

MARITIME STRATEGIC EVALUATION FOR ISRAEL 2017/18

Chief editor: **Prof. Shaul Chorev**

Edited and produced by: **Ehud Gonen**



The Proposed Marine Areas Law 5777 – 2017 and its Impact on the Energy Sector

Orin Shefler

What is the background to the Proposed Law?

This chapter discusses the proposed draft **Marine Areas Law 5777–2017** (herein: the "Proposed Law") according to the version approved by the Ministerial Committee for Regulation on August 7th, 2017. This proposal became valid as a government decision on August 24, 2017¹ and was approved by the Ministerial Committee for Legislative Affairs on September 17, 2017.

For over a decade, with the dramatic increase in economic activity in the territorial waters and economic waters of Israel as a result of the discovery of natural gas, there is increasing need for legislation that will clarify the extent of Israeli law in the Marine Areas. Legal uncertainty has negative economic and national implications to various domains and therefore the State wishes to formalize the extent of Israeli law in the Marine Areas. The government believes that, amongst other things, the lack of clear legislation regarding the Marine Areas may eventually "expose the State to claims that the Planning and Building Law, 5725–1965² (herein " Planning and Building Law") should be applied outside the territorial waters which in its current format does not fit the nature of the activity conducted in the Marine Areas."³

The government believes that enacting the Proposed Law at this time will help create a regulatory environment that encourages investment by foreign entities in Israel's Exclusive Economic Zone (herein "the EEZ") and will contribute to the success of the Offshore Bid Round⁴ initiative (i.e. a competitive process to issue new offshore licenses for oil and gas exploration) which is being implemented. In addition, the Proposed Law will increase economic certainty in the fields of taxation, labor laws, safety, regulation and environmental protection, and will improve the readiness for emergencies in the Marine Areas.

1 See Government Decision No. #2983.

2 See the Planning and Building Law, 5725–1965.

3 See the explanation of the Proposal Law as submitted to the Ministerial Committee for Regulatory Affairs dated August 3, 2017 on the subject of "The Law that Applies to Marine Areas of the State of Israel", p. 2, clause e.

4 See the designated internet site of the "Offshore Bid Round" initiative at <http://www.energy-sea.gov.il>

What are the goals of the Proposed Law?

The goals of the Proposed Law are to establish the extent of Israel's sovereignty over the Marine Areas: the **Territorial Waters**;⁵ the **Internal Waters**;⁶ the **Contiguous Zone**;⁷ and the **Exclusive Economic Zone**⁸ (herein combined: the "Marine Areas") and to improve the ability to prevent and detect territorial violations, to exploit rights in the EEZ, to ensure the development and exploitation of the Marine Areas (including natural resources) and to ensure the protection of the marine environment.⁹

The Proposed Law will extend the reach of specific laws to the Marine Areas by means of establishing a legal hierarchy using the method of addendums to the law. This formal extension of certain laws to the Marine Areas will provide a permanent solution to the temporary status that has prevailed since a legal opinion by the Assistant Attorney General (Economic-Fiscal), Adv. Avi Licht was published in 2013 titled "The Law That Applies To the Marine Areas"¹⁰ (herein: the "Legal Opinion of the Assistant Attorney General"). This legal opinion offers legal commentary and interpretation of existing law that have existed since the 1950s.¹¹

The Legal Opinion of the Assistant Attorney General provides a temporary solution to the complex legal issues at hand until the enactment of the Proposed Law which has already been deferred a number of times. In this Legal Opinion, the Assistant Attorney General concludes that "according to the law and until the enactment of the Marine Areas Law, Israeli law with respect to exploration, production and transmission of natural resources, environmental protection and the regulation of fiscal matters applies to the Marine Areas ... on the surface, the subsurface and to installations that fulfil a direct or indirect function in the exploration, production and transmission of natural resources in the Marine Areas."¹² Furthermore, the legal opinion states that "Israeli oil & gas regulation, environmental and fiscal laws are enforceable in the Marine Areas."¹³

5 See the Proposed Law, Section 3(1). "Territorial Waters. The stretch of the Mediterranean Sea that is 12 nautical miles from the baseline, including the seabed within such stretch and the airspace above."

6 See the Proposed Law, Section 4, "Internal Waters of the State of Israel are the waters in the areas from the baselines to shore, including the seabed underneath and the airspace above."

7 See the Proposed Law, Section 6. "Contiguous Zone of the State of Israel is the stretch of the Mediterranean Sea beyond the territorial waters up to 24 nautical miles from the baseline"

8 See the Proposed Law, Section 9. "The Exclusive Economic Zone of the State of Israel is the stretch of the Mediterranean Sea beyond the territorial waters up to a distance of 200 nautical miles from the baseline, including the seabed in that area."

9 See Proposed Law, Section 1 – Objectives of the Law.

10 See Legal Opinion "The Law Applying to the Marine Areas" by Adv. Avi Licht, the Assistant Attorney General (Economic-Fiscal) dated January 15, 2013.

11 See for example, The Coastal Waters Law 5717-1956 and also The Subsea Areas Law, 5713-1953.

12 See the Legal Opinion of the Assistant Attorney General, p. 11, Paragraph 57.

13 See the Legal Opinion of the Assistant Attorney General, p. 1, Paragraph 4.



Figure 1 – The Marine Areas of Israel (Unofficial Map)¹⁴

The Application of Israeli Law to the Marine Areas

Under the Proposed Law, several existing Israeli laws¹⁵ will be replaced by a new law that will define the **Territorial Waters** as "The stretch of the Mediterranean Sea that is 12 nautical miles from the baseline, including the seabed within such stretch and the airspace above."¹⁶ "The Territorial Waters and the Internal Waters are within the sovereign territory of the State of Israel and legislation that applies in the State of Israel will apply to them, unless otherwise specified."¹⁷

14 See Stage I Report, "Policy Paper for Israel's Maritime Domain, the Mediterranean Sea", November 2015, p. 20.

15 See amongst others, the Coastal Waters Law, 5717–1956.

16 See the Proposed Law, Section 3.

17 See the Proposed Law, Section 5 (a-b). The current international rule (12 nautical miles from the coastline) replaces the Dutch Freedom of the Sea principles that was established in the 17th century developed from the "Cannon Shot Rule, i.e. a distance of three nautical miles as a state's sovereign domain into the sea". This rule was expanded a number of times over the years by various agreements (also in Israel) up to 12 nautical miles, which is the accepted standard today.

