



OSPAR
COMMISSION

Overall Assessment on the Implementation of
OSPAR Recommendation 2010/5 on assessments
of environmental impact in relation to threatened
and/or declining species and habitats

OSPAR Convention

The Convention for the Protection of the Marine Environment of the North-East Atlantic (the “OSPAR Convention”) was opened for signature at the Ministerial Meeting of the former Oslo and Paris Commissions in Paris on 22 September 1992. The Convention entered into force on 25 March 1998. It has been ratified by Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland and the United Kingdom and approved by the European Community and Spain.

Convention OSPAR

La Convention pour la protection du milieu marin de l'Atlantique du Nord-Est, dite Convention OSPAR, a été ouverte à la signature à la réunion ministérielle des anciennes Commissions d'Oslo et de Paris, à Paris le 22 septembre 1992. La Convention est entrée en vigueur le 25 mars 1998. La Convention a été ratifiée par l'Allemagne, la Belgique, le Danemark, la Finlande, la France, l'Irlande, l'Islande, le Luxembourg, la Norvège, les Pays-Bas, le Portugal, le Royaume-Uni de Grande Bretagne et d'Irlande du Nord, la Suède et la Suisse et approuvée par la Communauté européenne et l'Espagne.

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1. Introduction

This overall assessment is based on implementation reports from:

- Denmark;
- Germany;
- The Netherlands;
- Norway;
- Spain;
- Sweden;
- United Kingdom.

The reports are attached for convenience (Annex 1, Appendices 1-7).

2. Applicability

The measure is applicable in all seven Contracting Parties listed above.

2.1 Means of Implementation

In Denmark, Germany, Spain and the UK the measure is implemented by administrative action. Environmental Impact Assessments (EIA) and partly also Strategic Environmental Assessments (SEA) are undertaken in all the seven Contracting Parties.

In addition to that, in Spain exists another administrative procedure for international oceanographic campaigns that take place in Spanish jurisdictional waters. A part of this procedure is a report on the environmental impact which takes into account the OSPAR list of threatened and/or declining species and habitats.

In Sweden, the measure is partly implemented by legislation (by means of the provision in the Environmental Code) and partly by administrative action. There are no specific provisions in the Swedish environmental legislation with regard to special consideration to species and habitats on the OSPAR list of threatened and/or declining species and habitats. Nevertheless, beside the Swedish Environmental Code which promotes sustainable development and includes rules on EIA, all the species on the OSPAR list are noted in the Swedish red list issued by the Swedish University of Agricultural Science. Although it is not a formal rule to consider this list in the EIA processes, the existence of those species are generally highlighted and probable impact on them is assessed and described in the EIA.

In the Netherlands, the measure is neither implemented by legislation, nor by administrative action, nor by negotiated agreement. Discussions on the coordinated implementation of the MSFD, the Birds and Habitat Directive and OSPAR Recommendations are still ongoing in the Netherlands. Several recommendations for species and habitats from the OSPAR list have been accepted by BDC. Protection of these species will take place e.g. through marine protected areas where activities are strictly regulated.

Annex 1 – Contracting Party Implementation Reports

Appendix 1

Denmark: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	no	yes	no

Please provide information on:

- a. specific measures taken to give effect to this measure;

EIA on projects and measures in Danish territorial waters is regulated by appropriate national legislation. The Danish Energy Agency is overall responsible authority on EIA in Danish territorial waters. The Agency is aware of the recommendation and the implementation hereof. The recommendation is being incorporated in internal guidelines used in the processing of applications on specific projects. The EIA process is carried out by the relevant sectors and their consultants. The Danish Nature Agency is consulted as part of the EIA process and assesses the compliance of the recommendation.

- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;

Communication of the recommendation to the relevant sectors and their consultants is a continuous process and lessons learned will be used for further administrative development.

- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

There are no plans for further legislative actions or negotiated agreements.

