



Algemene Rekenkamer

Marine pollution from ships



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Summary

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

General conclusions

On examining the policy area as a whole, the NCA finds that cooperation between the various public services leaves room for improvement. The public services involved in this policy area should, according to the NCA, account for the fact that the efficacy of their actions partly determines the efficacy with which other public services can act. In addition, the NCA 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. If, for instance, it would appear that prevention would yield more benefits to the environment than repression, it could be decided to invest more resources in prevention at the expense of repression. The NCA 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 audit

In its audit, the NCA 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 audit then goes deeper into prevention policy in the form of the environmental supervision of sea vessels and reception of waste in seaports. The prevention

policy was studied to assess the efficacy of measures taken against pollution and against polluters.

The audit prompted the NCA to formulate a number of recommendations that could enhance the efficacy of public actions.


Policy and accountability

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 NCA 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 updated 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.

Subjecting ships to environmental inspections

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 NCA 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 Shipping Inspectorate lacks sufficient information and steering options to guarantee optimal supervision, while there are indications that the classification societies pay less attention to environmental controls on sea ships than the Shipping Inspectorate.

With regard to port checks, the NCA comments that although the Netherlands has (more or less) met its 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 NCA 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 including the Shipping Inspectorate, and the Public Prosecution Service hold different opinions regarding whether the international treaties pertain to checking oil record books.

Waste reception in seaports

Internationally, the Netherlands has undertaken to provide adequate, accessible provisions for the reception of ships' waste. Speedy, simple and relatively inexpensive ways of waste reception 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 adequate and easily accessible. The audit of the NCA shows that a large number of port authorities have not been designated the requisite port reception facilities.

In the Netherlands, the market mechanism should bring about the desired accessibility of port reception facilities. The NCA thinks 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



NCA 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 NCA judges that the Minister has failed in her care of the port reception facilities to which she is internationally obligated.

Combating pollution

The NCA evaluated whether the aerial surveillance to detect oil spills on the North Sea is 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 evaluated and adapted the prevention policy promptly and effectively.

The availability of manpower and resources seem more decisive for planning aerial surveillance 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 Nederlandse Coastguard Services (Coastguard) on the types of pollution the air patrols of the North Sea Directorate should report to the Coastguard Centre in practice involve the air patrollers deciding whether to prosecute or not. For the Public Prosecution Service, the only body authorised in this regard, bases its decisions on information on pollution it receives from the Coastguard Centre.



The efficacy of combating marine pollution seems to be limited. On the one hand, a modern anti-pollution vessel is available, but on the other hand there are organisational bottlenecks such as frequently lengthy response times and insufficiently available air support. Countering coastal pollution seems adequate in general. 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 'Capacity Paper 1990' stagnated for years and has only recently led to a new, critical policy paper, 'Combating 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 NCA 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, the recording of counter pollution activities and evaluation are clearly given less attention.

Taking action against polluters

The NCA determines that the revision and modification of maritime legislation was low priority in the last decade. The Act to Prevent of Pollution from Ships contains a number of lacunas and erroneous formulations 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 the North Sea Public Prosecution Investigation Office that supports the Public Prosecution Service in this regard, is a problem. The coordination between administrative and criminal enforcement bodies on implementing maritime legislation leaves a lot to be desired. The consultation 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 Directorate-General for Freight Transport and the Public Prosecution Service have different views on police inspections of oil record books in sea ports. The NCA 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 NCA received a response to the audit 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 NCA, 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, Public Works and Water Management Inspectorate, eliminating legislative lacunas and creating conditions for sound coordination between criminal and administrative enforcement partners. The NCA believes that some of the initiatives outlined by the ministers could lead to better policy and an adequate policy implementation. It goes on to consider, that the proposed measures will need to be detailed much further and it will also need to be indicated which objective each of these measures is set out to achieve, at what time and with what resources. This is also the



approach of the government paper 'From policy budget to policy accountability' of May 1999 and the improvements it advocates. The NCA is disappointed that the ministers' response fails to address its comments on the lack of policy coherence (and policy implementation).

**I.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 garbage; 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, but also to governments. Governments must for example ensure that ship-owners and crews comply with regulations, and ensure that ships can deposit their waste in ports, and offer mutual assistance in the event of emergencies.

I.2 Audit conducted by the NCA

From June 2000 – June 2001, the Netherlands NCA conducted an audit 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?



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?

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

I.3 Audits of other courts of audit

The audit of the NCA was simultaneously carried out by a number of sister organisations in Europe: the audit institutions of Cyprus, Greece, Malta, Turkey and the United Kingdom. The audit institutions agreed that, a few months after the publication of the various national audits, they would combine the results in a joint report on 'best practice'.

I.4 Report structure

In this report, the NCA 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 NCA assessed whether the Shipping Inspectorate adequately implemented

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.



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 reception in the ports. The NCA researched the measures taken to provide adequate port reception 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 if necessary (chapter 5).

The investigation of those responsible for marine pollution has also been covered by the audit. The NCA 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 NCA 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, Public Works and Water Management and the Minister of Justice (chapter 8).

