23 May 2019

DE BRAUW
BLACKSTONE
WESTBROEK

NORTH SEA WIND POWER HUB

Planning and permitting study – The Netherlands

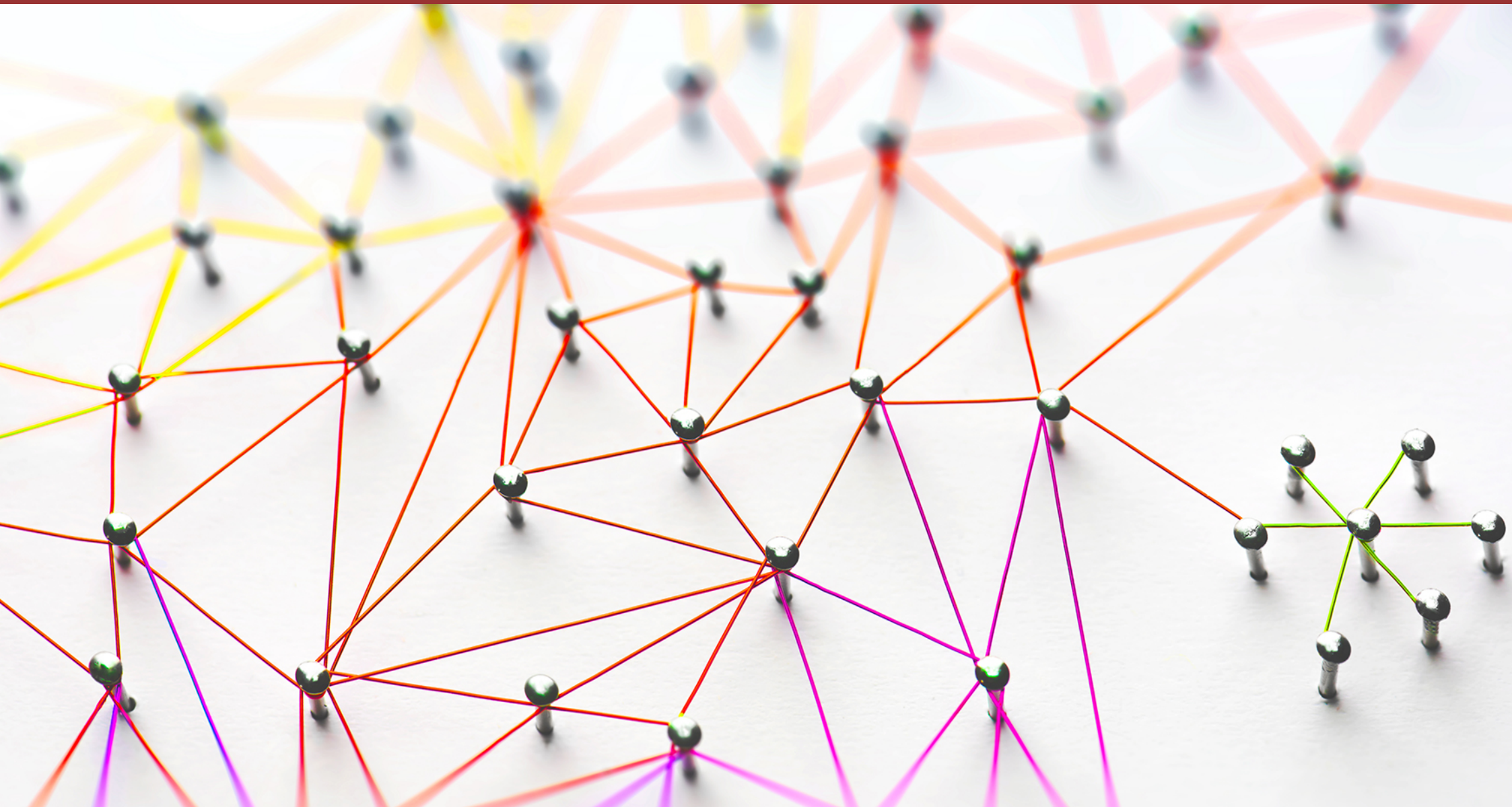


Table of content

Page

SCHEDULES

Schedule 1 Dutch EEZ

Schedule 2 Integrated maritime spatial policy map

1 Introduction and definitions

1.1 Introduction

De Brauw acts as legal adviser to the Consortium and has been requested by the Consortium to carry out a Planning and Permitting desk study covering the Dutch jurisdiction (the Netherlands and the EEZ). In that context, the Consortium and De Brauw have agreed upon:

(a) the scope of work as included in the Terms of Reference dated 15 January 2019;

(b) the structure of this Report.

1.2 Structure of the Report

Section 2: provides an outline of the relevant international, European and Dutch legislative framework for the NSWPH from a planning and permitting perspective. Regulatory issues regarding grid connections for offshore wind farms, subsidy support schemes and licences or exemptions, based on the Dutch Electricity Act and the Dutch Gas Act, are out of scope of this Report.

Section 3: provides an outline of the planning and permitting process tailored to the NSWPH.

Section 4: provides key findings and recommendations.

The text of this Report has been finalized on 22 May 2019.

1.3 Definitions

Administrative Law Division of the Council of State (Council of State)	*Raad van State*; highest administrative court
Birds Directive	Council Directive 2009/147/EC of 30 November 2009 on the Protection of wild birds [2009] *OJ L20/7*
EEZ	Exclusive Economic Zone
EIA Directive	Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment *OJ L26/1*, as amended (2014/52/EU)
Environmental Management Act	*Wet milieubeheer*
EIA Decree	*Besluit milieueffectrapportage*
General Environmental Law Act	*Wet algemene bepalingen omgevingsrecht (Wabo)*
General Administrative Law Act	*Algemene wet bestuursrecht*
Ground Excavation Act	*Ontgrondingenwet*
Habitats Directive	Council Directive 92/43/EEC of 21 May 1992 on the Protection of Natural Habitats and of Wild Fauna and Flora [1992] *OJ L206/7*
MSFD	Marine Strategy Framework Directive; Council Directive 2008/56/EC of 17 June 2008 establishing a framework for

	community action in the field of marine environmental policy *OJ L164/19*
MSPD	Marine Spatial Planning Directive; Council Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning *OJ L257/135*
Nature Protection Act	*Wet natuurbescherming*
new Environment and Planning Act	*Omgevingswet*
Offshore Wind Energy Act	*Wet windenergie op zee*
OSPAR Convention	OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic (opened for signature 22 September 1992; entered into force 25 March 1998) 2354 UNTS 67
SEA Directive	Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment *OJ L 197/30*
UNCLOS	United Nations Convention on the Law of the Sea (opened for signature on 10 December 1982; entered into force 16 November 1994) 1833 UNTS 3
Water Act	*Waterwet*
Wind Farm Site Decision	*Kavelbesluit*

1.4 Report roadmap

The following icon can be used as a roadmap for reading the Report:

Recommendation

2 Outline legislative framework

#	Source	Topic	Key description	Comments
2.1	**International framework**			
1.	UNCLOS	**Jurisdiction**	The UN convention on the law of the seas (UNCLOS) provides the basis for a number of governing rules and regulations on different sea uses that must be observed by states. Under UNCLOS, the continental shelf ("**CS**") of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory (i) to the outer edge of the continental margin or (ii) to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance. States, which are a party to UNCLOS, are entitled to determine an exclusive economic zone ("**EEZ**") beyond the territorial sea. The EEZ cannot extend beyond the continental shelf. The EEZ does not only comprise the seabed and subsoil of the submarine areas; it also the waters superjacent to the seabed. The Netherlands claimed its EEZ in 1999. The boundaries of the Dutch EEZ have been set by law (*Rijkswet instelling exclusieve economische zone*). The Dutch EEZ comprises the entire Dutch continental shelf and is determined by the border treaties with the United Kingdom, Belgium and Germany. See **Schedule 1**. Dutch law only applies in the Dutch EEZ, insofar as this has been determined by the Dutch legislator. The legislator has done so in respect of various laws. Relevant legislation applicable in the Dutch EEZ include the Spatial Planning Act, the Water Act, the Water Decree, the Offshore Wind Energy Act and the Nature Protection Act. In the EEZ, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living and with regard to other activities for the economic exploration and exploitation of the zone, such as the production of energy from the water, currents and winds. In addition to the provisions related to various maritime zones laid down in Articles 2, 17, 56 and 77, UNCLOS provides several instruments relevant for marine spatial planning, such as the designation of sea lanes; the prescription of traffic separation schemes; the consent on the delineation of the course for the laying of pipelines on the continental shelf; and the	