Historical background

In 1958, the Convention on the Continental Shelf¹⁸ was formulated and for the first time formalized the principle that a country's sovereignty extends beyond its territorial waters. This ideal is based on the principle of "Sovereign Rights" that extend to the continental shelf. This convention also established the possibility for exploitation of natural resources in the Marine Areas. Israel joined this international convention in April 1958 and ratified it in September 1961.¹⁹

In 1982, the United Nations Convention of the Law of the Sea (herein: UNCLOS) was formulated.²⁰ UNCLOS regulated, amongst other things the following: the definition of the Marine Areas;²¹ General rules for Innocent Passage in the Territorial Sea;²² Methods for measuring the baselines of the Marine Areas in Coastal States;²³ Rights and powers in the Marine Areas; Rules for Protection and Preservation of the Marine Environment²⁴ and in addition established an international mechanism for Settlement Of Disputes and Advisory Opinions.²⁵ The list of rights includes the right to explore and exploit, conserve and manage the natural resources in the EEZ²⁶ and to establish and use artificial islands, installations and structures.²⁷ Israel chose not to officially join UNCLOS, although de facto the state operates according to recognized international practices under UNCLOS (for example, the State of Israel declared its northern maritime border with Lebanon and submitted notification the UN institutions).²⁸ In contrast, Cyprus, Lebanon and Egypt are members of the UNCLOS, as are the Palestinian Authority (which joined in January 2015).²⁹ Turkey and the US have yet to join UNCLOS, each for its own reasons.

The fact that Israel did not join UNCLOS is related to Israel's foreign and domestic policy over the years and international developments. This policy was derived from, amongst other things, security considerations due to obligations imposed on Coastal States under UNCLOS. Israel's considerations are unofficially summarized in a legal opinion written

18 See the Convention on the Continental Shelf – 1958 (signed in Geneva on April 29, 1958).

19 See the list of countries that have ratified the Convention of the Continental Shelf.

20 See The United Nations Convention on the Law of the Sea – UNCLOS – 1982.

21 See the UNCLOS, Part II (Territorial Sea and Contiguous Zone) and Part V (Exclusive Economic Zone).

22 See the UNCLOS, Passage in the Territorial Sea (Part II, Section 3) and international arrangements for passage.

23 See the UNCLOS, Article 7 – Straight Baselines.

24 See the UNCLOS, Part XII – Protection & Preservation of the Marine Environment.

25 See UNCLOS, Section 186–191.

26 See UNCLOS, Part V, Section 56.

27 See UNCLOS, Part V, Section 60.

28 See Government Decision No. #3452 dated July 10, 2011.

29 See the list of countries that have ratified the UNCLOS.

by Adv. Moshe Shachal, the former Minister of Energy, which was published in 2009³⁰ as part of his private law firm's response to a previous draft of the Marine Areas Law. Such considerations included the desire to avoid exposure to international intervention on the delimitation of the final maritime boundaries in the International Tribunal of the Law of the Sea,³¹ the desire to steer away from claims and conflicts with neighboring countries following the major discoveries of natural gas in Israel's waters in the region, the adoption by Israel of practices accepted among regional UNCLOS members which have traditionally abstained from declaring their EEZ's and the fact that Israeli law had not yet been applied to the Marine Areas, which could hinder the momentum of exploration that was taking place at the time. This legal opinion is not an official document but perhaps clarifies the thought process behind Israel's decision not to join UNCLOS.

Delimitation of Israel's Maritime Boundaries

The Proposed Law changes the method of measuring the Israeli baseline from which the Marine Areas are measured. The Proposed Law will give the government the authority to determine geographic points along the coastline, or near to it, which will be used to determine the baseline from which the Marine Areas are measured. This strays from the current method under which the baseline is measured from the low tide line along the coast. In addition, the government will be authorized to determine the outer edges of the Marine Areas.³²

This change has major national and international significance. The government will have the authority to determine geographic points along the coastline or near it (in consultation with the Israel Mapping Center) and to draw an "imaginary line" between them in order to determine the areas up to the edge of the EEZ.

The edge of the Israel's EEZ overlaps the boundaries of neighboring countries EEZ's therefore overlaps must be resolved by diplomatic means. At the time of writing, the official geographic points have not yet been published for determining Israel's future baselines (although possible geographic points have unofficially been presented in public by the former director of the Israel Mapping Center, Dr. Haim Svaro, at a convention held by the Institute for National Strategic Studies (INSS) on February 22, 2014).³³

30 See the legal opinion published in the media in 2009 on the subject of "The Law that Applies in the Maritime Zones", written by Adv. Moshe Shachal.

31 The underlying assumption on this matter is that Israel is usually discriminated against in international organizations and when issues are brought for discussion in international organizations Israel's position is challenged by hostile countries, usually in a way that has nothing to do with the issue itself but rather for political reasons.

32 See the Proposed Law, Section 27. "The government, after receiving the opinion of the Israel Mapping Center, will decide on the geographic points along the coastline or near to it that will be used to determine the baselines from which the Marine Areas are measured and may announce by decision the edges of the Marine Areas, in their entirety or not."

