Pollution from sea-going ships

Text for publication: confidential

14 juli 2005
Bureau of Transport and Public Works & Housing,
Regional Development and the Environment
Section II

This document is confidential. The Netherlands Court of Audit
determines if and when the information will be published.

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Summary

From June 2000 – June 2001, the Netherlands Court of Audit conducted research into preventing and combating pollution caused by sea-going vessels. The survey assessed the extent to which government policy in this area is effective, where causes of possible inefficiencies lie, and what is the scope for improvement.

General conclusions
On examining the policy area as a whole, the Court of Audit finds that cooperation between the various public services leaves room for improvement. The public services involved in this policy area should, according to the Court of Audit, account for the fact that the efficiency of their actions partly determines the efficacy with which other public services can act. In addition, the Court of Audit believes that, because there is insufficient insight into the effectiveness of the various policy elements as a whole, policy choices are not made at the level to which they belong, if at all. This applies, for instance, to the decision to invest more resources in prevention at the expense of repression, if this is expected to be of greater benefit to the environment. The Court of Audit is of the opinion that the ministries involved would do well to gather policy information in this field, then assess those measures most appropriate to reaching the environmental goals to enable the Cabinet and Parliament to exchange thoughts on the matter, and to monitor progress.

The research
In its survey, the Court of Audit first of all evaluates the main characteristics of Dutch policy directed at preventing pollution from sea-going ships, and the accountability for that policy. The survey then goes deeper into prevention policy in the form of the environmental supervision of sea vessels and collection of waste in seaports. The prevention

policy was studied to assess the efficacy of measures taken against pollution and against polluters.
The research prompted the Court of Audit to formulate a number of recommendations that could enhance the efficacy of public actions.

Policy
Environmental pollution by sea-going vessels is an international problem with respect to which European directives have been adopted and international conventions entered into, which are binding for the Netherlands. The MARPOL treaty (International Convention for the Prevention of Pollution from Ships at Sea, 1973) is the most important of these treaties. Preparing and implementing policy is largely in the hands of the Ministry of Transport, Public Works and Water Management, although a number of services of other ministries are also involved.

The Court of Audit has researched policy coherence, available information and accountability in Parliament. For a number of reasons, it finds that Parliament is considerably impeded in exercising its controlling task in the policy area of 'pollution from sea-going ships' given that the conditions needed for so doing have not been met. Most importantly, policy is unclear on a number of points, the information up-dated on policy implementation merits improvements and, ten years after its announcement by the Minister in Parliament, a functioning system to monitor emissions from sea vessels is still not in place. Finally, there is hardly any mention of accounting to Parliament for policy implementation. With the exception of 1992, Parliament has never received the annual progress reports that the Minister repeatedly promised.

Monitoring sea ships to assure compliance with environmental standards
In the Netherlands, the Shipping Inspectorate (Scheepvaartinspectie) is largely responsible for the environmental supervision of sea ships. It supervises

compliance with (inter) national equipment requirements for ships sailing under the Dutch flag (flag state control) and for ships sailing under a foreign flag entering a Dutch port (port state control).

The Court of Audit concludes that there are too many risks involved in the Shipping Inspectorate's contracting out an increasing number of flag state controls to private classification societies (the so-called 'klassenbureaus'). The Shipping Inspectorate lacks sufficient information and steering options to guarantee optimal supervision, while there are indications that the classification companies pay less intention to environmental controls on sea ships than the Shipping Inspectorate.

With regard to port checks, the Court of Audit comments that although the Netherlands has (more or less) met is international obligations to carry out a certain minimum number of port checks in recent years, it could place more focus on vessels comprising the gravest danger to the maritime environment.

Finally, the Court of Audit finds that the Shipping Inspectorate interprets its duties too narrowly: it predominantly acts as adviser to ocean shipping. Environmental control of ocean shipping would be more efficient if it took a more active role as an administrative enforcement and investigative authority. The Directorate-General for Freight Transport (DGG) including the Shipping Inspectorate, and the Public Prosecution Service (OM) hold different opinions regarding whether international treaties should or should not relate to checking oil logbooks.

Waste collection in seaports

Internationally, the Netherlands has undertaken to provide sound, accessible provisions for the collection of ships' waste. Speedy, simple and relatively inexpensive ways of waste collection decrease the chance of garbage being discharged overboard. The Minister has given the port authorities responsibility for these port facilities without setting further criteria – or taking other measures – which ensure that these facilities are indeed appropriate and easily accessible. The research of the Court of Audit shows that a large number of port authorities have not been designated the requisite port waste reception facilities.

Stimulating the way in which such waste collection facilities operate in the Netherlands should bring about the desired accessibility of port waste collection facilities. The Court of Audit believes that there are good reasons for doubting the efficacy of this instrument in this context. In light of the importance attached to an efficiently functioning market, the Court of Audit finds that the decision to wait until insight into the scale and quality of the facilities has been acquired is mistaken.
Taking these matters into consideration, the Court of Audit judges that the Minister has failed in her care of the port waste collection facilities to which she is internationally obligated.

Measures against pollution
The Court of Audit evaluated whether the air patrols to detect oil spills on the North Sea are being implemented as planned, whether the preventive actions are effective and are documented, and whether the North Sea Directorate of the Directorate-General for Public Works and Water Management (RWS) evaluated and adapted the prevention policy promptly and effectively.

The availability of manpower and resources seem more decisive for planning the air patrols than a well founded, detailed, needs assessment.

For years, the available capacity for air patrols has lagged behind the need indicated based on formulated policy. There are also structural bottlenecks in implementation: there is repeated, considerable, under-realisation with respect to the number of planned flight hours. Measures taken to tackle this have not had the desired effect to date. Agreements between the North Sea Directorate and the Coastguard Centre on the types of pollution the air patrols of the North Sea Directorate should report to the Coastguard Centre in practice involve the air patrols deciding whether to follow up a lead or not. The Public Prosecution Service, the only body authorised in this regard, bases its decisions on information on pollution it receives from the Coastguard Centre.

Attempts to combat maritime pollution seem limited. The presence of a modern anti-pollution craft to tackle pollution is countered by a number of organisational bottlenecks such as a frequently long response time and insufficient available air support. In general, efforts to combat coastal pollution seem adequate. Attempts to clear pollution in the Dutch waters of the North Sea and on the coast are only documented and evaluated to a restricted extent. A backlog has also arisen in setting up files recording the costs of activities. Given that, in these instances, the parties responsible for the pollution are unknown, the lack of files has not meant that costs went unclaimed. However, because of this backlog there is no insight into the costs or cost effectiveness of the pollution countermeasures.

The revision of the *Capaciteitsnota 1990* ('Capacity Paper 1990') stagnated for years and has only recently led to a new, critical policy paper, *Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea 2000-2010'). For the time being, tackling the bottlenecks that have been identified has yielded nothing concrete.

The Court of Audit concludes that, as a body to monitor and clear environmental pollution in the North Sea and coastal areas, the North Sea Directorate is very short-term oriented. Clearly, less attention is given to activities other than operational (such as policy preparation and development, making decisions on policy implementation, and evaluating policy).

Action against polluters

The Court of Audit determines that the revision and modification of maritime legislation was low priority in the last decade. The Act to Prevent of Pollution from Ships (*Wet voorkoming verontreiniging door schepen*) contains a number of lacunas and erroneous assertions that make investigating and prosecuting environmental offences in the North Sea difficult if not impossible. Moreover, in a number of respects, the Netherlands is seriously behind with implementing amendments to international treaties on pollution at sea. This has seriously limited the efficacy of

the Dutch investigative and prosecuting policy in recent years. In addition, the availability of manpower and resources at the Public Prosecution Service and Staff Bureau of the North Sea Commission Public Prosecutors that supports the Public Prosecution Service in this regard in implementing prosecutions, is a problem. The coordination between administrative and criminal enforcement bodies on implementing maritime legislation leaves a lot to be desired. Negotiations between the Public Prosecution Service and the administrative enforcement partners is still insufficiently developed. No structural steps have been taken to meet the wish of the Cabinet to realise better coordination between enforcement at sea and in the ports; the DGG and the Public Prosecution Service have different views on monitoring oil logbooks.

The Court of Audit considers it essential that administrative and criminal enforcers rapidly develop a shared vision on enforcement above and at sea, and in the ports, and conclude agreements regarding the choices they make in investigating and prosecuting environmental offences in the North Sea.

In September 2001, the Court of Audit received a response to the survey from the Minister of Transport, Public Works and Water Management, also on behalf of the Minister of Justice. The ministers support the main points of the report, state that they have taken good note of the shortfalls identified by the Court of Audit, and have digested its recommendations and remarks. In their response, the ministers go into detail on the measures that are or will be taken regarding policy (and its implementation) to prevent pollution from sea ships or to improve measures taken to combat it. These include: embedding the Shipping Inspectorate in the recently founded Transport and Public Works Inspectorate, eliminating legislative lacunas and creating conditions for sound coordination between criminal and administrative enforcement partners. The Court of Audit believes that some of the initiatives outlined by the ministers could lead to better policy (and policy implementation). However, it regrets that the measures are still so lacking in substance and precision that in many cases there is no indication of the effect the ministers expect the measures to have. Furthermore, there is no

indication, in almost any case, of when the measure will be introduced and expected to achieve results. The Court of Audit is also disappointed that the ministers' response fails to address its comments on the lack of policy coherence (and policy implementation).

1 Introduction

1.1 Background

Ocean shipping is of crucial economic importance to the Netherlands. Enormous quantities of goods leave and arrive in the country by sea. This has benefits but can also damage the environment in a number of ways, including:

- Sea vessels burn fuel, discharge used oil and cause air pollution;
- Tank vessels with unpackaged chemicals must wash out their tanks before they can be re-filled, producing polluted rinsing water;
- Ships' crews generate domestic refuse; and
- Maritime accidents can result in environmental damage when fuel and/or hazardous cargoes enter the seas.

There is a great deal of international and national legislation that lays down standards governing the equipping of sea vessels and how crews should take action to keep pollution from sea ships to a minimum. These rules are primarily geared to ship-owners and crews, and to governments. Governments must ensure that ship-owners and crews comply with regulations, and ensure that ships can deposit their waste in ports, and offer each other the use of equipment in the event of emergencies.

1.2 Research conducted by The Court of Audit

From June 2000 – June 2001, the Netherlands Court of Audit conducted research into pollution by sea ships so as to be able to answer the following questions:

1. Is Dutch policy to prevent pollution by sea ships effective?

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2. Is Dutch policy to combat actual pollution by sea ships effective?
3. How can any ineffective action in the prevention and combating of pollution by sea ships be explained?
4. What improvements can be made?

The Court of Audit restricted its research to the steps taken by the Dutch government. Although ship-owners and port authorities play a key role in tackling pollution by sea-going vessels, the Court of Audit was not authorised to research these bodies.[1]
However, the Court of Audit did ask Dutch ship-owners and port authorities for their voluntary cooperation in a written poll on a number of aspects of the survey. Most of the parties obliged, for which the Court of Audit expresses its thanks. The answers prompted the Court of Audit to bring a number of points to the attention of the state.

1.3 Surveys of other courts of audit

The research of the Court of Audit in the Netherlands was simultaneously carried out by a number of sister organisations in Europe: the audit courts of Cyprus, Greece and Malta, Turkey and the United Kingdom. The audit courts agreed that, a few months after the publication of the various national surveys, they would combine the results in a joint report on 'best practices'.

1.4 Report structure

In this report, the Court of Audit starts with an evaluation of the main points of Dutch policy to prevent pollution by sea ships, and on accountability for this (chapter 2).
The report then goes into more detail on the preventive aspects of policy. Firstly, this concerns conducting environmental inspections of ships. The Court of Audit

[1] The measures of international governments naturally affect the quality of the environmental in Dutch coastal waters and ports; these instances are also outside the remit of this research.

assessed whether the Shipping Inspectorate adequately implemented checks of ships under the Dutch flag and ships sailing under foreign flags (chapter 3).
Another important aspect in the field of prevention policy is to stimulate waste collection in the ports. The Court of Audit researched the measures taken to provide efficient port waste collection facilities that are put to good use (chapter 4).
The report then looks into the actions taken against marine pollution. It evaluates whether the air patrols for the detection of spillage function according to plan, whether countermeasures are effective and well documented, and whether the control policy is evaluated promptly and thoroughly, and amended (chapter 5).
The investigation of those responsible for marine pollution has also been covered by the survey. The Court of Audit researched whether the Public Prosecution Service has sufficient manpower and resources available for this task, whether the administrative and criminal enforcement of maritime pollution violations are in harmony, and whether legislation against these offences is adequate. It also examined the ways in which enforcement is implemented (chapter 6).
The next chapter 'Conclusions and Recommendations' deals with the connections between the themes that have been treated separately. The Court of Audit makes a number of recommendations that it feels will enhance the efficacy of government policy in this respect (chapter 7).
The final chapter is dedicated to the response of the Minister of Transport and Public Works and the Minister of Justice (chapter 8).

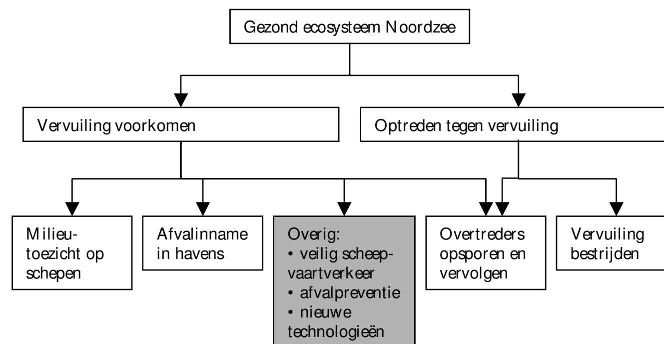
2 Policy and accountability

2.1 Introduction

Pollution by sea ships is by its very nature an international policy problem. To tackle this issue on an international scale, European directives have been drafted and the various countries have concluded treaties. The International Convention for the Prevention of Pollution from Ships[2] (further referred to as the MARPOL treaty), is the most important world-wide treaty. The European directives and international agreements are binding for the Netherlands and thus form the context within which Dutch policy must be framed.

Objectives and instruments
A highly simplified outline of Dutch policy on marine pollution from ships is given in figure 1.

Figure 1. Diagrammatic overview of environmental policy for shipping.



[Figure text:
Healthy North Sea ecosystem

[2] International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

Pollution prevention Action against pollution
Ships subject to environmental inspection
Port waste collection
Other:
-safe shipping
-waste prevention
-new technologies
Investigate and prosecute offenders
Combat pollution]

It should be noted here that pollution by ships is not the only threat to the healthy ecosystem of the North Sea. Maritime pollution can also be caused by discharges into the major rivers of effluence from water purification plants, agriculture and traffic. The grey part of the figure was not included in the survey carried out by the Court of Audit. In addition, it should be noted that the survey examined ships' waste from the moment it ceases to be 'sea flow' and becomes 'land flow' when collected in ports. Waste processing is thus outside the remit of this research.

Accountabilities
The Minister of Transport, Public Works and Water Management has primary responsibility for all the activities shown in the figure. Prosecuting polluters is an exception – this is the responsibility of the Minister of Justice. In addition, a number of government services answering to other ministries - such as the Coastguard Centre that is part of the Ministry of Defence – are involved in policy implementation.

In the first instance, policy is geared to preventing sea pollution caused by the deliberate or accidental discharge of hazardous substances[3] into the sea by ships.

The environmental inspections to which ships are subjected is primarily the task of the Shipping Inspectorate that, on 1 July 2001, became part of the Transport and

[3] Oil, hazardous bulk liquids, and substances that are packaged and transported by sea, and refuse.

Public Works Inspectorate-General, the Shipping Division. In addition, the National Police Services conduct checks on board ship.

Another instrument to prevent pollution from ships, to ensure the presence of efficient port waste collection facilities, has been delegated by the Minister to the port authorities. Controlling the licences these bodies require to offer such facilities on the basis of the Environmental Management Act (*Wet milieubeheer*) is the responsibility of the Minister of Housing, Spatial Planning and the Environment.

Secondly, policy is directed at limiting the risk of incidents and disasters and consequent damage to the marine and coastal environment. Controlling pollution is the prime task of the North Sea Directorate of Public Works, led by the Director of the Coastguard. Investigation and prosecution of polluters that has both a repressive and preventive function in this context, is primarily a matter for the Public Prosecution Service. In addition, the inspectors of the Shipping Inspectorate also have investigative powers in cases concerning the Act to Prevent Pollution from Ships (*Wet voorkoming verontreiniging door schepen*). The North Sea Directorate is responsible for clearing pollution at sea. Depending on the magnitude and type of pollution, clearing pollution washed up on the coast is one of the responsibilities of the coastal municipality or relevant department of Public Works.

Relevant policy papers
Policy has been elaborated in a large number of policy papers and parliamentary documents. The most important of these are:

- *Milieubeleidsplan voor de Scheepvaart 1991-1994* ('Environmental Policy Plan for Shipping'), 1991;
- *Voortgangsnota Scheepvaart en Milieu - Varen onder groene vlag* ('Progress Paper on Shipping and the Environment — Sailing under a green flag'), 1998;
- *Beheersvisie Noordzee 2010* ('Management Control Vision of the North Sea'), 1999;

- *Rampenplan voor de Noordzee 2000* ('Contingency Plan for the North Sea'), 1990;
- *Capaciteitsnota bestrijding olie en chemicaliën op de Noordzee* ('Capacity paper on tackling oil and chemical substances in the North Sea'), 1990;
- *Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea'), 2000.

Relevant legislation
In the Netherlands, the MARPOL treaty has been interpreted in the Act to Prevent of Pollution from Ships (*Wet voorkoming verontreiniging door schepen*), with accompanying general administrative measures. The legislation referred to forms the basis for, among other things, equipment criteria for ships, stipulations concerning discharges, and waste collection in ports.

The most important law concerning measures against pollution is the Act to Control Accidents in the North Sea (*Wet bestrijding ongevallen Noordzee*).

The Court of Audit has assessed:

- Whether the policy to prevent and control pollution from ships is clearly formulated (section 2.2);
- Whether the information recorded on implementing that policy offers sufficient insight into the efficacy of the policy (section 2.3);
- Whether accountability to Parliament regarding policy implementation is sufficient (section 2.4).

2.2 Lack of clarity in policies

According to the Court of Audit policies to prevent and control pollution from ships are lacking in clarity on a number of points.

Environmental policy
The precise effect on society that the environmental policy for shipping intends to achieve is unclear. The key policy paper, *Varen onder groene vlag* ('Sailing under a green

flag'), does not contain quantified objectives to reduce environmental pollution from ships. In this paper the Minister for Transport, Public Works and Water Management states that "it is often hardly possible, if at all, to provide exact goals in the form of setting a task in statistical terms." However, the paper does outline an objective for 2010. By this date, illegal discharges into the North Sea should have been reduced to a minimum. Further specification of the minimum scale is not given, and interim goals are not outlined.

The Court of Audit does not agree with the Minister that formulating objectives that can be monitored is entirely impossible. Internally, the ministry has a number of quantitative data that could be considered an indication of the total amount of illegally discharged oil, chemicals and waste. According to the Court of Audit, these data could be used to formulate ambitions and to measure the changes in the quantities of illegal discharges.

Prevention policy

The Court of Audit noted that *Varen onder groene vlag* ('Sailing under a green flag'), the policy document that mainly deals with prevention policy, does not consider the most important structural policy instruments used for this purpose by the minister. Inspections of Dutch ships are entirely omitted by the paper, while inspections of foreign ships in Dutch ports is only touched on incidentally when it concerns two initiatives to refine this instrument.[4] The paper does not clarify who is responsible for the most important structural policy instruments.

The Court of Audit also judges that the prevention policy is not clear about whether government control keeps track of the availability of adequate port waste collection facilities and whether the threshold for handing in waste – the tariffs involved – isn't too high. This doesn't concern controlling

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[4] *Varen onder groene vlag* replaces *Milieubeleidsplan voor de Scheepvaart 1991-1994* (1991), at least for shipping (as stated in *Varen onder groene vlag*, page 5). The old policy paper did mention the policy instruments referred to.

port waste collection facilities as holder of a facility permit based on the Environmental Management Act, but supervision of the extent to which waste collection in ports complies with the requirements specified by the Act to Prevent of Pollution from Ships (*Wet voorkoming verontreiniging door schepen*) and the criteria arising from the international agreements the Netherlands has concluded on port waste collection.

Policy to combat pollution
Of the three most significant papers on policy to combat pollution, two clearly describe the key policy instruments and the distribution of duties and responsibilities: *Rampenplan voor de Noordzee 2000* ('Contingency Plan for the North Sea') and *Capaciteitsnota 1990* ('Capacity Paper'). In the recently published paper *Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea'), for a number of measures there is no clarity on what will be realised when and by whom. It is stated, for instance: "Investigation and verification will be improved. The Netherlands Continental Plate and coast is regularly scanned by a plane equipped with remote sensing equipment." The latter measure was already in place before the paper was published, and what the improvement actually involves and who will oversee it, cannot be clearly ascertained from the paper. The Court of Audit also considers the way that this paper relates to the *Capaciteitsnota 1990* unclear: does the new paper supplement or replace the old one entirely? The Ministry of Transport, Public Works and Water Management stated, when asked, that it is supplemental. The Court of Audit, however, finds that it is unclear whether, if Parliament adopts the new paper, the basic principle of the old paper still applies, i.e. that it should be possible to clear, within 72 hours, half of the oil discharged in a 'sizeable incident' (an outflow of 30,000 m^3 crude oil after a collision 40 km west of Hoek van Holland).

Legislation
Finally, the Court of Audit found that Dutch law and international legislation are not entirely in line. The

discrepancy lies in lacunas or erroneous assertions in Dutch legislation and partly on the slow implementation in Dutch legislation of amendments to the treaty texts (further detailed in chapter 6, section 6.4). For ships this means that Dutch legislation subjects them to other criteria than those given in the treaty.

2.3 Information on policy implementation

The Court of Audit finds that the information on policy implementation requires improving.

Information on detected pollution
The North Sea Directorate of Public Works published annual figures throughout 1992-1995 on detected marine pollution. These data provide insight into the policy performance of the Directorate and are also used to adjust policy. After 1995, further reports were hindered by problems with data registration. A report of equal quality and scope as those issued from 1992-1995 has not been published to date.

The Coastguard Centre also keeps annual figures on instances of identified pollution. However, these statistics differ from those of the North Sea Directorate, which causes confusion. The key discrepancy is that the air patrol of the North Sea Directorate, on board surveillance aircraft, only report some of the oil spills they see to the Coastguard Centre. The discharges 'attached to a polluter' are reported and those that, in the opinion of the air patroller are 'worth dealing with'. In practice, the North Sea Directorate does not report smaller oil spillages, as agreed with the Coastguard Centre, to limit message traffic to and from the Coastguard Centre. The Court of Audit notes that data on detected (oil) pollution at sea is an important basis for measuring the effects of detection efforts, for which reason the uniform storage of data is crucial.

Information on control initiatives
The North Sea Directorate evaluates the control measures it takes only as an exception, and does not record the

reasons why, in some cases; the decision not to tackle marine pollution is taken (further detailed in chapter 5, section 5.3).

Information on enforcement
Since 1998, efforts have gone into designing a system to measure the effects of the Coastguard's enforcement efforts. The first system design was considered too ambitious by the organisations involved – too complex, too inaccessible and not feasible. The link between the enforcement performance realised and the desired social effects proved difficult to make as long as the objective of 'a clean, safe and living North Sea where people keep to the rules wherever possible' is adhered to. The Coastguard's annual reports are now using another way of measuring efficacy. They report on specific enforcement performance, (for example 'oil pollution from a ship, offender known' and 'discharge of ship's waste or cleaning water') and the means deployed in such cases. This approach, therefore, cannot be used as a basis to re-adjust the manpower and resources needed, with which it falls short.

2.4 Information provision to Parliament

During the parliamentary debate on the policy paper *Milieubeleidsplan voor de Scheepvaart 1991-1994* ('Environmental Policy Plan for Shipping') – the predecessor of *Varen onder groene vlag* ('Sailing under a green flag') – the Minister of Transport, Public Works and Water Management announced that, in the planning period 1991-1994, systematic methods would be developed and introduced to measure legal, illegal and accidental discharges. This pledge has not been met. The Minister also pledged to submit annual reports on progress and objectives reached, to the Lower House. In 1992, the progress report for 1991 appeared in which the Minister gave notice that, in future, the Lower House would be given yearly updates by means of the so-called North Sea Letters. However, the Lower House has not received such letters.

In 1998, in *Varen onder groene vlag*, the Minister states that there is still great uncertainty surrounding environmental damage from ships. She announces the execution of a 'zero measurement' in the planning period 1998-2001 "so that developments can be followed and the effects of the policy pursued can be determined better than before." On this occasion the Minister also said that, from mid 1998, she would ensure that periodical reports on shipping emissions were submitted to the Lower House. The Minister failed to meet either pledge. In August 1999 she again promised that the first version of a system to monitor and provide information in the form of a zero measurement based on existing data would be realised "in a couple of months", with the proviso that, when the emissions cannot be precisely defined, the trends would be made visible. However, the Court of Audit is forced to conclude that, ten years after the first announcement, no such monitoring system is up and running. It must also conclude that the periodical reports to the Lower House also promised have not emerged. Two relevant reports written by the Ministry on emission data were not presented to the Lower House.[5]

During the parliamentary debate on *Varen onder groene vlag*, the Minister also promised she would inform the Lower House of progress in implementing the paper, starting from February 2000. When the research of the Court of Audit concluded, the progress report had not yet appeared. For internal use, the Directorate-General for Freight Transport (DGG) appeared to have the beginnings of a progress report. This shows that the implementation of a number of initiatives has been slowed down.

The Court of Audit would finally like to remark that a progress report on the implementation of *Varen onder groene vlag* is of limited value as an account of the policy

[5] In the first instance this concerns the report *TO-emissies – een inventarisatie van emissies van de scheepvaart op het Nederlandse Continental Plat* (September 1997). The emission data contained largely relates to the period 1990-1995. The other report referred to here is *Actualisatie TO-emissies* (July 2000).

to prevent pollution from ships because the paper gives a far from complete picture of the policy area. The key structural prevention instruments are after all not mentioned, with which data on the input of the instruments in a progress report as referred to by the Minister, would naturally be lacking.

2.5 Conclusions

The Court of Audit believes, for a number of reasons, that it is extremely awkward for Parliament to exercise its monitoring tasks in the policy area of pollution from ships given that the requisite conditions for so doing have not been met.

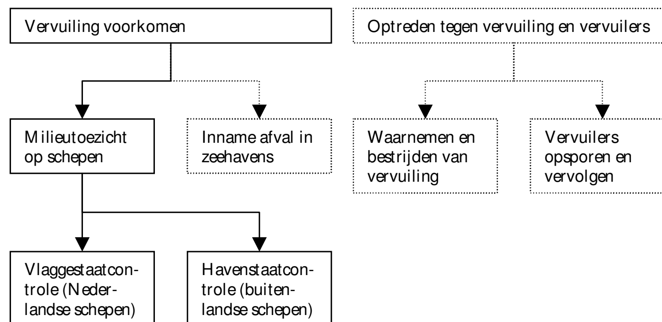
First and foremost, the Court of Audit considers that policy is unclear on a number of areas such as: the social effect to be realised, the position assigned to key structural prevention instruments in the policy, who monitors the availability of sound port waste collection facilities and what is the relationship between the policy papers *Bestrijding milieubedreigende stoffen Noordzee 2000-2010 (*('Tackling environmentally hazardous substances in the North Sea') and *Capaciteitsnota 1990* ('Capacity Paper').

Furthermore, the Court of Audit finds that the information recorded on policy implementation needs to be improved. An operational monitoring system for shipping emissions is still, ten years after its announcement by the Minister, not in place.

Little can be said of accountability to Parliament for the policy followed. With the exception of 1992, Parliament has not received the repeatedly promised annual reports on progress in implementing policy.

3 Pollution prevention: subjecting ships to environmental inspections

3.1 Introduction



[Figure text:
Pollution Prevention Action against pollution and polluters

Environmental control of ships
Port waste collection
Observing and combating pollution
Investigating and prosecuting polluters

Flag state control (Dutch ships)

Port state control (international ships)]

Supervision of compliance with rules governing the equipping and conduct of ships is a task for the Shipping Inspectorate. This body is responsible for checking sea-going vessels sailing under the Dutch flag – wherever in the world – and sea-going vessels sailing under an international flag anchored in a Dutch port. Inspecting

Dutch ships is known as 'flag state control' while controlling foreign vessels is referred to as 'port state control'.

Flag state control involves periodical inspections of the ships to see whether they meet the criteria of the MARPOL treaty (see chapter 2) and a number of other international agreements on aspects such as safety, the environment and working conditions. If the ship meets these requirements, the Shipping Inspectorate either issues it with a certificate or renews the current one. From an environmental perspective, an important certificate is the International Oil Pollution Prevention Certificate, or IOPP certificate. Sea vessels in excess of 400 ton gross are obligated to carry such a certificate as proof that their oil drainage and waste systems meet international criteria. The certificates are valid for a maximum of five years. At the end of that time, the Shipping Inspectorate conducts a new flag state control for which the ship must be put in dry dock. In addition, after two or three years, depending on the ship-owner's planning, interim inspections are held, and a *visering* or inspection visit[6] is held annually. Ship-owners undertake to request the flag state control themselves. In other words, these checks are never carried out unexpectedly.

In the port state control, introduced because not all flag states turned out to meet their responsibilities on time, ships are tested for the same aspects as in a flag state control. However, the inspection is less extensive because the ships are generally in port for a short time and the checks should not cause any undue delays. Different to flag state controls, port state controls are made without warning. The port state determines which ships will be inspected. An important restriction here is that ships may not be checked more than once every six months, unless there are urgent reasons for so doing.

The Court of Audit researched whether the Shipping Inspectorate adequately performs controls of the ships

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[6] Of these checks, the five-year is the most exhaustive, and the inspection visit or *visering* the least exhaustive.

under the Dutch flag (the flag state control, section 3.2) and controls of ships under foreign flags (port state control, section 3.3). The Court of Audit also evaluated the extent to which the understanding of its duties by the Shipping Inspectorate influences the efficacy of control and enforcement (section 3.4).

3.2 Monitoring Dutch ships

Contracting out activities

The Shipping Inspectorate does not carry out all flag state controls itself. In principle, it conducts five-yearly checks but contracts out an increasing number of interim inspections and all inspection visits to classification companies. These are private companies that traditionally – and even today – carry out technical inspections on the immediate instructions of ship-owners partly to assess the sea-worthiness and safety of ships, which is required for insurance purposes. Seven international bureaux, acknowledged by the European Commission, have been authorised to perform these certification activities in the Netherlands. Reputable bureaux include Bureau Veritas and Lloyd's Register.

Over the last few years, the Shipping Inspectorate has contracted out an increasing number of certification activities in the context of the flag state control to the classification companies.

This development can be explained further by the fact that, since 1995, the Dutch fleet has grown considerably (from 1,027 merchant ships in 1995 to 1,286 in 1999; an increase of 25%)[7], a growth that was not reflected during this period in the formation of the Shipping Inspectorate.

Due to the increased contracting out of activities, the Shipping Inspectorate has carried out fewer inspections of ships under the Dutch flag: it may even only inspect a ship once every five years.

Dutch ship-owners also note that the Shipping Inspectorate now has a heavier workload than a number of years ago: they signal backlogs in the administrative processing of certificates. In a questionnaire among ship-owners held by the Court of Audit, this was the most frequent complaint about the Shipping Inspectorate.

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[7] This results from the fact that, in 1995, a number of fiscal state measures entered into force that made sailing under the Dutch flag more appealing.

Supervision of classification companies
In the contracts that the Shipping Inspectorate concluded with the classification companies in 1996 on delegating parts of the flag state control, it was agreed that the bureaux would inform the Shipping Inspectorate of the shortfalls they discovered. This is vital for the Shipping Inspectorate in supervising the quality of the checks conducted by the bureaux and to gain insight into the quality of the Dutch fleet.

Not all classification companies keep to this contractual information obligation. The Shipping Inspectorate has practically no means of coercing the bureaux to submit this information, or to steer them in any other way.[8] In the meantime, there are indications that the bureaux give less attention to a number of matters than the Shipping Inspectorate, one of which is the environment.[9]
The Court of Audit states, in addition, that the classification companies have other links with the ship-owners: ship-owners are clients for standard classification activities and in their work for the Shipping Inspectorate, the ship-owner is the inspection object. The Court of Audit considers it dangerous that there are no guarantees that, in the second instance, the bureaux act with the required autonomy.

Quality of the Dutch fleet
The condition of the Dutch fleet seems to be reasonable, given the high ranking of the Netherlands on the white list maintained by the secretariat of the Paris Memorandum of Understanding. This list contains the flag states that meet international legislation most thoroughly, quantified against the results of port state controls. Only Finland, Ireland, Germany and Japan have higher rankings.

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[8] Withdrawing authorisation is an extreme means that probably won't be used in practice as the consequences are far-reaching. All ships under the Dutch flag that use the services of the classification company concerned should in that case be brought under other bureaux. Moreover, in a European context, withdrawing the recognition would also need to be regulated.

[9] Source: *Jaarplan 2000* ('Plans for the year 2000') by the Inspection Department of the Shipping Inspectorate.

The Court of Audit feels there are reasons for warning against a decrease in the quality of the Dutch fleet over the coming years because there are indications that the classification companies are paying less attention to monitoring compliance with environmental rules by ships.

3.3 Monitoring foreign ships

The 25% standard
In the last few years, the Netherlands has continuously met (or almost met) the agreement made by a number of countries within and outside Europe[10] , to subject 25% of the individual foreign ships that dock in their ports to a port state control. This agreement is laid down in the EU directive on port state control, and also in the Paris Memorandum of Understanding (Paris MOU).

The countries of the Paris MOU use a joint database on sea ships, SIRENAC, in which they enter the results of their port state controls and a great deal of other data on ships that visited their region. The data includes the type of ship, age, flag and date of the last inspection. Based on these data, the system assigns a 'target factor' to each of these ships. Using the target factor as a means of selection for port state control enables inspections to be made of ships which, for one reason or another, are felt to be due for assessment. The system assigns this category of ship a high target factor. If a ship has not been inspected earlier in the Paris MOU area, SIRENAC will have no data on it but the system will automatically designate it a high target factor.

Use of the target factor in practice
To assess how the Shipping Inspectorate uses the target factor in selecting ships for port state controls, the Court of Audit evaluated the target factors assigned to the ships that visited the port of Rotterdam in September and October

[10] Those countries are Canada, the Netherlands, Germany, Belgium, Poland, France, the United Kingdom, Norway, Sweden, Denmark, Italy, Spain, Croatia, the Russian Federation, Iceland, Finland, Portugal, Greece and Ireland.

2000 (where around 70% of the ships visiting the Netherlands drop anchor) and which ships were subject to port state control. This showed that, except for the ships with an extremely high target factor, the target factor in that period formed no obstacle to selecting ships for port state control. A relatively large number of low target factor ships were inspected.

The Paris MOU secretariat indicated earlier that ships with a high target factor are not inspected sufficiently. This finding not only applied to the Netherlands, but to the other affiliated countries as well. Because this was considered undesirable, in May 2000, port state controls were carried out throughout the Paris MOU region. When determining whether countries meet the norm of 25%, an inspection of a ship with a low target factor counts for less than inspecting a ship with a high target factor. This should deter countries from monitoring the 'easier' ships, which take less time, in order to meet the 25% standard. The new system, however, assigns heavier weight to inspections of ships monitored shortly before in another Paris MOU country, the weak points of which have already been established but not yet entirely rectified. These ships may have a higher target factor, but no longer comprise an equal risk to safety or the environment. According to the Court of Audit, this sends out the wrong message. Furthermore, it establishes that the new system of weighting inspections in September and October 2000 in the Port of Rotterdam has not yet resulted in better use being made of the target factor for the selection of ships for port state control.

Additional selection criteria
The Shipping Inspectorate stated, when asked, that deciding which ships should be subjected to port state control also depended on a number of other criteria:

- the availability of inspectors and their location
- where the ships are moored
- the anticipated duration of the inspection, the remaining working hours of the inspectors and possible travel time
- the consideration that inspectors should visit a 'good' ship now and then – one with a low target factor – to keep check of conditions there.

The Court of Audit considers it understandable and effective to an extent, partly in light of the other activities of the Shipping Inspectorate, to take these criteria into consideration. However, it deems it undesirable that these criteria are given greater weight than more substantial considerations when determining which ships should be subjected to port state control. In the Court's opinion, this is what happened in the ports of Eemshaven and Delfzijl – the latter also being a chemical port – where almost no port state controls were conducted in 1999 and 2000 because there were no inspectors living locally. The Court of Audit considers this an extremely undesirable situation, which the Minister of Transport, Public Works and Water Management should not hesitate to address.

In planning the activities of the Shipping Inspectorate, the number of individual foreign ships moored in a Dutch port is an important item of data. This information, together with the standard that one in four of the ships should be subjected to a port state control after all determines the total number of port state controls that the Shipping Inspectorate will minimally need to carry out. The Transport Safety policy unit at the Directorate-General notifies the European Commission once every three years of the number involved, working from the shipping statistics of the Central Bureau of Statistics (Centraal Bureau voor de Statistiek) (because the 25% norm is also included in the European Directive for port state control). In October 1998, the policy unit informed the European Commission that the previous year involved 5,645 individual ships, a far lower

number than that of 8,047 which was used as the basis in earlier years. For 1998, 1999 and 2000, a lower total would thus apply. The policy unit only forwarded the new total to the Shipping Inspectorate in May 2000. This meant that the Shipping Inspectorate continued to use the old total and, after two years, were forced to confirm that in 1998 and 1999 they had carried out considerably more port state controls than the Netherlands was internationally obliged to conduct. In 1998 the percentage was 34; in 1999 it had dropped to 32.

The Court of Audit considers it a serious shortfall that the Shipping Inspectorate was informed at such a late date of a fact that was imperative to its work planning, partly in view of the increased workload the body was dealing with. On this point, the policy unit manifested little insight into the capacity problems of its own inspection service. The Shipping Inspectorate could have been more alert when it did not automatically receive the information, and asked for it itself.

