



# **ESaTDOR European Seas and Territorial Development, Opportunities and Risks**

ANNEX 13 to the Draft Final Report

## **Governance Case Studies: North Sea**

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## **ANNEX 13**

### **North Sea Governance Case Studies**

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The purpose of the maritime governance case studies within the ESaTDOR project is to provide a more in depth assessment of the governance experience of different maritime and coastal regions. More specifically, case studies have been chosen on the basis that they are examples of transnational governance (either bilateral or multilateral arrangements) in order to investigate the following issues:

- Management of conflicts in relation to the uses of maritime space,
- The integration of terrestrial (land-based) and marine or maritime spatial planning, and
- The contribution that existing transnational governance arrangements can make to territorial cohesion.

In addition, the evaluation of governance arrangements in each of the case studies is intended to highlight examples of good practice in maritime governance, and provide evidence for further recommendations as to how governance arrangements in different maritime regions can be strengthened, through, for example, Integrated Maritime Policy or the development of further transnational cooperation initiatives.

The case studies were undertaken using a mixture of documentary reviews and interviews with a limited number of key stakeholders. A synthesis of the case study findings for all the regional seas considered in the ESaTDOR project (the Arctic and Atlantic Oceans, and the Baltic, Black, Mediterranean and North Seas) is contained within the Draft Scientific Report.

# North Sea Case Study 1:

## The OSPAR Convention

Alison Gilbert and Nicolien van der Grijp

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### The North East Atlantic



### The North East Atlantic

Region I	Arctic Waters
Region II	Greater North Sea
Region III	Celtic Seas
Region IV	Bay of Biscay and Iberian Coast
Region V	Wider Atlantic

## Abbreviations

CBD Convention on Biodiversity

EU European Union

IMO International Maritime Organisation

INSC International North Sea Conference

MSFD Marine Strategy Framework Directive

MSP Marine (or maritime) spatial planning

NSN North Sea Network of Investigators and Prosecutors

OSPAR The Convention for the Protection of the marine Environment of the North-East Atlantic (OSPAR Convention)

QSR Quality Status Report

WFD Water Framework Directive

## 1. Introduction

This case study focuses on the OSPAR Convention, the regional sea convention that covers the North Sea. The key features are summarised in Table 1a.

Table 1a: Key features of case study

Governance arrangement	European Sea	Spatial breakdown	Legal status	Key documents	Website
OSPAR Convention	North Sea	North East Atlantic: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom	International convention	<ul style="list-style-type: none"> <li>• OSPAR Convention</li> <li>• Bergen Declaration, 5<sup>th</sup> North Sea Conference, Bergen (Cooperation in the Process of Spatial Planning in the North Sea)</li> <li>• OSPAR Recommendation 2003/3 (Network of Marine Protected Areas)</li> <li>• Quality Status Report 2010</li> </ul>	<a href="http://www.ospar.org/">www.ospar.org/</a>

In their analysis of Marine Spatial Planning (MSP) initiatives, Calado et al. [1] argue for a strong role of European regional sea commissions in stimulating consultation among cross-border nations to facilitate sea use and biodiversity protection that are complementary on an international or regional scale. Consultation is needed to ‘upscale’ current, national approaches to MSP that tend to be heavily based on zoning [1], to comprehensive strategic spatial plans that achieve the objectives of MSP implementation. Such factors as the interconnectedness of neighbouring ocean space, cross-boundary impact of ocean use, and the broader scale necessary for ecological coherence, imply that national marine spatial plans need to be incorporated in a broader international scale. Dotinga and Trouwborst [2] come to essentially the same conclusion in the context of designating Marine Protected Areas (MPAs) under the EU Birds and Habitats Directives.

OSPAR is the regional sea commission of relevance for the North Sea. The OSPAR Convention is the current legal instrument guiding international cooperation for the protection of the marine environment of the North East Atlantic. The maritime area that falls under this convention is (see Figure 1): “the internal waters and the territorial seas of the Contracting Parties, the sea beyond and adjacent to the territorial sea under the jurisdiction of the coastal state to the extent recognised by international law, and the high seas, including the bed of all those waters and its sub-soil, situated within the following limits:

- i) those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding:
  - 1) the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenore Head to Griben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to Kullen,
  - 2) the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° north latitude and the meridian of 5° 36' west longitude;
- ii) that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42° west longitude."