33 See the program of the INSS event on February 27, 2014.

The Straight Baseline method is only one of the several internationally accepted methods under international law for determining maritime boundaries and is in compliance with UNCLOS.³⁴ There is however academic debate over the extent to which the Straight Baseline method is appropriate for use on the geographic characteristics of Israel's coastline.³⁵ For further information on this matter refer to literature on technical aspects for determining baselines found in the draft Proposed Law.³⁶



Figure 2 – The Eastern Mediterranean Sea and their EEZs

Israel's EEZ and the first Offshore Bid Round Initiative of 2017

The government has stated that among other things the current Offshore Bid Round initiative is one of the reasons for advancing the Proposed Law at this time. Israel is in the midst of a competitive proceeding to grant twenty four (24) new exploration licenses in the EEZ. The deadline for participating in this process has been deferred a number of times and is currently November 15, 2017.³⁷ Israel is interested in promoting exploration for a variety of reasons, including to increase competition among natural gas suppliers,

34 See UNCLOS, Article 7 – Straight Baselines.

35 See Maritime Strategic Evaluation for Israel 2016/17, Full Report, Chapter 16: "Management of Israel's Maritime Zones: A Review of The Legal Situation", P. 191, Adv. Nadia Tzimerman. "It appears that decision makers in Israel are aware of the fact that the geographic characteristics of the Israeli coast are not in harmony with the straight baseline method of the Convention, however ... Israel is basing itself on the accepted practice among neighboring countries in the region."

36 See A Manual on Technical Aspects of The United Nations Convention on the Law of the Sea – 1982.

37 See Announcement of the Commissioner for Petroleum Affairs dated June 22, 2017.

to attract new players to Israel, to diversify sources of energy, to increase sources of revenue and to achieve energy independence.

Most of the new exploration blocks are located in the center of Israel's EEZ (rather than near its boundaries – see the green areas in Figure 3). Until now, Israel has adopted a gradual strategy in the EEZ which has led to the discoveries of Leviathan, Tamar and other gas fields.

However, in this context it is important to recognize existing exploration blocks close to the maritime boundaries such as the **Alon D** license³⁸ opposite Lebanon, the **Yishai** discovery³⁹ opposite Cyprus (which is part of the Aphrodite reservoir on the Cypriot side) and the **Royee** license⁴⁰ opposite Egypt (herein: the "Licenses Near The Maritime Boundaries").

The Licenses Near The Maritime Boundaries were granted according to a formal work plan drawn up by the State and may constitute an incentive to formalize the maritime boundaries in the future. Under the Proposed Law, natural resources found in Israel's waters (including the areas of the Licenses Near The Maritime Boundaries) should be regarded state assets according to the State Assets Law, 5711 – 1951, including restrictions that apply to them.⁴²

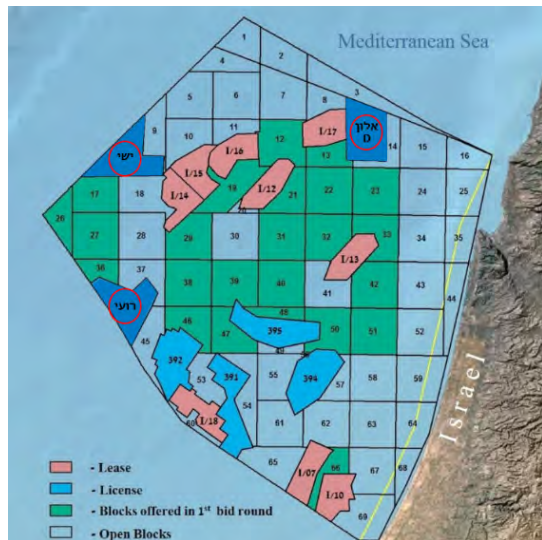


Figure 3 – Israel's New Offshore License Map⁴¹

38 See the article in Globes on August 27, 2017 which stated that: "The work plan has recently been extended by the Minister of Energy after granting an appeal submitted by the license holder claiming that they could not pursue exploration for policy and security reasons related to the EEZ border dispute between Israel and Lebanon and their desire to avoid aggravation until this dispute is resolved by international mediators".

39 See the article in Globes on November 22, 2015 on the declaration of the Yishai as a commercial discovery.

40 See the Updated Report on Drilling Work Plan for the Royee License dated June 18, 2017 (the deadline for drilling was extended to March 1, 2018).

41 See the New Offshore License Map for the Offshore Bid Round initiative by the Ministry of Energy dated December 20, 2016.

42 See the Proposed Law, Key Point 3 – The Application of Laws in the Marine Areas and the Status of Natural Resources.

Optional future arrangements for maritime boundaries will be to enter Maritime Delimitation Agreements,⁴³ Unitization Agreements⁴⁴ and/or the Joint Development Agreements⁴⁵ with Israel's eastern Mediterranean neighbors.

In 2010, Israel signed a maritime delimitation agreement with Cyprus using the Median Line standard⁴⁶ following the execution of a delimitation agreement between Lebanon and Cyprus earlier on. In 2011, the Israeli government decided to unilaterally declare its northern maritime boundary of the territorial waters and the EEZ with Lebanon and a list of geographic coordinates was published.⁴⁷

Lebanese opposition to this declaration came swiftly. Lebanon submitted a protest to the UN regarding the delimitation agreement between Israel and Cyprus, which according to the Lebanese complaint includes part of Lebanon's marine area. Thereafter, Lebanon froze the ratification of their agreement with Cyprus.

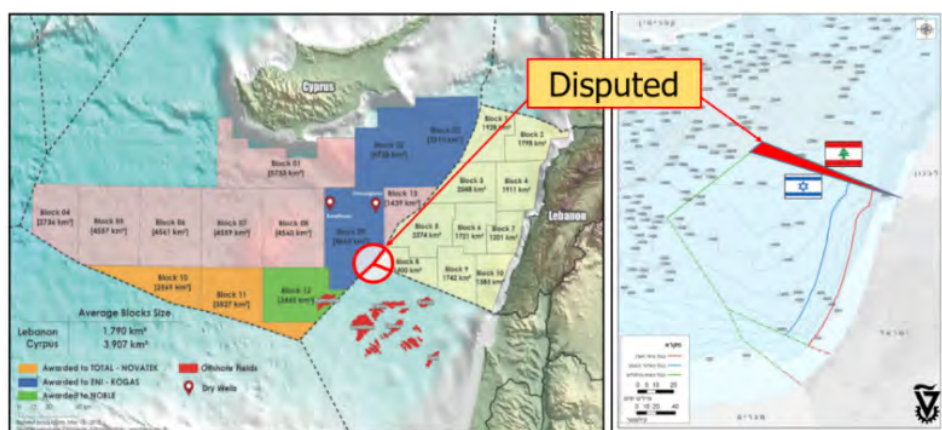


Figure 4 – The disputed area between Israel and Lebanon (which is also affected by Cyprus' maritime boundary)⁴⁸

