1 Netherlands - Country report

1.1 Introduction

1.1.1 Overview of the maritime fishing sector and self-employment

Sector trends

The maritime fishing sector alone plays only a small role within the Dutch maritime economic cluster but compared to the European fisheries market it has an important market share. According to the European Common Fisheries Policy Report, the Netherlands are ranked 5th among EU Member States after France and Denmark in terms of production (catches and aquaculture)\(^1\). An important share of the catches and fisheries products from the Netherlands are also exported to third countries.

Total gross revenues in 2014 for fishing vessels under the Dutch flag was about 402 million Euro\(^2\). The year 2014 was considered to be a good economic year for the maritime fishing sector (increase in total gross revenue by 0.7%) in particular for the cutter fisheries (kottervisserij - vessels between 30 to circa 45 meters) in contrast to the pelagic freezer trawler fisheries (vessels spending more than 3 days away from their home port fishing in international waters, on average more than 105 meters) where activities saw a decline. This can be explained due to changes in international fisheries agreements which affected the fishing quota. The most important income for the cutter fisheries is the sole and other flatfish catch and Brown shrimps typically fished in the North Sea and adjacent waters.

In 2014, the Dutch fishing fleet was made up of 616 active fishing vessels, of which 275 where cutter vessels, 250 vessels were other small fishing vessels (vessels with a length between 12 of up to 25 meters) and 8 vessels operate in trawler fishing in the high seas; the remaining vessels operate in mussel farming and oyster fisheries (83 vessels). There has been a decline in active vessels in the pelagic freezer trawler fisheries – almost half of the vessels were not active (or changed flag) compared to 2011 (14 active vessels)\(^3\). The main reason for this was a decline in income and catches made since 2011. In 2014 revenue had decreased by 25% compared to 2011.\(^4\)

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\(^2\) [Visie op de visserijketen, ABNAMRO](https://insights.abnamro.nl/visie-sector/2015/visserijketen/)

\(^3\) Data from LEI University of Wageningen

\(^4\) De Nederlandse Maritime Cluster: Monitor 2015 – available at:
The Dutch fishing sector is characterised by a rather small scale coastal fleet. Cutters do generally not remain more than 5 days at sea at any given time. Cutter fishing has not seen important changes over the past 10 years and the number of active vessels remained stable. The decrease in the cutter fleet occurred in the late 1990s up to 2003. In 1990, the cutter fleet still had more than 500 vessels compared to 2003, by which point the fleet had seen a 23% decline. The latest restructuring in cutter fishing in 2008 has seen another strong decline of the number of vessels (retirement of old vessels to increase quota for others, high oil prices caused high operational cost.) and has since stabilised at around 280 vessels.

Vessel capacity (motor capacity) has decreased over the past 10 years. In 2014 there were 80 cutters with a motor capacity of 2000 pk (20 additional cutters with Dutch owners were registered under the UK flag) registered under the Dutch flag. The costs for these vessels were high in particular with regard to fuel prices and fuel consumption. In the past years innovations in fishing methods – going from beam to pulse fishing – has decreased fuel consumption and thus decreased costs for cutter fishing contributing to stabilising their economic performance.

Typically, behind each cutter vessel is a family business. The majority of fishing enterprises are small family run enterprises that own a single vessel. It is only in rare cases that family enterprises own more than one vessel. The share of enterprises owning more than one vessel has strongly decreased in recent years from 37 enterprises in 2007 to 19 enterprises in 2013. In addition, in 2013 there were 168 enterprises with one vessel of a motor capacity of up to 300pk and 19 enterprises with one vessel with a motor capacity of up to 1500pk. These two categories of vessels have been slightly increasing over the past 2 years. The typical enterprises in the fishing sector are run as a kind of general partnership company (maatschap) whereby the vessel owner forms a partnership with the fisherman they work

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6 LEI data 2015.
with. In a general partnership all members are liable (also with their personal capital) and the agreement determines the shares of the benefit for each member. All members of the partnership remain self-employed (see also section 1.2 below).

In contrast, pelagic freezer trawler fishing is currently run by 4 shipping companies (redertijen) which are also long-standing family businesses active in the sector for more than 50 years. While in 2012 only 8 vessels were registered under the Dutch flag a number of vessels are operated under other EU flags such as the German, British or Danish flag.