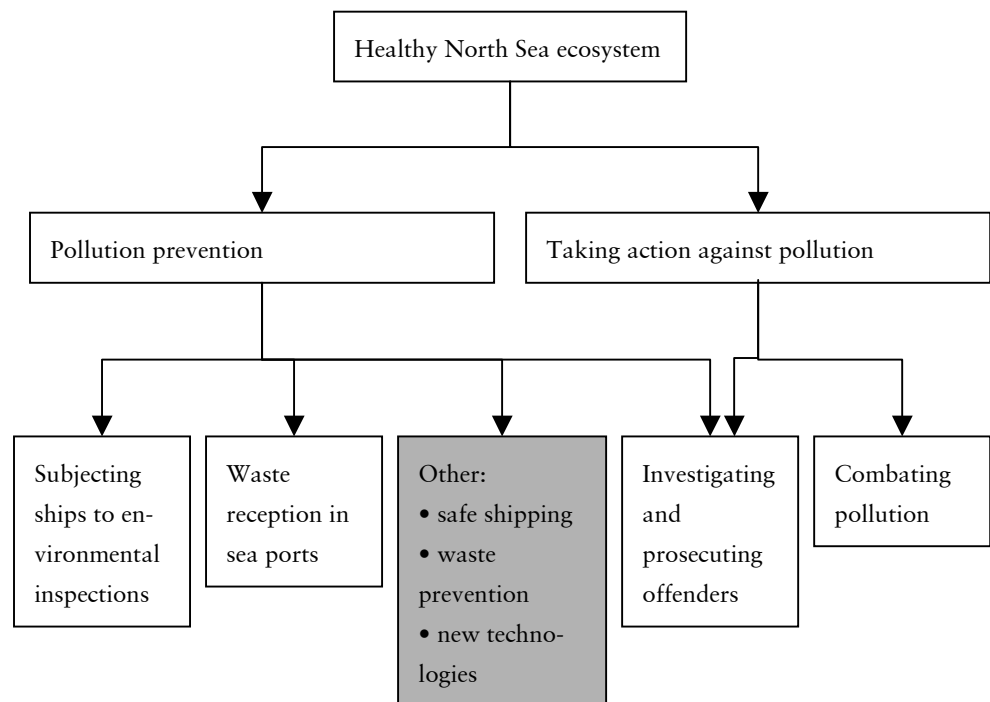
2.1 Introduction

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, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78, 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 (the annex shows an overview of relevant international regulations).

Objectives and instruments

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

Figure 1. Diagrammatic overview of environmental policy for shipping.



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

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 substances² into the sea by ships.

Carrying out 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, Public Works and Water Management Inspectorate-General, as the Shipping Division. In addition, the National Police Services conduct checks on board ship.

Ensuring the presence of efficient port reception facilities is another instrument to prevent pollution from ships, one that 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. Detecting pollution is the prime task of the North Sea Directorate of the Directorate-General of Public Works, under operational direction of the Director of the Coastguard. Investigation and prosecution of polluters, that have both a repressive and a preventive function in this context, are 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 combating pollution at sea. Depending on the magnitude and type of pollution, clearing pollution washed up on the coast is either the responsibility of the coastal municipality or of the Directorate-General of Public Works.

² Oil, hazardous bulk liquids, and substances that are packaged and transported by sea, and garbage.

Relevant policy papers

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

- The ‘Environmental Policy Plan for Shipping’ [*Milieubeleidsplan voor de Scheepvaart 1991-1994*] of, 1991;
- The ‘Progress Paper on Shipping and the Environment — Sailing under a green flag’ [*Voortgangsnota Scheepvaart en Milieu - Varen onder groene vlag*], of 1998;
- The ‘Management Control Vision of the North Sea 2010’ [*Beheersvisie Noordzee 2010*], of 1999;
- The ‘Contingency Plan for the North Sea’ [*Rampenplan voor de Noordzee 2000*] of 1990;
- The ‘Capacity paper on combating oil and chemical substances in the North Sea’ [*Capaciteitsnota bestrijding olie en chemicaliën op de Noordzee*], of 1990 and
- The paper ‘Combating environmentally hazardous substances in the North Sea’ [*Bestrijding milieubedreigende stoffen Noordzee 2000-2010*], of 2000.

Relevant legislation

In the Netherlands, the MARPOL treaty has been implemented in the Act to Prevent of Pollution from Ships, and accompanying regulations. The legislation referred to forms the basis for, among other things, equipment criteria for ships, stipulations concerning discharges, and waste reception in ports.

The most important law concerning measures against pollution is the Act to Control Accidents at the North Sea [*Wet bestrijding ongevallen Noordzee*].

The NCA 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 NCA policies to prevent and control pollution from ships are lacking in clarity on a number of points.

Environmental policy

The precise societal effect that the environmental policy for shipping intends to achieve is unclear. The key policy paper, '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 NCA does not agree with the Minister that it is entirely impossible to formulate objectives that can be monitored. 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 NCA, these data could be used to formulate ambitions and to measure the changes in the quantities of illegal discharges.

Prevention policy

The NCA has noted that 'Sailing under a green flag', the policy document that mainly deals with prevention policy, does not refer to 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.³ The paper does not clarify who is responsible for the most important structural policy instruments.

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The NCA is also of the opinion that the prevention policy is not clear about whether government supervision keeps track of the availability of adequate port reception facilities and whether the threshold for handing in waste – the tariffs involved – isn't too high. This doesn't concern supervising port reception facilities as holders of a facility permit based on the Environmental Management Act, but supervision of the extent to which waste reception in ports complies with the requirements specified by the Act to Prevent of Pollution from Ships and the criteria arising from the international agreements the Netherlands has concluded on port reception facilities.

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: the 'Contingency Plan for the North Sea' and the 'Capacity Paper 1990'. In the recently published paper 'Combating environmentally hazardous substances in the North Sea 2000-2010', 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 Shelf and coast are 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 NCA also considers the way that this paper relates to the 'Capacity paper on combating oil and chemical substances in the North Sea' unclear: does the new paper supplement the old one or does the new paper replace the old one entirely? The Ministry of Transport, Public Works and Water Management stated, when asked,

³ *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.



that it is supplemental. The NCA, 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 m³ crude oil after a collision 40 km west of Hook of Holland).