- 43 See A Manual on Technical Aspects of The United Nations Convention on the Law of the Sea – 1982, p. 137, paragraph 58.
- 44 See the definition: "Joint operations to maximize recovery among separate operators within a common reserve"
- 45 See Cross-Border Unitization And Joint Development Agreements: An International Law Perspective, Bastida Et Al, Houston Journal Of International Law, 2007.
- 46 See the Agreement Between The Government of the State Of Israel and The Government of the Republic of Cyprus on The Delimitation of the Exclusive Economic Zone - 2010.
- 47 See the Government Decision of July 10, 2011.
- 48 See the map of the Cypriot EEZ – Executive Magazine, Renewed Dynamism, Dated December 25, 2015 and also Israel's new map according to The Marine Plan for Israel by the Technion December 2015.

In this context, a call for action was issued by the government of Lebanon in the spring of 2017 for companies to carry out exploration surveys for oil and gas in a number of areas, some of which are located in the disputed area between Israel and Lebanon.

On October 13, 2017, the government of Lebanon announced that as part of the exploration license round currently underway, a consortium of ENI (an Italian company), TOTAL (a French company) and Novatek (a Russian company) had submitted a request to carry out seismic surveys in Block 4 and 9⁴⁹ (Part of Block 9 is located within the maritime territory of Israel according to Israel's position – see Figure 5).

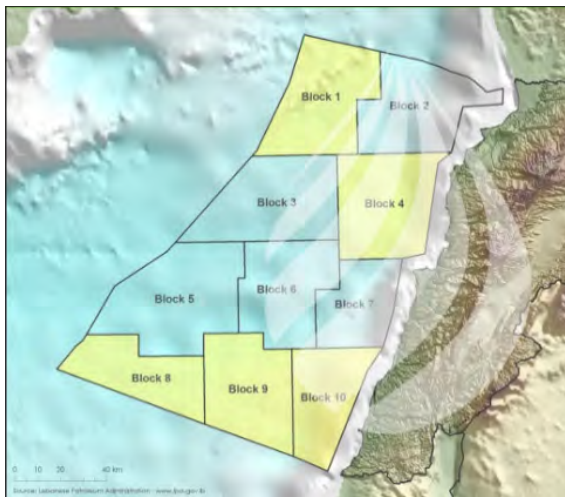


Figure 5 – Open blocks in the first round of granting of exploration licenses by Lebanon⁵⁰

With regard to the southern maritime boundary between Israel and Egypt, current views believe that delimitation will be part of a broader package deal that will also resolve a number of issues between the countries, including final status of the ICC arbitration verdict against EGAS and EGPC (two Egyptian companies) in favor of the Israel Electricity Company and others due to the cessation of gas exports to Israel (following the sabotage of the gas pipeline in Sinai).⁵¹ Furthermore, there is a possibility that export permits will be granted for the sale of natural gas from the Tamar and Leviathan reservoirs to Egypt and/or by way of its facilities as part of this package deal. It is also possible that the deal will be linked to the delimitation of the maritime boundary between Egypt and the Palestinian Authority.

49 See the Reuters Agency Press Release dated October 13, 2017.

50 See the maps posted on the Lebanese Petroleum Commissioner website dated January 2017.

51 See the article in Globes on December 6, 2015.

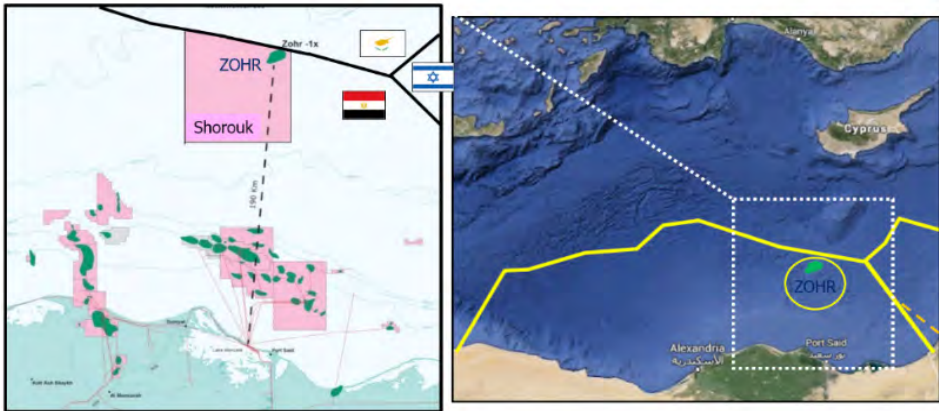


Figure 6 – Exploration activity in Egypt (the Zohr discovery near the maritime boundary with Cyprus and Israel)

Egypt is currently gaining momentum in developing natural resources in its EEZ (where the Zohr reservoir was discovered). Egypt and Israel have mutual interests for cooperation in their Marine Areas but often conflicting interests as well. On the one hand, the discoveries of natural gas have created new opportunities for cooperation between Israel and Egypt, which will require investment in infrastructure that will benefit both countries and the delimitation of their maritime boundary; on the other hand, the two countries are competing for natural gas markets and international investments. The diplomatic and economic history between the two countries has been characterized by ups and downs.

In parallel to the geopolitical and diplomatic activity in the region, leaseholders of exploration blocks located near the edges of the EEZ must also negotiate commercial agreements for the development of cross-border reservoirs. At this stage, commercial entities will find it difficult to reach such agreements for fields near Israel's maritime boundaries with Lebanon and with the Palestinian Authority due to the tense geopolitical status between the countries at this time. Therefore, it appears that the best opportunity at this point in time for cross border commercialization and development is between Israel and Cyprus.



Figure 7 – The Marine Plan Map of Israel by the Technion (on which are marked the border areas in the south)



Figure 8 – The maritime boundary with Gaza and agreements⁵²

The Marine Areas: Territorial Waters & Internal Waters

The Proposed Law will restate Israeli law on the matter of Israel's territorial waters including its internal waters.⁵³ The change will include a newly defined body of internal waters measured from the Israeli coastline to the baseline. Currently, under law the internal waters include the Sea of Galilee and waters within the ports' wave barriers. This change becomes relevant due to the adoption of the new Straight Baselines methodology.