3.4 The Shipping Inspectorate's understanding of its duties

The Shipping Inspectorate interprets its duties concerning the environmental supervision of sea ships too narrowly according to the Court of Audit. The current understanding lays emphasis on the responsibility of the shipping industry (ship-owners, captains and so on) and the Shipping Inspectorate primarily acts as adviser to the sector. However, the Shipping Inspectorate should also enforce maritime legislation. The Court of Audit feels that the Shipping Inspectorate should be more active regarding both its 'own' administrative enforcement and its contribution to criminal enforcement.

Plausible enforcement (that is effective in the long term) requires tightening up the relationship to monitored ships that are repeatedly discovered to have defects. The Court of Audit is of the opinion that the checks performed by the Shipping Inspectorate are not sufficiently directed at

identifying recidivism. This is expressed, for example, in the way in which follow-up actions are established after flag state controls. On the basis of an analysis of the shipping files from 1999 and 2000 which recorded one or more environmental defects, (74 files with a total of 100 defects), the Court of Audit confirmed that, in 19 cases, the Shipping Inspectorate had not laid down follow-up actions and that it had given too few details in 28 cases.

In preparing flag state controls, not all the available data is used and whether or not the right attention points are dealt with depends on the insight of the individual inspector. Recently, the Shipping Inspectorate started using a ranking system for ship-owners, by which a ship's identified defects influence the inspection capacity used to monitor the ship-owners involved. This system relies heavily on the data gathered during inspections conducted by classification companies. However, as we noted earlier, this is far from exhaustive.

At present, there is no scope for imposing increasingly serious sanctions on recidivist ship-owners, captains or ships. Identified as repeatedly the Court of Audit considers it desirable that the Shipping Inspectorate gains a clearer picture of the efficiency and possible desirability of adapting or expanding the range of sanctions.

The Court of Audit also determines that the Shipping Inspectorate does not actively check the validity of certificates it provides to Dutch ships. This is information that can easily be retrieved from the computerised Shipping Inspectorate system. However, in practice this data is not used. The Shipping Inspectorate finds that ship-owners are exclusively responsible for ensuring the validity of their certificates. The Court of Audit states that, in the cases referred to (which the survey demonstrated do not actually occur often) there is failure to comply with international and national legislation, which a government service with investigative powers should actively address.

The experts of the Shipping Inspectorate are special investigative offices in the context of the Act to Prevent of

Pollution from Ships (*Wet voorkoming verontreiniging door schepen*) and must in that capacity in principle report to the Public Prosecution Service if they suspect an offence is being committed. The Court of Audit finds it striking that the Shipping Inspectorate submits relatively few files to the Public Prosecution Service for possible criminal prosecution. Half of the 1,839 port state controls conducted by the Shipping Inspectorate in 1999 discovered defects. In eleven cases, the Shipping Inspectorate reported these faults to the section of the Public Prosecution Service (see chapter 6).[11] Although it is not possible to give a norm for this, eleven is low compared to the number of cases in which police monitoring of oil logbooks[12] led to the conclusion that MARPOL stipulations had been violated. In 1998 this applied to 83 of the 179 official reports, while in 1999 this held true for 174 of the 252 reports.

While undertaking flag state controls, the Shipping Inspectorate is not demonstrably inspecting oil logbooks. In 1999 and 2000, the flag state control made no mention of detecting faults in the oil logbooks.

The Public Prosecution Service is of the opinion that, as far as criminal enforcement is concerned, the Shipping Inspectorate's contribution is minimal at the current time. To support this, it refers to a yearlong difference of opinion between the Directorate-General for Freight Transport (DGG), including the Shipping Inspectorate on the one hand and the Public Prosecution Service and National Police Services (KLPD) on the other, on monitoring oil logbooks. The DGG finds that the inspections of oil logbooks carried out by the KLPD and the River Police infringe agreements arising from the treaties on the frequency of inspections in particular, while the Public Prosecution Service does not see the inspections of the

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[11] The Shipping Inspectorate sent a total of 19 reports to the section in 1999. Eight were drawn up at the request of another coastal state. The Shipping Inspectorate thus forwarded 11 reports under its own volition.

[12] The MARPOL treaty obligates captains to keep an oil logbook on board in which the actions performed with oil on board their ship (such as refuelling or handing in used oil to the port) must be recorded.

KLPD as administrative supervision in the sense of the treaties but as investigative activities in the context of the Economic Offences Act *(Wet economische delicten)*. Investigation and prosecution are not regulated in the treaties in the view of the Public Prosecution Service.

An investigation conducted by the KLPD in 2001 showed that a number of fishing ships under the Dutch flag did not have the required IOPP certificate. The Shipping Inspectorate was aware of this – as was the policy unit of the DGG that was involved – but no citations were issued. This type of tolerance is not permitted under the MARPOL regime.[13] Nor was this coordinated with the Public Prosecution Service which, according to the Court of Audit was self-evident given the Public Prosecution Services' responsibility for criminal enforcement.

3.5 Conclusions

The Court of Audit finds that the Shipping Inspectorate's supervision of ships' compliance with environmental legislation should be tightened up in a number of areas.

The Court of Audit deems the Shipping Inspectorate's increasing dependence on private bureaux to conduct flag state controls extremely dangerous. There are no guarantees that these bodies perform their duties for the Shipping Inspectorate with the necessary autonomy and the Shipping Inspectorate does not have the means to steer the classification companies. This begins with the information they need to form an opinion on the need for re-direction: the classification companies do not all keep to their contractual obligation to report on flag state controls on the level of defects found in individual ships. The Shipping Inspectorate thus had insufficient information to

[13] MARPOL gives treaty countries the option of dismissing individual cases from having the requisite IOPP certificate but not – as is the case here – of giving informal, generic consent for not needing to meet this obligation. The Shipping Inspectorate asserts that the heavy fishing vessels in question may not have had IOPP certificates, but did possess the necessary oil-water separator.

be able to properly supervise the duties carried out by the bureaux in the field of delegate flag state controls. Such supervision is necessary because of indications that the bureaux give less attention to compliance with environmental legislation than the Shipping Inspectorate itself.

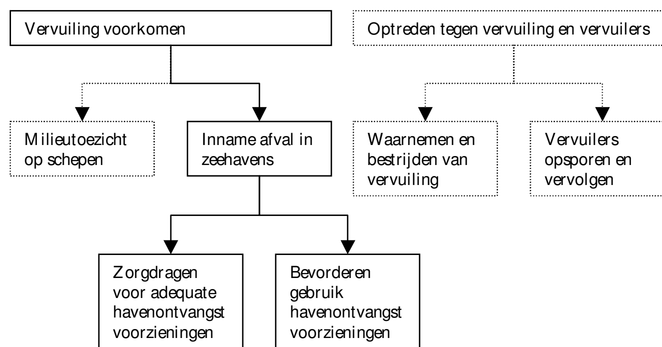
Over recent years, the Netherlands has always, or nearly always, met its international undertaking to subject 25% of individual international ships in Dutch ports to a port state control. The inspections similarly appear not to be directed at the ships that pose a more substantial danger to the environment or security. The 'target factor' for visiting ships that emerges from the international shipping database SIRENAC, the tool used by the Shipping Inspectorate for this purpose, does not seem decisive in the selection of ships for port state control and should, according to the Court of Audit, be put to better use.

Finally, the Shipping Inspectorate often interprets its task too narrowly in the view of the Court of Audit. It places too much emphasis on acting as adviser to the shipping industry. The Court of Audit finds that supervision of the environment would be more effective if the Shipping Inspectorate took a more active role in administrative enforcement and investigation.

The DGG and the Shipping Inspectorate on the one hand and the Public Prosecution Service on the other, have long held different opinions on the inspection of oil logbooks. The DGG finds that these controls infringe the treaty stipulations on the frequency of inspections, while the Public Prosecution Service believes that these stipulations do not classify checking oil logbooks as an investigative activity (see chapter 6 for investigation and prosecution).

4 Pollution prevention: waste collection in seaports

4.1 Introduction



[Figure text:
Pollution prevention Action against pollution
Ships subject to environmental control
Port waste collection
Observe and combat pollution
Investigate and prosecute offenders
Ensure good port waste collection facilities
Promote use of port waste collection facilities]

If sea-going vessels can deposit their waste in a fast, easy, inexpensive way, it will reduce the chance that they will discharge it overboard illegally. By ratifying the MARPOL treaty, the Netherlands has also undertaken to ensure the presence of good port waste collection facilities for ships' refuse in ports, to meet the waste disposal needs of the shipping industry. In the four North Sea Ministers conferences held between 1984 and 1995, it was also agreed that the use of port waste collection facilities would

be stimulated by, among other things, charging fairly low disposal rates.

The Act to prevent pollution from ships states that ensuring efficient port waste collection facilities is the responsibility of municipal port authorities. In 34 seaports, waste collection facilities should be available for oil-bearing mixtures and garbage and eight of these facilities should also have facilities for disposing of cargo-related chemicals.[14] The port authorities should designate companies that could provide port waste collection facilities. One condition is that these firms should have a licence granted on the grounds of the Environmental Management Act for the collection of waste substances. In addition, the port authorities can attach further prescriptions and restrictions to the nomination. Collecting oil-bearing mixtures, chemical residues and ships' garbage without an instruction from the port authority in question is prohibited. This is an economic offence.

The Court of Audit has investigated the instruments used to ensure sound port waste collection facilities (see section 4.2). It also assessed the extent to which the minister has taken action to improve the port waste collection facilities being put to good use (see section 4.3).

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[14] Three directives contain lists of ports that should have port waste collection facilities. For oil-bearing mixtures and household garbage, these are the directives PJ/S 30 668/86 *(Aanwijzing havens ingevolge Besluit voorkoming olieverontreinigen schepen)*, and S/J 32 367/88 *(Aanwijzing havens)*; for chemicals this is S/J 30 691/88 *(Regeling aanwijzing havens)*. The Ministry of Transport and Public Works indicated that these lists, dating from the 1980s, are obsolete and will be amended.

4.2 Port authorities responsible for waste collection

The responsibility for adequate[15] facilities for waste collection was delegated to port authorities at the end of the eighties because they were best placed to take the requisite measures for their ports. The delegation was not accompanied by a legal stipulation that the Minister would receive structural information from the port authorities on how they would actually set up sound port waste collection facilities in their port. According to the Court of Audit, this would have been a reasonable requirement. That the Minister did not stipulate being kept structurally up to date on the matter means that the minister lacks sufficient data to be able to determine whether the Netherlands is complying with international agreements on port waste collection facilities and whether the delegated tasks are executed in accordance with international and national criteria. Nor can the Minister determine whether existing port waste collection facilities actually meet shipping's waste disposal needs, as intended.

To learn more about how waste collection is regulated in the ports, the Court of Audit presented the port authorities with a limited number of written questions. It asked the port authorities for voluntary cooperation because the Court of Audit has no powers to perform municipal inspections. All port authorities responded, and the responses – which the Court of Audit has not been able to verify – give rise to the following. Of the 34 port authorities, thirteen stated that they had no designated port waste collection facilities.[16] This does not mean that waste is not collected in these ports. In the ports where garbage is collected, the collection companies are however in breach. The Ministry of

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[15] The term 'adequate' has not been elaborated further either in the legislation nor by the Minister; it is thus left to the port authorities to do so. The Court of Audit considers this worth noting because the Netherlands has undertaken an international obligation to ensure that the facilities are adequate.

[16] The Court of Audit was not able to assess whether the remaining 21 port authorities have designated waste collection facilities. Of these 21, eight sent the instruction, thirteen did not.

Transport, Public Works and Water Management is aware of this, but has taken no steps against it to date.

Many of the port authorities that have designated companies as port waste collection facilities have not bound further prescriptions or restrictions to the designation: 40% of them indicated not having done so. According to the Court of Audit, this is a key resource for port authorities in ensuring 'sound' waste collection facilities. This is confirmed by the instances in which port authorities have set further rules or restrictions (these, for example, regulated opening hours or made it mandatory to provide the latest rates on an annual basis). That port authorities link few rules or limitations to the designations indicates, according to the Court of Audit, that expectations that the port authorities could have fleshed this aspect out further have not been met.

Due to lack of structural information it is impossible to make well-founded pronouncements on the soundness of port waste collection facilities in the Netherlands. There are no indications that there is insufficient capacity to deal with the waste. However, many Dutch ship-owners who already responded to the questionnaire put to them by the Court of Audit, are critical of the scope for disposing of household garbage in Dutch ports.[17] In response to this, the Ministry of Transport, Public Works and Water Management said that, since 1988, only two complaints have been received by ship-owners. The Court of Audit believes that, for a number of reasons, ship-owners won't be quick to complain using the procedure offered by the MARPOL agreement and that the lack of official complaints does not necessarily mean that port waste collection facilities are sound. In addition, it notes that, over recent years, the Ministry of Transport, Public Works and Water Management and received indications from various studies on bottlenecks in seaport collection, and therefore has more information on this matter than from the complaints procedure alone.

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[17] Ship-owners also commented on the lack of port facilities to dispose of sanitary waste. MARPOL appendix IV, which relates to the subject, has not been ratified by the Netherlands.

4.3 Encouraging the use of facilities

A low threshold, including reasonable collection rates and good services, should make sure that sea ships make good use of the port waste collection facilities. In the Netherlands, the Minister assumes that the desired accessibility is realised by market forces (competition between port waste collection facilities). The Minister is not involved with setting collection tariffs, and has no structural insight into this aspect.

In practice, the majority of ports only have one port waste collection installation. This emerges from, among other things, the questionnaire held by the Court of Audit among port authorities. There is no realistic competition in these seaports. In seven to nine[18] of the 21 seaports where the port authorities has designated a port waste collection facility, there is more than one collection company. The Court of Audit notes that one can hardly speak of healthy market forces here. In the last few years, of the companies actively involved in waste collection and processing, many have increasingly formed conglomerates. With the result that competition between waste collection companies is less pronounced than it looks at first sight. Competitive collection rates is also hampered by the small number of waste processing companies (the next link in the chain after collection companies) and the fact that processing costs form a sizeable chunk of collection tariffs.

Signals that port waste collection facilities market is operating below par are nothing new. This was reported earlier in a survey commissioned by bodies including the Ministry of Transport, Public Works and Water Management.[19] The Minister took no action to curb this but

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[18] This depends on the waste product involved.

[19] Other bodies were: Alfons & Partners Consultancy *Knelpuntenanalyse HOI's* (The Hague 1996). In the Court of Audit report *Tankcleaning Rotterdam en andere havenontvangstinstallaties* of 1996 (Lower House, 1995-1996, 24 715 nos 1-2, pages 46

only remarked several times that the problems would be investigated or resolved in new policy.[20]

The Court of Audit is of the opinion that there are good reasons for doubting the efficacy of market forces as a tool for realising the desired accessibility of port waste collection facilities. Given the importance given here to good market mechanisms, namely as a policy tool, the Court of Audit feels that gaining a clear picture of the quality and efficacy of market forces was wrongly omitted.

In the policy paper *Varen onder groene vlag* ('Sailing under a green flag') of 1998, the Minister announces that, in 2000, the port authorities should have complete waste management plans integrating the collection of shipping waste with the other services it provides to the shipping industry.[21] According to the Court of Audit, such plans could improve the use of waste collection facilities in ports, although it determines that, up to now, the plans have not got off the ground.

The Court of Audit was unable to find concrete measures taken by the Minister to stimulate the use of port waste collection facilities.

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and 51) problems were reported concerning the use of port waste collection facilities: collection costs, speed of services, physical accessibility and round-the-clock availability.

[20] In the response to the Court of Audit report *Tankcleaning Rotterdam en andere havenontvangstinstallaties,* the Minister referred ahead to the improvements that would be introduced when the recommendations of the Hoogland committee had been followed up and the European Directive on port collection installations had been developed. When following the Hoogland committee's recommendations [1998], the Minister again referred ahead to the European Directive.

[21] These plans should contain an overview of the collection companies designated by the port authority, a description of the procedures for the collection, transportation, storage and processing of the waste, criteria for those handing in waste, service quality standards for collection companies and a complaints reporting point.

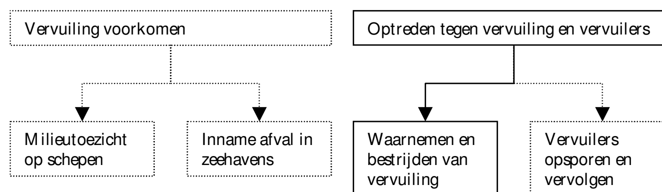
4.4 Conclusions

The Court of Audit judges that the Minister of Transport and Public Works has failed in providing sound port waste collection facilities by delegating them to the port authorities without setting further requirements or taking other measures to guarantee that these facilities are sound and easily accessible. The survey conducted by the Court of Audit shows that a large number of port authorities have not designated port waste collection facilities, which they should have done.
When collecting waste in the ports, the government has delegated international undertakings to the port authorities. In the opinion of the Court of Audit, it is reasonable to expect that the Minister, in such cases, would have ensured that the duties were carried out in such a way as to comply with international agreements and realise the desired results. In practice, the Minister lacked the necessary information and tools to re-direct the situation.

The Court of Audit finds that there are good reasons for doubting the efficacy of market forces as the instrument to realise the desired accessibility of port waste collection facilities. In light of the importance attached here to a well-functioning market, the Court of Audit finds that sound insight should have been acquired into the scale and quality of the market.

5 Taking action against pollution: the spillage

5.1 Introduction



[Figure texts:
Pollution Prevention Action against pollution and polluters
Environmental control of ships
Port waste collection
Observing and combating pollution
Investigating and prosecuting polluters]

Taking action against maritime pollution begins with observing the pollution. As a rule, this takes place by air patrols carried out by the Coastguard. These patrols are under the operational direction of the Coastguard Centre, using the plane of the North Sea Directorate of the Directorate-General for Public Works and Water Management or one of the other planes flown in relation to the Coastguard. The Coastguard plane is always manned by an air observer from the North Sea Directorate in the capacity of special investigative officer. A second air observer has general investigative powers or is also a special investigative officer.

If Coastguards detect pollution during a surveillance flight, they report it to the Coastguard Centre, which then informs the North Sea Directorate of the Directorate-General for

Public Works and Water Management. Third parties (possibly people on board ship) also sometimes observe marine pollution. Such individuals should also report the instance to the Coastguard Centre. An air patroller of the North Sea Directorate will then evaluate the gravity of the incident.

The North Sea Directorate is responsible for tackling marine pollution. The decision whether or not to take action is taken by the Duty Officer of the North Sea Directorate, in consultation with the air patroller. Sea pollution can sometimes wash up onto the coast. Depending on the scale and type of pollution, the Directorate-General for Public Works and Water Management, the regional coastal department coordinated by the North Sea Directorate or the coastal municipality in question, is charged with cleaning up the pollution.

The Court of Audit has judged whether the air patrols are carried out according to plan (section 5.2), effective measures are taken (section 5.3) and well documented (section 5.4) and, finally, whether the North Sea Directorate evaluated and adjusted the action promptly and efficiently (section 5.5).