Legislation

Finally, the NCA found that Dutch law and international legislation are not entirely in line. The discrepancy lies partly in lacunas or erroneous formulations in Dutch legislation and partly in 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 NCA 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 patrollers of the North Sea Directorate, on board surveillance aircraft, only report some of the oil spills they observe to the Coastguard Centre. The discharges 'attached to a polluter' are reported and those that, in the opinion of the air patroller are 'worth combating'. 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 NCA 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 its pollution combating actions 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. Now, another way of measuring efficacy is used in the Coastguard's annual reports. They report on specific enforcement performance, but do not link performance (for example 'oil pollution from a ship, offender known' and 'discharge of ship's waste or cleaning water') to the means deployed to achieve it. 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 'Environmental Policy Plan for Shipping 1991-1994' – the predecessor of '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 'Sailing under a green flag', the Minister states that there is still great uncertainty surrounding environmental damage from shipping. 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 NCA 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.⁴

During the parliamentary debate on 'Sailing under a green flag', the Minister also promised she would inform the Lower House of progress in implementing the paper, starting from February 2000. When the audit of the NCA concluded, the progress report had not yet appeared. For internal use, the Directorate-General for Freight Transport appeared to have the beginnings of a progress report. This shows that the implementation of a number of initiatives has been slowed down.

⁴ 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).



The NCA would finally like to remark that a progress report on the implementation of 'Sailing under a green flag' is of limited value as an account of the policy 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 NCA believes, for a number of reasons, that Parliament is considerably impeded in exercising its controlling tasks in the policy area of pollution from ships given that the requisite conditions needed for so doing have not been met.

First and foremost, the NCA considers that policy is unclear on a number of points such as: the societal effect to be realised, the position assigned to key structural prevention instruments in the policy, who monitors the availability of adequate port reception facilities and what is the relationship between the policy papers 'Combating environmentally hazardous substances in the North Sea 2000-2010' and the 'Capacity Paper'.

Furthermore, the NCA finds that the information recorded on policy implementation needs to be improved. A functioning system to monitor emissions from sea vessels is still, ten years after its announcement by the Minister, not in place.

Finally, there is hardly any mention of accounting 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.

Pollution prevention: subjecting ships to environmental inspections

3.1 Introduction

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 visiting a Dutch port. Inspecting national 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 visit⁵ is held annually. Ship-owners undertake to request the flag state

⁵ Of these checks, the five-year is the most exhaustive, and the inspection visit or *visering* the least exhaustive.



control themselves. In other words, these checks are never carried out unexpectedly.

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In the port state control, introduced because not all flag states turned out to meet their responsibilities accurately, 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. As opposed 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 NCA examined whether the Shipping Inspectorate adequately performs controls of the ships 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 NCA also evaluated the extent to which the understanding of its duties by the Shipping Inspectorate influences the efficacy of supervision 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 societies. These are private companies that traditionally – unto this day – carry out technical inspections on the immediate instructions of ship-owners to assess among other things the sea-worthiness and safety of ships, which is required for insurance purposes. Seven international classification societies, acknowledged by the European Commission, have been authorised to perform these certification activities in the Netherlands. Reputable classification societies 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 societies. This development can be explained 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%)⁶, 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 carries out ever fewer inspections of ships under the Dutch flag by itself: ships may be inspected only once every five years by the Shipping Inspectorate itself.

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 NCA, this was the most frequent complaint about the Shipping Inspectorate.

Supervision of classification societies

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

Not all classification societies keep to this contractual information obligation. The Shipping Inspectorate has practically no means of coercing the classification societies to submit this information, or to steer them in any other way.⁷

⁶ 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.

⁷ 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 society concerned should in that case be brought under other classification societies. Moreover, in a European context, withdrawing the recognition would also need to be regulated.



In the meantime, there are indications that the classification societies give less attention to a number of matters than the Shipping Inspectorate, one of which is the environment.⁸ The NCA states, in addition, that the classification societies have other links with the ship-owners: ship-owners are clients for standard classification activities whereas in their work for the Shipping Inspectorate, the ship-owner is the inspection object. The NCA considers it dangerous that there are no guarantees that, in the second instance, the classification societies act with the required autonomy.

Quality of the Dutch fleet

The condition of the Dutch fleet seems to be reasonable, for that matter, 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, as deduced from the results of port state controls. Only Finland, Ireland, Germany and Japan have higher rankings. The NCA nevertheless 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 societies 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 Europe⁹, 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).

⁸ Source: *Jaarplan 2000* ('Plans for the year 2000') by the Inspection Department of the Shipping Inspectorate.

⁹ 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.



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 NCA examined which target factors were assigned to the ships that visited the port of Rotterdam in September and October 2000 (where around 70% of the ships visiting the Netherlands drop anchor) and which of these ships were subjected 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 decisive factor in the selection of 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, a weighing of port state controls was introduced 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 an inspection of 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 deficiencies 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 NCA, this gives the wrong incentive. Furthermore, the NCA establishes that the new system of weighing 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 the decision which ships should be subjected to port state control is also based 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 NCA considers it understandable and efficient 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 NCA considers this an very 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 Dutch ports on a yearly basis 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



Directorate for Transport Safety (of the Directorate-General for Freight Transport) 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 Directorate 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 Directorate 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 was 32.

The NCA 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 Directorate 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 NCA. 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 NCA 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 deficiencies. The NCA 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 deficiencies (74 files with a total of 100 deficiencies), the NCA 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; 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 deficiencies influence the inspection capacity used to monitor the ship-owners involved. This system relies heavily on the data gathered during inspections conducted by classification societies. However, as we noted earlier, this information is far from complete.

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

The NCA 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 data systems of the Shipping Inspectorate. 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 NCA states that, in the cases referred to (which the audit



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 officers in the context of the Act to Prevent of Pollution from Ships and must in that capacity in principle report to the Public Prosecution Service if they suspect an offence is being committed. The NCA 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 deficiencies. In eleven cases, the Shipping Inspectorate reported these deficiencies to the North Sea Public Prosecution Investigation Office (see chapter 6).¹⁰ Although it is not possible to give a norm for this, eleven is low compared to the number of cases in which police investigation of oil record books¹¹ 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 official reports.