Examples of application of Israeli law on offshore projects within the Territorial Waters

At this point, the most significant offshore project within the territorial waters is the construction of the gas production platform for the Leviathan field (including a shore crossing to the receiving station through the Dor beach). In view of the platform location within the territorial waters, key portions of the project are subject to the full extent of Israeli law, including the Planning and Building Law.

52 Figure 8. Source: the Vox website which is referenced from the Policy Paper Stage I (p. 188).

53 See the Proposed Law, Section 4. "The Internal Waters of the State of Israel are the waters in the areas from the baselines to shore, including the seabed underneath and the airspace above."



Figure 9 – The Leviathan Production Platform within the territorial waters of Israel (Platform currently under construction in the US)

The construction of the Leviathan Production Platform and shore crossing through the Dor beach was approved according to the National Zoning Plan (Tama) 37H by the National Council for Planning and Building according to the Planning and Building Law. The procedural elements of the zoning plan were also affirmed in Supreme Court proceedings.⁵⁴ Subsequently, the field development plan as a whole was approved by the Ministry of Energy and building permit were granted.

The Leviathan subsea production facilities and subsea infrastructure located on the seabed are located outside the territorial waters of Israel and therefore are not subject to Tama 37H and/or the Planning and Building Law.

In the future, more offshore facilities (fixed and/or floating) may be positioned in Israel's Marine Areas and therefore it is important to finalize the legal and planning aspects as soon as possible.⁵⁵

54 See Supreme Court Case 7737/14 Municipality of Yokneam et al versus the National Council for Planning and Building and others.

55 See the draft Proposed Law, "The goal of the Proposed Law and the need for it" (Draft Law – Explanations), P.2. "...In the future, activities carried out with the encouragement of the State of Israel in Marine Areas may go beyond the context of natural resource exploration. For example, Government Decision #4776 dated June 17, 2012 initiated a feasibility study to deepen the governments understanding of establishing artificial islands for infrastructure installations."

The Contiguous Zone

Under the Proposed Law, Israel will formalize the extent of its laws to the Contiguous Zone.⁵⁶ New arrangements will include, amongst other things, expansion of specific laws such as the Antiquities Law⁵⁷ and associated regulation beyond the territorial waters. Furthermore, the new status will extend laws governing the entry and exit to and from the Contiguous Zone making it identical to entering and leaving Israel. In addition, policing, oversight and enforcement powers will be extended as will laws listed in the First Addendum⁵⁸ of the Proposed Law. The First Addendum includes a list of laws focusing on obligatory payments, such as tariffs, immigration and public health laws that will apply in the Contiguous Zone. The Planning and Building Law is not included in the First Addendum, since the Proposed Law will not extend beyond the territorial waters. As an alternative, the Proposed Law proposes a "Quasi-Planning Mechanism" described below.

Examples of application of Israeli Law on Projects in the Contiguous Zone

For the energy sector, the extension of Israeli laws to the Contiguous Zone will constitute a change to the existing situation. For example, in the southern area of Israel's Contiguous Zone there are currently two fixed offshore platforms (the Mari B and Tamar platforms). The Proposed Law will affect the management of these platforms located about one (1) or two (2) km outside the territorial waters within the Contiguous Zone.



56 See the Proposed Law, Section 6. "The Contiguous Zone of the State of Israel is the stretch of the Mediterranean Sea beyond the territorial waters up to 24 nautical miles from the baseline."

57 See the Antiquities Law, 5738–1978.

58 See the Proposed Law, First Addendum, "Laws concerning oversight and enforcement powers in the Contiguous Zone."

Figure 10 – The Tamar and Mari B Platforms in Israel's Contiguous Zone⁵⁹

These Production Platforms were positioned by the State and the Operator in the Contiguous Zone for a number of reasons such as the geographic plateau of the continental shelf on which the facilitates rest in waters up to 300m; also, their location outside the territorial waters and other practical reasons such as their proximity to the Ashkelon lease, existing shore facilities and entry point to shore, planning and building constraints, protest of residents in the North, several legal proceedings, etc.

The Exclusive Economic Zone⁶⁰

The Proposed Law will extend Israeli laws to the EEZ⁶¹ i.e. the "...the stretch of the Mediterranean Sea beyond the territorial waters up to a distance of 200 nautical miles from the baseline, including the seabed in that stretch"

At the points where Israel's EEZ overlaps the EEZ of neighboring countries (Cyprus, Lebanon, Egypt and/or the Palestinian Authority) the Proposed Law specifies that settlement of overlaps will be determined by agreement and in absence of an agreement according to international law. At this point in time, only the maritime border with Cyprus has been anchored in an agreement.⁶² Some scholars now question whether the adoption of the Straight Baselines methodology in the Proposed Law will have implications that require changes in the agreed-upon maritime boundary with Cyprus. This agreement includes conditional and limited terms for modifications and amendments specifically on the geographic points 1 and/or 12 of the Median Line.⁶³ The countries have agreed on an arbitration mechanism in the event of a dispute.

The Proposed Law will formally adopt the Supreme Court verdict in the case of **Davidian**,⁶⁴ namely that oil and gas fields are state-owned assets by law^{65,66} (even though a legal debate has not yet been concluded with respect to the status of "New Property Rights"

59 Photo by Moshe Shai as published in Yisrael Hayom on May 27, 2015.

60 See the Proposed Law, Chapter E, Mark a, Sections 9–10 which include the definition of the EEZ and also of the continental shelf for legal reasons.

61 See the Proposed Law, Section 9(a). "The Exclusive Economic Zone of the State of Israel is the stretch of the Mediterranean Sea beyond the territorial waters up to a distance of 200 nautical miles from the baseline, including the seabed in that stretch."