5.2 Carrying out air patrols

Planning

In terms of policy, the Coastguard is steered by the Permanent Contact Group for Policy Enforcement in the North Sea (PKHN) in which all the Coastguard departments and the Public Prosecution Service take part. In *Beleidsplan Handhaving Noordzee* ('Enforcement Policy Plan for the North Sea'), the PKHN, on a yearly basis, lists the air patrol needs for the various action areas[22] for which air surveillance of the North Sea is required. The Court of

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[22] The air surveillance and other preservation activities performed by the Coastguard are not only geared to the environment but also to fishing, traffic and safety and general enforcement (such as customs supervision). In addition, the Coastguard carries out services including 'Search and Rescue'.

Audit has determined that the policy plans from 1998 up to and including 2001 do not underpin the need for preservation air patrols directed at the environment. Equally, the PKHN has not given reasons in its specifications of this need. The 50/50 distribution of environmental flights over day and night, for example, is selected again each year without detailing the reasons for this choice.
The listing of needs seems to be based on the capacity of manpower and resources rather than preservation. There is no explicit feedback on the results and experiences of the air patrols in previous years.

The North Sea Directorate's plan must be used to perform a number of environmental tasks including detecting pollution that must be tackled and enforcement flights above shipping routes. For 2000, the total policy need for all tasks originally amounted to 1,750 flight hours. In 2000 the plane was only available for 1,200 flight hours (plus 550 random available hours for disaster and incident activities). Tension of this sort between policy need and available capacity has been the case since before 1990.
Furthermore, the distribution of the scarcity of flight hours among the various environmental tasks is obscure. Considerations appear to have no foundation.

Planning implementation
For many years, there have been a number of operational problems when implementing air patrols. The Coastguard plane of the North Sea Directorate is often grounded due to technical difficulties or lack of staff, and the planned number of flight hours is not reached.[23] The Annual Report 2000 of the Coastguard shows that out of 1,200 planned flight hours for that year, only 19% were realised. It must be concluded that the measures taken in recent years to curb cancellations have been quite ineffective.

Reporting pollution to the Public Prosecution Service

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[23] See the report *Functioneren Kustwacht* by the Netherlands Court of Audit, February 1998, Lower House 1997-1998, 25 865, no. 1-2, pages 18 onwards.

One very noticeable fact to emerge from the survey was that the North Sea Directorate of the Directorate-General for Public Works and Water Management and the Coastguard Centre have agreed that minor cases of pollution, including punishable instances, are not reported by the air patrols of the North Sea Directorate to the Coastguard Centre for efficiency considerations. The Public Prosecution Service had no part in this agreement and, as far as the Court of Audit can ascertain, was not involved. This would have been obvious given that that the Public Prosecution Service turns to the Coastguard Centre for information on pollution. In cases in which punishable instances of pollution are not reported to the Coastguard Centre, the decision of whether or not to prosecute by notifying the body in question – the Public Prosecution Service – was removed and taken by the air patrollers of the North Sea Directorate of the Directorate-General for Public Works and Water Management. The Court of Audit judges this to be fundamentally improper.

5.3 Efficacy of action taken against pollution

The steps taken to combat (oil) contamination at sea can be examined from two angles. Firstly, in the narrow sense: this involves the percentage of pollution cleared. Secondly, in the broad sense: the share of oil pollution in which attempts have been made to clear it.

Efficiency percentage of clearances
From 1983-1993, the percentage of contamination cleared was, according to the North Sea Directorate, an average of 50 to 60%. No figures are known for later years. The Court of Audit is unable to assess this data, as there is no clear standard to which it must be compared. Additionally, it notes that the value of this data as a measure for the efficacy of the current activities to clear pollution is limited because the organisation and equipment used to clear contamination has radically changed since 1993. Over recent years, there have fortunately been no major incidents in the Dutch waters of the North Sea with which the efficacy of the Dutch clean-up operation has never

really been put to the test. If one examines the efforts abroad of the ARCA anti-pollution vessel after the Erika disaster (on the south coast of Brittany in 1999), the North Sea Directorate seems to have an effective vessel. The efficacy of the anti-contamination activities are, however, negatively influenced by problems in the field. Low response times and the support needed for effective action from the air (to send an anti-pollution craft to the right place) is not always available.

Percentage of pollution cleared
Only a minority of all oil spills at sea are cleared. The majority of cases of oil contamination that are observed are minor and cannot always be reached on time. The long response time or lack of air support (at night) are often reasons for not taking action. It is striking that, from 1983-1993, no action was taken against a large number of relatively large spills.

Dealing with *coastal* pollution seems satisfactory in general. But here, too, it must be noted that there have been no large-scale incidents in the recent past.

5.4 Documenting anti-pollution activities

Final reports and evaluations
According to the internal manual of the North Sea Directorate on tackling marine incidents and disasters, a final report and evaluation should be made of every anti-pollution activity. The individual who headed the initiative concerned as Chief Duty Officer is responsible for this. In practice, the final reports and evaluations referred to for both marine and Dutch coastal anti-pollution activities seem only to be made incidentally. This means that complete and structured reports of the circumstances in which pollution is cleared and how effectively, is often lacking. But documenting cases in which it is decided not take countermeasures, is also generally missing.

The last two international initiatives in which the Netherlands took part were recorded in detail by the North

Sea Directorate.[24] These evaluations have also already proved their usefulness in practice.

Records of the cost
The North Sea Directorate can in many cases claim the expenses involved in countermeasures at sea or on the coast from the polluter. This requires keeping a record of the costs for each initiative. This is also the ultimate responsibility of the Chief Duty Officer involved. The Court of Audit has established that when drawing up dossiers on expenses over recent years, a backlog has evolved. After the clear-up near Egmond in August 1998 (empty bags of noxious substances), no further recorders were found with the exception of one covering Dutch aid in combating the results of the Erika disaster in December 1999. According to the North Sea Directorate, this is because the financial department has undergone a reorganisation of tasks, staff and priorities. The extent to which the backlog can be eliminated is still not clear. All countermeasures for which there have been no expenses dossiers since 1998 concerned pollution caused by an unknown party. Even if files had existed, it would have been impossible to claim the expenses from the polluters. The Court of Audit nevertheless finds it deplorable that the files were not created as this makes it very difficult to gain a clear picture of the cost effectiveness of the initiatives.

5.5 Evaluation and adjustment of combat policy

In 1993, the North Sea Directorate started to revise the *Capaciteitsnota 1990* ('Capacity Paper 1990'). Based partly on the results of the Evaluation of Oil Combating Strategy (ESO), the new policy paper *Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea 2000-2010') was drawn up and presented to the Lower House in December 2000. The revision went slowly: between 1994 and 1997, the ESO project ground to a halt.

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[24] This concerns the disasters with the Sea Empress (Wales, 1996) and the Erika (Brittany, 1999).

The new policy paper indicates a number of serious problems in implementing the combat policy determined in the *Capaciteitsnota 1990*. The Court of Audit considers it regrettable, because of this, that the revision of the old paper was not tackled more energetically.
The following problems were detected:

- The Netherlands is, according to the new paper, insufficiently prepared for a 'sizeable incident' on which the organisation and combat capacity should be based (an outflow of 30,000 m^3 oil 40 km west of Hoek van Holland). The new paper asserts that the assumption that half such a spillage will disappear through evaporation and dispersion is too optimistic. Only 10,000 m^3 seems to vanish while the remainder stabilises with the water leaving, in the least favourable scenario, a total of 70,000 m^3 water in oil emulsion to be cleared.
- The speed with which sea can be swept referred to in the *Capaciteitsnota* has proven in practice to be 25 tot 50 percent slower.
- The vast majority of combat capacity is provided by trailing suction dredgers. 'Standby' contracts for these vessels have been concluded with the commercial sector. Over the last ten years, the availability of trailing suction dredgers has considerably decreased, partly because of the increasing number of assignments in remote international locations.
- Up to now, resources for combating marine pollution have been concentrated in Rotterdam and Scheveningen and spread along the coast to a lesser extent. The areas to the north of the Wadden islands and before the Zeeland coast can hardly be protected – if at all – because of this, so says the new policy document.

The new policy paper expresses the intention to develop a system of considerations as a simple means of establishing the necessity of taking countermeasures. The Court of Audit believes that this is a constructive move. However, it notes that factual information on the reasons why it was decided not to take countermeasures in past years is

missing, making it difficult to set up a system such as the paper describes.

The critical analysis of the North Sea Directorate merits appreciation. At the same time, it must be concluded that tackling the problems identified is still lacking substance. The requisite policy information still seems to be incomplete, especially when it concerns current and complete insight into the risk of calamities elsewhere along the coast, or the risk of incidents that are smaller (such as a factor ten) than the normative incident, but still very serious. Finally, the survey found that there is no foundation for the sum of NLG 40 million named in the new policy paper for measures to tackle the bottlenecks identified in the document.

5.6 Conclusions

The availability for planning the air patrols seems to rely more on the availability of manpower and resources than a well-founded and detailed needs assessment.

For years, the available capacity for air patrols has lagged behind the need given on the basis of formulated policy. There are also structural problems in implementation: a constant, significant under-performance compared to the number of flight hours planned. Measures taken to tackle this have not had the desired effect to date.

The Court of Audit considers it fundamentally incorrect that the decision of whether or not to take countermeasures is in practice taken by air patrollers of the North Sea Directorate of the Directorate-General for Public Works and Water Management and not by the body authorised to do so - the Public Prosecution Service. This way of acting arises from agreements between the North Sea Directorate and Coastguard Centre, with which the Public Prosecution Service was not involved (see chapter 6 for investigation and prosecution).

The efficacy of combating marine pollution seems to be limited. Organisational bottlenecks like frequently lengthy response times and insufficient available air support are pitted against a modern anti-pollution vessel. Countering coastal pollution seems adequate in general. That said, (medium) sized incidents have not occurred in Dutch waters and/or coastal areas in recent years.

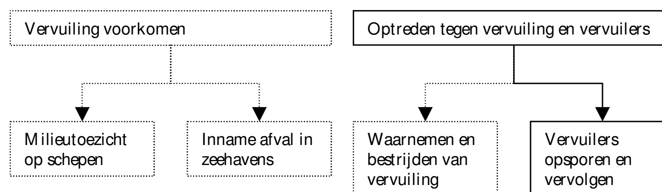
Countermeasures in Dutch North Sea waters and on the coast are poorly documented and evaluated. A backlog has also arisen in drawing up expenses files for the initiatives. Given that the parties responsible for the contamination are unknown in these cases, this has not hampered reclaiming costs. The Court of Audit nevertheless finds it regrettable that the backlog was allowed to develop as this hampers gaining a clear view of the costs and cost effectiveness of the anti-pollution measures.

The revision of the *Capaciteitsnota 1990* ('Capacity Paper 1990') ground to a halt for years and has only recently led to a new critical policy paper, *Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea 2000-2010'). Tackling the problems identified still lacks substance for the time being.

The Court of Audit concludes that, as a body for observing and clearing pollution on the North Sea and coastal areas, the North Sea Directorate is too focused on the short term. Activities other than operational initiatives such as policy preparation and development, determining how policy will be implemented and evaluation policy are clearly given less attention.

6 Taking action against pollution: the polluter

6.1 Introduction



[Figure texts:
Pollution Prevention Action against pollution and polluters
Environmental control of ships
Port waste collection
Observing and combating pollution
Investigating and prosecuting polluters]

Investigating and prosecuting parties responsible for environmental marine pollution starts in most cases with air patrols. An observed area of pollution generally indicates a breach of maritime legislation. Evidence must be collected during the flight by means of photos and so on. The Public Prosecution Service is responsible for investigating and prosecuting the offenders.

The Court of Audit has investigated whether the Public Prosecution Service has sufficient manpower and resources for this task (paragraph 6.2). It also assessed with the administrative and criminal enforcement of environmental offences at sea were well coordinated (paragraph 6.3). The Court of Audit also evaluated the legislation for these offences (paragraph 6.4). Finally, it

examined the implementation of the enforcement (paragraph 6.5).

6.2 Availability of manpower and resources

The Public Prosecution Service, and in particular the North Sea Environmental Public Prosecutor, is charged with investigating and prosecuting offenders. He is based in the Amsterdam district public prosecutor's office where he has prime responsibility for prosecuting environmental offences on land. No separate capacity has been set aside for implementing his North Sea environmental task either in the annual planning letters of the Board of Procurators General of the Public Prosecution Service, nor in the planning of the Amsterdam public prosecutor's office. Within the time that the North Sea Environmental Public Prosecutor is available, investigating marine pollution offences are competing with prosecuting land pollution offences in the district concerned. The time given to prosecuting marine pollution violations depends on the personal effort and commitment of the Public Prosecutor concerned and the scope that the Chief Public Prosecutor in Amsterdam is prepared to give. The secretaries of the public prosecutor's office that support the North Sea Environmental Public Prosecutor are also having to deal with North Sea environmental cases too much as 'extras', in the view of the Court of Audit.

The North Sea Environmental Public Prosecutor is also supported primarily by the North Sea Commission Public Prosecutors section. This commission steers the Coastguard when it comes to manpower and equipment for the criminal enforcement of marine legislation. The commission also directs the general and special investigative officers.
The section is manned by staff of the Royal Netherlands Military Constabulary (Koninklijke Marechaussee) and the National Police Services (KLPD). The Public Prosecution Service has not ensured that capacity and budget for the section are structurally arranged. This would be obvious according to the Court of Audit because the section plays a

key role for the Public Prosecution Service in preparing the prosecution of environmental offences on the North Sea. The section is based in the Coastguard Centre in IJmuiden, for which it has not been required to pay rent to date. Minor expenses (coffee, photocopying and so on) put pressure on the budget of the Coastguard Centre. There are problems with larger costs. At the end of 1999, neither the Public Prosecution Service nor the KLPD wished to cover the expense of making the computers of the KLPD staff and section personnel millennium-proof.
The continued existence of the section was the frequent subject of debate of recent years, and is so again. The Board of Procurators General is considering placing the tasks of the section with a national bureau it plans to set up.

6.3 Developments in enforcement policy

Coordination of administrative and criminal enforcement
In its policy paper *Strategie milieu* ('Environment Strategy') of July 1999, the Public Prosecution Service determined its strategy for the criminal enforcement of environmental legislation. In this document, the Public Prosecution Service asserts, among other thing, that administrative and criminal enforcement needs to be mutually supplemental and supportive, which requires close contact between the Public Prosecution Service and administrative enforcers. According to the paper, 'analyses of circumstances' should be drawn up with which relevant enforcement themes could be identified and priorities set.
When enforcing marine legislation, the Public Prosecution Service has, up to now, only elaborated its *Strategie milieu* paper to a limited extent. The consultations between the Public Prosecution Service and the administrative enforcement partners, of which the DGG is the most important, is still underdeveloped. This is because the North Sea Environmental Public Prosecutor and the section have insufficient capacity for these tasks and also because enforcing the Act to prevent pollution from ships does not receive sufficient attention from the DGG.

Coordination of enforcement at sea and in ports
In October 1994, the Cabinet informed the Lower House of its plans to reorganise the Coastguard. In this context, the Cabinet assumed the standpoint that supervision at sea cannot be seen separate from supervision along the coast and in the port. In the 1998 policy paper *Varen onder groene vlag* ('Sailing under a green flag'), the Cabinet repeats this stance and adds that better coordination needs to be realised between enforcing legislation for sea vessels at sea and in the ports.
According to the Court of Audit, no structural consequences have ensued from this vision so far. This is clear in the first instance from the fact that the Public Prosecution Service has not freed structural capacity to prosecute environmental offences on the North Sea and with this even less for elaborating the vision. In addition, at the end of 2000, the North Sea Coordination and Information Point (CIP), set up in 1997, was disbanded (intended to realise better coordination between enforcement at sea and in the ports) without evaluating its functioning. The Court of Audit wonders whether the reasons for setting up the CIP at the time have been sufficiently demonstrated as obsolete.
The research of the Court of Audit also shows that the DGG and the Public Prosecution Service share different opinions on the role of the Permanent Contact Group for Policy Enforcement in the North Sea (PKHN) of which both the Public Prosecution Service and all the ministries involved in the Coastguard are members. The difference of opinion focuses on checks of ships' oil logbooks carried out by the KLPD (on the instruction of the North Sea Environmental Public Prosecutor) in sea ports. Planning these inspections is now separate from the Enforcement Policy Plan for the North Sea.

6.4 Legislation

Current legislation has a number of lacunas and erroneous assertions that hamper and sometimes make it impossible to investigate and prosecute North Sea pollution offences. Moreover, in a number of areas, the Netherlands is

seriously lagging behind implementing adjustments to international treaties on marine pollution.

Legislation currently has the following lacunas and erroneous assertions:

- According to the Act to Prevent Pollution from Ships, international ships are not in breach if they show empty or wrongly completed oil logbooks to the Dutch port authorities while this is a punishable offence for Dutch ships. This obvious faulty argument has been law since 1986 but has never been repaired. Over recent years, the Public Prosecution Service has prosecuted such cases a number of times, but on the grounds of falsified documentation. Whether or not this solution will stand before the court is not yet known because no cases prosecuted on this ground have been dealt with.
- The Act to Prevent Pollution from Ships and the minor corresponding regulations conflict when it comes to which actions involving oil should be recorded in the oil logbook. According to the act "all acts relating to the transportation and discharge of hazardous substances" should be registered, while according to the model oil logbook of 1988, only those actions relating to tanks noted on the appendix to the IOPP certificate need to be recorded. In practice, and permitted, ships often have more oil tanks on board than mentioned in the appendix. If transactions take place with these tanks, according to the model oil logbook, they need not be registered. If captains only note 'actions' with tanks given in the appendix to the certificate, they are not deviating from the rules that apply to oil logbooks in the Netherlands.
- In 1993, the model oil logbook was adjusted within the framework of MARPOL. More data must be recorded on more subjects than in the past. In Dutch legislation this has not yet been introduced, with which a Dutch ship adhering to the Dutch model is acting in conflict with MARPOL and a Dutch ship adhering to the MARPOL model is acting in conflict with Dutch legislation.

Implementing amendments in the treaties in Dutch legislation is lagging behind on the following points:

- Coastal states that have ratified the UN Convention on the Law of the Sea, like the Netherlands, can set up an Exclusive Economic Zone (EEZ) under this treaty. This gives them extra legal power for a number of topics mentioned in the convention, including the protection of the maritime environment. In February 1989 the Dutch government assumed a provisionally positive view on setting up a Dutch EEZ and in September 1992, the North Sea Ministers and the European Community issued a joint statement that, in accordance with the UN Convention on the Law of the Sea, they would expand their legal power to curb damage to the maritime environment. In the Netherlands this meant that an EEZ Kingdom Act needed to be introduced – after a slow legislative process, this act entered into force in march 2000 – and that the Act to prevent pollution from ships should be adjusted to make illegal discharges punishable in the EEZ as well. The latter has not yet happened. In July 1997, the Minister of Transport and Public Works received recommendations from the Council of State on the proposed legislative amendment. The comments have not yet been processed into a bill and presented to Parliament.
- Since 1 August 1999, an alteration to the MARPOL treaty came into effect that, among other things, assigns the North Sea the status of 'special area' which states that ships must comply with tighter environmental standards.[25] The Act to Prevent Pollution from Ships has not yet been amended to include this alteration to the MARPOL treaty. As a result, ships in Dutch coastal waters that do not comply with the more stringent environmental criteria are not in breach of Dutch law and therefore cannot be prosecuted.