The Greater North Sea, or Region II, comprises the North Sea as bounded within ESaTDOR, the Channel, and Kattegat (which is included in the Baltic Sea in ESaTDOR).

### The North East Atlantic



### The North East Atlantic

Region I	Arctic Waters
Region II	Greater North Sea
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Map 1.1: The North East Atlantic and regions under the auspices of the OSPAR Convention  
(<http://www.ospar.com>)

The objective of the case study is to examine to what extent the governance arrangement is effective from the perspective of the stakeholders concerned, what its strong and weak points are, whether and how stakeholders are involved in policy making, and what lessons can be learned for other marine governance arrangements in general and marine spatial planning in particular.

The structure of the case study report is as follows. Section 2 provides context and conditions in terms of nature/human interactions. Section 3 describes how OSPAR operates. Section 4 discusses

agencies and actors. Section 5 provides a timeline for OSPAR's development and activities. Section 6 evaluates this governance arrangement on the basis of two criteria, viz. effectiveness and inclusiveness. The evaluation draws on the main documents of the governance arrangement itself, on the literature, and on interviews conducted with key stakeholders. Section 7 draws lessons for marine governance and planning. Section 8 presents conclusions.

## **2. Context and Conditions**

The OSPAR Convention includes five annexes that specify OSPAR's priority areas, viz.:

- Annex I: Prevention and elimination of pollution from land-based sources;
- Annex II: Prevention and elimination of pollution by dumping or incineration;
- Annex III: Prevention and elimination of pollution from offshore sources;
- Annex IV: Assessment of the quality of the marine environment;
- Annex V: Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area.

The first four annexes entered into force, together with the Convention itself, in 1998. The fifth annex was adopted in 1998 and entered into force in 2000.

OSPAR has developed, and is implementing, a suite of five thematic strategies to address the main threats that it has identified within its competence (the Biodiversity and Ecosystem Strategy, the Eutrophication Strategy, the Hazardous Substances Strategy, the Offshore Industry Strategy and the Radioactive Substances Strategy). Together with a Strategy for the Joint Assessment and Monitoring Programme, which assesses the status of the marine environment, OSPAR monitors implementation of the strategies and the resulting benefits to the marine environment. These six strategies fit together to underpin the ecosystem approach, which is also a cornerstone of the EU's Marine Strategy Framework Directive (MSFD) of 2009.

In 2003, OSPAR agreed to pursue strategies that would promote cooperation in spatial planning and to develop spatial planning tools for the OSPAR area. The most recent assessment of the marine environment is OSPAR's Quality Status Report 2010 [3]. Ten years of joint monitoring and assessment by OSPAR Contracting Parties provide the scientific basis for this report, which has been prepared based on the expertise of the many experts from OSPAR Governments and stakeholders who provided input to OSPAR Working Groups and Committees. Marine spatial planning is not elaborated in this report, but is specifically mentioned in the context of renewable energy generation, carbon capture and sequestration (the context of climate change), integrated management of human activities, biodiversity loss (and especially establishing a network of Marine Protected Areas).

The EU member states that are Contracting Parties to the OSPAR Convention have agreed that the OSPAR Commission should be the main platform through which they coordinate their work to

implement the MSFD in the region [4]. The OSPAR Commission has indicated that it will facilitate the coordinated and coherent implementation of the regional components of the MSFD ensuring maximum synergy wherever possible. There is a duality between the MSFD and the OSPAR Convention [5]. The Convention is used by member states to implement the cooperation and coordination requirements under the MSFD, but at the same time the MSFD serves to implement the objectives of OSPAR Convention to which the EU is a Contracting Party.

The annexes of the OSPAR Convention and the thematic strategies clearly show that the main issues addressed by OSPAR stem from both terrestrial and marine development. Initially, the issue was the dumping of wastes (including incineration) at sea. While a marine activity, the wastes were primarily generated on land. Concern for land-based sources of pollution provided a second phase in OSPAR's development. Two important economic sectors have a strong influence on the quality of the North-East Atlantic marine environment, viz. fisheries and shipping [3]. Neither issue falls directly or fully within the purview of OSPAR's Contracting Parties. The QSR 2010 identified fisheries as a human activity with a large and widespread impact on the marine environment due to: continued exploitation of stocks beyond sustainable levels; depletion of key predator and prey species and disruption to food webs; damage to sea bed communities and habitats by fishing gears; and, by-catch of non-target fish, seabirds and marine mammals.