62 See the Proposed Law, Section 9(b).

63 See the agreement between Israel and Cyprus, Article 1(c).

64 See Supreme Court Case 3734/11 Haim Davidian and others versus the Knesset of Israel, paragraph 28.

65 See the State Assets Law, 5711–1951, paragraph 1.

66 See the Subsea Areas Law, 5713–1953, paragraph 1a.

(as defined)⁶⁷. According to the Proposed Law, the State will manage the fields as state assets "including restrictions on executing deals relating to these assets and the grant of rights to exploit them by the government, unless otherwise provided by law."⁶⁸

The **Second Addendum**⁶⁹ of the Proposed Law lists the activities and accompanying activities⁷⁰ (and the list of assets related to these activities) for which Israeli laws will apply in the EEZ. The list includes, among others the Petroleum Law,⁷¹ the Natural Gas Sector Law,⁷² the Antitrust Law,⁷³ the Ports Ordinance,⁷⁴ the Regulation of Security in Public Organizations Law,⁷⁵ environmental protection laws and others.

In addition, in the **Third Addendum** in the Proposed Law formalizes the extent of laws applying to "Marine Installations"⁷⁶ in the EEZ⁷⁷ including laws concerning employment, social welfare, obligatory payments, immigration, safety and health. Furthermore, the **Fourth Addendum**⁷⁸ contains a list of laws that apply to "Permanent Marine Installations"⁷⁹ in the EEZ, for which specific laws are necessary due to the extended period of activity of these installations, with the appropriate limitations (see also preparedness for emergencies).

67 See Supreme Court Case 3734/11 Haim Davidian et al vs the Knesset of Israel, Paragraph 28: "A right with economic value that originates from the government authorities."

68 See the Proposed Law, Section 11 and Introduction – Key Point 3.

69 See the Proposed Law, Second Addendum, "Laws that apply to the Exclusive Economic Zone."

70 See the Proposed Law, Section 12 (a) "Exploration, production, exploitation, preservation or management of natural resources and also, laying cables and pipelines, carrying out scientific research, constructing marine installations, maintaining the safety and security of marine installations and environment protection."

71 See the Petroleum Law, 5712–1952.

72 See the Natural Gas Sector Law, 5762–2002.

73 See the Antitrust Law, 5748–1988.

74 See the Ports Ordinance [new version], 5731–1971.

75 See the Security in Public Bodies Law, 5758–1998.

76 See the Proposed Law, Section 2. Definitions. "A Marine Installation is a structure or facility including rigs in the Exclusive Economic Zone, whether connected to the seabed or not, which is necessary to carry out the list of activities as described, even if such vessel meets the definition of a Marine Vessel according to the Shipping Law (Vessels), 5720–1960.

77 See Proposed Law, Third Addendum, "Laws applying to marine installations located in the Exclusive Economic Zone."

78 See the Proposed Law, Fourth Addendum, "Laws that apply to Permanent Marine Installations in the Exclusive Economic Zone."

79 See the Proposed Law, Section 2. Definitions. "A Permanent Marine Installation is an installation planned to remain in place permanently or for an extended period of time for which the Minister of Justice has announced in the Reshumot to be necessary to conduct the activities listed in Section 1 of the definition of a "Marine Installation" – and for which the Minister of Justice has declared to be necessary after consulting with the Minister of Energy."

Examples of Application of Israeli law to Projects in the EEZ

The following is an example of the effect of the Proposed Law on the Karish and Tanin offshore fields located in the EEZ, which is currently in development.

During the project development phase, drilling rigs and/or drilling ships and/or other vessels will operate in the EEZ carrying out the construction tasks and installation for short periods of time. Upon completion of the work these vessels will leave the area. Such vessels are "Marine Installations"⁸⁰ and are defined in the Proposed Law and subject to the laws appearing in the Second and Third Addendums accordingly (with the appropriate limitations).



Figure 11 – A drilling ship



Figure 12 – Drilling rig ("Marine Installation")

Subsequently, at the conclusion of the construction and installation phase and thereafter during the production phase, a Floating Production Storage and Offloading (FPSO) installation will be positioned, according to the plan, in the EEZ with characteristics of a "Permanent Marine Installation", i.e. a fixed installation that will remain in the area over time and will serve as a strategic installation for the production of natural gas for Israel. Therefore, the list of laws appearing in the Second, Third and Fourth Addendums of the Proposed Law will apply to a FPSO (with the appropriate limitations).

The extension of Israeli law to the EEZ in the manner described above has major economic implications for companies in the energy sector and the implications should be examined carefully.

⁸⁰ See the Proposed Law, Chapter II. Definitions. "Marine Installation".



Figure 13 – An FPSO in the EEZ as Proposed for the Karish and Tanin fields⁸¹

On the one hand, the Proposed Law creates regulatory and legal certainty in the Marine Areas in accordance with international law, increases the oversight and governance of the State and formalizes the division of responsibility between the State and other parties, such as the production and exploration companies; on the other hand, the Proposed Law increases the cost of development, construction and operations for offshore projects and may affect long-term profitability.

Furthermore, as already mentioned, another controversial issue related to the Proposed Law is that the Planning and Building Law will not apply beyond the territorial waters. This controversy recently came to light with respect to Karish and Tanin after the field development plan was submitted to the National Planning Council by the Director General of the Ministry of Energy on August 8, 2017 and approved shortly afterwards by the Ministry of Energy on August 30, 2017.⁸² The opponents to the Proposed Law as presented (and to the manner in which the Karish and Tanin plan was approved) claim that "there should be separation between the body that approves offshore drilling (the Ministry of Energy and the Ministry of Finance) and the body overseeing it (the Ministry of Energy)."⁸³ Based on this rationale, a claim was filed in the Supreme Court arguing "that the development plan should be approved only after the completion of an Environmental Impact Study (including considering alternates), publication of such options and allowing the public to comment and express reservations."⁸⁴ This will be discussed in further detail below.

81 See press release by Energean dated June 20, 2017.

82 See the press release by Energean on August 30, 2017.

83 See the website of the "Tsalul" organization on the issue of the Marine Areas Law.

84 See the article in Calcalist on September 14, 2017 "The Association for the Protection of Nature goes to the Supreme Court: Stop the Development of the Karish and Tanin Fields."