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[25] One of the criteria is that oil tank ships and all other ships with a gross tonnage of 400 or more may only discharge bilge water from the engine room if they have equipment to filter oil that has an alarm and automatic 'stop' for cases in which a discharge contains more than fifteen particles per million of oil or oil-bearing mixtures.

This slow and backlogged implementation of international treaties in Dutch legislation, and failure to repair the lacunas and erroneous assertions in current legislation indicate, in the opinion of the Court of Audit, that the DGG assigns it low priority. This seems to be confirmed by the fact that the DGG already knows that the new EU directive on port waste collection facilities, published on 28 December 2000, will not be able to be implemented on time in Dutch legislation. If there are no complications, implementation will take place by mid 2003, while the guideline should be implemented on 28 December 2002.

Coordination between the Directorate-General and the Public Prosecution Service, that is confronted for the first time with the practical consequences of the stated bottlenecks in legislation, leaves room for improvement. The problem of international ships completing oil logbooks incorrectly, or not at all, has been officially reported to the Directorate-General by the Public Prosecution Service, but never resolved.

The Court of Audit has also determined that the Public Prosecution Service is barely involved in official preparations for adjusting maritime legislation. The DGG had not informed the Public Prosecution Service of the substance of the advice from the Council of State in 1997 on amending the Act to prevent pollution from ships and the punishability of discharges in the EEZ.

The Court of Audit considers that, in view of the shortfalls in current legislation and with a view to enforceability, it is desirable for the DGG to involve the Public Prosecution Service more closely in the planned adjustments to this act. A sensible move, all the more so because new legislation assigns the Ministry of Justice primary responsibility for monitoring the quality of legislation in terms of administration and rule of law of which workability and enforceability are a part.[26] This responsibility of the Ministry of Justice does not diminish the fact that the Ministry of

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[26] Instructions for legislation: instruction 254 sub 1, including the clarification to this instruction.

Transport, Public Works and Water Management must ensure the quality of the legislation.

6.5 Implementation

Despite the problems identified above, investigating and prosecuting marine environmental law violations has developed reasonably to well over recent years. The Commission of North Sea Public Prosecutors section made a useful contribution to this: clustering expertise and experience in this field in a small, specialised unit has had clear advantages. The procedural handbook *Handhavingsplan Milieu* ('Environmental Policy Enforcement Plan') developed for investigation and prosecution has been included in a common handbook by the other treaty states to the Bonn Convention. The Court of Audit hopes that the specialist know-how and experience with enforcing environmental legislation in the North Sea will be maintained, if the Board of Procurators General decides to disband the section and place its duties with a national agency.

Investigation and prosecution almost entirely focus on the known perpetrators of illegal discharges. Not on unknown offenders, as there is a very slight chance of proving that the pollution was caused by a specific ship. The Court of Audit is not in principle dismissive of this consideration but does feel that it should be founded on an explicit and repeated assessment of the chance of catching the offenders. Such an assessment is still not used, and the information required for this is still not available.

The annual reports of the Commission of North Sea Public Prosecutors show that the Netherlands is only able to impose sanctions on known offenders in a small number of cases. One of the most important reasons for this is that, each year, the Netherlands must submit a substantial number of dossiers (with information that could very well lead to catching offenders) to the flag states because of the fact that illegal discharges in the Dutch EEZ are, according to the Act to prevent pollution from ships, not punishable.

Over recent years, the number of cases were as follows. In 1995, 22 of the 34 potential files were handed over to the flag states. In 1996 this was 23 of the 37, in 1997 39 of the 51, in 1998 28 of the 38 and in 1999 20 of the 34. The section's annual reports indicate that the flag states have, on average, only imposed penal sanctions in one fourth or one fifth of these files.

6.6 Conclusions

Repairing and amending marine legislation had low priority in past decades. The Court of Audit finds this lamentable because it seriously limited the efficacy of Dutch investigation and prosecution policy all those years.

The availability of manpower and resources is a problem in implementing investigation and prosecution, both at the section and the Public Prosecution Service. Investigating and prosecuting environmental offences on the North Sea are now largely dependent on the personal efforts of the officials involved, which the Court of Audit considers too weak a basis.

The coordination between administrative and criminal enforcement instances on enforcing marine legislation also needs improving. The consultation between the Public Prosecution Service and the administrative enforcement partners is still insufficiently developed because the Public Prosecution Service does not have enough capacity and the DGG pays too little attention to enforcing the Act to prevent pollution from ships. In addition, to date no structural follow-up has been given to the Cabinet's wish, expressed in 1998, to realise better coordination between enforcing legislation for sea-going vessels at sea and in the ports. Finally, research has shown that the DGG and Public Prosecution Service have different views on the role of the North Sea Preservation Permanent Contact Group and, in particular, on police inspections of oil logbooks in sea ports.

7 Conclusions and recommendations

Conclusion
Examining the entire policy area to prevent and counter pollution by sea ships, the Court of Audit finds that the cooperation between the various public bodies could be better. An important example of this is that the administrative and criminal enforcement instances in this field do not coordinate their policies. The public bodies that play a role in this field should, according to the Court of Audit, be accountable for the fact that the efficacy of their actions determines to some extent how effective the measures taken by other public agencies can be. A relatively minor error on the part of one instance, such as passing on a new – lower – total number of ships visiting Dutch ports, can have crucial consequences for another service for which that total determines how many port state controls it will minimally need to perform annually.

Furthermore, the Court of Audit finds that there is insufficient insight into the accuracy of the policy sections taken as a whole. Policy choices are not made on the level to which they belong or are sometimes not taken at all. This applies, for instance, to the decision to deploy more resources for prevention at the expense of repression if this is expected to yield more benefits for the environment. The Court of Audit is of the opinion that it would be worth the while of the ministries involved to gather policy information on this point, and to assess which measures would most effectively reach the set environmental targets so that Cabinet and Parliament can exchange fundamental ideas on this, and monitor progress.

All in all, the Court of Audit determines that preventing and combating environmental pollution by sea ships has not

had the constant attention of, in particular, the overall ministry, the Ministry of Transport, Public Works and Water Management, that it deserves and to which the Netherlands is obligated by international treaties. The Court of Audit considers this unacceptable because the undertaking directly gives rise to meeting obligations.

Recommendations

With a view to the exchange of ideas mentioned, the Court of Audit recommends the ministers involved (notably the Minister of Transport, Public Works and Water Management and the Minister of Justice) to gather sufficient policy information on the contribution the separate policy elements make to 'prevention' and 'cure', to be able to make proposals to Parliament on the policy area as a whole. In addition, there is an urgent need for sound accountability to Parliament on policy performance. The Court of Audit asks the Minister of Transport and Public Works to consider treating accountability for policy on pollution from ships as a policy priority in the budget. Pursuant to the government paper *Van beleidsbegroting tot beleidsverantwoording* or *VBTB* ('From policy budget to policy accountability') of May 1999, Parliament can be given more insight into the performance and effects of the various ministries involved, and mutual coherence, by means of an overview structure.

The Court of Audit finds that the Shipping Inspectorate should focus its activities more sharply where there is greatest risk to the environment. This requires it to make better use of the 'target factor' in the future when selecting ships for port state controls. If the Shipping Inspectorate expands its understanding of its duties by taking a more active role as enforcer, it will also contribute to more effective environmental supervision, that will have enhanced deterrent effect.

The Court of Audit recommends that the Ministries of Transport and Public Works and the Ministry for Housing, Spatial Planning and the Environment gain a clearer picture of the scale and quality of the market forces at work in port waste collection. If necessary, steps will need to be

taken either to improve the operation of this instrument or to take steps directed at the desired accessibility of port waste collection facilities.

The North Sea Directorate of the Directorate-General for Public Works and Water Management should, according to the Court of Audit, improve assurances that, besides the incidental combating of pollution at sea and on the coast, policy preparation, development, accountability and evaluation continues to take place. This should lead to greater attention for recording countermeasures and drills and to drawing up files on the expenses involved; it should also result in a more energetic approach to the problems identified in implementing the *Capaciteitsnota* ('Capacity Paper').

The Court of Audit finds that investigating and prosecuting environmental offences on the North Sea would have greater chance of success if the three conditions were met. In the first place, it is important that the problems identified in legislation are tackled and resolved speedily and effectively. Here, priority should be given to a number of simple proposals (crucial to more effective prosecutions) for amending the Act to prevent pollution from ships including prosecuting discharges in the Netherlands Exclusive Economic Zone (EEZ). This should be done in close collaboration with the Ministry of Justice to safeguard upholding the law.
Secondly, capacity and budget must be expressly freed to support tasks carried out by the Public Prosecution Service because the basis for prosecution has been too weak to date, largely dependent on the personal effort and commitment of individual officials.
Thirdly, coordination between administrative and criminal enforcement bodies must be improved. It is desirable to elaborate a shared vision regarding enforcing marine pollution violations (including a vision on the coherence between enforcement at sea and in the ports), make agreements on prosecution policy and coordinate the planned legislative amendments.

8 Ministerial responses, comments and afterword

8.1 Ministerial responses and comments from the Court of Audit

The Minister of Transport and Public Works responded to the report in a letter dated 14 September 2001, also on behalf of her colleague at the Ministry of Justice.[28] The ministers support the main points of the report, state that they have taken good note of the shortfalls identified by the Court of Audit, and have digested its recommendations and remarks. The ministers claim that many of the matters outlined by the Court of Audit have already been recognised by the services involved and by the Public Prosecution Service, and action has already been taken in a number of instances.

The Minister first deals with the measures referred to. Then, she deals with the chapters of the report in more detail. The structure is also followed here. The comments of the Court of Audit are given *in italics*.

It is important to note that, in her response, the Minister of Transport and Public Works indicates plans to present a progress report to the Lower House in the autumn on the current status regarding implementing the action points listed in the *Voortgangsnota Scheepvaart en Milieu – Varen onder groene vlag* ('Progress Paper on Shipping and

[28] The Minister of Housing, Regional Development and the Environment, the Minister of the Interior and Kingdom Relations and the Minister of Defence also received the report. They have not forwarded separate responses.

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the Environment — Sailing under a green flag'). In the same report, the Minister will also refer to a number of new activities in the field of shipping and the environment, that were dealt with after the document appeared.

8.1.1 M easures taken and measures in progress

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The summary of activities given below has been taken, literally, from the letter of the Minister of Transport and Public Works:

"The measures taken or measures in progress listed below are in line with or related to the recommendations contained in your report:

- The Traffic and Public Works Inspectorate (IVW) set up on 1 July 2001 will contribute to improving the efficacy of enforcing environmental legislation for the shipping industry;
- The recent tightening up of European agreements regarding port state controls still covers using the 'target factor' in the sense recommended by the Court of Audit; this increases the efficiency of the port state control and more focused controls of ships that pose greater risks to the environment and safety;
- The tolerance policy regarding issuing certificates to fishing vessels is being terminated; consultations on the consequences of terminating the tolerance policy have been held with the sector involved;
- The backlogs in legislation are being eliminated;
- Within my ministry, together with other public service bodies involved, we are currently elaborating the policy paper *Bestrijding Milieubedreigende Stoffen* ('Tackling environmentally hazardous substances'), published in 2000, with the intention of realising not only a qualitative improvement in countermeasures, but a new *Capaciteitsnota* ('Capacity paper') for tackling pollution;
- The implementation of the 2000/59 European Directive on Port Waste Collection Facilities will address a number of the current objections.
- Enforcing environmental legislation is one of the duties to be performed in connection with the Coastguard. To

improve cooperation between the services involved in implementation, I refer you to the evaluation of the Coastguard promised earlier, especially where this concerns implementing enforcement duties, to take place at the end of 2002;

- The Ministry of Justice and the Public Prosecution Service shall place special emphasis on workability and enforceability when testing new legislation;
- The function of the North Sea Public Prosecutor will be structurally included in the total staffing of the Public Prosecution Service. The board of procurators general is deliberating the various options for optimally anchoring this post within the Public Prosecution Service;
- The Minister of Justice, who does this in consultation with the board of procurators general, and I, will create the conditions for good coordination between the North Sea Public Prosecutor and his administrative enforcement partners so that both can make the latter environmental enforcement arrangements in which the monitoring and administrative and criminal measures this gives rise to, are laid down;
- Based on these enforcement arrangements, the Minister of Justice and I will be provided with sufficient criminal and administrative policy information respectively on enforcing environmental legislation on the North Sea."

Response of the Court of Audit

The Court of Audit expects that some of the steps summed up by the Minister in her letter will lead to more effective (implementation of) policy on preventing and countering pollution from ships. It agrees with the Minister that the problems highlighted by the research were already known in part to the ministries concerned. Precisely because of this, the Court of Audit regrets that the measures outlined in the letter are so lacking in substance and detail that in many cases the Minister does not indicate the effects she expects them to achieve. Furthermore, in almost no instances is there any indication of when the measure will be introduced and when it will be expected to have any effect.

In her letter, the Minister then deals with the separate chapters of the report. Her response is given below, in summary, per section.

8.1.2 P olicy and accountability

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In response to the comments of the Court of Audit on gathering policy information, including comments on the monitoring system of emissions by ships, the Minister refers to the progress report due to appear in the Autumn, and to the periodical reports of other department sections. She writes that the Directorate-General for Freight Transport (DGG) has started restructuring the 'water environmental tasks', in which installing the Transport and Public Works Inspectorate (IVW) plays an important factor.

Response of the Court of Audit
If the report that the Minister announces is not more than a progress report on the policy paper Varen onder groene vlag*, then, according to the Court of Audit, many elements of the policy on preventing and combating pollution from ships would continue not to be addressed because they are not contained in the policy paper. The Court of Audit is also curious what the Minister will reveal in the progress report about a number of new activities taken after the appearance of the said paper. It wonders to which periodical reports of the department sections the Minister is referring in her letter and indicates that it is important that the Lower House is kept informed of the said information. From the Minister's letter, the Court of Audit concludes that the efforts of the Minister will not be directed at gathering policy information across the entire policy line as described in the research, and using this information in its entirety so as to be able to exchange ideas with Parliament and monitor progress. The information gathering as described here by the Minister is, put succinctly, incomplete and fragmentary.*

Based on its research and on the information provided by the Minister in her letter, the Court of Audit cannot estimate

the positive contribution that can be expected of the restructuring of the environmental water tasks of the DGG. Nor can it estimate the effects of setting up the IVW on the problems regarding policy and accountability that have been identified.

8.1.3 P ollution prevention: subjecting ships to environmental inspections

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As far as the flag state controls are concerned, the Minister says that she supports the dangers involved in contracting duties out to external inspection companies, or 'classification companies'. For this reason, she will give further assignments serious consideration, and subject them to extra measures to retain sufficient grip on how these inspection agencies function.
In her letter, the Minister outlines the background of the assignment policy to date. Up to 1 July 2001, the Shipping Inspectorate was part of the DGG, where the policy was contract out certificate-issuing tasks (such as flag state control) to the market, strictly enforcing it. The Shipping Inspectorate converted this into a planned 'new working method' with the aim of deploying capacity where it is needed and avoiding generally routine certification tasks. The Shipping Inspectorate enforces this by setting up a separate Enforcement section, as is the case for other sections of the Inspectorate. Here, the aim is to realise a clear distinction of functions between implementation/licensing and enforcement. Any further assignment of tasks will be accompanied by extra measures to retain control.

The Minister goes on to write that, because of large-scale environmental incidents in which classification companies were involved, such as the disaster with the oil tanker Erika, measures will also be taken within the European Union to improve supervision of the way in which these companies function. The IVW shall, says the Minister, also implement the EU directive on classification companies and will tighten up meta supervision (second line supervision).

Response of the Court of Audit
The Court of Audit considers it too early to make pronouncements on the question whether the new direction outlined by the Minister will result in more effective enforcement than the old. The Court of Audit considers two matters to be new: anchoring the Shipping Inspectorate in the IVW and the distinction between implementation/licence issuing and enforcement. The Court of Audit determines that the Minister does not for the time being indicate the measures that will ensure more control of the classification companies and how supervision will be tightened up.

Of port state controls, the Minister claims that it is not always possible to visit ships with a high 'target factor' and that this is not required because of other selection criteria: such as specific complaints and incidents.

The Minister writes that, based on its professional judgement and with a view to efficiency, the Shipping Inspectorate's coordination team assesses whether or not inspecting a ship with a high 'target factor' will incur unacceptably high risks. According to the Minister, the team is committed to eliminating 'rust buckets' (like the recent Nunki and Maria-S), 'naming and shaming' them on the website of the Paris Memorandum of Understanding.

Within the foreseeable future, the existing capacity problem experienced by the Shipping Inspectorate (that is enhanced by stiffening the inspection regime under the European Directive on port state control) will be reduced by recruiting fifteen extra inspectors, says the Minister.

The Minister goes on to say that, from 1 October to 31 December 2000, the Netherlands has done more than it was internationally obliged to do. During this time, a system was used in which inspecting ships with a high 'target factor' carried more weight than inspections of ships with a lower 'target factor'. According to the Minister, this means that, during that time, the Netherlands inspected sufficient ships with a high 'target factor'.

Response of the Court of Audit
The Court of Audit finds that appointing more inspectors is a positive step, as it was clearly needed.
It also feels that the fact that, during the last trimester of 2000, in the new system of ranked 'target factors', the Netherlands made a positive contribution. However, it does not concur with the interpretation of the Minister that this fact, that the Netherlands must have inspected sufficient 'high factor' ships in the period in question. Countries can score highly in the new system either by checking a lower number of 'high factor' ships or a greater number of 'low factor' ships. For an answer to the question of how the figures should be explained for the Netherlands – whether the first or second instance applies – requires further analysis of the data. The analysis of inspections of ships in September and October 2000 in the Port of Rotterdam, carried out by the Court of Audit, points towards the second rather than the first option.

Based on the comments of the Court of Audit on the way in which the Shipping Inspectorate interprets its tasks, the Minister underlines the preventive importance of advising, particular on the construction of ships. Referring to the recent embedding of the Shipping Inspectorate in the IVW, she states that the distinction between the advisory and enforcement role enables commencing enforcement and investigative tasks at an earlier stage, and more forcefully.

Response of the Court of Audit
The Court of Audit does not contradict the importance of sound advising during shipbuilding, and does not wish to suggest that the Shipping Inspectorate should give more attention to investigation and enforcement at the expense of advising. However, it finds that, when implementing its enforcement tasks, that the Shipping Inspectorate places too much emphasis on advising. In general, concerning what the Minister says regarding the new situation, in which the Shipping Inspectorate operates as a division of the IVW, the Court of Audit remarks that it is still too early to judge the effect that this will have. It will follow developments.

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ollution prevention: waste collection at ports

The Minister of Transport and Public Works indicates that her ministry is currently implementing the EU directive 2000/59 regarding port waste collection facilities and that indirect financing and port waste plans are relevant elements of this directive in the context of market forces. The port authorities are drawing up port waste plans to realise effective and efficient collection of ships' waste. According to the Minister, indirect financing will guarantee accessibility as the costs of collecting and processing the waste will be distributed over all incoming ships. According to the Minister, competition between collection companies within such a system is partly based on the quality of the service offered.