**Employment in the fishing sector**

Assessing the numbers of workers (employees and self-employed) in the sector are not straightforward. The recent Dutch Maritime Cluster report from 2015 (numbers for 2014) states that maritime fisheries provided work to 2,065 persons. This is a decline compared to the year 2013 when 2,263 persons were reported to be working in the sector. Information provided from the Dutch National Statistics Office for the EU Data Collection Framework on the Common Fisheries Policy states that in 2012 there were 1,748 FTE and in 2013 1,982 FTE active in the fisheries sector. This would appear to indicate a small increase of work in the sector. From information provided in interviews it appears that approximately half of the number of persons working in the sector are working in cutter fisheries (small scale fisheries) on a self-employed basis (approx. 1000). Furthermore, approximately 500 employees are active in the pelagic freezer trawler fishing sector and the rest is active in the cultivation of mussels and oysters. Typically, employees and self-employed do not work on the same vessel. Employees can mainly be found in the pelagic freezer trawler fisheries and self-employed are active in the cutter fleet (and other small scale fisheries).

According to interviewees the trawler sector also has a number of foreign workers present on board. Around 30% of employees are not of Dutch nationality. A number of workers come from Poland, Lithuania and Latvia. This is also due to the fact that they operate from outside the Netherlands and operate vessels under other EU flags.

The sector fears that the newly applicable EU policy on no discards (landing obligation – obligatory also for cutters since January 2016) may make the sector less economically viable thus driving workers out of the sector in the near future.

In terms of gender representation it has been indicated by interviewees that the share of women in the sector is close to 0% (no concrete figures are available).

The workforce is said to be ageing in the fisheries sector. Many self-employed individuals work longer as they could not accumulate sufficient savings from previous years due to lower revenues. Thus an important share of workers works up to the age of 60 and above.

One significant characteristic of the sector is that becoming a fisherman is generally linked to family tradition in the sector. Thus also the choice of being self-employed or not is rather a choice related to the tradition. One of the issues discussed in the sector is enterprise continuation as not in all cases a person in the family wants to continue the family business.

Indeed, the number of newly qualified fisheries officers, mates and mechanical/technical qualified mates has seen a decreasing trend in the past three years.

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7 LEI data
9 Similar description appears in the Dutch Maritime Cluster report 2015.
10 Nederlandse Maritieme Monitor 2015 – Arbeidsmarkt visserij
11 Nederlandse Maritieme Monitor 2015 – Arbeidsmarkt visserij, p.146
1.2 Working arrangements

1.2.1 Definition of main terms

1.2.1.1 General national law

The Dutch Civil Code (Burgerlijk Wetboek) chapter 7, Article 610 provides a general definition of an employee: "The employment contract is a contract whereby one party, the employee, undertakes in the service of the other party, the employer, to perform work for a certain period in exchange of pay". This definition sees the employee in service of the employer – a relationship of subordination, whereby the employee follows instructions and tasks from the employer.

The concept of self-employment is that the person works independently and also operates a company that has a legal status that can be identified as a typical “one-man” company. The following legal forms are generally used by self-employed individuals:

- A “one-man” company (eenmanszaak) meaning that the persons is the sole creator and owner of the business and is attached to the natural person. The latter means that the person is liable with his own personal property and fortune. Under this legal form it is possible to recruit workers. It depends on a number of criteria whether for tax purposes the owner can then be considered an employer/entrepreneur and make use of the specific status of being an employer.

- Self-employed fishermen can also decide to work together under one company name and create a partnership (maatschap), which is a particular agreement, within which all members remain self-employed status but in case of debt every member is liable to the same extent. This form of company is often used by those working in a liberal profession such as doctors or lawyers. There is a similar legal form called “vennootschap” also a type of partnership company. In both forms members are liable with their full private assets and property. In such forms an initial agreement with all members stipulates how the benefits are split, how costs are covered who is responsible for covering these costs etc. Also under these legal forms workers can be hired. However, for tax purposes each member is taxed and treated separately (apart from for VAT purposes). It could thus be that one of the members could be as well treated from a fiscal point of view as an employer.

- Other forms that are used are the limited liability company (in case higher capital investments are needed for example), a cooperative, an association or interest group, or a foundation.

Besides the term freelancer, there is also the term self-employed without personnel – called in the Netherlands ZZPer – this is not as such a legal company form but has its origins in tax provisions. In most cases freelancers are also ZZPers, however the category of ZZPers includes a broader number of types of activities and professions that are not naturally associated to typical freelance activities (e.g. workers in the construction sector, transport or care sector). It is not always straightforward whether an entrepreneur or self-employed without employees or freelancers can be fully considered as self-employed. In order to ascertain this, a number of criteria have to be checked:

12 http://wetten.overheid.nl/BWBR0005290/2015-11-26/1#Boek7_Titeldeel10_Afdeling1_Artikel610
– working under for their own account,
– being the sole owner,
– exploiting the business at his own risk,
– carries out work on his own initiative or being commissioned the work,
– having no employees,
– does not work in retail (here specific rules apply),
– bears the responsibility for the work/ and business,
– making a profit,
– invests less in property and capital goods,
– strives for several clients (not being dependant on one client),
– have an independent way to market the business (e.g. internet page, doing marketing, ads etc.).

