ELRA
European Land Registry Association

COMMON VISION CONFERENCE
AMSTERDAM 5-7 JUNE 2016

ooo

Marine cadastre

ooo

Legal framework
UNCLOS & EU legislation

Presentation by ELRA representative G. De Latte
Belgian ship mortgage registrar

ELRA
European Land Registry Association

CONTENTS

A. Introduction
B. UNCLOS
C. European legislation
D. Conclusions - De lege ferenda
E. Belgium
F. Further information

ELRA
European Land Registry Association

CONTENTS

A. Introduction

- Marine cadastre
- Marine cadastre parcel
- Registration of patrimonial rights and charges

B. UNCLOS

C. European legislation

D. Conclusions - De lege ferenda

E. Belgium

F. Further information

ELRA
European Land Registry Association

Marine cadastre

A marine cadastre is a system to enable the boundaries of maritime rights and interests to be recorded, spatially managed and physically defined in relationship to the boundaries of other neighbouring or underlying rights and interests
(*Robertson et al., 1999*)

Another definition of a marine cadastre would be: a marine information system, encompassing both the nature and spatial extent of the interests and property rights, with respect to ownership and various rights and responsibilities in the marine jurisdiction
(*Nichols et al., 2000*)

ELRA
European Land Registry Association

Marine cadastre parcel

A marine cadastre unit or parcel will have to reflect:

1. the three-dimensional and volumetric reality of every distinct marine zone (sea surface & water column & seabed or soil & subsoil) with:
   a) the rights and charges under UNCLOS
   b) the patrimonial rights
2. a fourth dimension, meaning the temporary nature of many particular rights because of the time aspect of most sea-linked activities (fixed terms licences, concessions and leases for mining, production of energy, aquaculture, fishing, etc…).

ELRA
European Land Registry Association

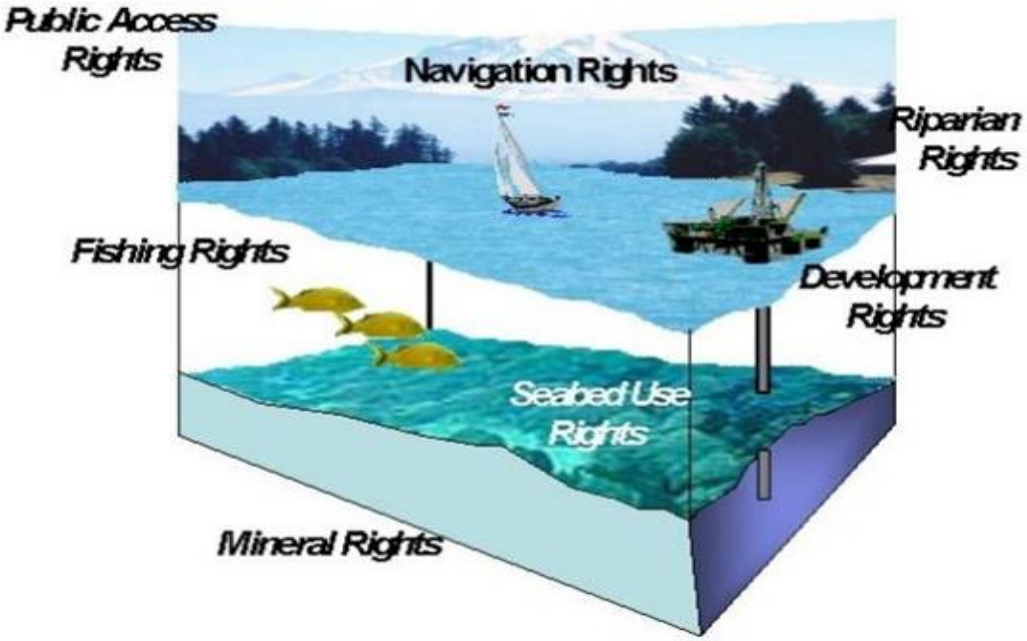


Figure 1: The Marine Parcel (after Sutherland, 2001)

ELRA
European Land Registry Association

Registration of patrimonial rights and charges – 1

- Registration is the recording of deeds relating to the creation or transfer of rights *in rem* in immovable goods (or ships) or relating to charges or restrictions encumbering immovable goods (or ships) on specific registers kept at public land or ship registries.
- This registration is effected for the sake of publicity and legal certainty. Registration is proof that the rights of the registered owner, beneficiary, transferee, mortgagee etc., are protected against third parties (deed system) or that the registered person is really legally entitled to the right (title system).
- Public registration and the legal certainty resulting from registration are of paramount importance and a *conditio sine qua non* for a sound real estate market and a performing credit sector, and ultimately for a thriving economy as such.

ELRA
European Land Registry Association

Registration of patrimonial rights and charges – 2

- The establishment of a marine cadastre that identifies and describes the physical parcel and its boundaries, is not sufficient in itself.
- It will have to be flanked by registration in the land registers (or ship registers) of the deed creating or transferring the rights, charges or restrictions with respect to the marine cadastral parcel.
- Registration is precisely what the European Land Registry Association (ELRA) and the European registrars is all about.
  For more information about ELRA, its members and activities, see www.elra.eu.

ELRA
European Land Registry Association

CONTENTS

A. Introduction

B. UNCLOS

- UNCLOS marine zones
- Territorial Sea – Rights and restrictions to be taken into account for the marine cadastre
- EEZ – Rights and restrictions to be taken into account for the marine cadastre
- EEZ – European Union
- EEZ – France

C. European legislation

D. Conclusions - De lege ferenda

E. Belgium

F. Further information

ELRA
European Land Registry Association

UNCLOS marine zones

a) territorial sea

b) contiguous zone

c) exclusive economic zone (EEZ)

d) continental shelf

e) High Seas

f) the Area

ELRA
European Land Registry Association

UNCLOS marine zones - 1

a) territorial sea – encompassing air space & sea surface & water column superjacent to the seabed & soil or seabed & subsoil - 0nm>12nm

b) contiguous zone – encompassing the sea surface & water column & soil & subsoil – 12nm>24nm

c) exclusive economic zone (EEZ) – encompassing the sea surface & water column & soil & subsoil – 12nm>200nm