Transportation, Long Term Policy Document, Environmental Aspects and the Israeli Industry

Maritime Transportation

The Proposed Law in its current version was submitted to the ministerial committees for regulation and legislative affairs through an initiative led by the Ministry of Energy and the Ministry of Justice respectively. Very noticeable is the absence of active involvement by the Ministry of Transportation on the issues relating to maritime transport and shipping. Although the addendums to the Proposed Law list various shipping and port laws, it may be worthwhile considering increased involvement (perhaps at the level of a consultant) of the Ministry of Transportation on the relevant issues according to the Proposed Law.

Long Term Policy Document

The Proposed Law has prompted disagreements between the Ministry of Energy and the Ministry of Environmental Protection on the issue of managing environmental aspects of oil and gas activity in the EEZ. Thus, the government has been urged to formalize its policy on this issue. The Proposed Law presents a "Quasi-Planning Mechanism" that balances between the interest of developing oil and gas fields and the interests of preserving the marine environment and the safety and health of civilians. As already mentioned, the Proposed Law does not extend the Planning and Building Law beyond the territorial waters.⁸⁵ The "Quasi-Planning Mechanism" includes, amongst other things, a requirement for the government to approve a "Long-Term Policy Document Regulating the Activities and Uses of the Marine Areas"⁸⁶ (Herein: "Long Term Policy") within two years from the date of the effectiveness of the Proposed Law.^{87,88} The Long Term Policy will be issued by the Ministry of Finance in consultation with the National Planning Council. All government entities that will exercise their authority in the Marine Areas will be subject to this Long Term Policy.⁸⁹ Until the final approval of the Long Term Policy "the Ministry of Energy will exercise its authority in the EEZ according to the activities and uses in such area taking into consideration environmental aspects related to the area ... in accordance with the recommendations of the Strategic Environmental Study carried out by the Ministry of Energy".⁹⁰

85 For further details on the planning approach which states that the Planning and Building Law should be applied in the EEZ, see the legal opinion issued by of Adam, Teva Vadin dated November 2013.

86 See the Proposed Law, Paragraph 16(a-i).

87 See the Proposed Law, Paragraph 16(a).

88 See the Government Decision #2983 (reg/8).

89 See the Proposed Law, Paragraph 16(g).

90 See the Proposed Law, Paragraph 16(e).

Environmental Aspects of Petroleum Drilling Activity

It is further proposed that the granting of approvals for Petroleum Drilling Activity⁹¹ in the EEZ will be the responsibility of the Authorized Official⁹² within the Ministry of Energy. The Ministry of Environmental Protection will have an advisory capacity in the approval process. The Authorized Official will have the power to deviate from the position of the Ministry of Environmental Protection, based on special justifications that will be recorded and published.⁹³

The government believes that Petroleum Drilling Activity in the EEZ is different in nature from Territorial Waters and on land, since the location of the drilling is far from population centers and from other marine activities and uses, and thus the effects of such activity on the public and on the marine environment near shore are minimal. The "Quasi-Planning Mechanism" gives adequate expression to planning, safety, engineering, professional and environmental considerations as required in a process of this type. The Proposed Law includes a list of environmental laws that apply to the Marine Areas and from the moment the proposal is approved additional approvals will be required, such as approval of an emergency plan, hazardous material permits, permits for water discharge at sea issued by an inter-ministerial committee led by the Ministry of Environmental Protection and emissions permit (for natural gas).

According to principles to be set forth in the Long Term Policy, and after providing an opportunity to the Israel Nature and Parks Authority to give its opinion, the Minister of Finance will be able to declare certain areas in the EEZ as a "Protected Marine Area".⁹⁴ A Protected Marine Area will have the status of a nature reserve, according to the National Parks Law⁹⁵ and its regulations. Prohibitions and restrictions that apply to Protected Marine Areas will not apply to the Israel Defense Forces or any branch of the defense establishment which the Minister of Defense or the Prime Minister approves in this context.⁹⁶

91 See the Proposed Law, Section 17, Definitions. "Petroleum Drilling Activity include drilling activities as part of petroleum exploration or during the petroleum production or during the positioning of a Permanent Marine Installation with the purpose of conducting Petroleum Drilling or handling the products of said Petroleum Drilling or storing products related to Petroleum Drilling or for the dismantling of said Marine Installation and laying pipeline infrastructure for transporting Petroleum [O.S. "Petroleum" is as defined in the Petroleum Law]."

92 See the Proposed Law, Section 17, Definitions: "The Authorized Official is the official authorized to approve Petroleum Drilling Activity under to the Petroleum Law and/or the Natural Gas Sector Law."

93 See the Proposed Law, Paragraph 19(e).

94 See the Proposed Law, Section E, Section 26(a). "A Protected Marine Area is an area in the Mediterranean Sea in which animals, plants, natural formations or land that have scientific or educational interest are protected from undesirable changes in their appearance, biological composition or their development."

95 See the National Parks Law, Nature Reserves National Monuments & Memorials Law – 5758, 1998

96 See the Proposed Law, Mark E, Section 26(f).

On the practical level, the Planning Authority (currently within the Ministry of Finance) has been preparing for the past several years a Long Term Policy of the type mentioned in the Proposed Law, a process that has not yet been completed.⁹⁷ To date, only a draft of the first stage of this process has been published (in November 2015).⁹⁸ The Ministry of Energy has also completed its groundwork prior on environmental issues by means of a Strategic Environmental Study for offshore oil and gas exploration and production which was published.⁹⁹

Opponents to the Proposed Law, such as Environmental organizations are calling on the government to stop the approval process of the Proposed Law in its current version and to allow the public to express its position. In addition, they claim that the Proposed Law does not allow for protection of nature in Marine Areas and does not allow due process in a democracy¹⁰⁰ Such groups seek to prevent a situation in which the Ministry of Environmental Protection cannot fulfil its function because of an initiative that bypasses the planning process. They demand the application of the Planning and Building Law in the Marine Areas or alternatively to create specific planning frameworks in this context.