The Minister of Transport and Public Works also indicates that a new intermediary organisation to be set up will be charged with settling the financing (collecting and managing the disposal rates paid by the ships, paying collection and processing companies) and assessing the port waste plans. The conditions, which this organisation will need to meet, will place express attention on the conditions that enable good government supervision.

Response of the Court of Audit
In its report, the Court of Audit concluded that the market for waste facilities barely gets off the ground in many ports with which it cannot have the effect the Minister expects, namely accessible port waste collection facilities. The Court of Audit wonders what effects on the market the Minister expects in this regard: indirect financing and port waste plans. In addition, the Court of Audit concludes that the Minister does not mention measures for improving insight into the functioning of the market. From this, it assumes that the Minister does not take on board the recommendation of the Court of Audit to gain better insight into the quality and scale of the market, which it regrets.

8.1.5 A ction against pollution: the spillage

According to the Minister of Transport and Public Works, further development of the *Nota Bestrijding milieubedreigende stoffen Noordzee 2000-2010* ('Tackling environmentally hazardous substances in the North Sea 2000-2010', presented to the Lower House on 14 December 2000) will lead to:

- a qualitative improvement in efforts to combat pollution at sea and on the coast;
- an up-dated capacity plan for combating pollution;
- optimisation of administrative support of the disaster organisation, combating pollution and the legal and financial conclusion of the operations carried out.

In the paper, the Minister indeed remarks that the NLG 40 million requested to cover the costs of implemented the planned policy was unfounded but that this amount was based on an estimate. In the implementation programme of the document (soon to appear), this estimate will be further detailed and underpinned.

Response of the Court of Audit
The Court of Audit hopes that the further elaboration of the Nota Bestrijding milieubedreigende stoffen Noordzee 2000-2010 *leads to a prompt and efficient approach to the serious problems that became manifest while implementing the Capaciteitsnota 1990. The Court of Audit hopes that the implementation programme for the policy paper is sufficiently concrete on the measures planned and the corresponding timeframe.*
According to the information available to the Court of Audit, the implementation costs mentioned in the paper are not founded, either in or outside the document. Finally, the Court of Audit finds that the announcement of a new and up-dated Capaciteitsnota *eradicated lack of clarity on the status of the document* Nota Bestrijding milieubedreigende stoffen Noordzee 2000-2010.

8.1.6 C ombating pollution: the polluter

The Minister of Transport and Public Works proposes that amending the legislation on the model oil logbook and the data to be recorded in the oil logbook is under preparation. The modification of the Act to prevent pollution from ships is currently being continued as a priority, which also applies to the implementation of other international legislation that is lagging behind. The Minister of Transport and Public Works will request the Minister of Justice to place special emphasis on the aspects enforceability and workability in testing relevant bills, to supplement the usual legislative testing carried out by the Ministry of Justice. The Public Prosecution Service will be closely involved in this.

With an eye to safeguarding capacity and budget for the criminal enforcement of environmental regulations, among other, on the North Sea, the post of North Sea Public Prosecutor will be structurally included in the total formation of the Public Prosecution Service. In the meantime, the board of procurators general are deliberating various options for the best way of anchoring this task within the Public Prosecution Service. One includes placing the post of North Sea Public Prosecutor with the national Special Preservation Public Prosecution Service that is to be set up.

Improving coordination between the North Sea Public Prosecutor for the environment and his administrative enforcement partners means that environmental enforcement arrangements are made regarding inspections and administrative and criminal measures that entail. The Minister of Transport and Public Works and the Minister of Justice, who does so in consultation with the board of procurators general, will create the conditions for good coordination, according to the Minister of Transport and Public Works.

The criminal enforcement of environmental legislation in the North Sea that takes place in the context of this enforcement arrangement, will become a structural part of

the standard policy and management cycle in the Public Prosecution Service. The related operating processes within the Public Prosecution Service will be set up so that the Minister of Justice will be able to draw on sufficient policy information on criminal law enforcement of environmental legislation on the North Sea.

Response of the Court of Audit
The Court of Audit notes the pledge that the backlogs in legislation will be eliminated. However, it misses a clear timeframe for this. The Court of Audit regrets the fact that it has not received an explicit promise to introduce a number of simple but crucial adjustments, as a matter of priority, regarding the Act to prevent pollution from ships. Involving the commitment of the Ministry of Justice (in this case the Public Prosecution Service) in adjusting the legislation is a positive step that the Court of Audit hopes will be structurally followed up.

Including the post of North Sea Public Prosecutor (including the environmental affairs officer) in the staff of the Public Prosecution Service leads the Court of Audit to think that the implementation of the duties corresponding to this post, and implementing the corresponding powers and accountabilities will now be assured. However, it does wonder if, with this, the deployment of people and means to support the North Sea Public Prosecutors (currently provided by the section) will be sufficiently regulated.

For a number of years, also in enforcing environmental legislation in the North Sea, efforts have been made to realise better harmonisation between the administrative and criminal enforcement partners. The pledge now made seems to be little more than a re-affirmation of that goal. The Court of Audit is particularly not clear how the Minister of Transport and Public Works aims to improve coordination; lack of clarity remains regarding the extent to which there are consequences for the DGG and the Shipping Inspectorate.

The Court of Audit feels that obtaining policy information on the criminal enforcement of environmental legislation on the

North Sea is a good example of a case that relies entirely on the efficient coordination of the services involved. In this case, relevant policy information is also kept by the Coastguard Centre and by the North Sea Directorate of Public Works. The (re)structuring of the operational processes within the Public Prosecution Service is thus not an adequate condition for acquiring information on the enforcement of environmental legislation in the North Sea.

8.2 Afterword by the Court of Audit

The ministers have given a detailed picture of the measures that are being taken and will be taken to help solve the problems reported by the Court of Audit. The Court of Audit had hoped that, at this stage, given that a number of bottlenecks were already known to them, the ministers would have given more concrete expression of what should be done than they actually did in their letter. What the proposed measures precisely involve, what their contribution to resolving very real problems will be, when they will be introduced or when they should be effective, is still left very much in the air.

The Court of Audit is equally disappointed by the fact that the Minister entirely skirts comments made in the report on the lack of coherence in (implementing) the policy. The Court of Audit would have liked to have seen that the ministers also consider it important to deliberate – and to discuss with Parliament – how prevention and repression interrelate and where the deployment of resources will yield maximum benefits. The picture of a fragmented policy area with disintegrated and incomplete information, hence incomplete accountability, is not eradicated by the ministers' response. The Court of Audit concludes that the ministers have still not adequately taken up this part of its message.

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<#>Commentaar Algemene Rekenkamer op reactie minister¶
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De Algemene Rekenkamer verwacht dat enkele van de acties die de minister in haar brief opsomt, zal kunnen leiden tot een doelmatiger (uitvoering van het) beleid inzake het voorkomen van en het optreden tegen milieuvervuiling door zeeschepen. Zij is het met de minister eens dat de knelpunten die uit het onderzoek naar voren komen ten dele al bij de betrokken ministeries bekend waren. Juist daarom betreurt zij het evenwel dat de acties in de brief nog zo weinig concreet en precies zijn, dat de minister in veel gevallen niet aanduidt welk effect zij van de maatregelen verwacht en dat in nagenoeg ... [28]

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Appendix 1. International legislation

The policy to prevent and combat environmental pollution from ships has a distinctly international character because the Netherlands has signed and ratified a number of international treaties. The most important of these are:

- The International Convention for the Prevention of Pollution from Ships at Sea (MARPOL), concluded in London in 1973 and 1978. The MARPOL treaty was signed worldwide by 110 countries. Signing the convention means that all affiliated countries are automatically linked to appendices I and II of the MARPOL treaty (oil and chemicals respectively). As of January 1989, appendix V also came into force for the Netherlands (domestic waste from sea ships).
- The Memorandum of Understanding on supervision of ships by the port state, concluded in Paris in 1982 (Paris MOU). This convention was signed by nineteen European countries and Canada.
- The international convention on oil pollution preparedness, response and cooperation, concluded in London in 1990 (OPRC Convention). This convention was signed worldwide by 52 countries.
- The Convention on cooperation in combating pollution in the North Sea through oil and other hazardous substances, concluded in Bonn, 1983 (Bonn Convention). This convention has been signed by eight North Sea countries.

Further, in its policy, the Netherlands must take account of a number of directives issued by the European Commission. The most important of these are:

- EU Directive 93/75/EEC of 13 September 1993 on the minimum requirements for ships transporting dangerous or contaminated goods, and that sail to or from the community's sea ports (PbEC L247).
- EU Directive 95/21/EC of 19 June 1995 on port state controls.
- EU Directive 94/57/EC of 22 November 1994 and 97/58/EC of 26 September 1997 on classification companies that inspect and/or certify ships.

A new EU Directive on port waste collection facilities for ships' waste and cargo residues was published on 28 December 2000 and should be converted into Dutch legislation on the same date in 2002.

Finally, the Netherlands is bound to international agreements made during North Sea ministerial conferences held in 1984, 1987, 1990 and 1995.

Appendix 2: Tabel conclusies, aanbevelingen, toezeggingen ministers en nawoord

Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
Beleid en verantwoording	Het is voor het parlement uitermate lastig om op het beleidsterrein milieuvervuiling door zeeschepen zijn controlerende taak uit te oefenen, aangezien niet is voldaan aan de noodzakelijke voorwaarden om dat te kunnen doen. Het beleid is namelijk op een aantal punten onduidelijk, de informatie over de uitvoering van het beleid is voor verbetering vatbaar en van verantwoording aan het parlement over de uitvoering van het beleid kan nauwelijks worden gesproken.	De betrokken ministers (met name van V&W en Justitie) zouden voldoende beleidsinformatie moeten verzamelen over de bijdrage die de afzonderlijke beleidsonderdelen leveren in het geheel van 'voorkomen' en 'genezen', om het parlement voorstellen te kunnen doen over het beleidsterrein als geheel. Daarnaast is er dringend behoefte aan een behoorlijke verantwoording over de beleidsprestaties aan het parlement. De Algemene Rekenkamer geeft de minister van V&W in overweging de verantwoording over het beleid inzake milieuvervuiling door zeeschepen in de begroting en verantwoording te behandelen als beleidsprioriteit. Conform de regeringsnota *Van beleidsbegroting tot*	De minister is voornemens de Tweede Kamer in het najaar een voortgangsrapportage voor te leggen met de stand van zaken in de uitvoering van de actiepunten uit de *Voortgangsnota Scheepvaart en Milieu – Varen onder groene vlag*. In diezelfde rapportage wil de minister ook melding maken van een aantal nieuwe activiteiten op het gebied van scheepvaart en milieu, die na het verschijnen van die nota ter hand zijn genomen. De minister verwijst in reactie op hetgeen de Algemene Rekenkamer stelde in het hoofdstuk Beleid en verantwoording behalve naar deze voortgangsrapportage ook naar de periodieke rapportages van andere dienstonderdelen. Zij schrijft dat bij het Directoraat-Generaal Goederenvervoer	Indien de rapportage die de minister aankondigt niet meer zou zijn dan een voortgangsrapportage over de beleidsnota *Varen onder groene vlag*, dan zouden veel elementen uit het beleid inzake voorkomen van en optreden tegen vervuiling door zeeschepen onbesproken blijven, omdat die in de beleidsnota niet worden genoemd. De Algemene Rekenkamer is daarnaast benieuwd naar hetgeen de minister in de voortgangsrapportage zal melden over een aantal nieuwe activiteiten, die na het verschijnen van genoemde nota ter hand zijn genomen. Zij vraagt zich af welke periodieke rapportages van dienstonderdelen de minister in haar brief bedoelt en tevens, of de Tweede Kamer op de hoogte is van de bedoelde informatie. De Algemene Rekenkamer maakt

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
		beleidsverantwoording (VBTB) van mei 1999 kan door middel van een overzichtsconstructie het parlement meer inzicht worden gegeven in de prestaties en effecten van de verschillende betrokken ministeries en de samenhang daarin.	(DGG) een proces van herstructurering van de 'natte milieutaken' is gestart en dat de instelling van de Inspectie Verkeer en Waterstaat (IVW) daarin tevens een factor van belang is.	uit de brief van de minister op dat de inspanningen van de minister niet gericht zijn op het verzamelen en presenteren van beleidsinformatie over de hele linie van het beleid zoals dat wordt beschreven in het onderzoek, en deze informatie in samenhang te gebruiken om daarmee met parlement van gedachten te kunnen wisselen en de voortgang te kunnen bewaken. De informatie-verzameling zoals hier beschreven door de minister is, kort gezegd, incompleet en fragmentarisch. Het is voor de Algemene Rekenkamer op grond van haar onderzoek en op grond van de informatie die de minister er in haar brief over geeft, niet in te schatten welke positieve bijdrage mag worden verwacht van de herstructurering van natte milieutaken bij DGG of van de oprichting van de IVW op de door haar benoemde gesignaleerde

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
				problemen in beleid en verantwoording
Vervuiling voorkomen: milieutoezicht op schepen	Het toezicht op de naleving van milieuregels door schepen door de Scheepvaartinspectie kan op een aantal onderdelen beter. Het is risicovol dat de Scheep-vaartinspectie steeds meer vlaggestaatcontroles uitbesteedt aan particuliere klassebureaus. De controles van buitenlandse schepen in Nederlandse havens blijkt daarnaast niet gericht op de schepen die voor milieu of veiligheid grotere risico's met zich meebrengen. Tot slot vat de Scheepvaartinspectie haar taak volgens de Algemene Rekenkamer te beperkt op. Het milieutoezicht zou effectiever kunnen zijn, als de Scheepvaartinspectie zich bij de bestuurlijke handhaving en de opsporing actiever opstelt. Over de controle op	De Algemene Rekenkamer meent dat de Scheepvaartinspectie haar inspanningen gerichter zou moeten inzetten daar waar het risico voor het milieu het grootst is. Daarvoor zou zij beter gebruik moeten maken van de *target factor* voor de selectie van schepen voor havenstaatcontrole dan zij tot nu toe doet. Als de Scheepvaartinspectie haar taakopvatting verbreedt, door zich als handhaver actiever op te stellen, draagt dit ook bij aan een effectiever milieutoezicht waarvan bovendien meer afschrikkend effect uitgaat.	De minister onderschrijft de conclusies van de Algemene Rekenkamer over risico's van uitbesteding van taken aan klassebureaus. Zij zal daarom verdere uitbesteding zeer zorgvuldig overwegen en gepaard laten gaan met extra maatregelen om voldoende grip te blijven houden op het functioneren van klasse-bureaus. De minister schetst in haar brief de achtergronden van het uitbestedingsbeleid tot dusverre. Tot 1 juli 2001 maakte de Scheepvaartinspectie deel uit van DGG, waar het beleid was om certificerende taken (zoals vlaggenstaatcontrole) uit te besteden aan de markt en streng te handhaven. De Scheepvaartinspectie heeft dit beleid omgezet in een	Het is nog te vroeg om uitspraken te doen over de vraag of de ingezette nieuwe koers die de minister schetst zal leiden tot een effectievere handhaving dan de oude. Nieuw zijn naar het oordeel van de Algemene Rekenkamer twee zaken: de inbedding van de Scheepvaartinspectie in de IVW, en de functiescheiding tussen uitvoering/vergunningverlening en handhaving. De Algemene Rekenkamer stelt vast dat de minister vooralsnog niet aanduidt welke maatregelen moeten zorgen voor meer grip op de klassebureaus en hoe het toezicht zal worden verscherpt. De Algemene Rekenkamer vindt het positief dat binnen de Scheepvaartinspectie meer inspecteurs worden aangetrokken. Ook beoordeelt zij het als positief dat Nederland in het laatste

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	oliejournaals verschillen DGG inclusief de Scheepvaartinspectie enerzijds en het OM anderzijds al enige tijd van mening. DGG vindt dat deze controles inbreuk maken op de verdragsbepalingen over de frequentie van inspecties, terwijl het OM meent dat deze bepalingen zich niet uitstrekken tot de controle op oliejournaals als opsporingsactiviteit.		voorgenomen 'nieuwe werkwijze', met de bedoeling om de capaciteit zoveel mogelijk daar te kunnen inzetten waar dat nodig is en veelal routinematige certificerende taken te verminderen. De handhaving wordt bij de Scheepvaartinspectie opgevoerd door een aparte afdeling Handhaving in het leven te roepen, zoals overigens ook voor de andere onderdelen van de Inspectie gebeurt. Hiermee wordt beoogd een duidelijke functiescheiding te bewerkstelligen tussen uitvoering/vergunningverlening en handhaving. Iedere verdere uitbesteding van taken zal gepaard gaan met extra maatregelen om hier grip op te kunnen houden. De minister schrijft verder dat er, vanwege grote milieu-	trimester van 2000 meer dan aan zijn verplichtingen heeft voldaan, in het nieuwe systeem van gewogen 'target factors'. Zij sluit zich echter niet aan bij de interpretatie van de minister van dit feit, dat Nederland in de bedoelde periode dus voldoende schepen met een hoge 'target factor' moet hebben geïnspecteerd. De Algemene Rekenkamer bestrijdt niet het belang van een goede advisering bij de bouw van schepen, en heeft ook niet de suggestie willen wekken dat meer aandacht bij de Scheepvaartinspectie voor opsporing en handhaving ten koste zou moeten gaan van die advisering. Wel vindt zij dat de Scheepvaartinspectie bij de uitvoering van haar handhavende taken teveel de nadruk legt op advisering. Over hetgeen de minister stelt omtrent de nieuwe situatie, waarin de

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
			incidenten waar klassebureaus bij betrokken waren, zoals de ramp met de olietanker 'Erika', ook binnen de Europese Unie maatregelen worden genomen om het toezicht op het functioneren van klassebureaus te verbeteren. De IVW zal, aldus de minister, de EU-richtlijn over klassebureaus ook tot uitvoering brengen en zelf het metatoezicht (tweedelijns-toezicht) verscherpen. Over havenstaatcontrole stelt de minister dat het niet altijd mogelijk is alle schepen te bezoeken met een hoge 'target factor', en dat dit ook niet vereist is omdat er ook andere selectiecriteria zijn: specifieke klachten en incidenten bijvoorbeeld. De minister schrijft dat het coördinatieteam van de Scheepvaartinspectie op grond van zijn 'professional	Scheepvaartinspectie als onderdeel van de IVW opereert, stelt de Algemene Rekenkamer ook hier dat het nog te vroeg is voor een oordeel over het effect dat hiervan zal uitgaan. Zij blijft de ontwikkelingen volgen.