While undertaking flag state controls, the Shipping Inspectorate does not demonstrably inspect oil record books. In 1999 and 2000, the flag state control made no mention of detecting faults in the oil record books.

The Public Prosecution Service is of the opinion that, as far as criminal enforcement is concerned, the Shipping Inspectorate's contribution is small at the current time. To support this, it refers to a yearlong difference of opinion between the Directorate-General for Freight Transport including the Shipping Inspectorate on the one hand, and the Public Prosecution Service and National Police Services on the other, on monitoring oil record books. The Directorate-

¹⁰ 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.

¹¹ The MARPOL treaty obligates captains to keep an oil record book 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.

General for Freight Transport finds that the inspections of oil record books carried out by the National Police Services and the Rotterdam 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 National Police Services 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 National Police Services 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 Directorate-General for Freight Transport that was involved – but no citations were issued. This type of tolerance is not permitted under the MARPOL regime.¹² Nor was this taken up with the Public Prosecution Service, which according to the NCA would seem self-evident given the Public Prosecution Services' responsibility for criminal enforcement.

3.5 Conclusions

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

The NCA deems the Shipping Inspectorate's increasing dependence on private classification societies to conduct flag state controls a risk. There are no guarantees that these bodies perform their duties for the Shipping Inspectorate with the necessary autonomy and the Shipping Inspectorate

¹² 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.



does not have the means to steer the classification societies. This begins with the information they need to form an opinion on the need for re-direction: the classification societies do not all keep to their contractual obligation to report on flag state controls on the level of deficiencies found in individual ships. The Shipping Inspectorate thus had insufficient information to be able to properly supervise the duties carried out by the classification societies in the field of delegate flag state controls. Such supervision is necessary because of indications that the classification societies 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 safety. 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 NCA, be put to better use.

Finally, the Shipping Inspectorate often interprets its task too narrowly in the view of the NCA. It places too much emphasis on acting as adviser to the shipping industry. The NCA 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 Directorate-General for Freight Transport 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 record books. The Directorate-General for Freight Transport finds that these controls infringe the treaty stipulations on the frequency of inspections, while the Public Prosecution Service believes that these stipulations do not pertain to checking oil record books as an investigative activity (see chapter 6 for investigation and prosecution).

Pollution prevention: waste reception in seaports

4.1 Introduction

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 adequate port reception facilities for ships' waste in ports, to meet the waste disposal needs of the shipping industry. In the four North Sea Ministerial Conferences held between 1984 and 1995, it was also agreed that the use of port reception 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 reception facilities is the responsibility of municipal port authorities. In 34 seaports, waste reception facilities should be available for oily mixtures and garbage and eight of these facilities should also have facilities for disposing of cargo-related chemicals.¹³ The port authorities are required to designate companies that can provide port reception facilities. One condition is that these firms should have a licence granted on the grounds of the Environmental Management Act for the reception of waste substances. In addition, the port authorities can attach further stipulations and restrictions to the designation. Collecting oily mixtures, chemical residues and ships' garbage without a designation

¹³ Three directives contain lists of ports that should have port waste reception facilities. For oily mixtures and household garbage, these are the directives PJS 30 668/86 (*Aanwijzing havens ingevolge Besluit voorkoming olieverontreinigen schepen*), and SJ 32 367/88 (*Aanwijzing havens*); for chemicals this is SJ 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.



from the port authority in question is prohibited. This constitutes an economic offence.

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The NCA has investigated the instruments used to ensure adequate port reception facilities (see section 4.2). It also assessed the extent to which the minister has taken action to ensure that the port reception facilities are put to good use (see section 4.3).

4.2 Port authorities responsible for waste reception facilities

The responsibility for adequate¹⁴ facilities for waste reception was delegated to port authorities at the end of the eighties because they would be 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 ensure that adequate port reception facilities would be set up in their ports. According to the NCA, 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 reception facilities and whether the delegated tasks are executed in accordance with international and national criteria. Nor can the Minister determine whether existing port reception facilities actually meet shipping's waste disposal needs, as intended.

To learn more about how waste reception is regulated in the ports, the NCA presented the port authorities with a small number of written questions. It asked the port authorities for voluntary cooperation because the NCA has no powers to

¹⁴ 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 NCA considers this worth noting because the Netherlands has undertaken an international obligation to ensure that the facilities are adequate.

perform audits at the municipal government level. All port authorities co-operated, and the responses – which the NCA has not been able to verify – give rise to the following. Of the 34 port authorities, thirteen stated that they had not designated port reception facilities.¹⁵ This does not mean that waste is not collected in these ports. In the ports where garbage is collected, the reception companies are however in breach. The Ministry of 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 reception facilities have not bound further stipulations or restrictions to the designation: 40% of them indicated not having done so. According to the NCA, this is a key resource for port authorities in ensuring ‘adequate’ waste reception 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 NCA, 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 adequacy of port reception facilities in the Netherlands. There are no indications that there is insufficient capacity to deal with the waste. However, many Dutch ship-owners who responded to the questionnaire put to them by the NCA, are critical of the scope for disposing of household garbage in Dutch ports.¹⁶ In response to this, the Ministry of Transport, Public Works and Water Management said that, since 1988, only two complaints have been filed by ship-owners. The NCA believes that, for a number of reasons, ship-owners won't be

¹⁵ The NCA was not able to assess whether the remaining 21 port authorities have designated waste reception facilities. Of these 21, eight sent the instruction, thirteen did not.

¹⁶ 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.



quick to complain using the procedure offered by the MARPOL agreement and that the lack of official complaints does not necessarily imply that port reception facilities are adequate. In addition, it notes that, over recent years, the Ministry of Transport, Public Works and Water Management received indications from various studies on bottlenecks in seaport waste reception, and therefore has more information on this matter than from the complaints procedure alone.