#	Source	Topic	Key description	Comments
			measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species and other forms of marine life. The rights of member states under international law to claim and assert the maritime zones, provided for in UNCLOS, must first be claimed and translated into national law through national legislation.	
2.	UNCLOS	**Artificial islands, installations and structures**	The right of the coastal state to regulate activities in its EEZ is expressly provided for in Article 56. It states that the coastal state has jurisdiction, as provided for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures (see Articles 60, 80, 87, 147, 208, 214, 246 and 259); (ii) marine scientific research (see Articles 87, 238-265 and 297); and (iii) the protection and preservation of the marine environment (see Articles 192-237). Article 60(1) UNCLOS states that the coastal state shall have the exclusive right in the EEZ to construct, authorise and regulate the construction, operation and use of "artificial islands" and “installations and structures for the purposes provided for in Article 56 and other economic purposes”. The coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, tax, health, safety and immigration laws and regulations (Article 60(2) UNCLOS).	UNCLOS does not hamper the construction of more coordinated infrastructure projects; however, the Convention does not give clear guidance.
3.	UNCLOS	**Cables and pipelines**	Pipelines are normally laid on the seabed, which forms part of the CS. Unlike the EEZ, the CS does not have to be claimed; it simply exists as a geologic phenomenon. Since the CS extends seawards from the territorial sea, the bottom of the EEZ will also by definition be the CS of the coastal state. According to UNCLOS (Article 79(1)), all States are entitled to lay submarine cables and pipelines on the CS. Subject to its right to take reasonable measures for the exploration of the CS, the exploitation of its natural resources, and the prevention, reduction and control of pollution from pipelines, the coastal state may not impede the laying or maintenance of such cables or pipelines.	Coastal states have clear jurisdiction over park-to-shore cables connecting offshore wind farms to the offshore grid.
4.	OSPAR Convention	**Pollution and waste at sea**	The Netherlands is party to the OSPAR Convention. In connection with this, agreements are being made on: monitoring of contaminants; assessing the condition of the sea; regulating offshore activities, particularly discharges; reduction of phosphates and heavy metals; protection of habitats and species; and tackling "waste at sea". The OSPAR	

#	Source	Topic	Key description	Comments
			Commission has taken up its role to implement the regional approach, as outlined in the Marine Strategy Framework Directive (see 2.2) in the North-East Atlantic region.	
5.	ESPOO Convention	**Environmental Impact Assessment and cross border impact** **Notification and cooperation**	The EU is party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Protocol on Strategic Environmental Assessment (SEA Protocol). The Espoo Convention requires that procedures for environmental impact assessments are extended across borders between Parties of the Convention when a planned activity in the territory of one contracting Party ("Party of origin") may cause significant adverse transboundary impacts in another contracting Party ("affected Party"). See the general guidance document on the Espoo Convention from the UNCE: https://www.unece.org/fileadmin/DAM/env/eia/documents/practical_guide/practical_guide.pdf In 2013, the European Commission (EC) issued guidance on the application of the environmental impact assessment procedure for large-scale transboundary projects, aiming to facilitate the authorisation and efficient implementation of such projects in the future. See http://ec.europa.eu/environment/eia/pdf/Transboundry%20EIA%20Guide.pdf	Note that pursuant to the applicable EIA and SEA EU Directives, an EIA report for a project must cover the whole project, in order to make it possible to assess the project's overall effects, in particular cumulative and significant adverse transboundary effects. This may lead to an approach to prepare first a joint EIA report for the whole project and then prepare individual national reports, in order to fulfil national requirements. We advise the NSWPH project to form an opinion on this, based on experiences in other transboundary projects, e.g. the Nord Stream 2 project. Multilateral or bilateral agreements under the Espoo Convention have to be taken into account. It has to be examined whether there are multilateral or bilateral agreements between the United Kingdom- the Netherlands – Germany and/or Denmark in place.
2.2	**European Union (EU) legislative framework**			
6.	**Marine Strategy Framework Directive (MSFD)**	**Marine strategies to protect and preserve the marine environment; regional approach**	The MSFD establishes a framework for the development of marine strategies designed to achieve "Good Environmental Status" in the marine environment by the year 2020. The MSFD calls for the development of a marine strategy by each Member State. The purpose of these marine strategies is to protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems in areas where they have been adversely affected. Such a marine strategy includes an initial assessment of:	

#	Source	Topic	Key description	Comments
			• the current environmental status of national marine waters and the environmental impact and socio-economic analysis of human activities; • the determination of what "Good Environmental Status" means for national marine waters; • the establishment of environmental targets and associated indicators to achieve "Good Environmental Status" by 2020; • the establishment of a monitoring program for the ongoing assessment and regular update of targets; and • the development of a program of measures designed to achieve or maintain "Good Environmental Status" by 2020. The MSFD requires "regional cooperation," which means cooperation and coordination of activities between Member States and, whenever possible, third countries sharing the same marine region or sub-region, for the purpose of developing and implementing marine strategies (article 6(2)). OSPAR Contracting Parties, which are EU Member States, have agreed that the OSPAR Commission should be the main platform through which they coordinate their work to implement the MSFD in the North-East Atlantic region.	
7.	Marine Spatial Planning Directive (MSPD)	**Integrated planning and management approach for coastal waters, the territorial sea and the EEZ**	The MSPD recognises that marine spatial planning will contribute to the effective management of marine activities and the sustainable use of marine and coastal resources, by creating a framework for consistent, transparent, sustainable and evidence-based decision-making. The MSPD lays down obligations to establish a maritime planning process, resulting in a marine spatial plan or plans. Such a planning process should take into account land-sea interactions and promote cooperation among Member States. Member States have to draw up maritime spatial plans that will map existing human activities, as well as display their future spatial developments at sea. Member States need to develop integrated coastal management strategies, which will ensure coordinated management of these human activities in coastal areas. The MSPD respects Member States prerogatives to tailor the content of the plans and strategies to their specific economic, social and environmental priorities, as well as their national sectoral policy objectives and legal traditions. The planning details and determination of management objectives are left to Member States. Similar to the MSFD, the MSPD also	

#	Source	Topic	Key description	Comments
			requires cooperation with third countries (article 12). A transboundary, sub-regional, and even regional, sea perspective is required when maritime activities and/or their effects cross national borders.	
8.	Environmental Impact Assessment Directive and Strategic Environmental Impact Assessment Directive	**Environmental Impact assessment of public and private projects and plans and programs**	The EIA Directive applies to a wide range of defined public and private projects, which are defined in Annexes I and II. All projects listed in Annex I are considered as having significant effects on the environment and require an EIA. For projects listed in Annex II, the national authorities have to decide whether an EIA is needed. This is done by the "screening procedure", which determines the effects of projects on the basis of thresholds/criteria or on a case-by-case examination. However, the national authorities must take into account the criteria laid down in Annex III. The SEA Directive applies to a wide range of public plans and programs, such as on-land use, transport, energy, waste and agriculture. The SEA Directive does not refer to policies. Plans and programs in the sense of the SEA Directive must be prepared or adopted by an authority (at national, regional or local level) and must be required by legislative, regulatory or administrative provisions. An SEA is mandatory for plans/programmes, which are: (i) prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use, and which set the framework for future development consent of projects listed in the EIA Directive, or (ii) have been determined to require an assessment under the Habitats Directive. The SEA and EIA procedures are very similar, but there are some differences: • the SEA requires the environmental authorities to be consulted at the screening stage; • scoping (that is, the stage of the SEA process that determines the content and extent of the matters to be covered in the SEA report to be submitted to a competent authority) is obligatory under the SEA.	
9.	Birds and Habitats Directives	**Natura 2000 and species protection**	The Birds and Habitats Directives apply within the territory of the EU Member States and form the cornerstone of Europe's nature and biodiversity law. The main aim of the Habitats Directive is to promote the maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species listed in the Annexes to the Directive at a favourable status, introducing robust protection for	