Appendix 2

Germany: implementation reports concerning OSPAR Recommendation 2010/5

Country: Germany

Reservation applies: no*

Is measure applicable in your country ? yes*

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	yes/no*	yes/no*	yes/no*

Please provide information on:

- a. specific measures taken to give effect to this measure;
- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;
- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

- **Species: Harbour Porpoise (*Phocoena phocoena*)**
- **Human activity/pressure: installation of foundations of offshore wind turbines/underwater noise.**
- *There is a risk that Harbour Porpoises are negatively impacted by underwater noise arising from the installation of foundations of offshore wind turbines, i.e. pile driving activities.*
- *In the incidental provisions of German approvals for the erection and operation of offshore wind installations in the German EEZ it is inter alia laid down that during the installation and foundation of a wind turbine such working methods according to the best available technology shall be used which are under the present conditions as noiseless as possible.*

Furthermore, in the incidental provisions sound emission thresholds are specified. Thus, it has to be ensured that the sound exposure level (SEL) in a distance of 750 m to the ramp site does not exceed the level of 160 decibel (dB re 1µPa²s) and the peak level (peak to peak) does not exceed the value of 190 decibel (dB re 1 µPa.) A technical mitigation concept on how to comply with these thresholds has to be provided to the

* Delete whichever is not appropriate.

approving authority before the start of the construction. The effectiveness of the measures chosen (according to the state-of-the-art of science and technology) have to be proven under conditions comparable to those offshore. A documentation of the testing has to be submitted to the approving authority.

To avoid the endangerment of harbour porpoises, the offshore wind farm developer has in addition to apply mitigation measures such as

- use of pingers before pile driving*
- soft-start techniques*
- source noise reduction techniques like bubble curtains*
- reporting requirements*

By using pingers and soft-start techniques the harbour porpoises will appropriately be deterred from the vicinity of the construction site. Together with noise reduction measures at source and the associated sound emission threshold values it is according to current knowledge sufficiently ensured that killing or injury of harbour porpoises will not occur.

Appendix 3

The Netherlands: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country ?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	no	no	no

Please provide information on:

a. specific measures taken to give effect to this measure;

No specific measures in place yet

b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;

No practical or legal problems encountered

c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

The Netherlands are currently discussing the coordinated implementation of requirements of the MSFD, the Bird and Habitats Directive and OSPAR Recommendations with results expected mid 2013. The protection of the listed species and habitats may in future be taken up in the requirements for Environmental Impact Assessments.

Meanwhile several recommendations for species and habitats from the OSPAR list have been accepted by BDC. Protection of these species will be e.g. through marine protected areas, either already existing or to be implemented under the MSFD. Within these areas, activities are strictly regulated and the OSPAR species usually benefit from measures taken to protect certain habitats (for example the habitat type H1110 "Sandbanks which are slightly covered by sea water all the time") or other species.

Appendix 4

Norway: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country ?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	yes	yes	yes

Please provide information on:

- a. specific measures taken to give effect to this measure;

Starting up *new human activities in Norwegian ocean areas will normally require an environmental impact assessment*

- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;
- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

b, c. Although impact assessments are implemented, the major issues of the seas are often settled politically. Economic considerations may then override ecological concerns.

Appendix 5

Spain: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country ?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	no	yes	no

Please provide information on:

a. specific measures taken to give effect to this measure:

OSPAR List is taken into account in the Environmental Impact Assessments (EIA) of projects, plans or programs to be developed in marine waters or on the coast. Since the entry into force of this OSPAR Recommendation 2010/5, this List has been considered in the following EIAs:

4 projects on dredging material in harbours

4 projects and plans related to energetic installations

1 land spatial planning

2 plans related to transport infrastructures

In Spain there are also other administrative procedures that require an assessment of the environmental impact of human activities. That is the case for international oceanographic campaigns that take place in the Spanish jurisdictional waters. This type of activity requires an administrative authorisation given by the Ministry of Foreign Affairs and Cooperation. The Ministry of Agriculture, Food and Environment is informed about these campaigns and submits a report on the environmental impact taking into account, among some other aspects, the OSPAR List species and habitats.

- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure:

OSPAR List of Threatened &/or Declining Species and Habitats is not a binding instrument, as is the case for other Lists approved by other Conventions. For example, when some species are included in Annex II and III of Barcelona Convention, environmental national legislations must be modified in order to protect these species, as well. One of the main difficulties found in the application of measures aimed at the protection of Species and Habitats included in the OSPAR List is the fact that they must not necessarily be included in national legislation, and consequently measures adopted to protect them are in most of the cases recommendations or voluntary actions, not having a binding application.

- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

Appendix 6

Sweden: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country ?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	Partly, by means of the provisions in the Environmental Code	Partly, see below	no

Please provide information on:

a. specific measures taken to give effect to this measure;
In the portal paragraph of the Swedish Environmental Code (1998:808), the stated purpose of the Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. The Environmental Code shall be applied in such a way as to

ensure that among other things human health and the environment are protected against

damage and detriment, whether caused by pollutants or other impacts, valuable natural and cultural environments are protected and preserved, and biological diversity is preserved.

Today demands for assessments of environmental impacts can be made mainly based on the rules concerning environmental impact assessment (EIA) in chapter 6 of the Environmental Code and in the Ordinance (1998:905) on assessment on environmental impact assessment. The aim of an EIA as expressed in chapter 6 paragraph 3 in the Environmental Code is to identify and describe the direct and indirect effects on a number of environmental aspects that a certain activity or measure may cause.

The responsibility to describe the effects is mainly placed on the operator. The Regional County Board Administration, but also to some extent the Swedish Agency for Marine and Water Management (SwAM) play an important role in reviewing that the content of the EIA proposed by the operator is sufficient to ensure that the portal paragraph of the Environmental Code is met.

There are no specific provisions in the Swedish environmental legislation that assure that special consideration is given to the species and habitats on the OSPAR list of threatened and/or declining species and habitats (2008-6). Nevertheless, all the species on the OSPAR list that exist in Swedish waters are noted

*in the Swedish red list issued by ArtDatabanken at the Swedish University of Agricultural Sciences. Although it is not a formal rule to consider this list while doing an EIA the existence of those species are generally highlighted and probable impact on them assessed and described in the EIA. For example, the presence of, and impact on, *Zostera Marina* should always be described in EIAs, and practical experience shows that this is also the case.*

Still, when it comes to the habitats on the OSPAR list there are currently no provisions that assure that consideration is taken to them in EIAs.

The Swedish Agency for Marine and Water Management has shared the actual recommendation with the Administrative County Boards of Halland and Västra Götaland, that is the Boards in the Swedish OSPAR area. There have also been oral information given about the content of the recommendation during meetings and conferences. This action is however not sufficient to assure that the consideration of this recommendation is being considered a routine.

- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;
- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

1 July 2011 the Swedish Agency for Marine and Water Management (SwAM) started operating. As a newly started agency and not fully staffed during its first year of operations the SwAM has had difficulties in reaching its targets in some areas.

In SwAM's plan of work for 2013 it is included a project for information dissemination of the OSPAR recommendation. This will contain information and guidance on the species and habitats on the OSPAR list and in how they are best considered in the EIAs.

Appendix 7

United Kingdom: implementation reports concerning OSPAR Recommendation 2010/5

Country:

Reservation applies:

Is measure applicable in your country?

If not applicable, then state why not

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Means of Implementation:	by legislation	by administrative action	by negotiated agreement
	No	Yes	No

Please provide information on:

- a. specific measures taken to give effect to this measure;

Strategic Environmental Assessments (SEAs), Environmental Impact Assessments (EIAs) are undertaken under relevant European and national legislation on programmes, projects and measures in UK seas. In most cases, developers and their consultants are aware of the need to include these species and habitats in EIAs, and relevant government bodies are aware of needs for SEAs. Both SEAs and EIAs are subject to initial scoping that provide both the public and governmental bodies the opportunity to ensure that all relevant threatened and declining species are considered in the assessment processes. The recommendation is included in guidelines used in the processing of applications on specific projects.

- b. any special difficulties encountered, such as practical or legal problems, in the implementation of this measure;

No difficulties encountered.

- c. any reasons for not having fully implemented this measure should be spelt out clearly and plans for full implementation should be reported.

There are no plans for further legislation.



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**OSPAR's vision is of a clean, healthy and biologically diverse
North-East Atlantic used sustainably**

ISBN 978-1-909159-61-7
Publication Number: 628/2014

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