4.3 Encouraging the use of facilities

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

In practice, the majority of ports only have one port reception installation. This emerges from, among other things, the questionnaire held by the NCA among port authorities. There is no realistic competition in these seaports. In seven to nine¹⁷ of the 21 seaports where the port authorities has designated a port reception facility, there is more than one reception company. The NCA notes that one can hardly speak of healthy competition here. In the last few years, of the companies actively involved in waste reception and processing, many have increasingly formed conglomerates. With the result that competition between waste reception companies is less pronounced than it looks at first sight. Competitive reception rates is also hampered by the small number of waste processing companies (the next link in the chain after reception companies) and the fact that processing costs form a sizeable chunk of reception tariffs.

Signals that port reception facilities market is operating below par are nothing new. This was reported earlier in a

¹⁷ This depends on the waste product involved.



survey commissioned by bodies including the Ministry of Transport, Public Works and Water Management.¹⁸ The Minister took no action to curb this but only remarked several times that the problems would be investigated or resolved in new policy.¹⁹

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

In the policy paper 'Sailing under a green flag' of 1998, the Minister announces that, in 2000, the port authorities should have complete waste management plans integrating the reception of shipping waste with the other services it provides to the shipping industry.²⁰ According to the NCA, such plans could improve the use of waste reception facilities in ports, although it determines that, up to now, the plans have not got off the ground.

The NCA was unable to find further concrete measures taken by the Minister to stimulate the use of port reception facilities.

¹⁸ Other bodies were: Alfons & Partners Consultancy *Knelpuntenanalyse HOI's* (The Hague 1996). In the NCA report *Tankcleaning Rotterdam en andere havenontvangstinstallaties* of 1996 (Lower House, 1995-1996, 24 715 nos 1-2, pages 46 and 51) problems were reported concerning the use of port waste reception facilities: reception costs, speed of services, physical accessibility and round-the-clock availability.

¹⁹ In the response to the NCA 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 reception installations had been developed. When following the Hoogland committee's recommendations [1998], the Minister again referred ahead to the European Directive.

²⁰ These plans should contain an overview of the reception companies designated by the port authority, a description of the procedures for the reception, transportation, storage and processing of the waste, criteria for those handling in waste, service quality standards for reception companies and a complaints reporting point.



4.4 Conclusions

The NCA judges that the Minister of Transport, Public Works and Water Management has failed to ensure the presence of adequate port reception facilities by delegating this responsibility to the port authorities without setting further requirements or taking other measures to guarantee that these facilities are adequate and easily accessible. The audit conducted by the NCA shows that a large number of port authorities have not designated port reception 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 NCA, 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 NCA finds that there are good reasons for doubting the efficacy of market forces as the instrument to realise the desired accessibility of port reception facilities. In light of the importance attached here to a well-functioning market, the NCA finds that sound insight should have been acquired into the scale and quality of the market mechanism.

Taking action against pollution: the spillage

5.1 Introduction

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, 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.

When the Coastguard detects 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 assess the gravity of the incident.

The North Sea Directorate is responsible for combating 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, either the Directorate-General for Public Works and Water Management (one or more of its regional coastal Directorates, coordinated by the North Sea



Directorate) or the coastal municipality in question, is charged with cleaning up the pollution.

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The NCA 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 in which all the Coastguard departments and the Public Prosecution Service take part. In the 'Enforcement Policy Plan for the North Sea' [*Beleidsplan Handhaving Noordzee*], the Permanent Contact Group for Policy Enforcement in the North Sea, on a yearly basis, lists the air patrol needs for the various action areas²¹ for which air surveillance of the North Sea is required. The NCA has found 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 Permanent Contact Group for Policy Enforcement in the North Sea 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 the need for enforcement. There is no explicit feedback on the results and experiences of the air patrols in previous years.

The North Sea Directorate's plane must be used to perform a number of environmental tasks, including detecting pollution

²¹ 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 such as 'Search and Rescue'.

that must be combated 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. Decisions on this matter 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.²² The Annual Report 2000 of the Coastguard shows that out of 1,200 planned flight hours for that year, 19% were not realised. It must be concluded that measures taken in recent years to curb cancellations have been insufficiently effective.

Reporting pollution to the Public Prosecution Service

One very noticeable fact to emerge from the audit 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 NCA 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 is not taken by the proper authority – i.e. the Public Prosecution Service – but by the air patrollers of the North Sea Directorate of the Directorate-General for Public

²² See the report *Functioneren Kustwacht* by the Netherlands NCA, February 1998, Lower House 1997-1998, 25 865, no. 1-2, pages 18 onwards.



Works and Water Management. The NCA judges this to be fundamentally incorrect.

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5.3 Efficacy of action taken against pollution

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

Efficiency percentage of combating operations

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 NCA 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 efficiency 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, so that 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 anti-pollution vessel. The efficacy of the anti-contamination activities are, however, negatively influenced by problems in the field. Response takes too long, and the aerial support needed for effective action (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 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, are often lacking. More often than not, records were missing of those cases in which it was decided not to engage in any pollution combating activity.

The last two international initiatives in which the Netherlands took part were recorded in detail by the North Sea Directorate.²³ 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 pollution combating actions 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 NCA 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 records were found with the exception of one covering Dutch aid in combating the results of the Erika disaster in December 1999. According to

²³ This concerns the disasters with the Sea Empress (Wales, 1996) and the Erika (Brittany, 1999).

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 pollution combating actions 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 NCA 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 pollution combating actions.

5.5 Evaluation and adjustment of pollution combating policy

In 1993, the North Sea Directorate started to revise the 'Capacity Paper 1990'. Based partly on the results of the 'Evaluation of Oil Combating Strategy' (ESO), the new policy paper '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.

The new policy paper indicates a number of serious problems in implementing the pollution combating policy determined in the 'Capacity Paper 1990'. This is one reason why the NCA considers it regrettable that the revision of the old paper was not tackled more energetically.