#	Source	Topic	Key description	Comments
			those habitats and species of European importance. The network of Special Protected Areas that has been established in accordance with the Birds Directive, together with a community-wide network of Special Areas of Protection established in accordance with the Habitats Directive, constitutes a coherent European ecological network to be called "Natura 2000". The most important legal consequence of the designation of sites under the Habitat Directive and Birds Directive is that the condition or quality of these areas should not deteriorate. Plans and projects in these areas likely to have significant effect must undergo an appropriate assessment of its implications for the site in view of the site's biodiversity and protection objectives (*instandhoudingsdoelstellingen*). The core provision of the Habitats Directive is set forth in Article 6. The aim of Article 6 is to prevent plans and projects from having a negative effect on the integrity of Natura 2000 sites. Article 6(1) and 6(2) concern the regular management and Protection of Natura 2000 sites. These define the scope of the site's protection objectives. The Habitats Directive does not exclude development activities in and around Natura 2000 sites. In accordance with Article 6(3) of the Habitats Directive, it requires that an appropriate assessment ("**AA"**) be carried out for any plan or project likely to have a significant negative effect on one or more Natura 2000 sites. If the appropriate assessment concludes that there are possible adverse effects on the integrity of the site and that these cannot be mitigated, then, in principle, the competent authorities will not approve the plan or project. However, a plan or project may still be approved, despite it having an adverse effect on the integrity of one or more Natura 2000 sites, provided that all the conditions in Article 6(4) of the Habitats Directive are met. In brief, Article 6(4) requires that the competent authorities ensure the following conditions are met: 1) The alternative put forward for approval is the least damaging for habitats, for species and for the integrity of the Natura 2000 site, and no other feasible alternative exists that would not affect the integrity of the site or have less impact; and 2) There are imperative reasons of overriding public interest that justify the approval of the plan or project; and 3) All compensatory measures required to ensure the protection of the overall coherence of the Natura 2000 network have been taken.	In principle, Projects of Community Interests (PCI) under the TEN-E Regulation, such as potentially the NSWPH project, will be considered as being of public interest from an energy perspective. PCI projects may be considered as being of overriding public interest, and therefore be admitted, provided that all other conditions in Article 6(4) of the Habitats Directive are met. See Guidance document on energy transmission infrastructure and Natura 2000 and EU protected species, p. 68.

#	Source	Topic	Key description	Comments
10.	Water Framework Directive	**Water quality**	The Water Framework Directive (WFD) applies to coastal waters: up to 1 mile for good ecological status and up to 12 miles for good chemical status.	
2.3	**Multilateral agreements**			
11.	Ems-Dollart Treaty and supplemental agreements	**Coordination of tasks and responsibilities**	The Ems estuary is one of the major estuaries in the Wadden Sea, situated on the border between the Netherlands and Germany. The exact lateral borderline within the area, between three and twelve nautical miles from the coast, is disputed. The Ems-Dollart Treaty of 1960, and its supplemental agreements , previously regulated all practical questions relating to the stretch of sea between zero and three nautical miles from the coast. However, these rules do not refer to the stretch of sea between three and twelve nautical miles from the coast. This "gap" has led to problems, particularly following the construction of an offshore wind farm in the disputed sea area. The Ems-Dollart Treaty and its supplemental agreements (the most recent of which was signed in 2014) now govern the most important points of practical relevance. In 2014 it was agreed that the authority to issue permits for submarine cables, pipelines and wind farms, as well as rights of exploitation and use, is assigned in accordance with the line stipulated in the 1964 Treaty between Germany and the Netherlands, on their continental shelf border.	
2.4	**National legislative framework – The Netherlands**			
12.	Water Act • Water Decree • Water Regulation • National Water Plan	**General framework for water policy and permitting regime in the coastal sea, territorial waters and the EEZ** **Permitting regime applicable to installations, cables and pipelines in the**	***Policy framework*** The Water Act provides for a permitting regime to regulate offshore activities. When issuing permits based on the Water Act, the central government (more specifically the Minister of Infrastructure and Water Management) has to take the National Water Plan (NWP) and the Policy Document on the North Sea, which forms an integral part of the NWP, into account (self-binding policy regulation). See further below. Pursuant to the Water Act, the government is required to draft a formal water plan every 6 years (Article 4.1(1)). The NWP also provides the "framework vision" (*Structuurvisie*), as defined by Article 2.3 (c) of the Spatial Planning Act. The NWP entrusts the	• In the Netherlands, the waters from 1 kilometre off the coast and within the EEZ are under the single authority of the central government. Different ministries are responsible for different sectors. *Rijkswaterstaat* (the Dutch maritime and marine management organisation) is the coordinating management authority, which collaborates with the other authorities on the

#	Source	Topic	Key description	Comments
	• Water Act Permit	**territorial waters and the EEZ, such as:** • **Artificial island** • **Export-cables** • **Interconnectors** • **Hydrogen pipeline** • **Hydrogen installations**	government to ensure a sustainable and spatially efficient use of the North Sea while considering the status of the marine ecosystem, as required in the Water Framework Directive, the Marine Strategy Framework Directive, and the Birds and Habitats Directives. The aim of the NWP is to protect and develop the marine ecosystem. The second National Water Plan, for the period 2016–2021, was drafted by the Minister of Infrastructure and Water Management, and was adopted by the Cabinet in December 2015. The 2016–2021 North Sea Policy Document is included as an appendix to the NWP, as stipulated by the Water Act (Article 4.1(3)b). The North Sea Policy Document applies to the Dutch EEZ and the non-administratively classified territorial sea. The North Sea Policy Document includes the Netherlands' Maritime Spatial Plan and details, and substantiates the policy choices about uses of the North Sea. See **Schedule 2**. The North Sea Policy Document aims at preventing fragmentation and promoting the efficient use of space, while giving private parties the scope to develop their own initiatives in the North Sea. It provides for an integrated assessment framework for all activities that the competent authorities should use to ascertain whether activities at sea are permitted. The following activities that are deemed to be of national interest have been designated in the 2016-2021 North Sea Policy Document: • Sand extraction and replenishment: sufficient space for sand extraction for protecting the coast, for counteracting flood risk and for fill sand on land; • Renewable (wind) energy: space for 6,000 MW of wind energy on the North Sea in 2020 (at least 1,000 km2), creating conditions for further (international) growth after 2020); • Cables and pipelines that are needed for the activities of wind energy projects, oil and gas extraction, and CO2 transport, including requisite cables and pipelines, bundling of cables and pipelines, and a removal obligation for cables and pipelines no longer in use; • Oil and gas recovery: as much natural gas and oil as possible is to be recovered from Dutch fields in the North Sea, so that the resource potential in the North Sea is used to the fullest;	issuance of permits and information management. • In the first kilometre, municipal and provincial bodies are the competent authorities. A municipal zoning plan (based on the Spatial Planning Act) will apply within the first kilometre . • The NWP and the 2016-2021 North Sea Policy Document do not only provide for an assessment framework that is relevant to the Water Act permit. It also applies to other permitting regimes, such as permits based on the Ground Excavation Act (*Ontgrondingenwet*) necessary for sand mining, the OWF Energy Act, the Mining Act, the Nature Protection Act and the General Environmental Law Act (omgevingsvergunning milieu). As such it is particularly important for developers and users of the North Sea who want to apply for a permit. • A new MSP is being developed: 2030 North Sea Strategy. The final version of the new plan is expected to be delivered in 2021. https://www.noordzeeloket.nl/en/policy/development-2030/ • See for the Netherlands MSP Country Information Profile: https://www.msp-platform.eu/countries/netherlands.

#	Source	Topic	Key description	Comments
			• CO2 storage: sufficient space for the storage of CO2 in empty oil and gas fields, or in underground water-retentive soil strata (aquifers); • Sea shipping: a system of traffic separation schemes, clearways and anchoring areas that allow safe and prompt handling of shipping; and • Defence areas at sea. These priorities lead to specific zones for developments and activities, where other activities can take place if they do not conflict with the priority function, The North Sea Policy Document describes an assessment framework that is used by the central government to assess the permissibility of activities at sea. It also outlines which action to take if and when various activities of national importance conflict. The assessment framework applies to all activities in the North Sea that require a permit under all laws and regulations, which apply in the North Sea both in the territorial waters and the EEZ. The integrated assessment framework requires the following 5 assessments to be carried out when applying for a Water Act permit (or for any of the other national permits that have to be assessed based on the North Sea Policy Document): • The spatial claim for the project has to be defined, and the precautionary principle has to be applied. • The location for the project has to be motivated and assessed, to prevent fragmentation and inefficient use of space. • The needs and benefits (*nut en noodzaak*) of the project have to be shown to prevent undesirable use; the project developer must clarify why the activity has to take place in the North Sea. • The project developer has to take mitigating measures to reduce potential significant negative effects. If there is a significant impact on ecological features, these have to be compensated. In line with the intentions of the new Environment and Planning Act (*Omgevingswet)*, which is expected to enter into force in 2021, the development of the 2030 North Sea Strategy has become a broadly supported participation process. In the new Environment and Planning Act, the North Sea Policy will be included in a national strategic planning	The new Environment and Planning Act (*Omgevingswet*) is currently planned to enter into force in 2021. However, a further delay cannot be excluded.