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
			judgement' afweegt of het uit efficiencyoverwegingen niet inspecteren van een schip met een hoge 'target factor' onaanvaardbare risico's met zich zal brengen. Het team is volgens de minister gedreven om de zogenaamde 'rust-buckets' (zoals recentelijk de Nunki en de Maria-S) te elimineren en door middel van de internetsite van het Paris Memorandum of Understanding aan de schandpaal te nagelen ('*name them and shame them*'). Binnen afzienbare tijd zal het bestaande capaciteitsprobleem bij de Scheepvaartinspectie worden gereduceerd door het aantrekken van vijftien extra inspecteurs. De minister stelt verder dat Nederland in de periode tussen 1 oktober tot 31 december 2000 meer heeft gedaan dan waartoe	

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
			ons land zich internationaal heeft verbonden. In die periode is gewerkt met een systeem waarin inspecties van schepen met een hoge 'target factor' zwaarder worden meegewogen, en inspecties van schepen met een lage 'target factor' lichter. Dit betekent, aldus de minister, dat Nederland in die periode voldoende schepen met een hoge 'target factor' heeft geïnspecteerd. Met betrekking tot de taakopvatting van de Scheepvaartinspectie onderstreept de minister het preventieve belang van advisering, vooral bij de bouw van schepen. Onder verwijzing naar de recente inbedding van de Scheepvaartinspectie in de IVW stelt zij dat de functiescheiding tussen de adviserende en de handhavende rol het mogelijk	

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
			maakt de handhavings- en opsporingstaak reeds eerder en krachtiger aan te vangen.	
Vervuiling voorkomen: inname afval in zeehavens	De minister van V&W is tekort geschoten in de zorg voor adequate havenontvangst-voorzieningen door deze aan de havenbeheerders te delegeren zonder nadere eisen te stellen, of andere maatregelen te nemen, om te waarborgen dat deze voorzieningen inderdaad adequaat en laagdrempelig zijn. Bij inzameling van afval in de havens is sprake van delegatie van internationale verplichtingen door de rijksoverheid aan de havenbeheerders. In een dergelijk geval zou de minister zich ervan moeten verzekeren dat de taakuitvoering zodanig is dat daarmee aan de internationale afspraken wordt voldaan en de beoogde resultaten worden gerealiseerd.	De Ministeries van V&W en VROM zouden zich inzicht moeten verwerven in de omvang en kwaliteit van de marktwerking onder havenontvangstvoorzieningen. Zonodig moeten initiatieven worden genomen hetzij om de werking van dit instrument te verbeteren, hetzij om andere maatregelen te treffen gericht op de gewenste laagdrempeligheid van de havenontvangstvoorzieningen.	De minister van Verkeer en Waterstaat gaf aan dat haar ministerie thans bezig is met de implementatie van de EU richtlijn 2000/59 betreffende havenontvangstvoorzieningen en dat indirecte financiering en havenafvalplannen als elementen van deze richtlijn relevante instrumenten zijn binnen het kader van marktwerking. De havenbeheerders stellen havenafvalplannen op om een effectieve en efficiënte inzameling van scheepsafval te realiseren. Indirecte financiering zal volgens de minister laagdrempeligheid garanderen doordat de kosten voor inzameling en verwerking van de scheepsafvalstoffen worden verdeeld over alle binnenkomende schepen.	De Algemene Rekenkamer heeft geconstateerd dat marktwerking in veel havens niet of nauwelijks van de grond komt, en daardoor ook niet het effect kan hebben dat de minister ervan verwacht, namelijk laagdrempelige havenontvangstvoorzieningen. De Algemene Rekenkamer vraagt zich af welke bijdrage aan marktwerking de minister verwacht van de instrumenten die zij in dit verband noemt: indirecte financiering en havenafvalplannen. Daarnaast constateert de Algemene Rekenkamer dat de minister geen maatregelen noemt om het inzicht in de marktwerking te verbeteren. Zij maakt hieruit op dat de minister de aanbeveling van de Algemene Rekenkamer niet overneemt om een beter inzicht te verwerven in kwaliteit en omvang van marktwerking, en betreurt dit.

Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	In de praktijk ontbreekt het de minister hier zowel aan de nodige informatie, als aan instrumenten om bij te sturen. Er zijn goede redenen om te twijfelen aan de effectiviteit van marktwerking als het instrument om de gewenste laagdrempeligheid van havenontvangstvoorzieningen te bewerkstelligen. Gezien het belang dat in dezen aan een goede marktwerking is gehecht, is de Algemene Rekenkamer van mening dat ten onrechte is nagelaten een goed inzicht te verwerven in de omvang en kwaliteit ervan.		Volgens de minister is concurrentie tussen inzamelingsbedrijven binnen een dergelijk systeem mede gebaseerd op de kwaliteit van de geboden service. Voorts gaf de minister van Verkeer en Waterstaat aan dat een nieuw op te zetten intermediaire organisatie belast zal worden met het afwikkelen van de financiering (onder andere inning en beheer van de afgiftebijdragen van de schepen, uitbetaling aan inzamel- en verwerkingsbedrijven) en het beoordelen van de havenafvalplannen. In de voorwaarden waaraan deze organisatie zal moeten voldoen, zal nadrukkelijk aandacht worden besteed aan de condities die een goed toezicht door de overheid mogelijk maken.	

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
Optreden tegen vervuiling: de vlek	De beschikbaarheid van mensen en middelen lijkt meer bepalend voor de planning van de luchtsurveillances dan een onderbouwde en nader gespecificeerde behoefte. De beschikbare capaciteit voor luchtsurveillances blijft al jaren achter bij de opgegeven behoefte op basis van het geformuleerde beleid, en er is van structurele knelpunten bij de uitvoering: telkens weer is er een forse onderrealisatie ten opzichte van het aantal geplande vlieguren. De Algemene Rekenkamer vindt het principieel onjuist dat de beslissing om al dan niet te vervolgen in de praktijk genomen wordt door luchtwaarnemers van de directie Noordzee van Rijkswaterstaat en niet door de bevoegde instantie, het OM. Deze handelwijze vloeit voort uit afspraken tussen de directie	De directie Noordzee van Rijkswaterstaat moet volgens de Algemene Rekenkamer beter waarborgen dat, naast de incidentele bestrijding van verontreinigingen op zee en op de kust, de beleidsvoorbereiding, -ontwikkeling, -verantwoording en –evaluatie terzake doorgang blijft vinden. Dit moet leiden tot bijvoorbeeld een grotere aandacht voor de vastlegging van bestrijdingsacties en oefeningen en het opstellen van kostendossiers, maar ook tot een voortvarende aanpak van de gesignaleerde knelpunten bij de uitvoering van de *Capaciteitsnota.*	Volgens de minister van V&W zal de nadere uitwerking van de '*Nota Bestrijding milieubedreigende stoffen Noordzee 2000-2010*' leiden tot: • een kwalitatieve verbetering van de bestrijding van verontreinigingen op zee en op de kust; • een geactualiseerd capaciteitsplan voor de bestrijding van verontreinigingen; • optimalisering van de administratieve ondersteuning van de incidentenorganisatie, de bestrijding van de verontreinigingen en de juridische en financiële afhandeling van de uitgevoerde operaties. De minister stelt dat in de nota inderdaad een onderbouwing ontbreekt van de f 40 miljoen	De Algemene Rekenkamer hoopt dat de nadere uitwerking van bedoelde nota leidt tot een tijdige en adequate aanpak van de ernstige knelpunten waarvan in de opzet dan wel bij de uitvoering van de '*Capaciteitsnota 1990*' sprake blijkt te zijn. De Algemene Rekenkamer spreekt de hoop uit dat het uitvoeringsprogramma van de nota voldoende concreet is over de voorgenomen maatregelen en het bijbehorende tijdpad. Volgens de informatie waarover de Algemene Rekenkamer beschikt, ontbreekt de onderbouwing van de in de nota genoemde uitvoeringskosten, zowel in de nota als daarbuiten. De Algemene Rekenkamer meent ten slotte dat met het aankondigen van een nieuwe en geactualiseerde Capaciteitsnota, de onduidelijkheid over de status van de '*Nota Bestrijding milieubedreigende stoffen Noordzee 2000-2010*' is

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	Noordzee en het Kustwachtcentrum, waarbij het OM niet betrokken is geweest. De effectiviteit van de bestrijding van verontreiniging op zee lijkt beperkt. Tegenover de aanwezigheid van een modern bestrijdingsvaartuig staan organisatorische knelpunten zoals een vaak lange responstijd en onvoldoende beschikbare luchtsteun. De bestrijding van kustverontreinigingen lijkt in het algemeen afdoende. Overigens hebben (middel-)grote incidenten op de Nederlandse zee en/of de kust zich de laatste jaren niet voorgedaan. Bestrijdingsacties in het Nederlands deel van de Noordzee en op de kust worden slechts beperkt gedocumenteerd en geëvalueerd. Ook is een achterstand ontstaan in het opstellen van kostendossiers		die genoemd wordt als de kosten van de uitvoering van het voorgenomen beleid, maar dat aan dit bedrag wel een raming ten grondslag heeft gelegen. In het binnenkort te verschijnen uitvoerings-programma van de nota wordt deze raming nader gespecifi-ceerd en onderbouwd.	verdwenen.

Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	over bestrijdingsacties. Aangezien de veroorzakers van de verontreinigingen in deze gevallen onbekend zijn gebleven, heeft dit er niet toe geleid dat kostenverhaal achterwege is gebleven. Het is desondanks te betreuren dat achterstand is ontstaan in het opstellen van kostendossiers, want hierdoor is het niet goed mogelijk inzicht te krijgen in de kosten c.q. de kosteneffectiviteit van de bestrijdingsacties. De herziening van de *Capaciteitsnota 1990* heeft jarenlang stilgelegen, en heeft pas onlangs geleid tot een nieuwe kritische beleidsnota, de nota *Bestrijding milieubedreigende stoffen Noordzee 2000-2010.* De aanpak van de gesignaleerde knelpunten is vooralsnog weinig concreet. De Algemene Rekenkamer			

Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	concludeert dat de directie Noordzee, als organisatie voor het waarnemen en opruimen van milieuverontreiniging op de Noordzee en de kust, sterk op de korte termijn gericht is. Aan andere dan operationele activiteiten, zoals de beleidsvoorbereiding en –ontwikkeling, het maken van vastleggingen over de uitvoering van het beleid en het evalueren van het beleid, wordt duidelijk minder aandacht gegeven.			
Optreden tegen vervuiling: de veroorzaker	Herstel en aanpassing van de maritieme milieuwetgeving heeft in het voorbije decennium een lage prioriteit gehad. De Algemene Rekenkamer betreurt dit, omdat het de effectiviteit van het Nederlandse opsporings- en vervolgingsbeleid in al die tijd ernstig beperkt heeft. De beschikbaarheid van mensen en middelen vormt een	De Algemene Rekenkamer is van mening dat de opsporing en vervolging van milieudelicten op de Noordzee meer kans van slagen zou hebben als in elk geval aan drie voorwaarden zou worden voldaan. In de eerste plaats is het van belang dat de gesignaleerde knelpunten in wet- en regelgeving met spoed en afdoende worden weggenomen. Daarbij zouden	De minister van V&W stelt dat aanpassing van de regelgeving over het model-oliejournaal en de in het oliejournaal te vermelden gegevens in voorbereiding is. De wijziging van de Wet voorkoming verontreiniging door schepen wordt thans met prioriteit voortgezet, en dit geldt ook voor de achterstallige implementatie van andere	De Algemene Rekenkamer neemt goede nota van de toezegging dat de achterstanden in de regelgeving worden weggewerkt. Zij mist hierbij nog wel een duidelijk tijdpad. De Algemene Rekenkamer betreurt het dat niet expliciet de toezegging is gedaan om met voorrang enkele eenvoudige maar cruciale aanpassingen door te voeren van de Wet voorkoming verontreiniging

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	knelpunt bij de uitvoering van de opsporing en vervolging, zowel bij het Stafbureau als bij het OM. De afstemming tussen bestuurlijke en strafrechtelijke handhavingsinstanties over de handhaving van maritieme milieuwetgeving ten slotte laat te wensen over. Het overleg tussen het OM en de bestuurlijke handhavingspartners is nog onvoldoende ontwikkeld, vanwege onvoldoende capaciteit bij het OM en onvoldoende aandacht van DGG voor de handhaving van de Wet voorkoming verontreiniging door schepen. Daarnaast is tot nu toe geen structureel gevolg gegeven aan de wens van het kabinet, verwoord in 1998, een betere coördinatie tot stand te brengen tussen handhaving van de regelgeving voor de zeevaart op zee en in de havens. Tot slot	met voorrang enkele eenvoudige, maar voor een effectieve vervolging cruciale voorstellen van wet tot aanpassing van de Wet voorkoming verontreiniging door schepen moeten worden ingediend, waaronder de strafbaarstelling van lozingen in de Nederlandse Exclusieve Economische Zone (EEZ). Eén en ander in nauwe samenwerking met het Ministerie van Justitie om de handhaafbaarheid te waarborgen. In de tweede plaats zou voor de vervulling van taken bij het OM uitdrukkelijk capaciteit en budget moeten worden vrijgemaakt, omdat tot nu toe de basis voor vervolging te wankel is, want grotendeels afhankelijk van de persoonlijke inzet en betrokkenheid van individuele functionarissen. In de derde plaats zou de	internationale regelgeving. De minister van V&W zal de minister van Justitie verzoeken bij de toetsing van de betreffende wetsvoorstellen bijzondere nadruk te leggen op de aspecten handhaafbaarheid en uitvoerbaarheid, zulks in aanvulling op de al te doen gebruikelijke wetgevingstoets die het Ministerie van Justitie uitvoert. Het Openbaar Ministerie zal daarbij nauw worden betrokken. Met het oog op het veiligstellen van capaciteit en budget voor de strafrechtelijke handhaving van – onder meer – de milieuvoorschriften op de Noordzee zal de functie van Noordzee Officier van Justitie structureel in de totale formatie van het Openbaar Ministerie worden opgenomen. Inmiddels beraadt het college van procureurs-generaal zich over	door schepen. Het vergroten van de betrokkenheid van het Ministerie van Justitie (in casu het Openbaar Ministerie) bij de aanpassingen van de regelgeving is een goede zaak, die naar de Algemene Rekenkamer hoopt een structureel vervolg krijgt. Uit de opname van de functie van Noordzee Officier van Justitie (waaronder de officier voor milieuzaken) in het formatieplan van het Openbaar Ministerie, leidt de Algemene Rekenkamer af dat de uitvoering van de bij deze functie behorende taken en de uitoefening van de bijbehorende bevoegdheden en verantwoordelijkheden nu zekergesteld wordt. Wel vraagt zij zich af of de inzet van mensen en middelen voor de ondersteuning van de Noordzee Officieren van Justitie (die thans door het Stafbureau verleend wordt) hiermee ook afdoende geregeld

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
	is uit het onderzoek gebleken dat DGG en het OM verschillend denken over de rol van de Permanente Kontaktgroep Handhaving Noordzee, en meer in het bijzonder over de politiecontroles op oliejournaals in de zeehavens.	afstemming tussen bestuurlijke en strafrechtelijke handhavingsinstanties moeten verbeteren: het is wenselijk dat zij een gezamenlijke visie uitwerken op handhaving van maritieme milieudelicten (waarin begrepen een visie op de samenhang tussen handhaving op zee en in de havens), afspraken maken over het vervolgingsbeleid en afstemmen over de voorgenomen wetswijzigingen.	verschillende opties voor een optimale inbedding van deze taak binnen het Openbaar Ministerie. Een daarvan houdt in de functie van Noordzee Officier onder te brengen in het op te richten (landelijk) Bureau Bijzondere Handhaving Openbaar Ministerie. Het verbeteren van de afstemming tussen de Noordzee Officier van Justitie milieu en zijn bestuurlijke handhavingspartners houdt in dat er milieuhandhavings-arrangementen worden gemaakt over de controle en de daaruit voortvloeiende bestuurlijke en strafrechtelijke acties. De minister van V&W en de minister van Justitie, die dat in overleg met het college van procureurs-generaal doet, zullen voor een goede afstemming de voorwaarden scheppen, aldus de minister	wordt. Al enige jaren wordt, ook bij de handhaving van de milieu-voorschriften op de Noordzee, gestreefd naar een betere afstemming tussen de bestuurlijke en strafrechtelijke handhavingspartners. De nu gedane toezeggingen lijken weinig meer in te houden dan een herbevestiging van dit streven. Het is de Algemene Rekenkamer met name niet duidelijk geworden hoe de minister van V&W de afstemming denkt te verbeteren; onduidelijk blijft in hoeverre er consequenties zijn voor DGG en de Scheepvaartinspectie. De Algemene Rekenkamer meent dat het verkrijgen van beleidsinformatie over de strafrechtelijke milieuhandhaving op de Noordzee een goed voorbeeld is van een zaak die staat of valt met een goede

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Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nawoord Algemene Rekenkamer
			van V&W in haar reactie. De strafrechtelijke milieuhandhaving op de Noordzee die in het kader van deze handhavingsarrangementen plaatsvindt, zal structureel deel kunnen gaan uitmaken van de reguliere beleid- en beheerscyclus in het Openbaar Ministerie. De daarmee samenhangende bedrijfsprocessen binnen het Openbaar Ministerie zullen zodanig worden ingericht dat de Minister van Justitie zich tijdig van voldoende beleids-informatie omtrent de strafrechtelijke milieuhandhaving op de Noordzee kan doen voorzien.	afstemming tussen de betrokken diensten. In dit geval berust ook relevante beleidsinformatie bij het Kustwachtcentrum en bij Rijkswaterstaat Directie Noordzee. De (her-)inrichting van de bedrijfsprocessen binnen het Openbaar Ministerie is voor het verkrijgen van beleidsinformatie over de strafrechtelijke milieuhandhaving op de Noordzee dus nog geen voldoende voorwaarde.

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De minister van Verkeer en Waterstaat

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heeft bij brief van 14 september 2001 op het rapport gereageerd, mede namens haar collega van Justitie.[1]

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De ministers stellen de bevindingen van het rapport op hoofdlijnen te onderschrijven, en goede nota te hebben genomen van de door de Algemene Rekenkamer geconstateerde tekortkomingen alsmede van

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haar opmerkingen en aanbevelingen. Veel

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van hetgeen de Algemene Rekenkamer signaleert is volgens de ministers al door de betrokken diensten en het Openbaar Ministerie onderkend, en in een aantal gevallen is er ook reeds actie op genomen.

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behandelt zij de hoofdstukken van het rapport meer in detail

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. Die indeling wordt hier ook aangehouden. In *cursief* is steeds het commentaar van de Algemene Rekenkamer opgenomen.

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Vooraf is het nog van belang op te merken dat de minister van V&W in

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haar reactie aangeeft voornemens te zijn de Tweede Kamer in het najaar een voortgangsrapportage voor te leggen met de stand van zaken in de uitvoering van de actiepunten uit de voortgangsnota *Scheepvaart en Milieu*. In

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diezelfde rapportage wil de minister ook melding maken van een aantal nieuwe activiteiten op het gebied van

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scheepvaart en milieu, die na het verschijnen van die nota ter hand zijn genomen.