Among the problems indicated, the following stand out:

- 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 m³ oil 40 km west of Hook of 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 m³ seems to vanish while the remainder stabilises with the water leaving, in the least favourable scenario, a total of 70,000 m³ water in oil emulsion to be cleared;



- The speed with which sea can be swept referred to in the 'Capacity paper' has proven in practice to be 25 tot 50 percent slower;
- The vast majority of combat capacity is provided by trailing suction hopper dredgers. 'Standby' contracts for these vessels have been concluded with the commercial sector. Over the last ten years, the availability of trailing suction hopper 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 Frisian 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 decision model as a means of unambiguously establishing the necessity of taking countermeasures. The NCA believes that this is a constructive move. However, it notes that factual information on the reasons why in some instances it was decided not to combat certain spills in past years is missing. This makes it difficult to set up a model 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 'sizeable incident', but still very serious. Finally, the audit 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.

Conclusions

The availability for planning the aerial surveillance 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 NCA considers it fundamentally incorrect that the decision of whether or not to prosecute 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 practice arises from agreements between the North Sea Directorate and the 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. On the one hand, a modern anti-pollution vessel is available, but on the other hand there are organisational bottlenecks such as frequently lengthy response times and insufficiently available air support. Countering coastal pollution seems adequate in general. (Medium) sized incidents have not occurred in Dutch waters and/or coastal areas in recent years, though.

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 pollution combating actions. In all cases, the parties responsible for the contamination were unknown. Even if files had existed, it would have been impossible to claim the expenses from the polluters. The NCA 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 pollution combating actions.

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

The NCA 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, the recording of counter pollution activities and evaluation are clearly given less attention.

Taking action against pollution: the polluter

6.1 Introduction

Investigating and prosecuting parties responsible for environmental marine pollution starts in most cases with aerial surveillance. An observed spill 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 NCA has investigated whether the Public Prosecution Service has sufficient manpower and resources for this task (paragraph 6.2). It also assessed if the administrative and criminal enforcement of environmental maritime legislation were well coordinated (paragraph 6.3). The NCA also evaluated the legislation itself (paragraph 6.4). Finally, it examined the results 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 the North Sea Environmental Public Prosecutor has at his disposal, prosecuting marine pollution offences needs to



compete 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 leeway 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 NCA.

The North Sea Environmental Public Prosecutor is also supported primarily by the North Sea Public Prosecution Investigation Office. Said 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 Investigation Office is manned by staff of the Royal Netherlands Military Constabulary [*Koninklijke Marechaussee*] and the National Police Services. The Public Prosecution Service has not ensured that capacity and budget for the Investigation Office are structurally arranged. This would be obvious according to the NCA because the Investigation Office plays a key role for the Public Prosecution Service in preparing the prosecution of environmental offences on the North Sea.

The Investigation Office 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 National Police Services wished to cover the expense of making the computers of the National Police Services staff of the Investigation Office millennium-proof.

The continued existence of the Investigation Office 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 Investigation Office with a national bureau it plans to set up.

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 things, 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, field studies 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 Directorate-General for Freight Transport is the most important, is still underdeveloped. This is because the North Sea Environmental Public Prosecutor and the Investigation Office have insufficient capacity for these tasks and also because enforcing the Act to prevent pollution from ships does not receive sufficient attention from the Directorate-General for Freight Transport.

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 as separate from supervision along the coast and in the ports. In the 1998 policy paper 'Sailing under a green flag', the Cabinet repeats this stance and adds that better coordination needs to be realised between the enforcement of for sea vessels at sea and in the ports. According to the NCA, 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 dedicated 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 with the intention to realise better coordination between enforcement at sea and in the ports, was disbanded without an evaluation of its functioning. The NCA wonders whether the reasons for setting up the CIP at the time have been sufficiently demonstrated as obsolete.

The audit of the NCA also shows that the Directorate-General for Freight Transport and the Public Prosecution Service share different opinions on the role of the Permanent Contact Group for Policy Enforcement in the North Sea 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 record books carried out by the National Police Services (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 national legislation has a number of lacunas and erroneous formulations that hamper and sometimes prohibit the investigation and prosecution of 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 formulations:

- According to the Act to Prevent Pollution from Ships, international ships are not in breach if they show empty or wrongly completed oil record books 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 corresponding regulations conflict when it comes to which actions involving oil should be recorded in the oil record book. According to the act "all acts relating to the transportation and discharge of hazardous substances" should be registered, while according to the model oil record book 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 record book, 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 record books in the Netherlands.
- In 1993, the model oil record book 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, Public Works and Water Management 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.²⁴ 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.

This slow and backlogged implementation of international treaties in Dutch legislation, and failure to repair the lacunas and erroneous formulations in current legislation indicate, in the opinion of the NCA, that the Directorate-General for Freight Transport assigns it low priority. This seems to be confirmed by the fact that the Directorate-General for Freight Transport already knows that the new EU directive on port reception facilities, published on 28 December 2000, will not be implemented on time in Dutch legislation. If there are no complications, implementation will take place by mid 2003, while the directive should be implemented on 28 December 2002.

Coordination between the Directorate-General for Freight Transport 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

²⁴ 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 oily mixtures.



oil record books incorrectly, or not at all, has been officially reported to the Directorate-General for Freight Transport by the Public Prosecution Service, but never resolved.

The NCA has also determined that the Public Prosecution Service is barely involved in official preparations for adjusting maritime legislation. The Directorate-General for Freight Transport 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 NCA considers that, in view of the shortfalls in current legislation and with a view to enforceability, it is desirable for the Directorate-General for Freight Transport to involve the Public Prosecution Service more closely in the planned adjustments to this act. All the more so because new legislation assigns the Ministry of Justice primary responsibility for monitoring the quality of legislation of which workability and enforceability are a part.²⁵ This responsibility of the Ministry of Justice does not diminish the fact that the Ministry of Transport, Public Works and Water Management itself must ensure the quality of its legislation.