#	Source	Topic	Key description	Comments
			and environmental policy document (*Nationale Omgevingsvisie, NOVI*). The 2030 North Sea Strategy Agenda will be published in the summer of 2019, and will contain the strategic challenges – including timing, areas of tension and opportunities – with the related key options for national and international investment, knowledge and cooperation agendas. The strategic agenda will also outline the challenges, which are already casting their shadows, and the national scope for policymaking within the European and global regulatory frameworks. **Permitting regime and competent authority** The Minister of Infrastructure and Water Management is the competent authority to issue a Water Permit (based on the Water Act and Article 6.13 of the Water Decree) for artificial islands, installations, and cables and pipelines in the North Sea. The Water Permit regulates the spatial planning assessment of projects located entirely or partially offshore (outside the area designated as a municipal zone). The Water Decree provides for general regulations and requirements for activities covered by the Water Act. All Ministries, with tasks and responsibilities on the North Sea, work together in the Interdepartmental Directors North Sea Consultative Body (IDON). This organisation coordinates the development of policy and prepares decisions about the management of the North Sea. The following organisations work together in IDON: the Ministries of Infrastructure and Water Management (Chair), Economic Affairs and Climate Policy, Defence, Finance, Education, Culture and Science and the executive organisations of Public Waterworks (*Rijkswaterstaat*) and the Coastguard (*Kustwacht*). Within the Coastguard, six ministries collaborate on enforcement, shipping control and incident response. The IDON is closely involved in realising in practice the recommendations and activities specified in the National Water Plan and the 2016-2020 Policy Document on the North Sea, which forms an integral part of the NWP. Among other things, the recommendations relate to the themes "Building with North Sea nature", "Food and Marine ecosystems", "Energy transition at sea", "Multiple use of space at sea" and "Connecting land-sea and shipping" (including the aspects of safety and the accessibility of ports).	

#	Source	Topic	Key description	Comments
13.	Offshore Wind Energy Act	**Permitting regime for Offshore Wind farms (OWFs)**	The Offshore Wind Energy Act (OWE Act) entered into force on 1 July 2015, and provides the legal framework for the development of wind energy projects within the Dutch EEZ. The OWE Act prohibits the construction, exploitation and removal of a wind farm in the Dutch territorial sea or Dutch EEZ without a licence, sets out the requirements for a licence application and provides the legal framework for the designation of sites for the construction and exploitation of wind farms in the so-called Wind Farm Site Decision. In brief, the Offshore Wind Energy Act distinguishes between three steps of decision-making. ***1. National Water Plan*** The Offshore Wind Energy Act requires the determination of areas for the construction of offshore wind farms in the National Water Plan. The designation of such areas in the National Water Plan is a necessary pre-condition for developing an offshore wind farm. Under the OWE Act, an offshore wind farm can only be realised at an area designated for that use in the National Water Plan (NWP). The central government (Minister of Economic Affairs and Climate Policy) does not grant permission for wind farms to be built outside designated wind energy areas. Within designated areas, permission is granted only for wind farms built according to the requirements of the OWE Act. Development must be in harmony with other users of the North Sea. This means, among other things: (i) to maintain appropriate distance between shipping routes and wind farms, (ii) to calculate appropriate distance between mining sites and wind farms, and (ii) specific conditions under which passage and multiple use of wind farm zones will be allowed. ***2. Site decision under the OWE Act*** The second stage includes the adoption of a "wind farm site decision" (WFSD; *kavelbesluit*) by the Minister of Economic Affairs and Climate Policy in agreement with the Minister of Infrastructure and Water Management. A WFSD specifies the exact location and the conditions under which an offshore wind farm can be constructed and operated at that location. The central government (Minister of Economic Affairs and Climate Policy and the Minister of Infrastructure and Water Management) is responsible for producing an Environmental Impact Assessment (EIA) report and an Appropriate	In 2018 the 2024-2030 Offshore Wind Energy Roadmap has been published. See https://english.rvo.nl/sites/default/files/2018/03/Letter-Parliament-Offshore-Wind-Energy-2030.pdf

#	Source	Topic	Key description	Comments
			Assessment for the WFSD. This means that in principle no additional EIA will be required to develop OWFs. The OWE Act requires the Minister to take the interests of third parties into account, including the interests of parties operating nearby wind farms, and to provide an assessment of the environmental and ecological impact of the wind farm, the construction costs and the impact on shipping routes. The conditions that have been attached to the WFSDs that have been taken so far, differ slightly between the various site decisions. Noteworthy conditions include the following: • The term of the permit under the Offshore Wind Energy Act will be 30 years (from the date of issuance); • The permits to be issued for the locations will allow for a maximum number of turbines; • The maximum tip height of the turbines; and • The wind farms must be connected to the offshore grid of the transmission system operator (TenneT). The WFSDs also include an exemption under the Nature Protection Act. Such exemption is required for impacting protected species. Where, in the past, such exemption for impacting protected species used to be granted separate from other permits, this exemption is now already included in the site decision itself. A WFSD must be prepared under the extended preparation procedure set out in section 3.4 of the General Administrative Law Act. This procedure requires a draft decision to be laid down for public review for 6 weeks. During this period, anyone is allowed to submit views on the draft decision. ***3. Permit tender / award – Minister of Economic Affairs and Climate Policy*** Following the adoption of the WFSDs, the OWE permits allowing the construction and operation of the wind farm will be tendered by the Minister of Economic Affairs and Climate Policy. The OWE permit entails the exclusive right to construct and operate the offshore wind farm. The last tender rounds for offshore wind farms did not entail a renewable subsidy (SDE) tender.	

#	Source	Topic	Key description	Comments
			General rules for OWFs General rules for OWFs – more or less comparable to permit conditions, but set on a national level by law – have been set in paragraph 6a of the Water Decree. These rules have been elaborated on in the Water Regulations and apply by operation of law to offshore wind farms (and thus do not require implementation into permit conditions). With the introduction of these general rules, the Dutch government aims to simplify and align the legal regime applicable to the construction, operation and decommissioning of offshore wind farms. The general rules entered into force on 1 July 2015 and cover, inter alia, the durability of wind turbines, marking in lightning requirements, requirements in respect of the electrical installations, maintenance and incidents, etc. ***Offshore grid*** The Dutch transmission system operator TenneT is responsible for the electricity transmission infrastructure needed for the offshore wind farms to transport electricity to the onshore high voltage grid. Under the Electricity Act 1998, TenneT is designated as operator of the offshore grid.	
14.	Spatial Planning Act	**Planning regime** **Relevant to onshore activities, limited relevance for offshore activities as such**	The Spatial Planning Act is applicable in the EEZ. For the sake of completeness, we note that the Spatial Planning Act provides for the power to adopt a so-called State Spatial Plan (*Rijksbestemmingsplan*) for the Dutch EEZ. Unlike the current National Water Plan, such a State Spatial Plan would provide binding planning rules on the use of areas within the Dutch EEZ. Adopting a State Spatial Plan for the Dutch EEZ is not mandatory, and such plan has not yet been adopted. Various parts of the Dutch North Sea have been designated as Natura 2000 nature protection areas. Under the Dutch Nature Protection Act, requirements, including a permit requirement, apply for impacting such areas. It follows from the site decisions applicable to the Project that developing and operating the Project will not impact said areas, and subsequently, no special permit is required for this. The Spatial Planning Act provides for a national coordination procedure (*rijkscoordinatieregeling*) that is applicable to projects and installations designated by law or designated by the Cabinet in a special procedure. The national coordination procedure applies to the following projects listed in the Electricity Act 1998: (i) the national high voltage grid; (ii) the offshore grid (n*et op zee*);	The Spatial Planning Act is applicable in the territorial sea and in the EEZ. The central government is, however, not inclined to adopt a State Spatial Plan or a national zoning plan (*rijksinpassingsplan*) for the North Sea. The National Water Plan is considered to be part of a formal policy plan (*structuurvisie*) under the Spatial Planning Act. The planning aspects are taken into account in the Water Act permit, as outlined in section 12 above.