In order to be considered as an entrepreneur by the Tax Authority, a self-employed individual needs to also fulfil a time criterion – the person needs to work at least 1225 hours per year within the activity in a self-employed capacity.

The term ZZPer is not legally defined and one can also be considered self-employed without personnel within a partnership company (maatschap, venootschap). Legislation on taxation will ultimately provide whether one can be considered fully as self-employed without employees, being in such a case an entrepreneur (ondernemer) or whether work needs to be re-classified as dependant work (employee) due to the fact that the person is dependent on a single provider. In order to avoid errors in taxation and to fight involuntary self-employment, the Tax Authority has put in place a service that specifies and clarifies a contractual relationship and has a self-service offer providing standardised contracts for specific sectors. Should the work be qualified as an activity that is for profit but does not satisfy the hour criterion or the criteria for self-employment, then the income is characterised as income from a side activity – which is still taxed as part of the income of the person but the person cannot benefit from the tax deductions of entrepreneurs. For this part of the activities, a proportion of the health insurance contributions have to be paid.

1.2.1.2 **Specifically on maritime fishing sector**

In the fisheries sector, the two legal work arrangements are thus the employees working under a written maritime labour agreement for fisheries or as a self-employed person working within a written partnership agreement (maatschap), which are governed by lex specialis. In rare cases (e.g. small scale fisheries) there are self-employed without employees – being thus a vessel owner- working alone on their vessel. In all cases the vessel owner has more responsibility and legally has a specific position – whether as an employer, or in a partnership agreement.

1.2.2 **Working arrangements used in the maritime fishing sector**

As already mentioned above, employees only tend to work in the pelagic freezer-trawler fisheries and in the mussels and oyster fisheries (depending on the size of companies). Working conditions for the pelagic freezer-trawler fisheries are further specified by the collective agreement for trawler fisheries (CAO trawlvisserij). Every employee working on board a vessel has a written employment contract for the maritime sector – a so called – maritime employment agreement (zee-arbeidsovereenkomst). The maritime employment agreement for fisheries is regulated by the Civil Code Book 7 Section 12A.

Within the small scale and cutter fisheries fishermen work as self-employed individuals in a written partnership agreement (maatschap) specific to the fisheries sector. Each person forming part of such a company remains self-employed. In general, it is unusual that a
partnership engages an employee. Thus self-employed and employees do not normally work together on board a vessel.

The following table provides an overview over which types of employment contracts are used in which type of fisheries and an indication of the trend of the use. No data on type of employment contract in the fisheries could be accessed/is available.

<table>
<thead>
<tr>
<th>Type of contracts (add or remove those not relevant)</th>
<th>Main characteristics of the positions where each contract is more used</th>
<th>Trend in the last years: increasing; stable; decreasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard employment contracts</td>
<td>Generally used in pelagic freezer-trawler fisheries</td>
<td>Stable – rather recently decreasing</td>
</tr>
<tr>
<td>Fixed-term contracts</td>
<td>Used in pelagic freezer trawler fisheries</td>
<td>Increasing</td>
</tr>
<tr>
<td>Part-time employment</td>
<td>Used in pelagic freezer trawler fisheries – part-time means that a fisherman does not work every third fishery trip (rotation).</td>
<td>Increasing</td>
</tr>
<tr>
<td>Self-employment</td>
<td>Generally used in coastal and cutter fisheries</td>
<td>Recently slightly increasing but overall stable over the past 8 years.</td>
</tr>
<tr>
<td>Other forms of contracts Posting of temporary agency workers</td>
<td>Used in pelagic freezer trawler fisheries, cutter fisheries in case of need for replacement</td>
<td>stable</td>
</tr>
</tbody>
</table>

### 1.3 Social legislative instruments analysis

This section analyses and compares the following aspects of social legislation and how it affects workers and self-employed in the fishing sector:

- working conditions – including work contracts, working hours and method of pay
- social security and pensions
- health and safety rules
- qualification and safe manning

#### 1.3.1 Working conditions

**Working arrangements**

Working conditions are generally set out in the work agreement in accordance with the sector specific collective agreement in place. The trawler fishing sector has a specific collective agreement (CAO) which lays down a number of principles and benefits which are more favourable for the employee than general applicable law.