ELRA
European Land Registry Association

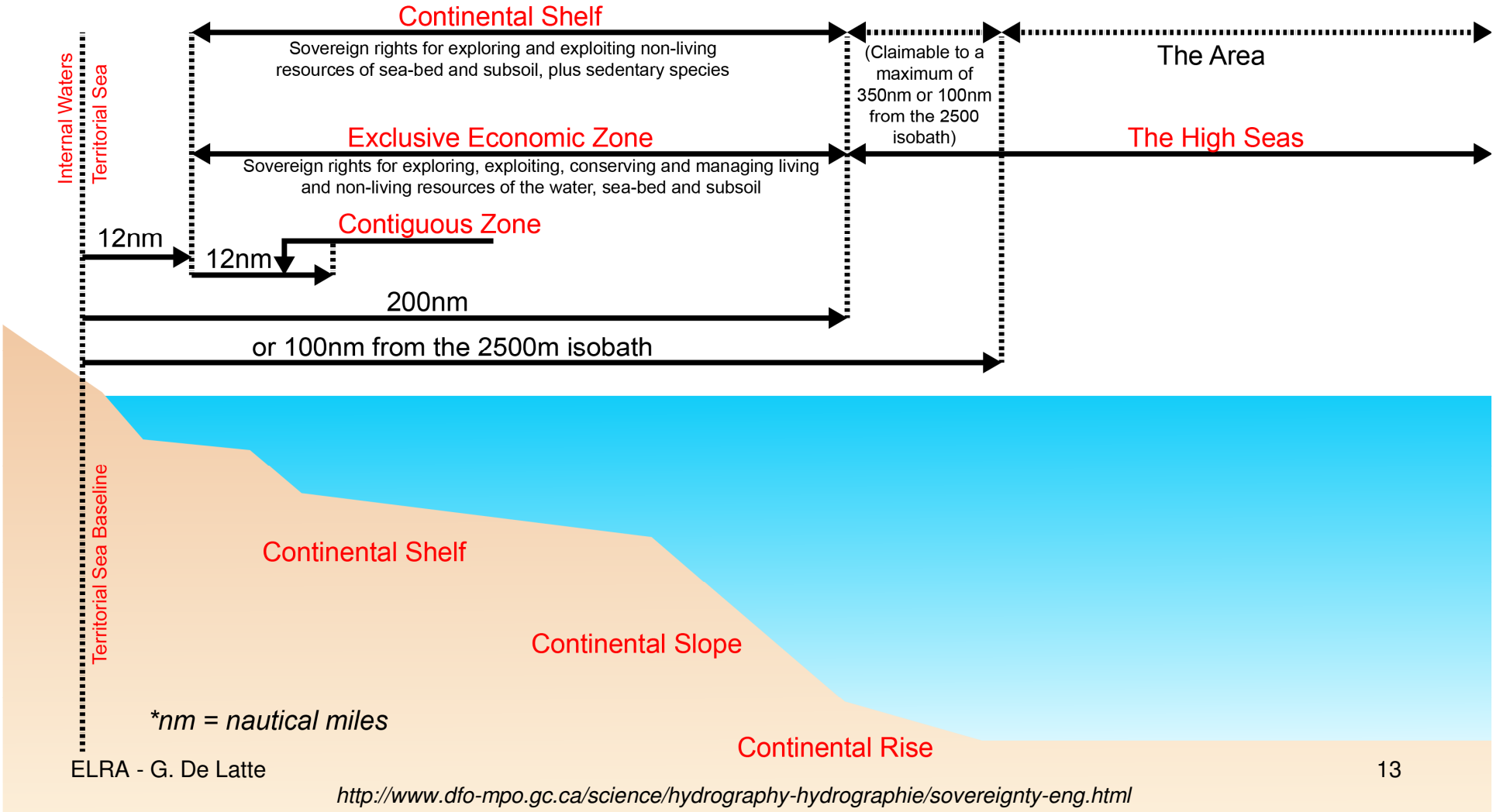
UNCLOS marine zones - 2

d) continental shelf – encompassing only the seabed and its subsoil – 12 nm > 200 nm (max. 350 nm)

e) High Seas – consisting only of the sea surface and the water column subjacent to the surface – beyond EEZ
– beyond national jurisdiction

f) the Area - encompassing only the seabed and its subsoil under the High Seas – beyond continental shelf
– beyond national jurisdiction