#	Source	Topic	Key description	Comments
		National coordination procedure	and (iii) interconnectors and energy projects, such as windfarms with a capacity of at least 100 MW and other sustainable power plants with a capacity of at least 50 MW (paragraph 3.6.3 of the Spatial Planning Act). Thus, the national coordination procedure is likely to apply to the interconnectors, wind farms and cables within the scope of the NSWPH project. However, the NSWPH as such does not fit into the categories listed in the Electricity Act 1998. If the NSWPH is designated as a project of common interest (PCI) under Regulation (EU) No 347/2013 (guidelines for trans-European energy infrastructure), the national coordination procedure will also apply. This Regulation intends to simplify the permit-granting process for projects of common interest. It does so by requiring Member States to designate the competent authority in their country responsible for simplifying and coordinating the permit-granting process for projects of common interest. The national competent authority is also responsible for taking the requisite decisions within the established time period. The minister of Economic Affairs and Climate Policy has been designated as the competent authority in the Netherlands. If the NSWPH is not designated as a project of common interest (PCI), the minister of Economic Affairs and Climate Policy will have to take a separate decision to apply the national coordination procedure, and Parliament has to approve this decision. When the national coordination procedure is followed, the drafts of every single decision required for the project are made available for public examination all at once. This allows everyone to express an opinion on all of the draft decisions. The final decisions are prepared after the public participation process ends. Interested parties can file appeals relating to those decisions with the Administrative Law Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*).	If the NSWPH is not designated as a PCI, we advise requesting that the minister of Economic Affairs and Climate Policy will apply the national coordination procedure based on the national and international public interest involved.
15.	Nature Protection Act Decree on nature protection	**Permitting regime for activities potentially affecting Natura 2000 or protected species**	***Natura 2000 permit*** The Nature Protection Act prescribes a permit for projects, which might have an impact on the Natura 2000 sites (Article 2.7(2)). If that is the case, the Nature Protection Act requires that an Appropriate Assessment be carried out (Article 2.8).	

#	Source	Topic	Key description	Comments
			The Natura 2000 permit can be integrated with an environmental permit *(omgevingsvergunning*) based on the General Environmental Law Act. It is up to the applicant to decide whether such integration is the preferred route. If no environmental permit is needed, there is no dependency. The Appropriate Assessment ("**AA**") carried out under Article 2.8 of the Nature Protection Act, despite having many similarities, is distinct from the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). While these assessments are often carried out together, as part of an integrated or coordinated procedure, each assessment has a different purpose and assesses the impact on different aspects of the environment, starting from a different baseline. The AA has to meet stricter requirements regarding available knowledge and information, and the impact of the respective assessment procedures also differ. In EIA or SEA assessments, the authorities have to take the identified impact into account. For an AA based on the Habitats Directive, however, the outcome is legally binding for the competent national authority, unless it is successfully challenged on scientific grounds or sound facts. Therefore, the outcome of the appropriate assessment (almost) fully shapes the final decision (approval) of the project, whereas the outcome of the EIA and SEA leaves more room for weighing policy considerations. It is not required that the Appropriate Assessment is part of the EIA. A Natura 2000 permit application should cover the entire project. This means that not only the preparatory works and building works should be covered by the permit application, but also the exploitation phase. The dismantling of an installation is usually considered a separate project. Separate activities are considered one project if one of the activities is an absolute prerequisite for the other. If separate activities are distinct, both in characteristics and in timing, they are not one project, according to Dutch case law. A Natura 2000 permit application may be used to cover more than one project, provided that (i) it is clear which projects are covered by the application and (ii) an AA is carried out per project, taking into account cumulative effects. An AA must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the project. Article 2.8(1) and 2.8(3) Wnb provide that each individual project to be authorised within Natura 2000 sites must not, in combination with other plans and projects, jeopardise the conservation	 The obligation to take into account the cumulative effects of the NSWPH project with other plans and projects calls for: (i) alignment with the EEZ coastal states and (ii) close monitoring of plans and projects developed by the EEZ coastal state within the impact range of the defined scope of the projects.

#	Source	Topic	Key description	Comments
			of the habitat types and species protected in the site, or the potential to establish a good conservation status, in the long term. The Council of State (highest administrative court) determines the significance of effects of a project in relation to the specific features and environmental conditions of the Natura 2000 site concerned, taking particular account of the site's conservation objectives. The conservation objectives of habitats and species are laid down in the by-law designating an area as a Natura 2000 site. The Council of State has ruled that an AA must describe the direct impact of a project per habitat and per location. The starting point of the AA is the current situation in the Natura 2000 site. The specific features and environmental conditions of the Natura 2000 site may include the autonomous development (if this development is likely to happen) and conservation measures that are being carried out in that site. The Council of State rules on a case-by-case basis whether or not an AA provides complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt that a project will adversely affect the integrity of that site. Relevant factors are: nature, size and location of the project; the production of waste; pollution and nuisances; the risk of accidents; existing land use; the relative abundance, quality and regenerative capacity of natural resources in the area; the absorption capacity of the natural environment, with particular attention to natural areas and sites classified or protected under the Birds and Habitats Directives, the extent of the potential impact; the magnitude and complexity of the impact; the probability of the impact; and the duration, frequency and reversibility of the impact. ***Protected species exemption*** The Nature Protection Act provides that protected species, (that is, animals and plants) may not be killed and/or harmed by a project, unless an exemption has been obtained (Article 3.1 et seq.). An exemption can only be obtained if one of the reasons, listed in Article 3.3(4) and Article 3.8(5), can be applied. The Nature Protection Act allows for an exemption for impacting species if: (i) the impact of a project onto the species will not have an adverse impact onto the favourable Protection status of the species (*gunstige staat van instandhouding*), that is, mortality rate lower than 1% of the annual natural mortality (ORNIS-criterion); and	

#	Source	Topic	Key description	Comments
			(ii) there should be a compelling reason of public interest (*dwingende reden van groot openbaar belang*). Standing case law holds that the realisation of a renewable energy project meets this criterion. Exemptions are generally provided because wind energy is "in the interest of public health and safety" and "for the protection of flora and fauna". This is in line with the EU Guidance Document "Wind energy developments and Natura 2000" (2011). The impact onto the species (criterion i) must be assessed by an ecologist, usually during the EIA phase. If the 1% is exceeded, mitigating measures will have to be taken. Main topics regarding the species exemption based on the Nature Protection Act: - It is not yet clear whether any unintended but likely killing of small numbers of species would qualify as "deliberate killing" in the sense of Article 5 Birds Directive and Article 12 Habitats Directive. It is likely that the Dutch courts will maintain their strict interpretation based under the former Flora and Fauna Act, and will therefore determine that, whenever a project is likely to cause the death of at least one extra specimen of a strictly protected species, this is to be seen as deliberate killing and an exemption is required - Cumulative effects: in practice, the ORNIS principle is only determined for local species, and the cumulative effects of activities are usually not taken into account. In a recent guidance document of December 2017 on the application of species protection law, the Ministry of Economic Affairs and Climate Policy stipulates that cumulative effects should be dealt with when deciding on activities having an effect on protected species: "for the evaluation cumulative effects need to be taken into account, which includes previous exempted derogations for populations of the same species." Regarding offshore wind farms, cumulative effects are generally taken into account, at least to some extent. The evaluation framework for offshore wind energy does include an assessment of the cumulative effects. ***Competent authority*** The competent authority to issue a Natura 200 permit and/or an exemption for protected species related a project, such as this, in the EEZ is the minister of Agriculture, Nature Protection and Fisheries.	In a recent study carried out for the Ministry of Economic Affairs and Climate Policy by the Utrecht University, it was concluded that an EU wide approach on cumulative effects would be desirable. See https://dspace.library.uu.nl/res_biodiversity_a_comparison.pdf