In general one cutter vessel or small fisheries vessel equals one company (often a family company). Typically fishermen on cutter vessels are self-employed and work together under a partnership agreement (maatschap). This implies that there is the vessel owner, skipper (sometimes owner and skipper are the same) and fishermen who are partners. The vessel owner or the partnership buys fishing rights. Typically there are 3 to 7 people working on a cutter vessel. Rules on how the partnership agreements have to be concluded for the sector are set out under the Dutch Commercial Code Article 452q. The partnership agreement has to be prepared in writing and needs to set out who is the skipper and under what role the other persons work on board the vessel. In addition the agreement stipulates how profit will be shared for each person and how profit is calculated (deducting a number of costs). It is possible to find the relevant article under the following link: [http://wetten.overheid.nl/BWBR0001838/2015-01-01#BoekTweede_TiteldeelVierde_Paragraaf1](http://wetten.overheid.nl/BWBR0001838/2015-01-01#BoekTweede_TiteldeelVierde_Paragraaf1)
typical that 60% of the profit will be for the vessel owner and 40% for all other partners. The vessel owner has to take care of the vessel and needs to undertake all repairs to the vessel. The partnership agreement is set up either for a determined or undetermined period. All members of the partnership agreement remain self-employed. There are legal limits to hire employees under the partnership agreement. Due to the fact that the partnership is not a company per se and the employee would need to be hired by one of the members. Despite the fact that it is one person that hires an employee, in case of an accident all members of the maatschap may be considered as being responsible for that employee as in a maatschap all members have a shared liability. This can be a risk for the maatschap and thus it is very rare that employees are hired. It is possible to name substitutes that can work for one of the members. The substitute is agreed by all members and names are annexed to the agreement. A substitute may be needed in case of replacement due to illness of a partner. Until recently, there has been legal uncertainty with regard to temporary agency workers working as replacements for a fishermen in a maatschap. This is due to the fact, if the agency workers are non EU-employees which under current applicable rules are not allowed to work within the 12 mile zone, and if the Crewing Agency does not provide correct papers, it can become a risk for the maatschap in case of an accident for example for the reasons mentioned above. Despite legal uncertainty, it however does occur that a maatschap makes use of temporary workers or agency workers.\[16\]

**Working time**

The Act regulating working time for workers in the Netherlands is the Law on Working time (Arbeidstijdenwet) and more specifically for the sea fisheries the Decree on Working time for the Transport sector (Arbeidstijdenbesluit vervoer)\[17\]. The latter is applicable for workers only. From interviews with the representatives from the cutter fisheries and self-employed in the sector it emerges that in general the rules are also respected on board cutter vessels (where primarily self-employed work). A representative from the pelagic freezer trawler fisheries finds that due to the specific organisation of the fisheries cycles of cutter fisheries it seems rather impossible to respect the rules on daily rest (10 hours of which 6 hours must be uninterrupted).

The Decree on working time stipulates that the skipper shall place the planning of working time and rest times on board in a visible place so that all workers on board are aware of the schedule (Art. 6A 1:4). Rest time shall be 10 hours in every 24 hours. It can be split into two parts whereby there shall be at least one period of 6 hours of uninterrupted rest time. There should not be more than 14 hours between the two rest periods (Art. 6A 2:2). Rest periods can be interrupted in case of immediate safety reasons or in case to help someone in distress at sea. Within the time period of 7 days the rest time of workers and the skipper shall be at least 77 hours. The maximum weekly working hours shall be 48 hours calculated on average over a period of 52 weeks (Art.6A 2:3).

The latest collective agreement for the trawler fisheries that can be accessed online, applicable for the period 2011-2014 (a new agreement is still being negotiated) also sets out further specific rules for working time on board trawler vessels. The collective agreement stipulated under Section F that a fishing trip per worker shall not last longer than 45 days maximum – this duration can be exceeded by the employer twice per year by another 2 weeks. Generally, working time is counted over 52 calendar weeks and a maximum of 270 days at sea. Overtime is allowed only in case of immediate safety reasons (as set out under the Decree on working time under Article 6A 2:7). According to the agreement days at sea

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16 Information provided by interviewees, see also M. Kuijpers, 2010, Uitzendarbeid binnen de Nederlandse zeevisserij. Scriptie, Tilburg University, accessed at: [http://arno.uvt.nl/show.cgi?fid=113534](http://arno.uvt.nl/show.cgi?fid=113534)

17 The Arbeidstijdenbesluit vervoer can be accessed at: [http://wetten.overheid.nl/BWBR0009386/2015-03-02#Hoofdstuk6A](http://wetten.overheid.nl/BWBR0009386/2015-03-02#Hoofdstuk6A)
account also for the time when the employee works on shore, or on board the vessel even if it is located in a port. Rest time shall be 12 hours in every period of 24 hours.