Israeli industry and Local Content

It should be mentioned that the extension of Israeli labor laws to the EEZ as proposed in the **Fourth Addendum** will contribute to ensuring fair employment practices and the protection of rights for Israeli workers who will be employed on Permanent Marine Installations in the EEZ. The State has emphasized the importance of integrating, employing and training Israeli personnel and local content in the oil and gas industry to the maximum extent possible and has even introduced regulations designed to encourage such involvement. Thus, for example, in the Leviathan and Karish-Tanin leases, regulations are in place to measure local content utilized in projects in the Marine Areas (for example the obligation to submit a detailed work plan, minimum investments, etc.).¹⁰¹ In addition, according to the Natural Gas Framework (Government Decision #476) leaseholders must invest a cumulative amount of \$500 million over 8 years in local content to the (starting from the determining date)¹⁰² with the goal of maximizing value added to the Israeli economy.

97 See an article in the Calcalist newspaper on November 9, 2015.

98 See the Stage I Report, "Policy Document for Israel's Maritime Domain – Mediterranean Sea", dated November 2015.

99 See "A Strategic Environmental Survey for the Offshore Exploration and Production of Oil and Gas" dated October 2016.

100 See the Tashtiot "Environmental Organizations to Steinitz: Stop the Proposed Marine Areas Law" dated September 6, 2017.

101 See the Leviathan lease and the Karish and Tanin lease, Section 30, Local Content.

102 See Government Decision #476, Section I.

Preparedness of Civilian Industry for Emergencies

The issue of the preparedness of the civilian industry for emergencies was investigated in the State Comptroller report published in September 2015.¹⁰³ Specifically, within the Leviathan and Karish-Tanin lease documents are obligations to prepare a "Procedure for Operation of Installations"¹⁰⁴ and also to coordinate activities in an emergency with the authorities.¹⁰⁵ The State Comptroller warned of problems in maintaining the operation of civilian industry during an emergency and in particular the operation of offshore gas installations. To address this matter, the Proposed Law proposes to extend the Labor Services in Emergencies Law – 1979¹⁰⁶ to offshore installations in the EEZ.¹⁰⁷ In this way, the State will improve the ability to ensure the continuity of natural gas supply in an emergency and will also formalize the legal basis for declaring "**Critical Enterprise**"¹⁰⁸ status for gas facilities in the Marine Areas (which was granted to the existing gas platforms in the summer of 2014).¹⁰⁹ The problem being addressed is that currently, some of the **critical** employees working on the offshore installations in the Marine Areas are not Israeli citizens, they are employed by a foreign company and do not have permanent resident status.¹¹⁰ Therefore, the question arises as to what means the State can ensure the manning of key positions on Permanent Marine Installations during emergencies. There is a need to examine additional mechanism to ensure that key positions are manned during an emergency, whether by means of the lease document or by consent and/or by means of a restraining order and/or amendments to the law and/or by means of training permanent residents to fill those positions.

103 See the State Comptroller Report "Preparedness of Civilian Industry for Emergencies", September 2015.

104 See the Leviathan and Karish-Tannin lease documents, Section 20.

105 See the Leviathan and Karish-Tannin lease documents, Section 28.2.

106 See the Labor Services in Emergencies Law, 5727–1967.

107 See the Proposed Law, Fourth Addendum, Law Number (#32).

108 See the Labor Services in Emergencies Law, 5727–1967, Definitions. "A **Critical Enterprise** is an enterprise or part of it that operates or can be operated to benefit state security or public security or which supplies critical goods or services and which has been approved as such by an order of the Minister after consultation with the Minister of Defense...; and also any enterprise or part of one that can be operated to meet the critical needs of the economy and whose operation is essential to the supply of goods and services necessary to the public or for export and the Minister has given his approval by an order on this matter."

109 See the State Comptroller Report "The Preparedness of Civilian Industry for Emergencies", September 2015, p. 16. "In the summer of 2014, **Critical Enterprise** approval was given to the offshore gas installations, which are operated by, among others, a foreign company."

110 See the State Comptroller Report "The Preparedness of Civil Industry for Emergencies", September 2015. Reference No. 5. "See the revised version of the Labor Services in Emergencies Law, 5727–1967, which refers to the Security Services (integrated version) Law, 5736 - 1986, stating that a Permanent Resident is a 'person whose permanent place of residence is within a territory governed by the laws of the State of Israel or a person whose presence is viewed as permanent residence accordingly [to this law]."

Conclusion and Recommendations

The draft Proposed Marine Areas Law, approved by the ministerial committees, should be advanced in an effort to reach the broadest possible consensus between the relevant professional entities, leading up to its final approval by the Knesset as early as possible, with emphasis on the following issues:

- The implications of determining the geographical coordinates along the coast or near to it which will be used to determine the baseline from which the Marine Areas are measured (according to paragraph 27 of the Proposed Law).
- Promoting diplomatic efforts (whether explicit or implicit) for settling the maritime boundaries of the EEZ that overlap with those of neighboring countries and also to prepare for the possibility of disagreement under international law (according to paragraph 9(b) of the Proposed Law).
- To conclude and approve the Long Term Policy Document regulating the activities and uses in the Marine Areas as soon as possible (According to Chapter 5, Mark 3 – Long Term Policy, Section 16 of the Proposed Law).
- To formulate general environmental policy instructions from which specific criteria for submitting an environmental document may be derived (according to Chapter 5, Mark 4. "Environmental Aspects of Petroleum Drilling Activity. Sections 17–25 of the Proposed Law).
- To advance development of existing and new fields in Israel, including the Leviathan project, the expansion of Tamar Southwest and the Karish-Tannin project, with emphasis on energy security, including "non-disruptable physical availability of natural gas, at a reasonable price, while taking into account environmental considerations."
- To advance the "Offshore Bid Round" initiative without any additional delays; to attract operators to Israel; to establish mechanisms for reducing regulation and approving projects on a "fast track" basis; and encouraging international players to operate and invest in Israel.
- To assess the implications and ways for including the Ministry of Transportation as an advisory in the management of aspects of the Proposed Law on matters related to shipping, shipping lanes and other essential related issues.
- To examine and apply additional mechanisms that will ensure the continuity of civilian industry in emergencies.