#	Source	Topic	Key description	Comments
16.	Environmental Management Act EIA Decree	**General framework act, implementing EIA and SEA Directives**	Chapter 7 of the Environmental Management Act provides for the procedures relating to EIA reports and strategic environmental assessment reports. Whether an environmental impact assessment procedure must be followed depends on the nature of the project and what possible significant consequences it could have on the environment. The criteria for this are laid down in the EIA Decree. To determine whether an EIA is applicable, there are two lists (the C list and the D list) with specific activities and thresholds. Part C contains activities, plans and projects for which an EIA is mandatory. Part D contains activities, plans and projects for which a judgement on whether an EIA is required is needed. This means that a judgement must be obtained first on whether an EIA is required or not. This judgement depends on the seriousness of the negative consequences for the environment. An EIA is either linked to a specific decision or linked to a plan or program. If an Appropriate Assessment has to be made for a plan, this also leads to a mandatory SEA. The full procedure for EIA for complex projects and SEA contains the following steps: • EIA registration and screening • Public announcement, public consultation and consultation of designated authorities • Scoping / memorandum on the scope and detailing of the project (*Notitie reikwijdte en detailniveau*), including advice from the Netherlands Commission Environmental Assessment • Assessment • Review (incl. publication of EIA report, public consultation, consultation of designated authorities and review advice of Netherlands Commission Environmental Assessment) • Decision • Evaluation	It is likely that a SEA and an EIA must be carried out for various activities in scope of the NSWPH project. An SEA / EIA has to be submitted as part of the permit applications. Depending on the planning and permitting decisions that will be taken, the SEA / EIA will be linked to the first plan or permit that will be drafted / applied for. Note that multilateral or bilateral agreements under the Espoo Convention may lead to a joint EIA report under the Espoo Convention, in addition to national EIA's. Note that there are several initiatives to create a common environmental assessment framework. See https://www.msp-platform.eu/projects/strategic-environmental-assessment-north-seas-energy-seanse

Important documents resulting from the EIA process are the following:

- Scoping document / memorandum on the scope and detailing of the project
- EIA report
- Monitoring report

Main topics to be covered in an EIA report (source: see http://www.eia.nl/en/countries/eu/netherlands+(the)/eia):

1. Objective: a description of the intent of the proposed activity.
2. Proposed activity & alternatives: a description of the proposed activity and the reasonable alternatives to be taken into consideration, including an explanation of the selection of the alternatives to be taken into consideration. In the event of a project subject to the EIA requirements, there must also be a description of how the proposed activity will be performed.
3. Relevant plans & projects: in the case of a plan subject to the EIA requirement, there must be a summary of prior plans adopted that relate to the proposed activity and the alternatives described. In the case of a project subject to the EIA requirement, there must be an indication of this project (or these projects) and a summary of the administrative bodies' prior projects that relate to the proposed activity and the alternatives described.
4. Current situation & autonomous development: a description of the existing state of the environment, insofar as the proposed activity or the alternatives described can have consequences for this, and of the expected development of that environment, if neither that activity nor the alternatives are undertaken.
5. Effects: a description of the consequences for the environment that the proposed activity and the alternatives described could have, including an explanation of how these consequences were determined and described. As of 2017, based on Directive 2014/52/EU, an EIA also has to describe cumulative impacts with existing and/or approved projects.
6. Comparison: how the expected development of the environment described (point 4) compares to the possible consequences for the environment described as a result of the proposed activity and each of the alternatives taken into consideration (point 5).

The description of the intent of the proposed activity is in fact a description of the "needs and benefits" of the project or, to put it briefly, the project justification. Note that the project justification may have a substantial impact on the application of the regulatory framework, such as the applicability of an overriding public interest related to the Birds and Habitats Directives.

Note that the EMA (Article 7.23(1) sub f) does not explicitly refer to cumulative effects. According to this section, an EIA should contain "all other information, as referred to in Annex IV of the EIA Directive".

#	Source	Topic	Key description	Comments
			7. Mitigating & compensating measures: a description of the measures to prevent, limit and offset, as far as possible, major consequences for the environment resulting from the activity. 8. Gaps in information: a summary of the gaps in the descriptions of the existing state of the environment and the consequences for the environment (points 4 and 5) as a result of the necessary data not being available. 9. Summary: a summary that gives the general public sufficient understanding to evaluate an EIA and the possible consequences for the environment resulting from the proposed activity, and the alternatives described, as set out in the report.	
17.	Mining Act	**Mining installations and gas production pipelines** **Re-use of platforms**	The Mining Act provides for a permitting regime for the exploration and exploitation of hydrocarbons and the storage of CO2. If the Mining Act is applicable, other permitting regimes will most likely not apply. The re-use of mining platforms and pipelines connected to these platforms has not been foreseen in the Mining Act. So far, there is little guidance on the regulatory framework that will apply to the re-use of platforms.	A public consultation is currently pending on a proposed amendment of the Mining Act to facilitate the re-use of platforms.
18.	Ground Excavation Act	**Sand mining**	The Ground Excavation Act provides the permitting regime for sand mining. Permit applications must comply with the NWP and the 2016-2021 North Sea Policy Document discussed above.	
19.	New Environment and Planning Act	**New legislative framework for many of the current permitting regimes**	A new Environment and Planning Act (*Omgevingswet*) is expected to enter into force in 2021. This date has already been postponed several times and a further delay cannot be excluded. The new Environment and Planning Act will dramatically change the legal framework for many of the permits outlined in this memorandum. Most of the separate environmental laws will be integrated into the new Environment and Planning Act, including: the Water Act, the Environmental Management Act, the General Environmental Law Act, the Spatial Planning Act, the Mining Act, the Excavation Act and the Nature Protection Act. It will, however, not dramatically change the key characteristics of the current permit schemes that are relevant to the NSWPH project: the competent authorities for activities in the	This initial planning and permitting study must be updated in the future, based on the new Environment and Planning Act.

#	Source	Topic	Key description	Comments
			North Sea will remain the same as under the current regimes, and the assessment procedures will be more or less the same. The new Environment and Planning Act comprises six key instruments: 1) the planning and environmental strategy - a coherent strategic plan relating to the physical environment; 2) the programme - a package of draft plans and measures that serve to meet environmental values or targets in the physical environment and to continue to meet them; 3) decentralised regulations, (namely the municipality's environmental plan, the water board's regulation and the province's environmental regulation) - in which the decentralised authorities comprehensively lays down the general rules and obligations for obtaining permits; 4) general government regulation orders (*algemene maatregelen van bestuur*) - regulating activities within the physical environment; 5) the "all in one" environmental permit - which an initiator can use to obtain permission for all of the activities that it wishes to carry out, via an application to a single office (even if there are more competent authorities involved); and 6) the project decision - a generic arrangement for decision-making in relation to projects with a public interest according to the 'faster and better' approach (this includes a scoping and participation process). In addition to these key instruments, the new Environment and Planning Act contains supporting instruments that are necessary to formulate decisions and implement them, such as procedural rules and regulations for supervision and enforcement. At present, there are four General Government Regulation Orders (see (4) above) in place: - The Environment and Planning Order contains procedural rules that tie in with the Environment and Planning Act. - The Quality of the Living Environment Order (*Besluit kwaliteit leefomgeving*) contains the revised substantive pre-conditions placed on government activities, (to	In the new Environment and Planning Act, the North Sea Policy will be included in a national strategic planning and environmental policy document (*Nationale Omgevingsvisie*, NOVI). The 2030 North Sea Strategy Agenda will be published in the summer of 2019, and will contain the strategic challenges – including timing, areas of tension and opportunities – within the related key options for national and international investment, knowledge and cooperation agendas. The strategic agenda will also outline the challenges, which are already casting their shadows, and the national scope for policymaking within the European and global regulatory frameworks. Other instruments that will be relevant for the development of the NSWPH: - general government regulation orders, (specifically the Quality of the Living Environment Order (*Besluit activiteiten leefomgeving*); - the project decision, (replacing the current national coordination procedure); and - the "all in one" environmental permit, (replacing the various environmental permits now based on e.g., the Water Act, the Environmental Management Act, the General Environmental Law Act, the Spatial

#	Source	Topic	Key description	Comments
			include environmental values, instructional rules and assessment rules for permit applications). - The general rules on "activities" are combined in two General Administrative Regulations Orders: one for construction (*Besluit bouwwerken leefomgeving*) and one for the environment and water (*Besluit activiteiten leefomgeving*). o Chapter 7 of the General Administrative Regulations Order on Activities (*Besluit activiteiten leefomgeving*) provides for general rules that will apply to activities in the North Sea, like the NSWPH project.	Planning Act, the Excavation Act and / or the Nature Protection Act).