Method of Pay

The main difference between employees and self-employed in the fishing sector is that the employee receives a guaranteed/or minimum salary (garantieloon) in case that the share of the catch does not exceed the guaranteed wage. This is a condition set out by the Civil Code Book 7 Section 12A Article 741 and the collective agreement of the trawler fisheries. Self-employed fisherman do not receive any income during the time the vessel does not go fishing or the catch has not been successful. Each self-employed fisherman in a partnership company receives a share of the catch (taking into account costs of expenses) after each trip.

1.3.2 Social security legislations

In the Netherlands one needs to distinguish between national insurance schemes and employee insurance schemes. The social security regime for employees in the fishing sector is no different than for other employees, and self-employed in the fisheries benefit from a rather more advantageous regime than other self-employed individuals.

All persons that live or work in the Netherlands have to pay basic health insurance which is a national insurance which is financed through a dual contribution system. All insured pay a nominal premium to their private insurance company and an income related premium to the Belastingdienst (Tax Authority). Thus it does not matter whether someone is employed or self-employed.18 Other national insurances or benefits are child benefits and retirement pensions.

Each person living in the Netherlands builds up a pension (ouderdomspensioen – Algemene Ouderdoms Wet Algemene Ouderdomswet (AOW)) whether working as an employee or self-employed or not working at all. One builds up every year 2% of the pension. The general retirement age is currently 65 but is increasing since and will be raised to in 202119. This pension age is applicable to all persons. The 2015 data from the Dutch Statistical office shows that people working in the agriculture and fishing sector are working on average up to 67.3 years, thus longer than workers in other sectors.20 In addition employees have a work-related pension paid on the basis of the income. This pension is sector or company specific and the share contributed to such a scheme is in general regulated via the sector specific collective agreement or the company agreement.

For the trawler fisheries the pension fund is linked to the PGB Pension fund. This is a new regulation that has recently been agreed by the social partners of the sector. In 2015 social partners agreed to improve the building up of pensions in the trawler fisheries sector. Previously, pensions were linked to the Pension fund Zeevisserij. The employer paid 3.9% of the salary to the pension fund – the sector collective agreement (CAO) stipulated an increase up to 2014 of 5.3%. Under the new rules, the fisherman will be part of a group insurance where the risk is shared with all persons contributing to the pension compared to having a pension fund where the risk is for the person alone. In addition, each employee can decide to contribute more to the pension plan than specified in the CAO. Under the new

18 Zorverzekeringswet (Health insurance law) accessible at: http://wetten.overheid.nl/BWBR0018450/2016-01-01
20 See for further information: http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventId=1087&furtherevents=yes
rules, 16.1% will be contributed by the individual to the pension funds whereby 5.6% will be paid by the employer.\(^{21}\)

Self-employed fishermen on the other hand do not dispose of a sector specific or company specific pension plan. They would need to provide a private pension plan for themselves. Employees can also additionally chose to invest in a private pension insurance plan. Due to high costs for pension plans for self-employed and in particular for those that do not have personnel, the Stichting ZZP Nederland representing ZZPers (self-employed without personnel) has created in 2015 a specific pension plan for self-employed. It is a flexible plan, which costs less than other pension insurances, and the person can decide how much to contribute, for how long to set the pension plan and can also interrupt the plan in cases of work incapacity. It is not a group insurance and the saved amount remains with the person. From a formal point of view self-employed fisherman being member of a partnership agreement/maatschap can also have access to this pension. As the plan is still quite recent, it is not clear at this stage to what extent self-employed fisherman wish to accede and make use of this option. From interviews it appeared that pensions for fishermen are often quite low and the sector has been discussing recently about improved pension plans (also for employees). This discussion is however difficult in the sector as pension plans are seen as costly by fishermen.