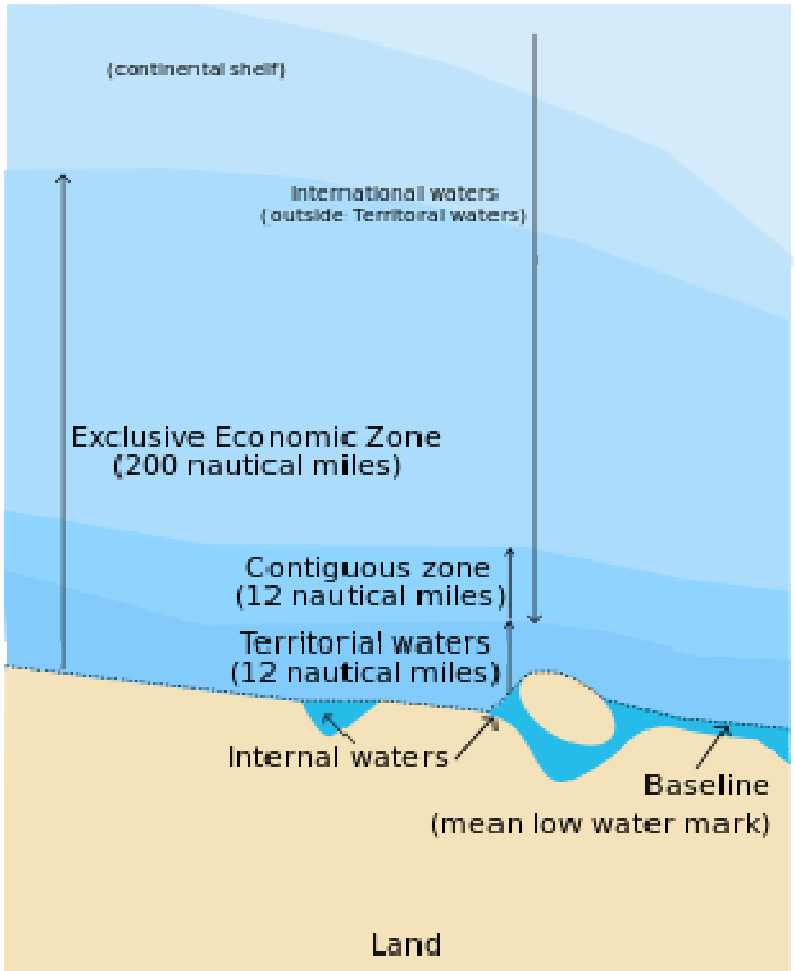
ELRA
European Land Registry Association



http://www.dfo-mpo.gc.ca/science/hydrography-hydrographie/sovereignty-eng.html

ELRA
European Land Registry Association

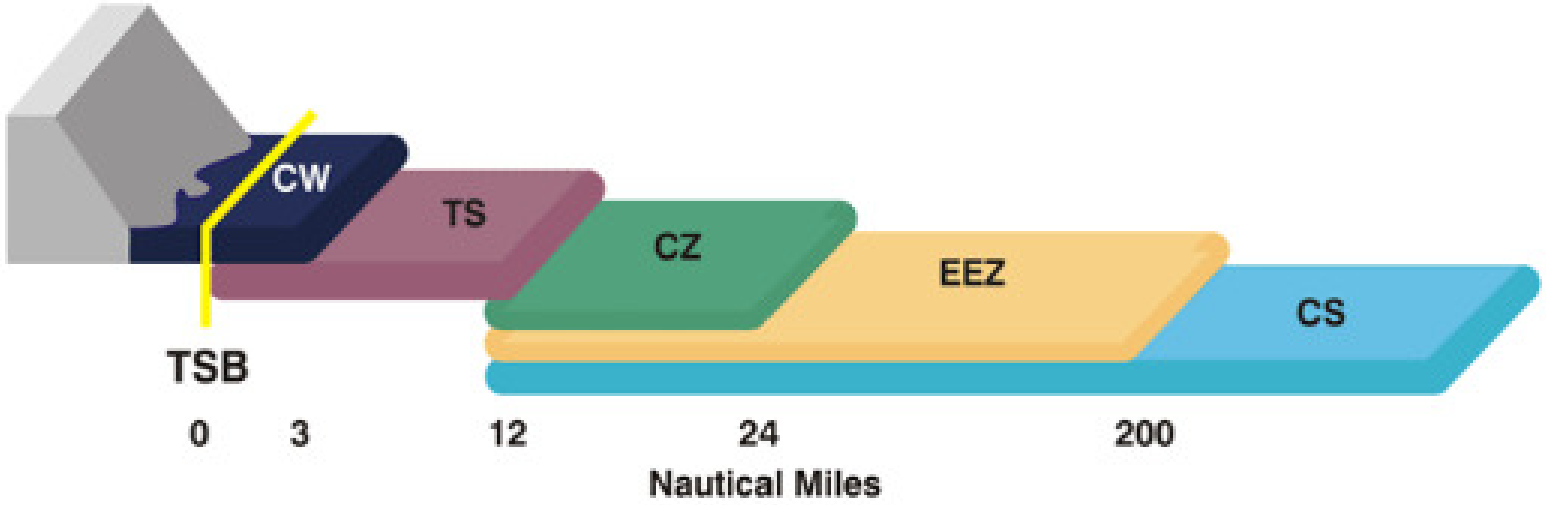
UNCLOS marine zones - 4



https://en.wikipedia.org/wiki/Exclusive_economic_zone

ELRA
European Land Registry Association

UNCLOS marine zones - 5

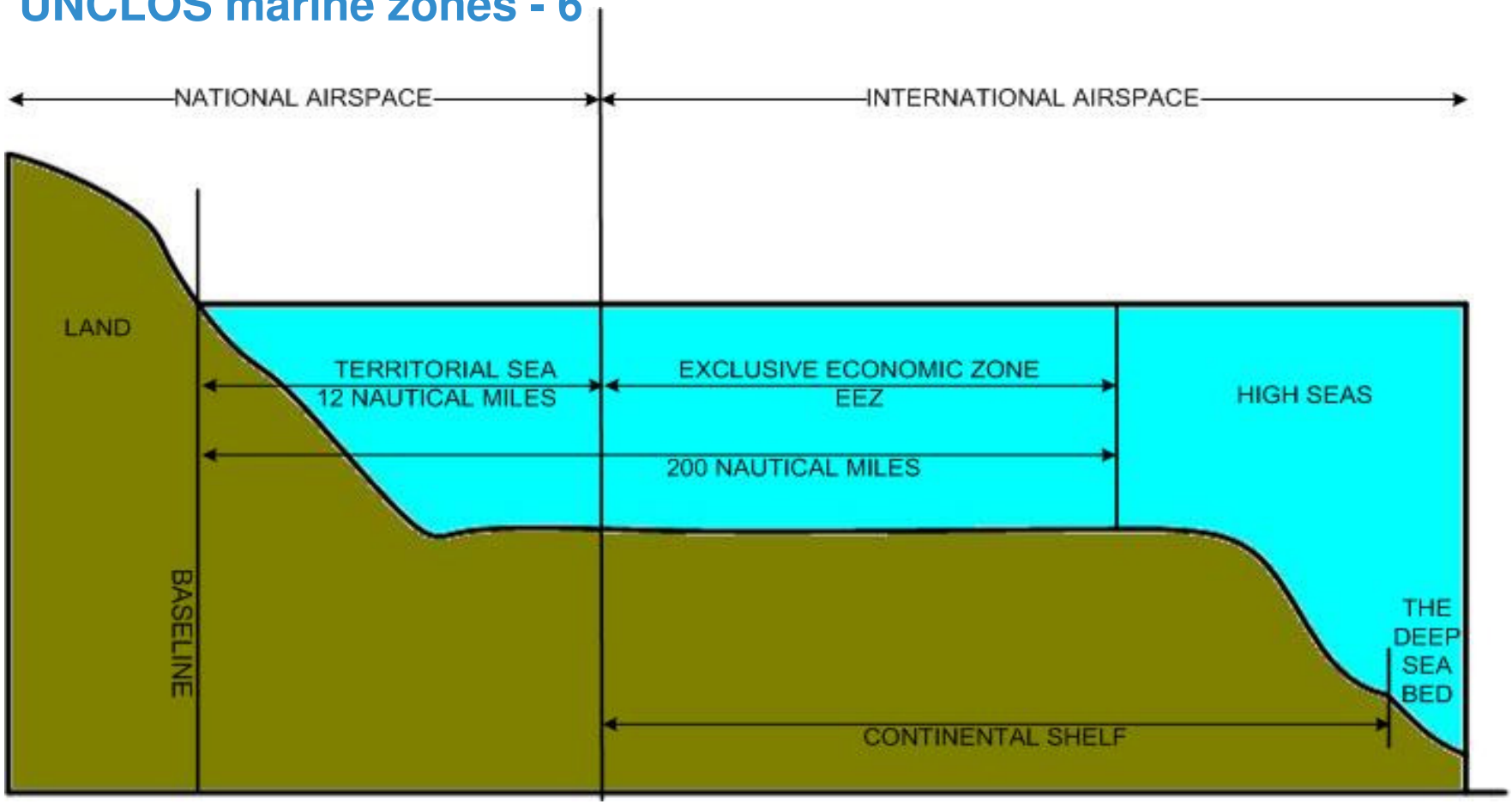


TSB	territorial sea baseline	CZ	contiguous zone
CW	coastal waters	EEZ	exclusive economic zone
TS	territorial sea	CS	continental shelf

GEOSCIENCE AUSTRALIA
MP 02/343.19