3 Outline of the planning and permitting regime NSWPH

3.1 Activities NSWPH

3.1.1 The table below lists the main permitting regimes that are most likely applicable to the various NSWPH activities, as outlined in the ToR:

#	Project	Permitting regime	Competent Authority	Comments
1.	Artificial island	Water Act	Minister of Infrastructure and Water Management	A sand-based island, caissons / gravity-based and jacket structures will all be considered as artificial islands under the Water Act.
		Nature Protection Act	Minister of Agriculture and Nature Protection	
2.	Wind farms and export cables	Water Act	Minister of Infrastructure and Water Management	
		OWE Act	Minister of Economic Affairs and Climate Policy	
		Nature Protection Act	Minister of Agriculture and Nature Protection	
3.	Interconnectors	Water Act	Minister of Economic Affairs and Climate Policy	
		Nature Protection Act	Minister of Agriculture and Nature Protection	
4.	Hydrogen pipelines	Water Act	Minister of Infrastructure and Water Management	Currently there is no specific regulatory framework in place for hydrogen pipelines (onshore and offshore).
		Nature Protection Act	Minister of Agriculture and Nature Protection	
5.	Hydrogen production installation	Water Act	Minister of Infrastructure and Water Management	
		Nature Protection Act	Minister of Agriculture and Nature Protection	
		Environmental Permit	Minister of Infrastructure and Water Management	The General Environmental Law Act (*Wabo*) is applicable in the EEZ and will apply to

#	Project	Permitting regime	Competent Authority	Comments
				installations that will be developed on the hub (artificial island) or on re-used platforms (only if these platforms do not qualify as a mining installation).The assumption is that the Minister of Infrastructure and Water Management is the competent authority.
6.	Re-use of platforms	Mining Act	Minister of Economic Affairs and Climate Policy	If the platform is still part of a mining installation, the Mining Act will apply.
		Water Act	Minister of Infrastructure and Water Management	Required for placement or leaving in place, and decommissioning of platforms.
7.	Sand mining	Sand mining permit	Minister of Infrastructure and Water Management	Required for extracting sand from the seafloor, for building an island.

3.2 Planning and permitting regime: coordination

3.2.1 If the NSWPH is designated as a project of common interest (PCI) under Regulation (EU) No 347/2013 (guidelines for trans-European energy infrastructure), a national coordination procedure for planning and permitting applies. It is highly likely that this will be the case. The Regulation intends to simplify the permit-granting process for projects of common interest. It does so by requiring Member States to designate the competent authority in their country responsible for simplifying and coordinating the permit-granting process for projects of common interest. The national competent authority is also responsible for taking the requisite decisions within the established time period. The minister of Economic Affairs and Climate Policy has been designated as the competent authority in the Netherlands.

3.2.2 If the NSWPH is not designated as a PCI, the minister of Economic Affairs and Climate Policy will have to take a separate decision to apply the national coordination procedure, and Parliament has to approve this decision. If the NSWPH is not designated as a PCI, we advise requesting that the minister of Economic Affairs and Climate Policy apply the national coordination procedure based on the national and international public interest involved (see section 2.4, item 15).

3.2.3 When the national coordination procedure is followed, the drafts of every single permit required for the project are made available for public examination all at once. This allows everyone to express an opinion on all of the draft permits at the same time.

3.2.4 The final decisions are prepared after the public participation process ends. Interested parties can file appeals relating to those decisions with the Administrative Law Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*).

3.3 Permitting: general procedure and timeline

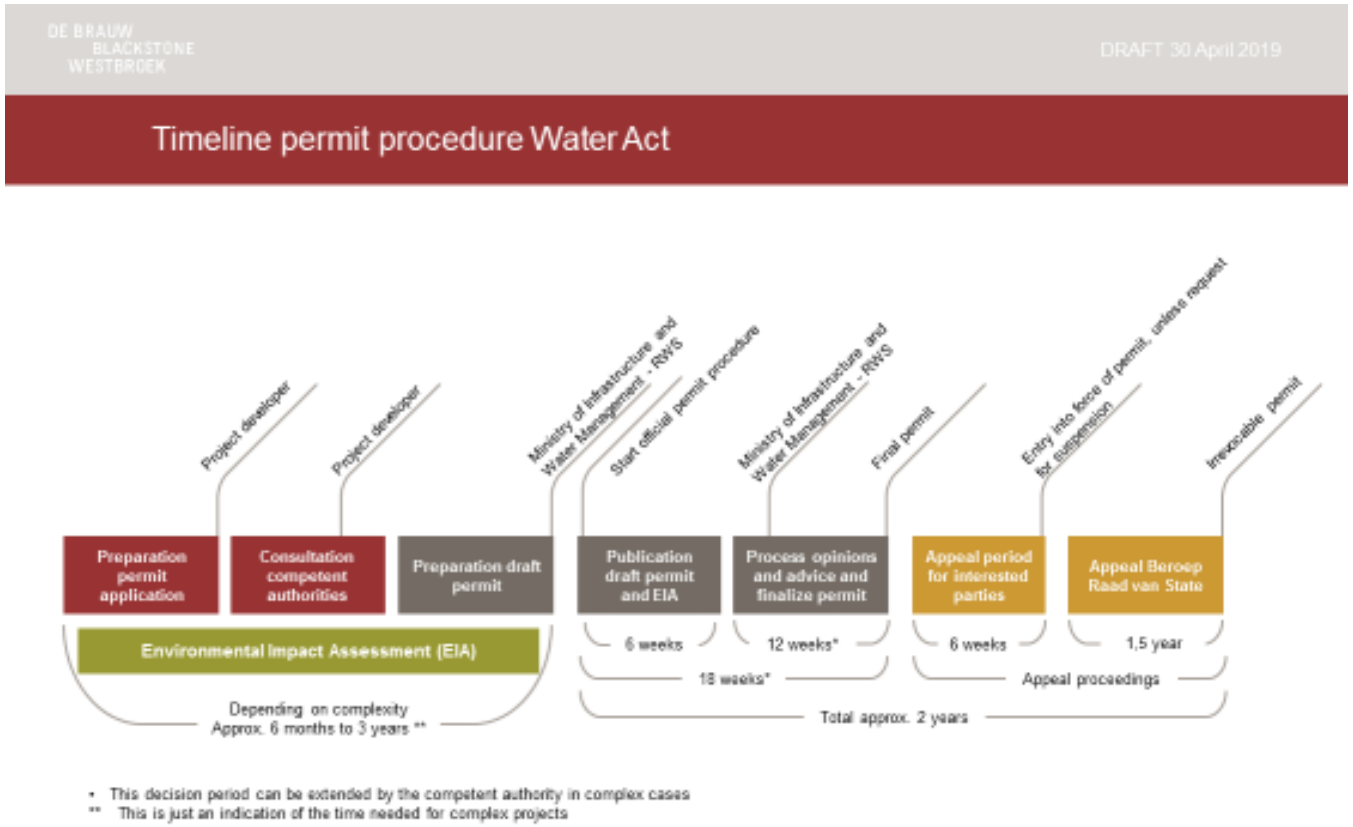
3.3.1 The permit procedure for the relevant permits (Water Act, Nature Protection Act, General Act on Environmental Law) is more or less the same. Basically, all permits that are required for the NSWPH must be prepared under the extended preparation procedure set out in section 3.4 of the General Administrative Law Act. This means that the draft decisions, along with the EIA/AA that is prepared, are collectively available for public examination. During a 6-week period (statutory requirement), members of the public can express their opinions on these documents either in writing or orally. Often, one or more information evenings are organised so that opinions can be expressed orally as well.

3.3.2 The general permit procedure itself, after submission and if prepared well, usually will take approximately 1 year, without appeals. If the answers to public examination opinions require more information, it can be expected that the procedure takes much longer.

3.3.3 However, the duration of preparing the permit procedure largely depends on the complexity of the project. It is highly likely that the preparation of the permitting procedure for the NSWPH project will take much more lead time in both the preparatory and consultation phase, and in the application and decision-making phase (> 3-5 years). Having said this, we believe it is useful to outline a timeline for one of the most relevant permit procedures, the permit procedure under the Water Act. The assumption is that a national coordination procedure will apply.

3.4 Timeline permit procedure Water Act

3.4.1 The general timeline for the permit granting process based on the Water Act is as follows:



3.4.2 In practice, the submission of any formal document for an OWF with export cables to the main land takes at least three years, due to complex issues for example, the landfall and land route.

4 Key findings and recommendations – what experience tells us

4.1 Strategic level

4.1.1 The NSWPH planning and permitting process is only viable with political and ministerial consent and support up front, across all EEZ coastal states involved. The planning and permitting process must be based on an overall design that is specific enough to identify potential conflicts of interest. This 'pre-planning and permitting' stage takes at least one to two years. We believe that this should result in a memorandum of understanding, or a covenant on the mutual interests and cooperation, to be an effective starting point for planning and permitting. This process cannot be underestimated.