With regard to illness and work incapacity there are employee specific insurances to which employers also contribute. For self-employed fisherman in a partnership company (maatschap) specific rules are applicable compared to other self-employed. The law on illness insurance (Ziektewet)\(^{22}\) and the Unemployment Act (Werkloosheidswet) set out under Article 4.f that the person, who is a crew member of a fishing vessel, and who is paid a share of the catch, is considered to be an employee and as such is insured unless he (a) has insurance against loss of income due to sickness with the Sociaal Fonds voor de Maatschapsvisserij (Social Fund Shared for Partnership Fisheries (SFM) which is the specific illness and work incapacity insurance company for the fishing sector (only self-employed maatschap)), or (b) is the owner or co-owner of the fishing vessel. Members of a partnership in the sector may thus opt-out of the workers' social security system entirely if they take an insurance against the loss of income due to (long term) sickness (including injury and ailments). The SFM insures vessels and its crew members (this can mean also vessels where only one person works on board). The law (Ziektewet and Werkloosheidswet) recognises the vessel’s owner or co-owner as the “employer” under Article 10.1 f. From the interviews it appears that more than 90% of self-employed opt for an insurance with the SFM rather than for the general employee insurance. The SFM insures all persons that work for a Dutch cutter vessel owner even if the vessel flies a foreign flag.

The SFM insures typically all self-employed working on cutter vessels and within a maatschap agreement. Once the agreement is signed, the vessel owner has to communicate this agreement to the SFM who then registers all partners. Each partner can make a choice of contribution formulas (low, high, extra-high) in case of illness and work incapacity. In case of illness, a specific case is opened and the doctor provides a report to certify sickness and stipulate time of absence. Within the first 52 weeks the person receives indemnities directly from SFM. If remaining unable to work longer than 52 weeks, further indemnities are provided by a private insurer with which the SFM has a specific agreement until the person is 67 (retirement age). The medical advisor of the above mentioned private insurer classifies a percentage of incapacity according to which the person will receive indemnities.


\(^{22}\) The text can be accessed at the following link: http://wetten.overheid.nl/BWBR0001888/2016-01-01

If sickness occurs at sea the vessel owner has the responsibility for the partner. Any intervention that has to be carried out at sea or on land will be covered by the general sickness insurance.

In addition to illness and work incapacity, the SFM also insures for the case of death (due to accident) and all members are obliged to contribute to this insurance. There is also the possibility to take out an extra work incapacity insurance.

The SFM has been established by law since 1971 and it was a political choice of the sector to install a specific insurance company for self-employed fishermen at the time. It is considered to be a regime that is less costly for fishermen than the general employee insurance scheme.

1.3.3 Health and safety legislations

The general occupational health and safety law (Arbeidsomstandigheidenwet - Arbowell\(^{23}\)) is applicable to companies (employers with employees) and to self-employed working in a partnership agreement. This law prescribes that each employer/vessel owner has to carry out a proper risk assessment for the company. For each vessel a risk assessment has to be carried out as set out under Article 5 of the Arbowell. The sector specific agreement for the trawler fisheries generally sets out more specific rules.

The Dutch Labour Inspectorate and Shipping Inspectorate indicates that the Arbowell applies to the partnership agreements (maatschapij) in fishing sector on basis of Article 1, paragraph 2, sub-paragraph a, primo, of the Arbowell. The skipper, who has command over all crew members, is considered to be the employer under the Arbowell. Thus, the cutter fishing sector also carries out a risk assessment for each vessel. The law on seafarers (Wet Zeevarenden) sets out under Article 4 that the ship owner needs to make sure that the ship is manned in a way that all members on board are well aware of the risks at sea, needs to prevent fatigue of the crew and prevent risks from the crew and the environment and has to instruct everyone about their role and tasks. Thus the vessel owner has a number of responsibilities that concern indirectly health and safety of fishermen on board. The representative organisation for self-employed Vissersbond also encourages to carry out a risk assessment and a specific internal commission for health and safety is currently in place to develop a tool for the cutter fisheries.

The Decree on manning of fishing vessels sets out a general requirement for professions in the sector that basic safety training is part of the professional qualification. Under Article 44 of the Decree the aspects of such safety training are further specified (e.g. survival techniques, firefighting, emergency procedures, principles of first aid, prevention of pollution of the sea and prevention of accidents on board). The certificate for professional competency (vaarbevoegheidsbewijs) is valid for 5 years and is re-examined according to the experience that can be found in the seaman's book (see further information in sector 1.3.4. below). It does not appear from the law whether basic safety training has to be renewed and within which period.

All workers in the fishing sector need to have a valid medical certificate to be able to work on board a vessel (Article 40 Wet Zeevarenden). The certificate is valid for 2 years. The Decree on manning of fishing vessels sets out more specific rules for medical certificates under Articles 60 to 69. It also specifies under Article 64 that the medical specialist for seafarers can declare a fisherman for a time specific period incapable to work in the maritime fisheries (3 years) or generally incapable (more than 3 years). The costs of the medical certificate have to be covered either by the employer or the vessel owner.