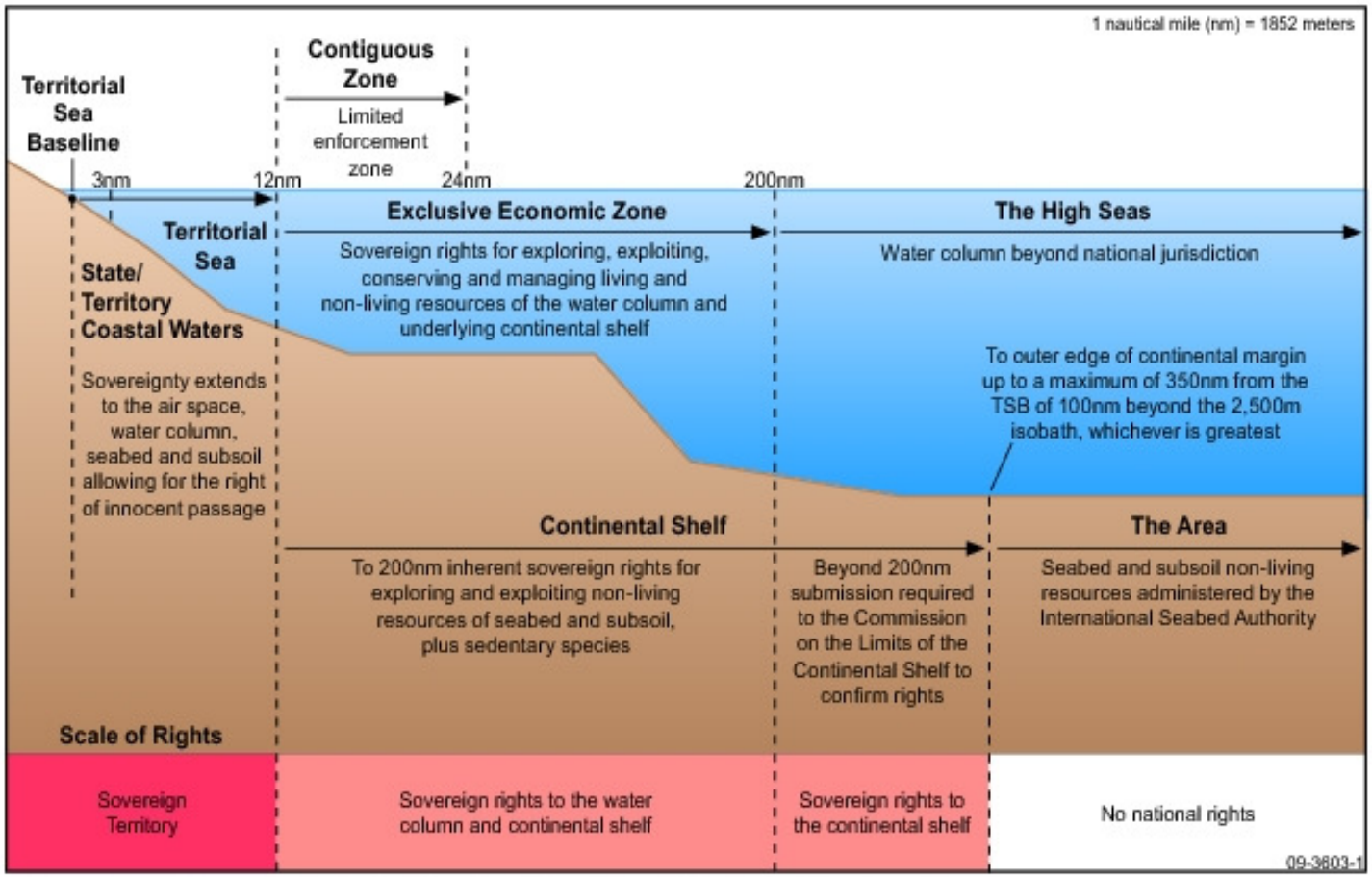
ELRA
European Land Registry Association

UNCLOS marine zones - 6



ELRA
European Land Registry Association

UNCLOS Marine zones – 7 – Territorial Sea and EEZ



www.nauticalcharts.noaa.gov

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – TERRITORIAL SEA – 1

The actual spatial data regarding location, description and boundaries (the basic cadastre information) is to be completed by the following information:

A. sovereignty of coastal state

B. public rights, responsibilities and restrictions that restrict the sovereignty of the coastal state – pursuant to UNCLOS:

B.1. paramount right of innocent passage

B.2. fishing rights in favour of other states

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – TERRITORIAL SEA – 2

B.3. general marine spatial planning restrictions
(shipping routes & protected sandbanks & special fishing and aquaculture zones & areas for sand and gravel exploitation & energy atolls & areas for wind farms & corridors for cables and pipelines & disposal sites for dredged material & extension zones for ports & sites for coastal protection & zones for military exercises & protected wrecks and underground cultural heritage)

B.4. protection and preservation of the marine environment and the prevention, reduction and control of pollution thereof

B.5. conservation of living and non-living resources

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – TERRITORIAL SEA – 3

B.6. marine scientific research

B.7. protection of archaeological and historical objects found at sea

B.8. private rights *in personam* based on licences, concessions or leases granted by the coastal state to companies for exploration and exploitation of the territorial sea - *these rights are temporary in that they only last for the duration of the licences, concessions or lease.*

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – TERRITORIAL SEA – 4

C. public and private rights *in rem* – patrimonial rights

C.1. public property of the soil and subsoil and its resources (public domain of coastal state)

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – TERRITORIAL SEA – 5

C.2. private property rights and other rights *in rem* owned by the holders of licences and concessions with regard to:

C.2.1. immovable goods
(offshore units fixed to the seabed & pipelines and cables if fixed to the seabed or embedded in the subsoil) – *the property rights to these goods are temporary* –
Registration of the deeds concerned at the land registry!

C.2.2. movable goods (mobile offshore units & pipelines and cables lying on the seabed without being fixed to it & living and non-living resources appropriated pursuant to the licences, concessions or leases but only for the duration of these licences, concessions or leases);
Registration of the deeds concerned at the ship registry!

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – EEZ – 1

The actual spatial data regarding location, description and boundaries (the basic cadastre information) might by completed by the following information:

A. sovereign economic rights of the coastal state

B. rights, responsibilities and restrictions that restrict the sovereign rights of the coastal state :

B.1. paramount right of free navigation and overflight

B.2. right of other states to lay and maintain cables and pipelines

B.3. fishing rights in favour of other states (pursuant to European or international law or bilateral agreements)

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – EEZ – 2

B.4. general marine spatial planning restrictions
(shipping routes & protected sandbanks & special fishing and aquaculture zones & areas for sand and gravel exploitation energy atolls & areas for wind farms, etc.)

B.5. protection and preservation of the marine environment and the prevention, reduction and control of pollution thereof

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – EEZ – 3

B.6. conservation of living and non-living resources

B.7. marine scientific research

B.8. protection of archaeological and historical objects found at sea

B.9. private rights *in personam* based on licences, concessions or leases granted by the coastal state to companies for exploration and exploitation of the EEZ *e.g. sand and gravel extraction, crude oil and natural gas extraction, mining, fishing, aquaculture, energy production, dumping of dredging material etc.)*
these rights are temporary in that they only last for the duration of the licences, concessions or leases;

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – EEZ – 4

C. private rights *in rem*

= private property rights and other rights *in rem* owned by holders of licences, concessions or leases.

= with regard to following 'movables':

C.1. fixed and mobile offshore units (artificial islands, installations and structures) – *the rights to fixed offshore units are temporary* in that they only last for the duration of the licences, concessions or leases having allowed for their construction;

ELRA
European Land Registry Association

Rights and restrictions to be taken into account for the marine cadastre – EEZ – 5

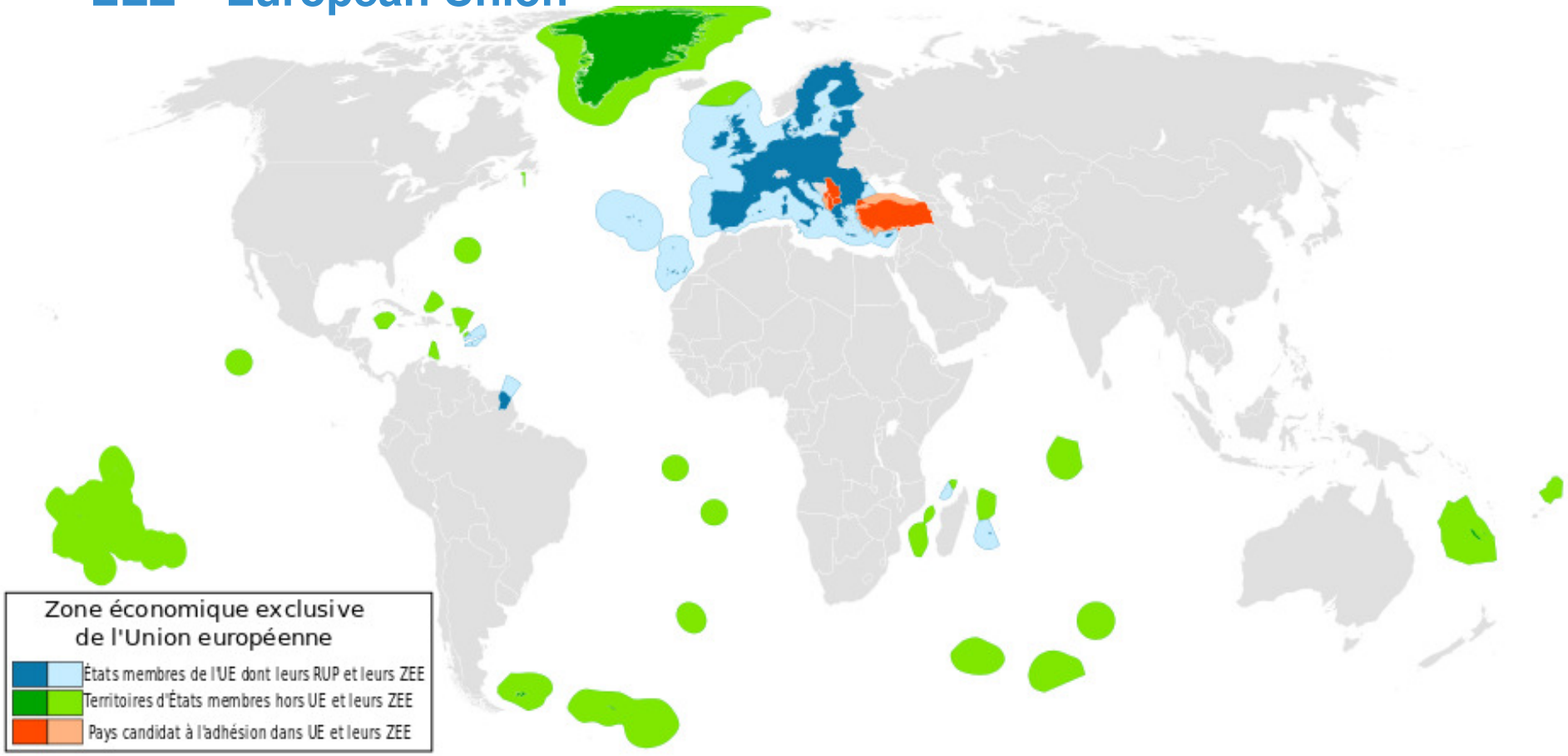
C.2. pipelines and cables on the seabed or embedded into the seabed;

C.3. living and non-living resources appropriated pursuant to the licences, concessions or leases but only for the duration of the licences, concessions or leases involved

Registration of all deeds concerned should be effected at the ship registry or at a new offshore unit registry to be created

ELRA
European Land Registry Association

EEZ – European Union

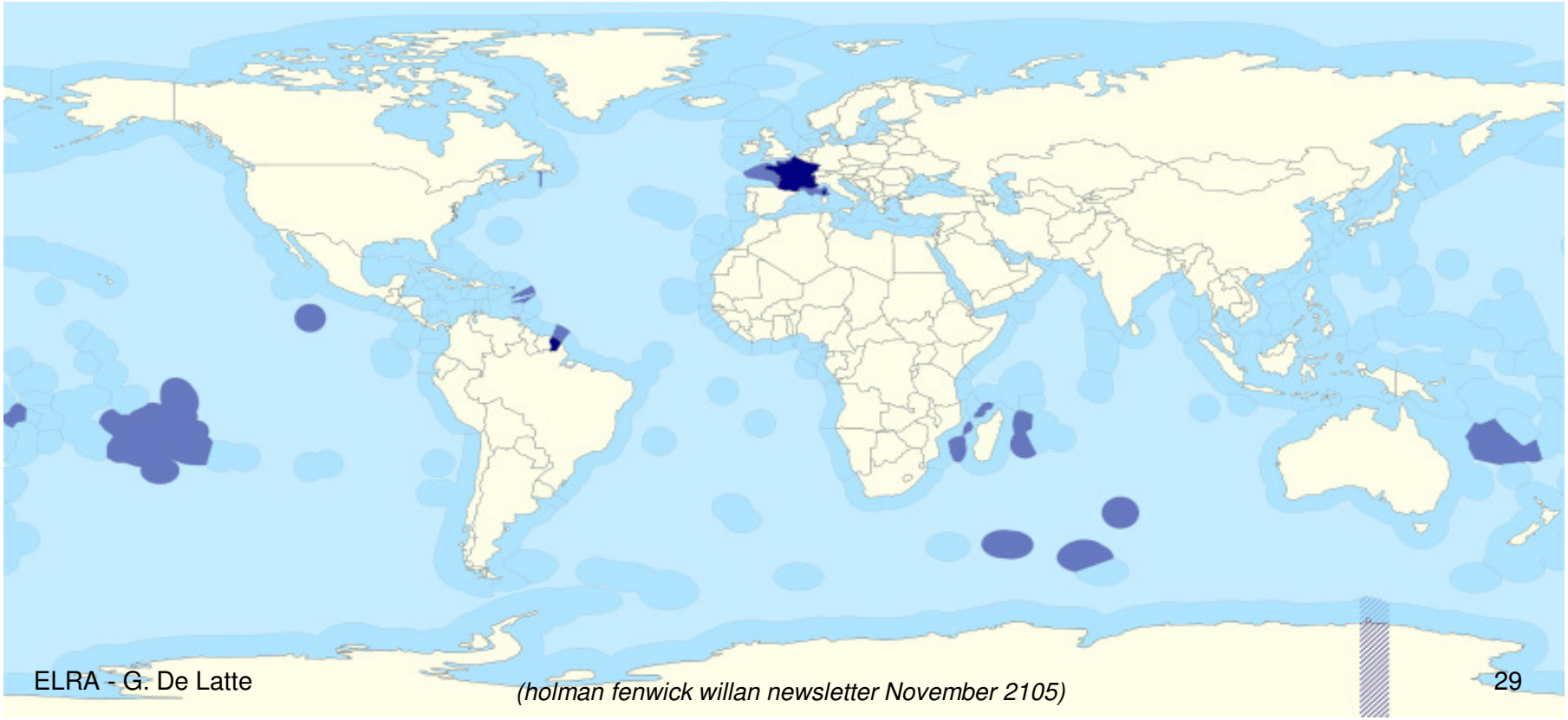


(https://en.wikipedia.org/wiki/Exclusive_economic_zone)

ELRA
European Land Registry Association

EEZ – France

France controls the second largest EEZ in the world, covering 11,030,000 km^2 just behind the USA (11,350,000 km^2) but before Australia (8,150,000 km^2)



(holman fenwick willan newsletter November 2105)

ELRA
European Land Registry Association

CONTENTS

A. Introduction
B. UNCLOS
C. European legislation
D. Conclusions - De lege ferenda
E. Belgium
F. Further information

ELRA
European Land Registry Association

INSPIRE directive

Directive 2007/2/EC of 14 March 2007 establishing an infrastructure for spatial information in the European Community

The INSPIRE Directive 2007/2/EC aims at laying down general rules for the establishment of the ‘infrastructure for spatial information’ (inspire) in the EU, for the purposes of environmental policies and policies or activities that may have an impact on the environment.

ELRA
European Land Registry Association

COM(2007)575 - Communication of 10 October 2007 - Integrated Maritime Policy for the European Union (Blue Book)

Objective: to enhance Europe's capacity to face the challenges of globalization and competitiveness, climate change, degradation of the marine environment, maritime safety and security, and energy security and sustainability.

Three important horizontal planning tools to support a joined up policy :

- maritime surveillance which is critical for the safe and secure use of marine space;
- maritime spatial planning which is a key planning tool for sustainable decision-making;
- and a comprehensive and accessible source of data and information.

ELRA
European Land Registry Association

Integrated Coastal Zone Management

1. The Convention for the protection of the marine environment and the coastal region of the Mediterranean (the Barcelona Convention)

done on 16 February 1976 - entry into force on 12 February 1978.
Objectives: to "prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area, and to protect and enhance the marine environment in that area so as to contribute towards its sustainable development" and to "promote the integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources"

2. The Madrid protocol on Integrated Coastal Zone Management in the Mediterranean of 21 January 2008

Focuses on establishing "a common framework for the integrated management of the Mediterranean coastal zone" and on taking "the necessary measures to strengthen regional cooperation"

ELRA
European Land Registry Association

Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy – Marine Strategy Framework Directive

This directive is about achieving or maintaining good environmental status in the marine environment by the year 2020 at least, by way of developing and implementing marine strategies aiming at the protection and preservation of the marine environment and at the prevention and reduction of pollution of the marine environment.

ELRA
European Land Registry Association

MARINE KNOWLEDGE 2020 - 1

COM(2010)461 – Communication of 8 September 2010 – Marine Knowledge 2020 - Marine data and observation for smart and sustainable growth

The objective set by this communication is the integration of marine knowledge via the creation of a targeted multi-purpose use ‘operational marine data architecture’.

It points to existence of existing initiatives, such as:

- global monitoring for environment and security initiative (GMES)
- shared environmental information systems SEIS and WISE-marine (COM(2008)46)

ELRA
European Land Registry Association

MARINE KNOWLEDGE 2020 - 2

COM(2012)473 – Green Paper of 29 August 2012 – Marine Knowledge 2020 - From seabed to ocean forecasting

This green paper deals with a flagship project to prepare a seamless multi-resolution digital seabed map of European waters by 2020.

The Green Paper draws the attention to the ‘European Marine Observation and Data Network (EMODnet) and to the GMES Marine Services (nowadays known as ‘Copernicus Marine Service’).

ELRA
European Land Registry Association

BLUE GROWTH / BLUE ECONOMY – 1

COM(2012)494 – Communication of 13 September 2012 – Blue Growth – Opportunities for marine and maritime sustainable growth

The Blue Economy mainly refers to:

- marine energies (offshore wind energy, and other future offshore renewable energy to be produced by tidal barrage & wave power devices & ocean thermal conversion;
- aquaculture;
- maritime, coastal and cruise tourism;
- marine mineral resources;
- blue biotechnology.

ELRA
European Land Registry Association

BLUE GROWTH / BLUE ECONOMY – 2

COM(2014)254 – Communication of 8 May 2014 – Innovation in the Blue Economy

The objective is to ensure that marine data is easily accessible, interoperable and free of restrictions on use, with the specific target of developing a multi-resolution map of the entire seabed and overlying water column of European waters by 2020 as a flagship initiative. This objective is to be reached by way of improving and integrating existing systems such as: European Marine Observation and Data Network (EMODnet), Data Collection Framework for fisheries16 and WISE-Marine for environmental data etc.

ELRA
European Land Registry Association

BLUE GROWTH / BLUE ECONOMY – 3

Commission Staff Working Document SWD(2014)149 of 8 May 2014 – roadmap – accompanying Communication COM(2014)254 of 8 May 2014 – Innovation in the Blue Economy

This document elaborates *inter alia* on the European Marine Observation Data Netwotk (EMODnet).

The document also focuses on the 'Copernicus marine service', which is a follow-up to the MyOcean projects related to the marine services of GMES (Global monitoring for environment and security initiative – see previous slides).

ELRA
European Land Registry Association

Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning (EU Official Journal of 28 August 2014)

The framework for maritime spatial planning established by this directive aims at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources.

The framework shall provide for the establishment and implementation by Member States of maritime spatial plans.

As regards Belgium, a maritime spatial plan for the Belgian part of the North Sea has already been established by royal decree of 20 March 2014 (see further slides).

ELRA
European Land Registry Association

CONTENTS

A. Introduction
B. UNCLOS
C. European legislation
D. Conclusions - De lege ferenda (future law required)
E. Belgium
F. Further information

ELRA
European Land Registry Association

De lege ferenda
Future law required – 1

New legislation – implementing EU orientations, communications and/or directives - is needed with regard to:

1. the establishment of basic principles, semantics, rules and procedures relating to the creation of a marine cadastre;
2. the description and delimitation of the marine public domain including the soil and subsoil of the territorial sea;
3. the creation of private rights *in rem* and 'hypothecs' or mortgages on 'conceded' parts of this public domain;

ELRA
European Land Registry Association

De lege ferenda
Future law required – 2

4. the assimilation of fixed offshore units in the waters beyond the territorial sea to seagoing vessels for the purpose of registration, attachment/arrest/seizure and mortgage;
   a uniform status of the fixed offshore units ideally to be determined by an international convention prepared by the International Maritime Organisation (IMO) and the Comité Maritime International (CMI)
5. *last but not least*: an urgently needed harmonisation of the many and confusing European legal instruments regarding all things marine and maritime – a kind of 'codex' that would also contain basic common EU guidelines and principles relating to # # 1 to 4.

ELRA
European Land Registry Association

CONTENTS

A. Introduction
B. UNCLOS
C. European legislation
D. Conclusions - De lege ferenda
E. **Belgium**
- Important marine/maritime players
- Marine spatial plan for the Belgian part of the North Sea (different to marine cadastre)

F. Further information

ELRA
European Land Registry Association

BELGIUM – Important marine/maritime players – 1
DG Environment

Directorate General for the Environment (DG), that is part of the Federal public service (FPS) of health, food chain safety and environment - has been instrumental in drawing up a marine spatial plan for the Belgian part of the North Sea

ELRA
European Land Registry Association

BELGIUM – Important marine/maritime players – 2
MUMM

'Management Unit of the North Sea Mathematical Models' (MUMM) that is part of the Operational Directorate Natural Environment of the Royal Belgian Institute of Natural Sciences (RBINS) - MUMM takes an active role in the Marine Environmental Protection Committee (MEPC) of the International Maritime Organisation (IMO) - MUMM issues binding opinions regarding environmental effects of sand and gravel extraction projects and construction and exploitation of wind farms in the Belgian part of the North Sea to the competent Belgian federal minister

ELRA
European Land Registry Association

BELGIUM – Important marine/maritime players – 3

Ship registry – 1

This registry has jurisdiction to register ships under Belgian flag

Under Belgian law, a ships means “any floating craft, self-propelled or not, with or without any water displacement, used or fit to be used as a means of locomotion, in, above or under the water, including the installations not permanently attached to the shore or to the soil”.