4.1.2 The scope of the NSWPH (with or without OWF's and interconnectors) defines the scope of the environmental studies (SEA, EIA and AA). A legal analysis and agreement on the findings with EEZ coastal states, Dutch ministries and the EC is key for the planning and permitting process.

4.1.3 Time needed to prepare planning and permit requests generally exceeds the formal procedure times. The Port of Rotterdam Maasvlakte 2 land reclamation took approximately ten years, from project idea to (global) spatial plan (PKB PMR (2003)), and then another five years for the detailed zoning plan and key permits. Current procedures are more efficient, but given the scale and issues connected with the NSWPH, the planning (start of construction towards 2030) is ambitious.

4.1.4 Choice of interconnector connection points and land routings are complex and intrinsically connected with the marine route and landfall. Given the transport capacities at stake, optimising spatial integration and reducing spatial use on land will ultimately prove decisive for the overall acceptance and planning of the NSWPH.

4.2 Coordination, planning and permitting

4.2.1 Pursuant to the applicable EIA and SEA EU Directives, an EIA report for a project must cover the whole project, in order to make it possible to assess the project's overall effects, specifically the cumulative and significant adverse transboundary effects. This may lead to an approach to prepare first, a joint EIA report for the whole project, and then individual national reports, in order to fulfil national requirements. We advise the NSWPH project to form an opinion on this, based on experiences in other transboundary projects (e.g. the Nord Stream 2 project).

4.2.2 Multilateral or bilateral agreements under the Espoo Convention have to be taken into account. We advise to assess any multilateral or bilateral agreements between the United Kingdom, the Netherlands, Germany and/or Denmark that may be in place.

4.2.3 The obligation to take into account the cumulative effects of the NSWPH with other plans and projects requires: (i) alignment with the EEZ coastal states, and (ii) close monitoring of the plans and projects developed by the EEZ coastal state within the impact range of the defined scope of the projects.

4.2.4 Scheduling of the project has inherent uncertainties. Feedback from all parties involved - stakeholders, NGO's and the public, at an early stage, is imperative for a smooth permitting process.

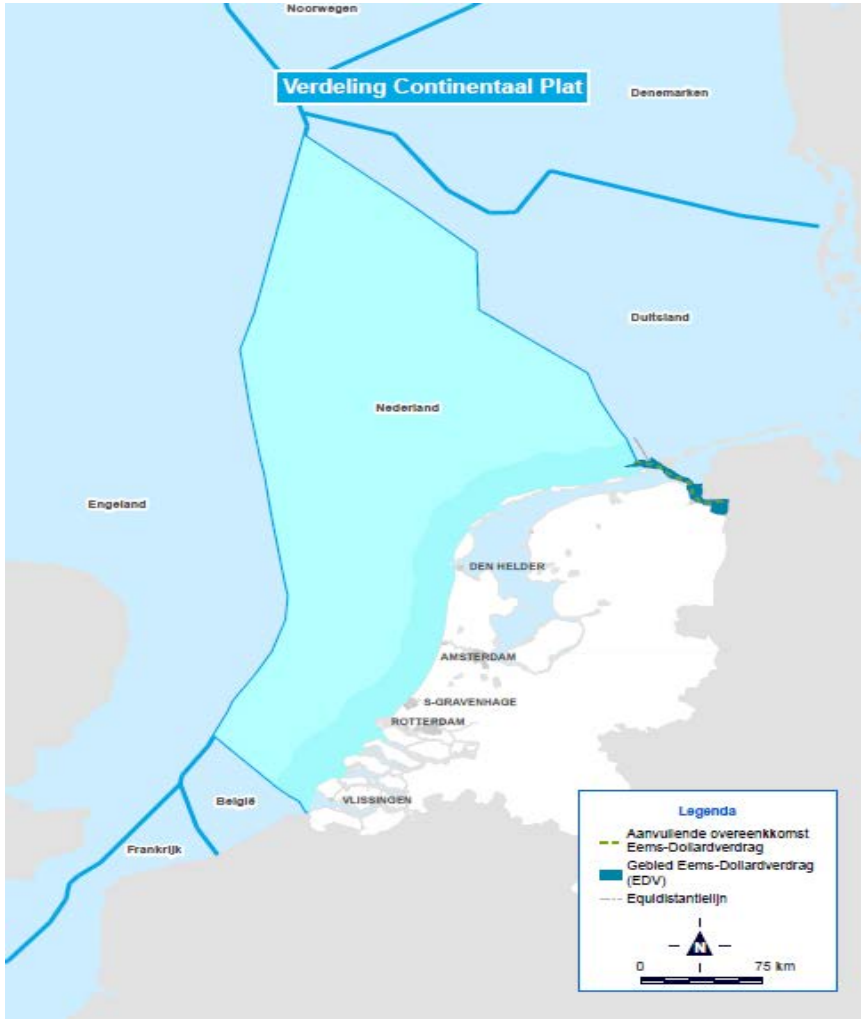
4.2.5 Competent authorities take the safe route. Be prepared for this. Accuracy is more important than speed.

4.2.6 Supporting competent authorities is key. There will be a substantial knowledge gap between the competent authority and the NSWPH project developer. Sharing information, in order to obtain understanding and bridge the gap, helps in the permitting process and will contribute to obtaining more solid permits.

4.2.7 Not all technical / design information will be completed at an early stage which poses difficulties in applying for permits. We advise early discussion on the possibilities for a framework permit, allowing detailed conditions at a later stage, or, discuss possibilities to adjust permit applications. The Water Permit can be designed as a Framework Permit, with conditions to deliver specific information at a later stage, (subject to approval of the competent authority). However, competent authorities are not always willing to postpone receipt of information with regards to the work plans. This is to prevent uncertainties and surprises regarding practicability and possible impacts.

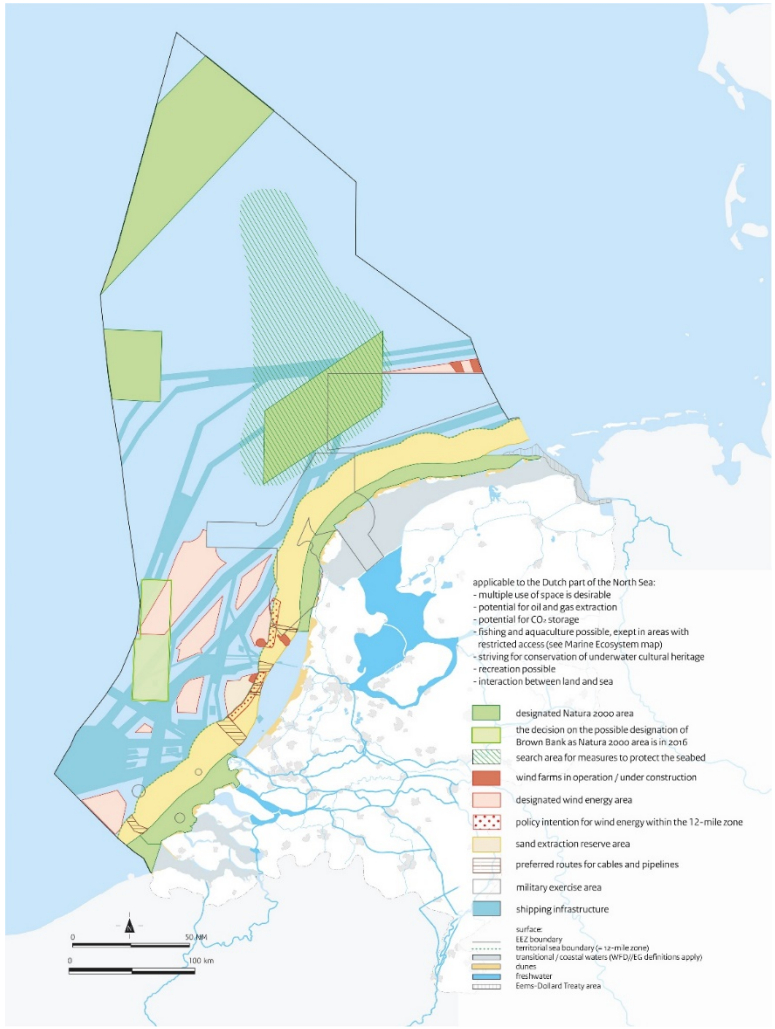
***

Schedule 1 Dutch EEZ



Source: https://www.noordzeeloket.nl/en/policy/international/

Schedule 2 Integrated maritime spatial policy map



Source: 2016-2021 North Sea Policy Document