

## The Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area

### Prepared by the Secretariat

#### Background

1. With a view to complementing the 1992 OSPAR Convention with means to enable the Commission to take measures to protect and conserve the ecosystems and biological diversity of the maritime area, OSPAR Heads of Delegation prepared the attached new Annex V and related Appendix 3 to the Convention.

2. With regard to the use of certain words in the draft Annex V, OSPAR Heads of Delegation agreed that it is the common understanding of Contracting Parties that the references to "questions relating to the management of fisheries" are references to the questions on which action can be taken under such instruments as those constituting:

- a. the Common Fisheries Policy of the European Community;
- b. the corresponding legislation of Contracting Parties which are not Member States of the European Union; or
- c. the corresponding legislation in force in the Faroe Islands, Greenland, the Channel Islands and the Isle of Man.
- d. the North East Atlantic Fisheries Commission and the North Atlantic Salmon Commission

whether or not such action has been taken.

For the avoidance of doubt, it was also agreed that in the context of the OSPAR Convention, the management of fisheries includes the management of marine mammals.

#### Action requested

Ministers are invited:

- a. to adopt the attached new Annex V and the related Appendix 3 to the 1992 OSPAR Convention on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area;
- b. to endorse the common understanding of Contracting Parties with regard to references to questions relating to the management of fisheries at § 2. above.

**DRAFT**

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Biological Diversity of the Maritime Area**

RECALLING the welcome in the Final Declaration of the Ministerial Meeting of the Oslo and Paris Commissions, 21-22 September 1992, for the possibility under the 1992 OSPAR Convention of addressing matters relating to the protection of the marine environment other than those relating to the prevention and elimination of pollution, and for the possibility of taking any necessary measures on these matters by the adoption of new Annexes to that Convention in the future;

RECALLING the Recitals of the 1992 OSPAR Convention;

RECALLING Article 16 and 18 of that Convention: which provide the procedure for the proposal, adoption and entry into force of new Annexes and of new Appendixes to that Convention;

RECALLING the United Nations Convention on the Law of the Sea, in particular the provisions relating to navigation and the exploitation of natural resources;

RECALLING the provisions of other global and regional agreements on the protection and conservation of marine ecosystems and biological diversity;

RECALLING the importance of coordination and harmonisation of work in different forums for the protection of marine species and their habitats;

RECALLING the significant differences which exist between:

- a. the ecological conditions of the maritime area:
- b. the impacts of human activities affecting these conditions;

in the different regions and sub-regions covered by the 1992 OSPAR Convention;

RECALLING the fact that certain Contracting Parties are not coastal States bordering the maritime area:

**THE CONTRACTING PARTIES TO THE CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT OF THE NORTH-EAST ATLANTIC ADOPT ANNEX V AND APPENDIX 3 TO THE CONVENTION**

**AND FURTHER DECIDE THAT:**

- a. programmes or measures under this new Annex shall avoid duplicating action which is already prescribed by other international conventions and the subject of appropriate measures agreed by other international organisations; and
- b. before a programme or measure is adopted under this new Annex, consideration shall be given to whether action could be taken more appropriately under some other international convention or arrangement.

## ANNEX V

### On the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area

#### ARTICLE 1

For the purposes of this Annex and of Appendix 3 the definitions of “biological diversity”, “ecosystem” and “habitat” are those contained in the Convention on Biological Diversity of 5 June 1992.

#### ARTICLE 2

In fulfilling their obligation **under** the Convention to take, individually and jointly, the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected, as well as their obligation under the Convention on Biological Diversity of 5 June 1992 to develop strategies, plans or programmes for the conservation and sustainable use of biological diversity, Contracting Parties shall:

- a. take the necessary measures to protect and conserve the ecosystems and the biological diversity of the maritime area and to restore, where practicable, marine areas which have been adversely affected; and
- b. cooperate in adopting programmes and measures for those purposes for the control of the human activities identified by the application of the criteria in Appendix 3.

#### ARTICLE 3

1. For the purposes of this Annex, it shall *inter alia* be the duty of the Commission:

- a. to draw up programmes and measures for the control of the human activities identified by the application of the criteria in Appendix 3;
- b. in doing so:
  - (i) to collect and review information on such activities and their effects on ecosystems and biological diversity;
  - (ii) to develop *means*, consistent with international law, for instituting protective, conservation, restorative or precautionary measures related to specific areas or sites or related to particular species or habitats;
  - (iii) subject to Article 4 of this Annex to consider aspects of national strategies and guidelines on the sustainable use of components of biological diversity of the maritime area as they affect the various regions and sub-regions of that area;
  - (iv) subject to Article 4 of this Annex, to aim for the application of an integrated ecosystem approach.

- c. also in doing so. to take account of programmes and measures adopted by Contracting Parties for the protection and conservation of ecosystems within waters under their ~~sovereignty~~ or jurisdiction.
2. In the adoption of such programmes and measures, due consideration shall be given to the question whether any particular programme or measure should apply to all, or a specified part of the maritime area.

#### ARTICLE 4

1. In accordance with the penultimate recital of the Convention, no programme or measure concerning a question relating to the management of fisheries shall be adopted under this Annex. However where the Commission considers that action is desirable in relation to such a question, it shall draw that question to the attention of the authority or international body competent for that question. Where action within the competence of the Commission is desirable to complement or support action by those authorities or bodies, the Commission shall endeavour to cooperate with them.
2. Where the Commission considers that action under this Annex is desirable in relation to a question concerning maritime transport, it shall draw that question to the attention of the International Maritime Organisation. The Contracting Parties who are members of the International Maritime Organisation shall endeavour to cooperate within that Organisation in order to achieve an appropriate response, including in relevant cases that Organisation's agreement to regional or local action, taking account of any guidelines developed by that Organisation on the designation of special areas, the identification of particularly sensitive areas or other matters.

### APPENDIX 3

#### Criteria for Identifying Human Activities for the Purpose of Annex V

1. The criteria to be used, taking into account regional differences, for identifying human activities for the purposes of Annex V are:
  - a. the extent, intensity and duration of the human activity under consideration;
  - b. actual and potential adverse effects of the human activity on specific species, communities and habitats;
  - c. actual and potential adverse effects of the human activity on specific ecological processes;
  - d. irreversibility or durability of these effects,
2. ~~These~~ criteria are not necessarily exhaustive or of equal importance for the **consideration** of a particular activity.