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INTERNATIONAL COUNCIL FOR THE
EXPLORATION OF THE SEA

C.M. 1977/B: 15

Joint Session on Interaction
between the Fishing Industry
and the Offshore Gas/Oil
Industries.



A SHORT NOTE ON THE DUTCH LEGISLATION AND REGULATIONS
OF THE INTERACTION BETWEEN THE OFFSHORE OIL AND GAS
INDUSTRY AND THE FISHERIES

by

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Upon completion of the Geneva Convention regarding the Continental Shelf (1958), the Netherlands Government put into effect a law dealing with the exploration for and exploitation of minerals (Mining Law Continental Shelf).

It should be noted that sand, gravel and clay are not regarded as minerals within the context of this law; the rules for the exploration and exploitation of these minerals have been laid down in a separate law, which has however not yet been put into force.

The Mining Law Continental Shelf should be seen as a frame-law, i.e. it contains a number of main rules, which are to be worked-out into more details through further regulations. As far as this law deals with the protection of other interests of users of the (North) Sea, the following definitions are of importance to fishery:

1. It can be ruled by General Order -a Royal Decree- that certain parts of the Continental Shelf are not to be covered by a mining licence. This article has so far only been applied to exclude mining activities in the interest of shipping (f.i. approaches to harbours) and defense (exercise areas). It has not been proven necessary to apply similar arrangements with regard to fishery.
2. Also by Royal Decree regulations can be put into force with respect to:
 - a. protection of the natural resources of the sea;
 - b. preventing pollution of the sea;
 - c. other interests acknowledged by international law.

The regulations under 2 above contain a large number which are of importance to fishery, they cover the following subjects:

A. SEISMIC ACTIVITIES

Vessels engaged in this type of survey have to be equipped with such communication-gear as to be able to contact fishing-vessels through the established fishery-wave-length and also with suitable equipment to trace fish-shoals.

Sufficient expert-personnel should be on board to operate the aforementioned equipment.

The ship's crew should be able to recognize vessels actually fishing, fixed fishing equipment, dragnets and floating nets.

No activities are allowed within a given distance from vessels actually fishing or fixed fishing-gear. No explosives may be detonated close to fish-shoals.

A fishery-expert can be appointed to accompany the survey upon request of the Minister of Agriculture and Fishery.

All indications related to the impact of detonated explosives on the living riches of the sea, as observed at the sea-surface, have to be entered into a ledger; this ledger is available to the proper authority if so requested.

B. POLLUTION OF THE SEA

It is forbidden to discharge oil or oily substance. Proper arrangements have to be in force to avoid these pollutants to enter the sea even inadvertently.

Pipelines should be constructed sufficiently strong, adequate corrosion-prevention techniques applied and a regular check on leakage and general condition be carried-out.

Leaking sections have to be put out of operation immediately and repair-work has to start soonest thereafter.

C. SHIPPING (INCLUDING FISHERY)

All mining-installations have to be adequately lighted, carry radar-reflectors and emit sound-warnings during poor visibility.

When no longer in use, installations and pipelines have to be removed. Abandoned holes have to be completed at such a depth below the seafloor, that no obstruction for shipping remains.

Pipelines have to be buried according to specifications as soon as shipping or fishing activities could be endangered.

The track of a pipeline can be laid down by central government, a variety of spheres of interest might have to be taken into account.

All known obstacles should be published in the "Notice to Mariners" and also be plotted on the sea-maps concerned.

Concluding it should be noted that the Mining Law Continental Shelf provides for a safety-zone around mining installations. In practice the safety-zones, with a radius of 500 m, are only established around permanent installations. Unauthorized entry of such a safety-zone is regarded an offense and therefore punishable.

As the Netherlands are one of the signatories of the "Convention on the High Seas" - Geneva 29th of April 1958, it should be pointed out that the articles 2, 26, 27, 28, 29 of this convention are dealing with pipelines and submarine cables.

However at the moment it is unclear how this convention fits in the frame-work of the National Law.

The full text of these above mentioned articles:

Convention on the High Seas

The States Parties to this Convention,

Desiring to codify the rules of international law relating to the high seas,

Recognizing that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

Article 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

Article 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

- (1) Freedom of navigation;
- (2) Freedom of fishing;
- (3) Freedom to lay submarine cables and pipelines;
- (4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

Article 26

1. All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas.
2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.
3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already

dy in position on the seabed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

Article 27

Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

Article 28

Every State shall take the necessary legislative measures to provide that, if persons subject to its jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

Article 29

Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand.