

Agreement to amend and update the Agreement between the State of the Netherlands and The Ocean Cleanup concerning the deployment of systems designed to clean up plastic floating in the upper surface layer of the high seas

The Parties,

The State of the Netherlands, represented in this matter by the Minister for Infrastructure and Water Management, hereinafter referred to as ‘the Minister’;

and

Stichting The Ocean Cleanup, a foundation under Dutch law and registered with the Dutch trade registry under number 57262632, and The Ocean Cleanup Projects B.V., a private limited liability company incorporated under Dutch law and registered with the Dutch trade registry under number 67171699, both represented by Boyan Damir Slat and hereinafter together referred to as ‘The Ocean Cleanup’;

Whereas:

- the parties signed an Agreement on 8 June 2018 intended to facilitate and support the activities of The Ocean Cleanup and fulfil the duty of care of the Netherlands in relation to the activities of The Ocean Cleanup;
- The Ocean Cleanup has since deployed various systems on the high seas to remove floating plastic from the oceans;
- since the signature of the Agreement, the systems of The Ocean Cleanup have undergone continuous development and modification;
- The Ocean Cleanup has carried out an environmental impact assessment for system 002 and 03;
- The Ocean Cleanup has continuously monitored the operation and results of the system;
- after evaluating the Agreement, the Parties have decided to extend the Agreement as well as to update it to take into account the latest insights and developments.

Agree as follows:

Article 1 Amendment and updating of the Agreement

A

Article 1.1, point c is to read as follows:

c. system: one or more systems developed by The Ocean Cleanup and designed to capture plastic floating in the upper surface layer of the high seas;

B

In article 1.2, the words ‘and marine biodiversity’ are inserted after ‘marine environment,’.

C

Article 1.5 is to read as follows:

Article 1.5 National identification markings

The origin of the system and its connection to the Netherlands may be displayed through identification markings affixed to the system.

D

Article 2.2 is to read as follows:

Article 2.2 Traceability and visibility

In order to ensure the safety of navigation, the system must at all times be visible to and identifiable by every seafarer engaged in navigation by means of instruments generally used for maritime navigation.

E

Article 2.3 is amended as follows:

1. Paragraph 2 is to read:
2. Equipment will signal whether the system has become untethered or there is reason to believe that it is threatening to become untethered or that the system is drifting or threatening to drift outside of its planned area of operation. If necessary, measures will be taken by The Ocean Cleanup.
2. Paragraph 3 is deleted.

F

Article 2.4 is to read as follows:

Article 2.4 Formal Safety Assessment

Prior to the deployment of the system onto the high seas, The Ocean Cleanup will carry out a Formal Safety Assessment as referred to in MSC-MEPC.2/Circ.12/Rev.2, as amended, or an equivalent assessment of the system, at least in respect of any significant change to the design of the system or the manner in which the system operates in comparison with the system as assessed in the most recent Formal Safety Assessment, if the change can reasonably be expected to have potential safety implications.

G

Article 2.5, paragraph 1 is to read as follows:

1. Prior to the deployment of the system, The Ocean Cleanup will ensure the provision of insurance or security, subject to the usual conditions, in order to cover any damage caused to third parties, including damage caused by oil pollution or other pollution arising from or caused by the system, and any damage resulting from a maritime accident caused by the system or parts thereof.

H

The following article is inserted in chapter 2 after article 2.6:

Article 2.7 Safety training

The Ocean Cleanup will ensure that persons who, on behalf of The Ocean Cleanup, are on board a vessel with which the system is connected have successfully completed a recognized basic safety training course entitling them to a certificate which is valid at the time the vessel departs from the port and during their time on board the vessel.

I

In article 3.1, paragraphs 1 and 2 are renumbered as paragraphs 2 and 3 respectively and the following new provision is inserted as paragraph 1:

1. The Ocean Cleanup will continuously monitor the effects of its cleanup activities on and for the marine environment.

J

The following article is inserted after article 3.1:

Article 3.1a Environmental impact assessment

1. The Ocean Cleanup shall conduct a screening for any significant change made to the design of the system or to the manner in which the system operates, when it is expected that this significant change may have more than a minor or transitory effect on the marine environment or when the effect of this significant change are unknown or poorly understood, to determine whether an environmental impact assessment is required.
2. If reasonable grounds are found for believing that the significant change referred to in paragraph 1 may cause substantial pollution of or significant and harmful changes to the marine environment, The Ocean Cleanup shall conduct an environmental impact assessment on the basis of relevant national or international legislation. This involves identifying, as much as reasonably possible, the possible effects on the ecosystem and the costs and benefits of the cleanup activities on the marine environment.
3. The Ocean Cleanup will inform the Minister in good time that the screening or environmental impact assessment, as the case may be, is being carried out and will submit the results to the Minister as soon as reasonably possible.
4. The Minister may carry out an evaluation of the screening or the environmental impact assessment or have it carried out by an independent third party. If the conclusions of the third party differ from the screening or assessment by The Ocean Cleanup, the parties may consult with each other about this.

K

Article 3.2 is amended as follows:

1. Paragraph 2 is to read:
2. The Ocean Cleanup will monitor the interaction between the system and species present in the area. This will take into account, among other things, the impact of plastic and other materials that may be captured by the system on species present in the area.
2. The following two paragraphs are added after paragraph 2:
3. The Ocean Cleanup will submit a report on the system's by-catch to the Minister at least once a year, including a description of the interaction between the system and species present in the area.
4. The Ocean Cleanup will inform the Minister as quickly as possible in the event of exceptional cases of by-catch and provide further information on the incident to the Minister in good time.

L

In article 4.1, paragraph 1 the words 'fishing activities' are replaced by 'fishing and research activities'.

M

Article 5.1 is amended as follows:

1. Paragraph 1 is to read:
 1. The Minister may inform other States, through the appropriate diplomatic channels, of The Ocean Cleanup's activities and, if necessary, facilitate contact between staff of The Ocean Cleanup and any States concerned.
2. In paragraph 2, the words 'In view of the Minister's obligation under paragraph 1,' are replaced by 'In so far as relevant for the purposes of the Agreement or the responsibilities of the State of the Netherlands in relation to the activities of The Ocean Cleanup'.
3. The following new paragraph is added:
 3. Each of the Parties will designate a contact person for the purpose of communication in relation to the Agreement.

N

Article 5.2, paragraph 2 is to read as follows:

2. In so far as relevant for the purposes of the Agreement or the responsibilities of the State of the Netherlands in relation to the activities of The Ocean Cleanup, the Parties will keep each other informed about participation in international activities and organizations.

O

In article 6.3, paragraph 2 the words 'once a year' are replaced by 'once every two years'.

P

Article 6.4 is to read as follows:

Article 6.4 Costs

In the event that The Ocean Cleanup incurs costs in performing obligations under the Agreement, which are not already incumbent on The Ocean Cleanup because of other national or international rules, the parties will consult each other about the reimbursement of such costs.

Q

In article 7.1, paragraph 2, the words 'a two-year period' are replaced by 'a five-year period'.

R

Amendment to the Dutch text that does not affect the English text.

Article II Entry into force

This amendment will enter into force on the day after it is signed by all Parties.

As agreed and signed in duplicate in The Hague on 29 May 2024.

THE MINISTER OF INFRASTRUCTURE AND WATER MANAGEMENT,

Mark Harbers

Stichting The Ocean Cleanup,

Boyan Damir Slat

The Ocean Cleanup Projects B.V.,

Boyan Damir Slat

Explanatory notes

General

1. Introduction

This Agreement amends and updates the Agreement concluded between the State of the Netherlands (represented by the Minister for Infrastructure and Water Management, hereinafter referred to as the Minister) and The Ocean Cleanup, consisting of Stichting The Ocean Cleanup and The Ocean Cleanup Projects B.V. (hereinafter referred to as The Ocean Cleanup) on 8 June 2018. The Agreement has a term of five years, after which it has been extended by operation of law for two years. In February 2023, the Ministry and The Ocean Cleanup evaluated the Agreement. It is apparent from this evaluation that both parties are satisfied with the Agreement, but that it requires amendment in several places in order to reflect the current situation.

2. Background

The Ocean Cleanup has as its objective to rid the world's oceans of plastic by using self-developed technologies. The Ocean Cleanup has developed a system to clean up the amount of plastic floating in the upper surface layer of the oceans, more specifically in the accumulation zones such as the five subtropical gyres. The Minister wishes to facilitate and support these activities of The Ocean Cleanup as fully as possible. As the system is unique in its kind, there is no applicable legislation or any other ready-made legal framework. That is why an Agreement setting out the arrangements between the two parties was drawn up in 2018. At the time the Agreement was drawn up, The Ocean Cleanup intended to remove the plastic by having the system transported by ship to the high seas, where it would then be positioned. The system would not be fixed to the seabed, nor actively steered or controlled. The system has now been developed further by The Ocean Cleanup and in consequence is now towed by two slow-moving vessels. The Ocean Cleanup has shown that this method is effective in cleaning up floating plastic as it removed 346,435 kilograms of plastic from the ocean during the test and validation phase. Since it was taken into account that the system design would continue to be developed at the time the Agreement was drawn up in 2018, the Agreement has remained workable. The term of the Agreement was therefore extended in 2023 following evaluation. However, in view of the change in the working method employed by The Ocean Cleanup, it is desirable that the Agreement be amended and updated.

In the context of the Agreement, The Ocean Cleanup prepared an environmental impact assessment in 2022, in which it investigated the impact of system 002 on the marine environment. This environmental impact assessment was then independently evaluated by Bureau Waardenburg at the State's request. In keeping with the advice in Bureau Waardenburg's draft report, The Ocean Cleanup modified its activities in a number of ways. Bureau Waardenburg subsequently drew up a final report in which it noted, based on the 2022 environmental impact assessment and The Ocean Cleanup's written response to the draft report, that The Ocean Cleanup is taking the necessary precautionary measures to reduce their environmental impact. Bureau Waardenburg concluded that the mitigating measures taken were observed to be effective, and that The Ocean Cleanup had adopted an adaptive management approach to feed the iterative learning process. It was also evident from the by-catch monitoring that the expected potential impact was lower than initially expected. However, Bureau Waardenburg advised The Ocean Cleanup not to expand its cleanup activities as long as the net environmental benefit of these activities has not been demonstrated. In 2023, The Ocean Cleanup also conducted an environmental impact assessment for system 03. This environmental impact assessment is to be evaluated by an independent third party appointed by the Minister. The present amendment involves the addition of a new article 3.1a requiring the performance of an

environmental impact assessment in certain cases. This provision is explained in more detail in the article-by-article commentary.

3. International context

The Ocean Cleanup's activities are closely aligned with the ambitions of the State of the Netherlands regarding innovation, sustainability, ocean policy and tackling marine litter. The amendments to this Agreement take into account as far as possible current developments in the international field, such as the Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the BBNJ Agreement).

Moreover, in 2022 the United Nations Environment Assembly adopted resolution 5/14, entitled 'End plastic pollution: Towards an international legally binding instrument'. For the Netherlands, the emphasis is mainly on preventing plastic pollution by promoting sustainable production and reducing the consumption of plastics. The Ocean Cleanup's activities are in keeping with operative paragraph 3c: 'To promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing plastic pollution.'

Individual articles

Point A

Point A modifies the definition of system in article 1.1. Only the word 'floating' [before 'system'] has been removed. When the Agreement was drafted in 2018, the activities were carried out by a passive floating system which was not propelled or towed. Since then, The Ocean Cleanup has continued to develop the system and its manner of operation. The Ocean Cleanup now employs system 03, which has a U-shape that is actively towed by two vessels at an average speed of 0.75 metres per second (2.7 kilometres per hour).

Point C

The provision in article 1.5 concerning the affixing of identification markings to the system in order to show the system's connection with the Netherlands is changed from a requirement to a possibility ('may'). In practice, it has proved difficult to affix identification markings to the system as they are washed away by the ocean. Nonetheless, The Ocean Cleanup continues to study ways of displaying the connection with the Netherlands.

Point D

Article 2.2 relating to the traceability and visibility of the system (which was then a passive floating system) required that the system should be visible and identifiable in order to ensure the safety of navigation for other maritime traffic. The current system is towed by two vessels. Just as in the case of identification markings, it has proved difficult to affix instruments to the system itself. The obligation has thus been formulated differently. The system must still be visible to and identifiable by every seafarer engaged in navigation. It is up to The Ocean Cleanup to determine how this is achieved, whether by means of instruments on the vessels or in some other way.

Point E

Article 2.3 requires the monitoring of the system's location. Once again, affixing equipment to the system has proven difficult. The risk that the system may be located outside the planned area of

operation is greater in the case of a passive floating system. This risk has been reduced by the way in which The Ocean Cleanup currently operates. The vessels to which the system is connected have equipment to determine and monitor its location. The Agreement still contains a duty of care for The Ocean Cleanup to take measures if the system becomes or threatens to become untethered or drifts or threatens to drift outside of its planned area of operation.

Point F

The Ocean Cleanup has carried out a Formal Safety Assessment (FSA) for the system, as required by the Agreement. If The Ocean Cleanup makes a significant change to the design of the system or to the manner in which the system operates that can reasonably be expected to have potential (negative) implications for safety, it is required to carry out an FSA as referred to in MSC-MEPC.2/Circ.12/Rev.2, as amended, or an equivalent assessment, at least for this significant change. This involves a change to the design of the system or the manner in which it operates in comparison with the version of the system on which the most recent FSA was carried out. This does not mean that The Ocean Cleanup must carry out an FSA every time a copy of the system is deployed. This requirement only applies in the event of a significant change to the system as a whole (in terms of its design or manner of operation). A significant change could be a change in itself or in cumulation with earlier changes. In this point, also the reference to the version of the FSA has been updated to the current version.

Point H

Point H adds a new article to the Agreement. This article provides that The Ocean Cleanup must ensure that everyone on board the vessel towing the system has completed at least a basic safety training and received a certificate for this. It is up to The Ocean Cleanup to decide how to ensure this. This duty of care does not apply to the crew of the vessels as they fall under the flag state of the vessel concerned.

Points I and J

A paragraph has been added to article 3.1 requiring The Ocean Cleanup to continuously monitor the effects of its cleanup activities on and for the marine environment. Moreover, a new article 3.1a has been added. Article 3.1 deals with the necessary measures that The Ocean Cleanup may reasonably be expected to take in order to prevent damage to the marine environment arising from the deployment of the system. In this context, the performance of an environmental impact assessment is regarded as an important instrument. Whenever it is expected that any significant change made to the design of the system or to the manner in which the system operates may have more than a minor or transitory effect on the marine environment or where the effect of the significant change is unknown or poorly understood, The Ocean Cleanup shall conduct a screening to determine whether an environmental impact assessment is required. A significant change could be a change in itself or in cumulation with earlier changes. The Ocean Cleanup has carried out an environmental impact assessment for system 002 and system 03. The environmental impact assessment (or the screening preceding the assessment) need not be conducted again whenever a copy of system 03, or a future system which has been the subject of an environmental impact assessment (or the screening), is deployed. If the screening demonstrates that there are reasonable grounds for believing that the significant change may cause substantial pollution of or significant and harmful changes to the marine environment, The Ocean Cleanup will conduct an environmental impact assessment. The Minister may carry out an assessment of the screening or the environmental impact assessment or have it carried out by an independent third party. The wording of this article has been based as far as possible on the wording of the recently signed BBNJ Agreement.

Point K

An outdated provision has been replaced in article 3.2, paragraph 2. For the first deployment of the system, The Ocean Cleanup implemented a monitoring plan in keeping with the Agreement. The Ocean Cleanup now continuously monitors the interaction between the system and species present in the area. A third and fourth paragraph have also been added. These require The Ocean Cleanup to submit an annual report on the system's by-catch to the Minister and to inform the Minister as quickly as possible in the event of exceptional cases of by-catch.

Point M

As a consequence of the amendment to article 5.1, the Minister can inform other States about The Ocean Cleanup's activities and, if necessary, facilitate contacts between The Ocean Cleanup and any States concerned. Moreover, The Ocean Cleanup will inform the Minister about contacts it has or has had with other States in so far they are relevant to the Agreement or the Minister's duty of care. A paragraph has also been added to ensure that each of the Parties will designate a contact person with a view to sharing information and discussing other matters relating to the Agreement. It seems logical that the contact person appointed to act on behalf of the State should be on the staff of the Ministry of Infrastructure and Water Management. Where necessary, the involvement of the Ministry of Foreign Affairs will be sought through this contact person.

Point N

Article 5.2 provides that the Parties will consult each other on the involvement of international organizations. The Ocean Cleanup's obligation to inform the Minister about contacts with international organizations has been clarified by emphasizing that this provision applies only in so far as the international activities relate to the Agreement or the Minister's duty of care. The obligation has also been extended to apply to the Minister.

Point O

The evaluation will take place at least once every two years rather than at least once a year. The Agreement has been drawn up in such a way as to allow scope for The Ocean Cleanup's further development. Annual evaluation is therefore not necessary; once every two years suffices.

Point P

Old article 6.4 has been deleted. Registration of the system is no longer relevant. The original text of the Agreement was based on the assumption of a passive floating system. The system with which The Ocean Cleanup now operates is towed by vessels sailing under the flag from a different State. This means that it is no longer necessary to explore the possibility of registering the system. This provision has been replaced by a new article 6.4 concerning the costs incurred by The Ocean Cleanup in performing obligations under the Agreement, for example any costs incurred by The Ocean Cleanup in relation to the independent evaluation that the Ministry may carry out or has carried out for the environmental impact assessment. Each time, the Parties will enter into talks about the costs that have been incurred and discuss how these costs (or part of them) can potentially be reimbursed at that moment within the applicable legal rules, financial frameworks and policy, political considerations.

Point Q

The Agreement is extended for a term of five rather than two years. It is future-proof and in keeping with current developments at The Ocean Cleanup. If necessary, the Agreement may be amended before the end of the term.