This definition covers all floating offshore installations and structures.

ELRA
European Land Registry Association

BELGIUM – Important marine/maritime players – 3

Ship registry – 2

Offshore installations and structures that are fixed to the seabed of the exclusive economic zone (EEZ) have to be assimilated to 'ships' - this would allow for their registration under Belgian flag/nationality.

This would also allow for the registration of rights *in rem* and mortgages against them and enhance the legal certainty of the transactions contribute to these installations and structures getting more easily financed.

This would require the creation of a proper marine cadastre (with prior delimitation and georeferenced location of the site those installations and structures occupy on the seabed and with their exact description)

ELRA
European Land Registry Association

BELGIUM – Important marine/maritime players – 4

Belgian cadastre

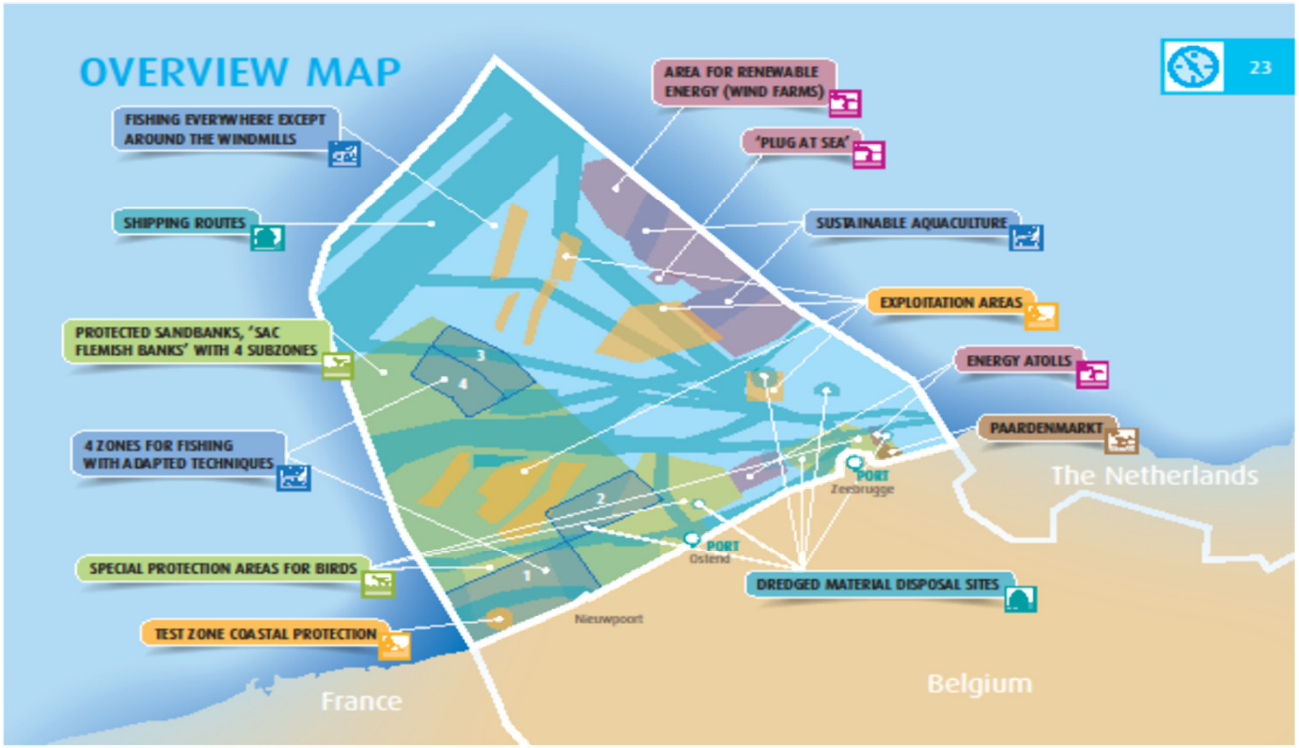
The Belgian cadastre should play a very important role when it comes to creating a marine cadastre or preparing the creation thereof.

However, for the time being, they are not involved – for lack of staff, means, ambition…

It can only be hoped that eventually they will understand and meet the challenge…

ELRA
European Land Registry Association

BELGIUM – Marine spatial plan for the Belgian part of the North Sea (different to marine cadastre)



ELRA
European Land Registry Association

Belgian part of North Sea – Wind farm park - Belwind

ELRA
European Land Registry Association

CONTENTS

A. Introduction
B. UNCLOS
C. European legislation
D. Conclusions - De lege ferenda
E. Belgium
F. Further information

ELRA
European Land Registry Association

ATLAS_EUROPEAN_SEAS_AND_OCEANS-MarineJurisdictions_SeaUses_Governance-2007.pdf
http://goo.gl/ywlUqD

Marinecadastre-MarineSpatialPlan-BelgianPartOfNorthSea-Brochure.pdf
http://www.health.belgium.be/en/marine-spatial-planning#article

Mortgages against offshore windfarms
http://goo.gl/Q1mNMU
http://www.elra.eu/elra-annual-publication/index

Some considerations about the importance of navigation, about the international relevance and peculiarities of maritime law and about the differences between land registration and ship registration
http://goo.gl/TSjNan

CMLA draft convention on offshore units, artificial islands and related structures used in the exploration for and the exploitation of petroleum and seabed mineral resources in CMI News Letter 2014/1
http://comitemaritime.org/Newsletters

ELRA
European Land Registry Association

Are there any questions?

ELRA
European Land Registry Association

Thank you for your attention