6.5 Enforcement results

Despite the problems identified above, investigating and prosecuting marine environmental law violations has developed reasonably well over recent years. The North Sea Public Prosecution Investigation Office 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 NCA hopes that the specialist know-how and experience with enforcing environmental legislation in

²⁵ Instructions for legislation: instruction 254 sub 1, including the clarification to this instruction.



the North Sea will be maintained, if the Board of Procurators General should decide to disband the Investigation Office 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 in retrospect that the pollution was caused by a specific ship. The NCA 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 being made, 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 would be likely to lead to the conviction of 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 as yet. Over recent years, the numbers were as follows. In 1995, 22 of the 34 files likely to lead to convictions 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 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 NCA finds this lamentable because it has 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



Investigation Office 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 NCA considers too weak a basis.

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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 Directorate-General for Freight Transport 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, the audit has shown that the Directorate-General for Freight Transport 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 record books in sea ports.

Conclusion

Examining the entire policy area to prevent and counter pollution by sea ships, the NCA 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 and actions. The public bodies that play a role in this field should, according to the NCA, be well aware of 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 on an annual basis.

Furthermore, the NCA finds that there is insufficient insight into the efficacy 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. If, for instance, it would appear that prevention would yield more benefits to the environment than repression, it could be decided to invest more resources in prevention at the expense of repression. The NCA is of the opinion that it would be worth the effort 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 NCA determines that preventing and combating environmental pollution by sea ships has not had the constant attention of, in particular, the Ministry of



Transport, Public Works and Water Management, that it deserves and to which the Netherlands is obligated by international treaties. The NCA considers this unacceptable because these obligations directly imply that sound arrangements need to be made.

Recommendations

With a view to the exchange of ideas mentioned, the NCA 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 NCA asks the Minister of Transport, Public Works and Water Management to consider treating accountability for policy on pollution from ships as a policy priority in the budget. Pursuant to the government paper 'From policy budget to policy accountability' [*Van beleidsbegroting tot beleidsverantwoording* or *VBTB*] 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 NCA finds that the Shipping Inspectorate should focus its activities more sharply where the risk to the environment is greatest. This requires it to make better use of the 'target factor' in the future when selecting ships for port state control. If the Shipping Inspectorate expands its understanding of its duties by taking a more active role as enforcer, this will contribute to a more effective environmental supervision and it will have an enhanced deterrent effect.

The NCA recommends that the Ministries of Transport, Public Works and Water Management 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 reception. If necessary, steps will need to be taken either to improve the operation of this instrument or



to take other measures to achieve the desired accessibility of port reception facilities.

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The North Sea Directorate of the Directorate-General for Public Works and Water Management should, according to the NCA, 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 pollution combating actions and drills and to drawing up files on the expenses involved; it should also result in an energetic approach to the problems identified in implementing the 'Capacity Paper'.

The NCA finds that investigating and prosecuting environmental offences on the North Sea would have a greater chance of success if 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 that are crucial to more effective prosecution for amending the Act to prevent pollution from ships including penal provisions on discharges in the Netherlands Exclusive Economic Zone (EEZ). This should be done in close collaboration with the Ministry of Justice to safeguard enforceability.

Secondly, capacity and budget must be expressly dedicated 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 the enforcement of environmental maritime legislation (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.

Ministerial responses, comments and afterword

8.1 Ministerial responses and comments from the NCA

The Minister of Transport, Public Works and Water Management responded to the report in a letter dated 14 September 2001, also on behalf of her colleague at the Ministry of Justice.²⁶ The ministers support the main points of the report, state that they have taken good note of the shortfalls identified by the NCA, and have digested its recommendations and remarks. The ministers claim that many of the matters outlined by the NCA 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 action referred to. Then, she deals with the chapters of the report in more detail. This structure of the letter is also followed below. The comments of the NCA are given *in italics*.

It is important to note that, in her response, the Minister of Transport, Public Works and Water Management 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 'Progress Paper on Shipping and 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 Progress Paper appeared.

²⁶ 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.



8.1.1

Measures taken and measures in progress

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

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

- The Transport, Public Works and Water Management Inspectorate 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 control includes the use of the 'target factor' in the sense recommended by the NCA; this increases the efficacy of port state control and focuses controls on 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 'Combating environmentally hazardous substances in the North Sea 2000-2010', published in 2000, with the intention of realising not only a qualitative improvement in pollution combating policy, but a new 'Capacity paper' for combating pollution;
- The implementation of the 2000/59 European Directive on Port Reception 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 they can make the environmental enforcement arrangements in which investigation and the administrative and criminal measures that entail, are laid down;
- Based on these enforcement arrangements, the Minister of Justice and I can be provided with sufficient criminal and administrative policy information respectively on enforcing environmental legislation on the North Sea."

Response of the NCA

The NCA 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 combating pollution from ships. It agrees with the Minister that the problems highlighted by the audit were already known in part to the ministries concerned. Precisely because of this, the NCA 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 and the means that will be dedicated. Furthermore, in almost no instances is there any indication of when the measure will be introduced and when it is 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.



In response to the comments of the NCA 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 has started restructuring the 'water environmental tasks', in which installing the Transport, Public Works and Water Management Inspectorate plays an important factor.

Response of the NCA

If the report that the Minister announces is not more than a progress report on the policy paper 'Sailing under a green flag', then, according to the NCA, 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 NCA 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 NCA concludes that the efforts of the Minister will not be directed at gathering policy information across the entire policy line as described in the audit, 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 audit and on the information provided by the Minister in her letter, the NCA cannot estimate the positive contribution that can be expected of the restructuring of the environmental water tasks of the Directorate-General for Freight Transport. Nor can it estimate the effects of setting up the Transport, Public Works and Water Management Inspectorate on the problems regarding policy and accountability that have been identified.