\(^{23}\) The entire text of the law can be accessed at the following link: [http://wetten.overheid.nl/BWBR0010346/2016-01-01](http://wetten.overheid.nl/BWBR0010346/2016-01-01)
The medical certificate is linked to the professional certificate (vaarbevoegheidsbewijs). If a person has no valid medical certificate the professional certificate is not valid either. Thus it is of crucial importance that all workers have always an updated medical certificate and a professional certificate. This also guarantees that fisherman are in good health to work on board a vessel and have the necessary professional skills. These are conditions irrespective of whether a fisherman is employed or self-employed.

For medical assistance on board, vessels have to provide for radio communication in order to contact a medical advisor from the Radio Medical Service and has to carry specific medical supplies (first aid). The rules are set out under the Decree of Fishing Vessels (Vissersvaartuigenbesluit 200224) and the Regulation on medical supplies on board fishing vessels (Regeling medische uitrusting aan boord van Nederlandse vissersvaartuigen25).

The SFM signalled that the rate of work incapacity is not much higher than in other sectors. Currently it stands at around 3%. According to the SFM most accidents do not occur on board vessels but on land. Nevertheless, in interviews with representatives of the sector it also appeared that most probably not all accidents are signalled that occur in the cutter fisheries and the risk alertness among fishermen is not very high. According to a report released in 2015 by the Committee for Security (Onderzoeksraad voor Veiligheid) – an independent body evaluating accidents in transport sectors – on the latest incidents in the maritime sector - quite a significant share of very serious and serious accidents in the fishing sector involving cutter fisheries. Something that has been noted in the report was that in a number of cases the fishermen did not have valid professional and medical certificates.

Reasons mentioned for accidents were fatigue and a insufficient risk evaluation or security alert systems not functioning. The report was also discussed by the Sectoral Committee (Sector Raad) which brings together members from the trawler fisheries and cutter fisheries and the issue of security and risk evaluation is an increasingly important topic in the sector.

It was estimated that the regulatory framework to ensure security and health in the sector shall be improved and a new legislation is to be expected in 2016. The general task for representatives of the sector is to improve the alertness with regard to risks among fisherman and to carry out preventative actions. It was discussed that a mental shift is necessary in the sector. This shift may also come by the increasing share of education levels in the sector but can also be improved by the modernisation of fleets and the introduction of technology.

1.3.4 Professional qualification, Manning of vessels

The law on Seafarers (Wet Zeevarenden26) is also applicable for workers in the fisheries sector. It sets out specific rules for safe manning, certificates of professional competencies and skills. Articles 5, 6, 13 b, 15, 16 and 17 set out rules on certificates of manning which are compulsory for every vessel. Such a certificate states the minimum number of persons that need to be present on board. Article 18 (Wet Zeevarenden) sets out that every person working on board a fishing vessel needs to have a certificate concerning the function he/she exercises on board and provide proof of professional skills and qualifications.

The Decree on manning of fishing vessels (Besluit Zeevisvaartbemanning) further sets out specific rules for the fisheries sector, such as minimum manning standards for different sizes and types of fishing vessels (Articles 6 to 17). Article 22a (Wet Zeevarenden) also states that currently no person without a Dutch competency certificate can work on board fishing vessels.

24 The decree can be accessed at the following website: http://wetten.overheid.nl/BWBR0013342/2011-05-14#Hoofdstuk6
25 The regulation can be accessed at the following link: http://wetten.overheid.nl/BWBR0027842/2012-01-01
26 Wet Zeevarenden – can be accessed at: http://wetten.overheid.nl/BWBR0009124/2014-08-20#Hoofdstuk2_Paragraaf2_Artikel13
This is due to the fact that the Netherlands still need to implement the STCW-F Convention. Currently, the Decree on manning of fishing vessels sets out under its Paragraph 3 (Articles 25 to 35) the type of qualifications and experience that a skipper should provide for the different types of fishing vessels. Furthermore, the Decree sets out under its Section 5 professional requirements for all other professions in the maritime fisheries sector.

On board of every vessel there is a crew list in which the skipper of the vessel will note every day the named professions (on the manning certificate) and persons working on board the vessel. This crew list document is valid for not longer than 12 months. It has to be kept on board the vessel at all times (Art. 33 Wet Zeevarenden). In addition, each fishermen has a “seaman’s book” which is valid for 10 years. The skipper notes in this book all trips that have been carried out, name of the vessel (and its characteristics) and function carried out on board. The Decree on manning of fishing vessels also sets out further specific rules regarding the seaman book of fisherman (Articles 53 to 59).

It can be concluded that the framework to access the profession and the rules for training and manning are the same for all fisherman whether working as an employee or self-employed. The conditions to access the profession are important with regard to safety and ensuring overall professionality in the sector.