Reeds genomen en lopende acties

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Onderstaande opsomming van acties is letterlijk overgenomen uit de brief van de minister van V&W:

“De volgende reeds genomen of nog lopende acties sluiten aan op, of houden verband met de in uw rapport gedane aanbevelingen:

De op 1 juli 2001 opgerichte Inspectie Verkeer en Waterstaat (IVW) zal ertoe bijdragen dat de effectiviteit van de handhaving van milieuregels voor de scheepvaart verder wordt verbeterd;

De recente aanscherping van Europese afspraken op het gebied van de havenstaatcontrole omvat tevens het gebruik van de ‘target factor’ in de zin als door de Algemene Rekenkamer aanbevolen; daarmee wordt de doelmatigheid van de havenstaatcontrole vergroot en gerichter gecontroleerd op schepen met grotere risico’s voor milieu en veiligheid;

Het gedoogbeleid met betrekking tot de certificering van vissersvaartuigen wordt beëindigd; over de consequenties van het beëindigen van het gedoogbeleid heeft overleg met de betrokken sector plaatsgevonden;

De achterstanden in de regelgeving worden weggewerkt;

Binnen mijn departement wordt samen met andere betrokken overheidsdiensten gewerkt aan een nadere invulling van de in 2000 uitgebrachte Nota Bestrijding Milieubedreigende Stoffen, met als einddoel zowel een kwalitatieve verbetering van de bestrijding als een nieuwe Capaciteitsnota voor de bestrijding van verontreinigingen;

De implementatie van de Europese Richtlijn 2000/59 betreffende Havenontvangstvoorzieningen, zal aan een aantal van de thans bestaande bezwaren tegemoet komen;

Handhaving van de milieuwetgeving is één van de in Kustwachtverband uit te voeren taken. Voor een mogelijke verbetering van de samenwerking tussen de bij de uitvoering betrokken diensten verwijs ik u naar de eerder toegezegde evaluatie van de Kustwacht, met name waar het gaat om de uitvoering van handhavingstaken, die eind 2002 zal plaatsvinden;

Het Ministerie van Justitie en het Openbaar Ministerie zullen bij de toetsing van nieuwe wetgeving bijzondere nadruk leggen op de handhaafbaarheid en uitvoerbaarheid;

De functie van Noordzee officier van justitie zal structureel in de totale formatie van het Openbaar Ministerie worden opgenomen. Het college van procureurs-generaal beraadt zich op de verschillende opties voor optimale inbedding van deze functie binnen het Openbaar Ministerie;

De Minister van Justitie, die dat doet in overleg met het college van procureurs-generaal, en ik zullen de voorwaarden scheppen voor een goede afstemming tussen de Noordzee officier en zijn bestuurlijke handhavingspartners, zodat beide laatstgenoemden milieuhandhavingsarrangementen kunnen maken waarin de controle en de daaruit voortvloeiende bestuurlijke en strafrechtelijke acties zijn vastgelegd;

Op basis van deze handhavingsarrangementen kunnen de Minister van Justitie en ik worden voorzien van voldoende strafrechtelijke respectievelijk bestuurlijke beleidsinformatie over de milieuhandhaving op de Noordzee."

Reactie Algemene Rekenkamer

De Algemene Rekenkamer verwacht dat enkele van de acties die de minister in haar brief opsomt, zal kunnen leiden tot een doelmatiger (uitvoering van het) beleid inzake het voorkomen van en het optreden tegen milieuvervuiling door zeeschepen. Zij is het met de minister eens dat de knelpunten die uit het onderzoek naar voren komen ten dele al bij de betrokken ministeries bekend waren. Juist daarom betreurt zij het evenwel dat de acties in de brief nog zo weinig concreet en precies zijn, dat de minister in veel gevallen niet aanduidt welk effect zij van de maatregelen verwacht en dat in nagenoeg geen enkel geval wordt aangegeven wanneer de maatregel wordt ingezet of wanneer ze effect moet sorteren.

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daarom verdere uitbesteding zeer zorgvuldig

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Tot zover het citaat uit de brief van de minister.

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gaat in haar brief vervolgens

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in op de afzonderlijke hoofdstukken van het rapport. Haar reactie wordt hieronder paragraafsgewijs samenvattend weergegeven.

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Beleid en verantwoording

In reactie op de opmerkingen van de Algemene Rekenkamer over het verzamelen van beleidsinformatie, inclusief de opmerkingen over het monitoringsysteem van emissies door de scheepvaart, verwijst

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naar de voortgangsrapportage die in het najaar zal verschijnen en naar de periodieke rapportages van andere dienstonderdelen

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, in reactie op de opmerkingen van de Algemene Rekenkamer over het verzamelen van beleidsinformatie, inclusief de opmerkingen over het monitoringsysteem van emissies door de scheepvaart

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t dat bij het Directoraat-Generaal Goederenvervoer (DGG)

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een proces van herstructurering van de ‘natte milieutaken’ is gestart en dat de instelling van de Inspectie Verkeer en Waterstaat (IVW)

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daarin tevens een factor van belang is.

Reactie Algemene Rekenkamer
Indien de rapportage die de minister toezegt niet meer zou zijn dan een voortgangsrapportage over de beleidsnota ‘Varen onder groene vlag’*, dan zouden volgens de Algemene Rekenkamer veel elementen uit het beleid inzake voorkomen van en optreden tegen vervuiling door zeeschepen onbesproken blijven. De Algemene Rekenkamer is dan ook benieuwd naar de beschrijving van de instrumenten die na* ‘Varen onder groene vlag’ *zijn ingezet, en die ook een plaats zullen krijgen in de aangekondigde voortgangsrapportage. De Algemene Rekenkamer is van mening dat met de toezeggingen van de minister helaas nog altijd niet gewaarborgd is dat er over de hele linie van het in het onderzoek beschreven beleid beleidsinformatie wordt verzameld, en in samenhang gebruikt om weloverwogen beleidskeuzes voor te stellen aan het parlement. De informatie-*

verzameling zoals hier beschreven door de minister is, kort gezegd, incompleet en fragmentarisch.

Het is voor de Algemene Rekenkamer op grond van haar onderzoek en op grond van de informatie die de minister er in haar brief over geeft, niet in te schatten welke positieve bijdrage mag worden verwacht van de herstructurering van natte milieutaken bij DGG of van de oprichting van de IVW op de door haar benoemde gesignaleerde problemen in beleid en verantwoording.

Vervuiling voorkomen: milieutoezicht op schepen

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Wat de vlaggenstaatcontrole betreft

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zegt de minister dat zij de conclusies van de Algemene Rekenkamer over risico's van uitbesteding van taken aan klassebureaus

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Commentaar Algemene Rekenkamer op reactie minister

Reeds voorgenomen en lopende acties

De Algemene Rekenkamer verwacht dat enkele van de acties die de minister in haar brief opsomt, zal kunnen leiden tot een doelmatiger (uitvoering van het) beleid inzake het voorkomen van en het optreden tegen milieuvervuiling door zeeschepen. Zij is het met de minister eens dat de knelpunten die uit het onderzoek naar voren komen ten dele al bij de betrokken ministeries bekend waren. Juist daarom betreurt zij het evenwel dat de acties in de brief nog zo weinig concreet en precies zijn, dat de minister in veel gevallen niet aanduidt welk effect zij van de maatregelen verwacht en dat in nagenoeg geen enkel geval wordt aangegeven wanneer de maatregel wordt ingezet of wanneer ze effect moet sorteren.

De detailinformatie die de minister vervolgens per hoofdstuk van het rapport geeft, beantwoordt maar enkele van deze vragen.

Hierna: cursiefjes van hierboven.

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De ministers hebben een uitvoerig beeld geschetst van de maatregelen die genomen zijn en worden om tegemoet te komen aan de knelpunten waarover de Algemene Rekenkamer heeft gerapporteerd. De Algemene Rekenkamer had gehoopt dat de ministers zich in dit stadium, gelet ook op het feit dat een aantal knelpunten al langer bekend is, in preciezere en concretere bewoordingen zouden hebben uitgelaten over hetgeen nu moet gebeuren, dan ze in hun brief hebben gedaan. Wat de geschetste maatregelen exact inhouden, welke bijdrage ze kunnen leveren in het oplossen van de zeer reële knelpunten, en wanneer ze worden ingezet dan wel effect moeten sorteren, blijft nu nog teveel in het midden.

Zeker zo teleurstellend acht de Algemene Rekenkamer het

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de in het rapport gemaakte opmerkingen over gebrek aan samenhang in (de uitvoering van) het beleid.

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De Algemene Rekenkamer had graag van de visie van de minister willen vernemen op de vraag hoe

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het uitzicht op rendement van de inzet van middelen het grootst is. Het beeld van een gefragmenteerd beleidsterrein, met versnipperde en onvolledige beleids- en daarmee verantwoordingsinformatie, wordt door de reactie van de ministers alleen nog maar versterkt. De

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Algemene Rekenkamer moet vaststellen dat dit onderdeel van haar boodschap door de ministers nu nog onvoldoende is opgepakt.

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2: Tabel conclusies, aanbevelingen, toezeggingen ministers en nawoord

Hoofdstuk	Conclusies	Aanbevelingen	Toezeggingen minister(s)	Nav
Beleid en verantwoording	Het is voor het parlement uitermate lastig om op het beleidsterrein milieuvervuiling door zeeschepen zijn controlerende taak uit te oefenen, aangezien niet is voldaan aan de noodzakelijke voorwaarden om dat te kunnen doen. Het beleid is namelijk op een aantal punten onduidelijk, de informatie over de uitvoering van het beleid is voor verbetering vatbaar en van verantwoording aan het parlement over de uitvoering van het beleid kan nauwelijks worden gesproken.	De betrokken ministers (met name van V&W en Justitie) zouden voldoende beleidsinformatie moeten verzamelen over de bijdrage die de afzonderlijke beleidsonderdelen leveren in het geheel van ‘voorkomen’ en ‘genezen’, om het parlement voorstellen te kunnen doen over het beleidsterrein als geheel. Daarnaast is er dringend behoefte aan een behoorlijke verantwoording over de beleidsprestaties aan het parlement. De Algemene Rekenkamer geeft de minister van V&W in overweging de verantwoording over het beleid inzake milieuvervuiling door zeeschepen in de begroting en verantwoording te behandelen als beleidsprioriteit. Conform de regeringsnota *Van beleidsbegroting tot beleidsverantwoording* (VBTB) van mei 1999 kan door middel van een overzichtsconstructie het parlement meer inzicht worden gegeven in de prestaties en effecten van de verschillende betrokken ministeries en de samenhang daarin.		
Vervuiling voorkomen: milieutoezicht op schepen	Het toezicht op de naleving van milieuregels door schepen door de Scheepvaartinspectie kan op een aantal onderdelen beter. Het is risicovol dat de Scheep-vaartinspectie steeds meer	De Algemene Rekenkamer meent dat de Scheepvaartinspectie haar inspanningen gerichter zou moeten inzetten daar waar het risico voor het milieu het grootst		

	vlaggestaatcontroles uitbesteedt aan particuliere klassebureaus. De controles van buitenlandse schepen in Nederlandse havens blijkt daarnaast niet gericht op de schepen die voor milieu of veiligheid grotere risico's met zich meebrengen. Tot slot vat de Scheepvaartinspectie haar taak volgens de Algemene Rekenkamer te beperkt op. Het milieutoezicht zou effectiever kunnen zijn, als de Scheepvaartinspectie zich bij de bestuurlijke handhaving en de opsporing actiever opstelt. Over de controle op oliejournaals verschillen DGG inclusief de Scheepvaartinspectie enerzijds en het OM anderzijds al enige tijd van mening. DGG vindt dat deze controles inbreuk maken op de verdragsbepalingen over de frequentie van inspecties, terwijl het OM meent dat deze bepalingen zich niet uitstrekken tot de controle op oliejournaals als opsporingsactiviteit.	is. Daarvoor zou zij beter gebruik moeten maken van de *target factor* voor de selectie van schepen voor havenstaatcontrole dan zij tot nu toe doet. Als de Scheepvaartinspectie haar taakopvatting verbreedt, door zich als handhaver actiever op te stellen, draagt dit ook bij aan een effectiever milieutoezicht waarvan bovendien meer afschrikkend effect uitgaat.		
Vervuiling voorkomen: inname afval in zeehavens	De minister van V&W is tekort geschoten in de zorg voor adequate havenontvangst-voorzieningen door deze aan de havenbeheerders te delegeren zonder nadere eisen te stellen, of andere maatregelen te nemen, om te waarborgen dat deze voorzieningen inderdaad adequaat en laagdrempelig zijn. Bij inzameling van afval in de	De Ministeries van V&W en VROM zouden zich inzicht moeten verwerven in de omvang en kwaliteit van de marktwerking onder havenontvangstvoorzieningen. Zonodig moeten initiatieven worden genomen hetzij om de werking van dit instrument te verbeteren, hetzij om andere maatregelen te treffen gericht op de gewenste		

	havens is sprake van delegatie van internationale verplichtingen door de rijksoverheid aan de havenbeheerders. In een dergelijk geval zou de minister zich ervan moeten verzekeren dat de taakuitvoering zodanig is dat daarmee aan de internationale afspraken wordt voldaan en de beoogde resultaten worden gerealiseerd. In de praktijk ontbreekt het de minister hier zowel aan de nodige informatie, als aan instrumenten om bij te sturen. Er zijn goede redenen om te twijfelen aan de effectiviteit van marktwerking als het instrument om de gewenste laagdrempeligheid van havenontvangsvoorzieningen te bewerkstelligen. Gezien het belang dat in dezen aan een goede marktwerking is gehecht, is de Algemene Rekenkamer van mening dat ten onrechte is nagelaten een goed inzicht te verwerven in de omvang en kwaliteit ervan.	laagdrempeligheid van de havenontvangstvoorzieningen.		
Optreden tegen vervuiling: de vlek	De beschikbaarheid van mensen en middelen lijkt meer bepalend voor de planning van de luchtsurveillances dan een onderbouwde en nader gespecificeerde behoefte. De beschikbare capaciteit voor luchtsurveillances blijft al jaren achter bij de opgegeven behoefte op basis van het geformuleerde beleid, en er is van structurele knelpunten bij de uitvoering: telkens weer is er	De directie Noordzee van Rijkswaterstaat moet volgens de Algemene Rekenkamer beter waarborgen dat, naast de incidentele bestrijding van verontreinigingen op zee en op de kust, de beleidsvoorbereiding, -ontwikkeling, -verantwoording en –evaluatie terzake doorgang blijft vinden. Dit moet leiden tot bijvoorbeeld een grotere aandacht voor de vastlegging		

	een forse onderrealisatie ten opzichte van het aantal geplande vlieguren. De Algemene Rekenkamer vindt het principieel onjuist dat de beslissing om al dan niet te vervolgen in de praktijk genomen wordt door luchtwaarnemers van de directie Noordzee van Rijkswaterstaat en niet door de bevoegde instantie, het OM. Deze handelwijze vloeit voort uit afspraken tussen de directie Noordzee en het Kustwachtcentrum, waarbij het OM niet betrokken is geweest. De effectiviteit van de bestrijding van verontreiniging op zee lijkt beperkt. Tegenover de aanwezigheid van een modern bestrijdingsvaartuig staan organisatorische knelpunten zoals een vaak lange responstijd en onvoldoende beschikbare luchtsteun. De bestrijding van kustverontreinigingen lijkt in het algemeen afdoende. Overigens hebben (middel-)grote incidenten op de Nederlandse zee en/of de kust zich de laatste jaren niet voorgedaan. Bestrijdingsacties in het Nederlands deel van de Noordzee en op de kust worden slechts beperkt gedocumenteerd en geëvalueerd. Ook is een achterstand ontstaan in het opstellen van kostendossiers over bestrijdingsacties. Aangezien de veroorzakers van	van bestrijdingsacties en oefeningen en het opstellen van kostendossiers, maar ook tot een voortvarende aanpak van de gesignaleerde knelpunten bij de uitvoering van de *Capaciteitsnota*.		

	de verontreinigingen in deze gevallen onbekend zijn gebleven, heeft dit er niet toe geleid dat kostenverhaal achterwege is gebleven. Het is desondanks te betreuren dat achterstand is ontstaan in het opstellen van kostendossiers, want hierdoor is het niet goed mogelijk inzicht te krijgen in de kosten c.q. de kosteneffectiviteit van de bestrijdingsacties. De herziening van de *Capaciteitsnota 1990* heeft jarenlang stilgelegen, en heeft pas onlangs geleid tot een nieuwe kritische beleidsnota, de nota *Bestrijding milieubedreigende stoffen Noordzee 2000-2010.* De aanpak van de gesignaleerde knelpunten is vooralsnog weinig concreet. De Algemene Rekenkamer concludeert dat de directie Noordzee, als organisatie voor het waarnemen en opruimen van milieuverontreiniging op de Noordzee en de kust, sterk op de korte termijn gericht is. Aan andere dan operationele activiteiten, zoals de beleidsvoorbereiding en –ontwikkeling, het maken van vastleggingen over de uitvoering van het beleid en het evalueren van het beleid, wordt duidelijk minder aandacht gegeven.			
Optreden tegen vervuiling: de veroorzaker	Herstel en aanpassing van de maritieme milieuwetgeving heeft in het voorbije decennium	De Algemene Rekenkamer is van mening dat de opsporing en vervolging van milieudelicten		

	een lage prioriteit gehad. De Algemene Rekenkamer betreurt dit, omdat het de effectiviteit van het Nederlandse opsporings- en vervolgingsbeleid in al die tijd ernstig beperkt heeft. De beschikbaarheid van mensen en middelen vormt een knelpunt bij de uitvoering van de opsporing en vervolging, zowel bij het Stafbureau als bij het OM. De afstemming tussen bestuurlijke en strafrechtelijke handhavingsinstanties over de handhaving van maritieme milieuwetgeving ten slotte laat te wensen over. Het overleg tussen het OM en de bestuurlijke handhavingspartners is nog onvoldoende ontwikkeld, vanwege onvoldoende capaciteit bij het OM en onvoldoende aandacht van DGG voor de handhaving van de Wet voorkoming verontreiniging door schepen. Daarnaast is tot nu toe geen structureel gevolg gegeven aan de wens van het kabinet, verwoord in 1998, een betere coördinatie tot stand te brengen tussen handhaving van de regelgeving voor de zeevaart op zee en in de havens. Tot slot is uit het onderzoek gebleken dat DGG en het OM verschillend denken over de rol van de Permanente Kontaktgroep Handhaving Noordzee, en meer in het bijzonder over de	op de Noordzee meer kans van slagen zou hebben als in elk geval aan drie voorwaarden zou worden voldaan. In de eerste plaats is het van belang dat de gesignaleerde knelpunten in wet- en regelgeving met spoed en afdoende worden weggenomen. Daarbij zouden met voorrang enkele eenvoudige, maar voor een effectieve vervolging cruciale voorstellen van wet tot aanpassing van de Wet voorkoming verontreiniging door schepen moeten worden ingediend, waaronder de strafbaarstelling van lozingen in de Nederlandse Exclusieve Economische Zone (EEZ). Eén en ander in nauwe samenwerking met het Ministerie van Justitie om de handhaafbaarheid te waarborgen. In de tweede plaats zou voor de vervulling van taken bij het OM uitdrukkelijk capaciteit en budget moeten worden vrijgemaakt, omdat tot nu toe de basis voor vervolging te wankel is, want grotendeels afhankelijk van de persoonlijke inzet en betrokkenheid van individuele functionarissen. In de derde plaats zou de afstemming tussen bestuurlijke en strafrechtelijke handhavingsinstanties moeten verbeteren: het is wenselijk dat zij een gezamenlijke visie uitwerken op handhaving van maritieme milieudelicten	

	politiecontroles op oliejournaals in de zeehavens.	(waarin begrepen een visie op de samenhang tussen handhaving op zee en in de havens), afspraken maken over het vervolgingsbeleid en afstemmen over de voorgenomen wetswijzigingen.		