Pollution prevention: subjecting ships to environmental inspections


As far as the flag state controls are concerned, the Minister says that she supports the dangers involved in contracting duties out to classification societies. For this reason, she will give serious consideration to further contracting out, and will subject this to extra measures to retain sufficient grip on how the classification societies function.

In her letter, the Minister outlines the background of the contracting out policy to date. Up to 1 July 2001, the Shipping Inspectorate was part of the Directorate-General for Freight Transport, where the policy was to contract out certificate-issuing tasks (such as flag state control) to the market, and to strictly enforce. The Shipping Inspectorate converted this into a planned 'new working method' with the aim of deploying capacity where it is needed and reducing generally routine certification tasks. The Shipping Inspectorate enforces this by setting up a separate Enforcement section, as is being done in other divisions of the Inspectorate. Here, the aim is to realise a clear distinction of functions between implementation/licensing and enforcement. Any further contracting out 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 societies 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 Transport, Public Works and Water Management Inspectorate shall, says the Minister, also implement the EU directive on classification societies and will tighten up meta supervision.

Response of the NCA

The NCA 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 NCA considers two matters to be new: anchoring the Shipping Inspectorate in the Transport, Public Works and Water Management Inspectorate and the distinction



between implementation/licencing and enforcement. The NCA determines that the Minister does not for the time being indicate the measures that will ensure more control of the classification societies and how supervision will be tightened up.

Of port state control, 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 the Shipping Inspectorate's coordination team, based on its professional judgement, assesses whether not inspecting a ship with a high 'target factor' for efficiency reasons, would incur unacceptably high risks. According to the Minister, the team is committed to eliminating 'rust buckets' (like the recent Nunki and Maria-S), and to '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 NCA

The NCA 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 of this fact, namely 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 NCA, points towards the second rather than the first option.

Based on the comments of the NCA on the way in which the Shipping Inspectorate interprets its tasks, the Minister underlines the preventive importance of advising, particularly on the construction of ships. Referring to the recent embedding of the Shipping Inspectorate in the Transport, Public Works and Water Management Inspectorate, 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 NCA

The NCA 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, 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 Transport, Public Works and Water Management Inspectorate, the NCA remarks that it is still too early to assess the effect that this will have. It will follow developments.

8.1.4 Pollution prevention: waste reception at ports

The Minister of Transport, Public Works and Water Management indicates that her ministry is currently implementing the EU directive 2000/59 regarding port reception facilities and that indirect financing and port waste

plans are relevant elements of this directive in the context of competition between market forces. The port authorities are drawing up port waste plans to realise effective and efficient reception 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 reception companies within such a system is partly based on the quality of the service offered.

The Minister of Transport, Public Works and Water Management 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 reception 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 NCA

In its report, the NCA concluded that the market for waste facilities barely gets off the ground in many ports, and consequently cannot have the effect the Minister expects, namely accessible port reception facilities. The NCA wonders what effects on the market the Minister expects in this regard of the measures she mentions in this respect: indirect financing and port waste plans. In addition, the NCA 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 NCA to gain better insight into the quality and scale of the market, which it regrets.

8.1.5 Action against pollution: the spillage

According to the Minister of Transport, Public Works and Water Management, further development of the paper 'Combating 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.

The Minister remarks that the NLG 40 million requested to cover the costs of implementing the planned policy was indeed not substantiated in the paper itself, but that this amount was in fact based on an estimate. In the implementation programme of the document (which is soon to appear), this estimate will be further detailed and underpinned.

Response of the NCA

The NCA hopes that the further elaboration of the paper 'Combating environmentally hazardous substances in the North Sea 2000-2010' leads to a prompt and efficient approach to the serious problems that became manifest while implementing the 'Capacity paper 1990'. The NCA 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 NCA, the implementation costs mentioned in the paper are not founded, in or outside the document. Finally, the NCA finds that the announcement of a new and up-dated 'Capacity paper' eradicates the lack of clarity on the status of the document 'Combating environmentally hazardous substances in the North Sea 2000-2010'.

8.1.6 Combating pollution: the polluter

The Minister of Transport, Public Works and Water Management proposes that an amendment of the legislation on the model oil record book and the data to be recorded in the oil record book 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, Public Works and Water Management 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, among other things, environmental regulations 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 Enforcement Section of the Public Prosecution Service that is to be set up.

Improving coordination between the North Sea Environmental Public Prosecutor and his administrative enforcement partners means that environmental enforcement arrangements are made regarding investigation and the administrative and criminal measures that entail. The Minister of Transport, Public Works and Water Management 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, Public Works and Water Management.

The criminal enforcement of environmental legislation in the North Sea that takes place in the context of this enforcement arrangement, can 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 NCA

The NCA notes the pledge that the backlogs in legislation will be eliminated. However, it misses a clear timeframe for this. The NCA 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 NCA hopes will be structurally followed up.

From the fact that the post of North Sea Public Prosecutor (including the Environmental Public Prosecutor) will be included in the formation of the Public Prosecution Service, the NCA gathers that the implementation of the duties that go with this post, and the implementation of 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 Investigation Office) 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. It is particularly not clear to the NCA how the Minister of Transport, Public Works and Water Management aims to improve coordination; lack of clarity remains regarding the extent to which there are consequences for the Directorate-General for Freight Transport and the Shipping Inspectorate.

The NCA 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 a sound 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 concerning the North Sea.

Afterword by the NCA

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 NCA. The NCA 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, what means will be dedicated to them or when they should be effective, is still left very much in the air.

The NCA 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 NCA 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 people and 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. This does not seem to be in the spirit of the new system of 'policy budgeting', as described in the government paper 'From policy budget to policy accountability'. The NCA concludes that the ministers have still not adequately taken up this part of its message.



Annex International legislation

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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 noxious liquid substances 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 control;
- EU Directive 94/57/EC of 22 November 1994 and 97/58/EC of 26 September 1997 on classification societies that inspect and/or certify ships;



A new EU Directive on port reception 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.

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