1.4 Social dialogue and self-employment

Collective bargaining

The social partners in trawl fisheries negotiating sector collective agreements are CNV Vakmensen representing employees and Redersvereniging voor de Zeevisserij representing employers of the sector. The sector collective agreement is only applicable to employees not to self-employed fishermen.

Social dialogue and coverage of self-employed

Self-employed are mainly represented by the organisation Visned and by the Nederlandse Vissersbond. Both are organisations that help the cutter fisheries also with economic and technical aspects concerning fishing methods and innovation, social and training questions, as well as sustainable fishing but also carry out representation work towards governmental bodies.

The fishing sector has a sector committee (Stichting Sectoraad Visserij). This sector committee is administered by representatives of the fishing sector including self-employed and their representative organisations. The committee discusses all socio-economic, health and safety, training and qualification issues concerning the maritime fisheries sector. As such, issues that concern legislation and positions that are communicated to political entities also includes the position of self-employed fishermen.

1.5 Conclusions

The maritime fishing sector in the Netherlands is split in two subsectors – the pelagic freezer trawler fishing sector employing employees, and the so-called cutter fisheries and small-scale fisheries mainly operated by partnership companies (maatschappij) following specific rules for the sector consisting of self-employed without personnel.

The majority of individuals work as self-employed fishermen in the sector as the cutter fishing sector is the dominant part of the Dutch fisheries sector. Self-employed and workers do not work together on the same vessel. Within a partnership there are no employees as it is legally not possible to hire employees. It has however been mentioned that forms of

agency work/ fixed term working relationships do exist causing legal uncertainty with regard to the applicable working conditions.

Overall, there is a legislative framework in place that provides for same conditions (for employees and self-employed) with regard to qualification and training including basic safety training, medical certificates and medical treatment on board (depending on the size of vessels and trip). Basic health care, basic old-age pension, coverage for illness and work incapacity covers employees and self-employed. Differences can be found mainly with regard to the stability of remuneration, working time and work related pensions (second pillar pension). Self-employed take the risk for their income and need to take out a private individual pension scheme. Working time is not regulated for self-employed but vessel owners have a legal responsibility to avoid fatigue of crew members and to ensure safety on board. The cutter fishing sector takes risk assessment serious and promotes health and safety on board.

New legislation planned for 2016 will further improve rules on safety training for fishermen and will improve over time risk alertness of workers in the sector. In addition, also innovation in fishing techniques and technology on board vessels improve safety on board.

1.6 Sources

1.6.1 National legislation analysed

- Working arrangements and self-employment regulations;
  - Burgerlijke Wetboek 7
  - Wetboek van Koophandel
- Specific fishing sector regulations;
  - Besluit Zeevisvaarbemanning
  - Arbeidstijdenbesluit visserij
  - Wet Zeevarenden
  - Schepelingenbesluit
- Social security and pensions regulations;
  - Algemeene Oudertoemswet AOW
  - Ziektewet
  - Zorgverzekeringenwet
- Health and safety regulations;
  - Arbeidsomstandighedenwet
  - Regeling medische uitrusting aan boord van Nederlandse vissersvaartuigen
  - Vissersvaartuigenbesluit 2002
  - Besluit Zeevisvaarbemanning

1.6.2 Literature review and other documents

Websites consulted:

- Inspectie Leefomgeving en Transport - https://www.ilent.nl/onderwerpen/transport/visserij/
- Visned http://www.visned.nl/
- Vissersbond http://www.vissersbond.nl/
- Belastingdienst: http://www.belastingdienst.nl/wps/wcm/connect/nl/home/home
Publications – reports:

- European Commission, Facts and Figures of the Common Fisheries Policy, 2014
- Ecorys, R. van der Aaa (2016) De Nederlandse Maritime Cluster, Monitor 2015, Nederland Maritiem Land
- M. Kuijpers, 2010, Uitzendarbeid binnen de Nederlandse zeevisserij, Scriptie, Tilburg University, accessed at: http://arno.uvt.nl/show.cgi?fid=113534

1.6.3 List of consulted organizations

- CNV Vakmensen – Wietze Kampen (Sector Responsible Manager)
- ZZP Nederland – Maarten Post (Director)
- SFM – John Mooijman (Zoetermeer, Director of the SFM), Fekke van der Meulen (Urk)
- Reedersvereniging Zeevisserij- Cor Blonk (Responsible for employment affairs)
- Vissersbond - Derk Jan Berends (Director)
- Stichting Sectorraad Visserij – Ment van der Zwan (President)