The OSPAR Convention states that questions relating to the management of fisheries should be regulated under international and regional agreements dealing specifically with such questions, such as the EU Common Fisheries Policy for the waters of EU Member States and the 1982 Convention on multilateral cooperation in North-East Atlantic Fisheries (implemented through the North East Atlantic Fisheries Commission with whom OSPAR has agreed a memorandum of understanding – see Table 2). Where OSPAR considers that the protection and conservation of the North East Atlantic is, say, compromised by fisheries, it acts to draw that question to the attention of the relevant authority or international body.

The OSPAR maritime areas, and in particular the North Sea, contain some of the busiest sea lanes in the world and both the number of ships and the quantities of cargo are growing rapidly. Shipping has a diversity of impacts on the marine environment, including: accidental or illegal pollution with oil or hazardous and noxious substances (HNS); introduction of alien invasive species via ballast water<sup>1</sup>; air pollution emissions; toxic substances from anti-fouling paints; and pollution with marine litter.

The OSPAR Commission has an Agreement of Cooperation with the International Maritime Organisation (IMO), the competent international body for the regulation of international shipping. Should the OSPAR Commission consider that action in relation to questions concerning maritime transport is necessary, it draws those questions to the attention of the IMO. OSPAR Contracting Parties also cooperate on such issues within the IMO.

The North Sea is becoming busier. Not only shipping, but also construction activities and tourist traffic have been increasing over the last decade. The spatial pattern of human-nature interactions

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<sup>1</sup> The Helsinki and OSPAR Commissions have put in place voluntary guidelines for the shipping industry that requests vessels entering their waters to exchange all their ballast tanks at least 200 nautical miles from the nearest land in water at least 200 metres deep (see Table 2).



has become an issue, in part because of concerns regarding the diversity of demands on marine space and the potential for (and existing) conflicts of use. However spatial aspects have received greater emphasis as a result of plans to generate energy offshore, notably via wind farms, and to establish a network of Marine Protected Areas under the Convention on Biodiversity (CBD). Both have an explicit spatial component; both can place severe restrictions on other maritime activities, notably shipping and fisheries.

OSPAR's QSR 2010 makes it clear that marine spatial planning (aka maritime spatial planning) is an important tool contributing to an ecosystem approach for the integrated management of human activities. Its relevance is emphasised in the contexts of renewable energy generation, climate change (particularly plans for carbon storage or sequestration), tourism, dumped munitions, and biodiversity. The QSR highlights national actions in this regard (Norway, Germany and the Netherlands are mentioned as providing example of good practice for integrated management of human activities, and in particular with regards to their growing expertise in marine spatial planning).

The OSPAR Convention interacts with other conventions relevant for the marine environment, including the Helsinki Commission and the different programmes established under the UNEP Regional Seas Programme. It has agreed Memoranda of Understanding or Agreements of Cooperation with a number of relevant international organisations (see Table 2). Close collaboration is also maintained with the European Commission and the European Environment Agency. The OSPAR Commission also contributes to the global discussions on marine conservation, held e.g. in the UN General Assembly, the Convention on Biological Diversity (CBD) and the International Union for Conservation of Nature (IUCN).

OSPAR works to support and strengthen ties with the European Union's marine and environmental directives and policies. At its Ministerial Meeting in 2010, the renewed strategy for the Joint Assessment and Monitoring Programme (JAMP) for the period 2010 to 2014 is to provide a framework to develop OSPAR's monitoring and assessment programmes, with a particular focus on supporting the work to implement the EU MSFD.

### **3. How OSPAR works**

The work of the OSPAR Commission is formally governed by the Rules of Procedure of the OSPAR Commission. Work to implement the OSPAR Convention and its strategies is taken forward through the adoption of: decisions, which are legally binding on the Contracting Parties, and recommendations and other agreements, which are not legally binding. Decisions and recommendations set out actions to be taken by the Contracting Parties. Until September 2011, OSPAR and its predecessors had issued around 30 decisions and 100 recommendations; these numbers highlight a tendency towards non-binding agreements. OSPAR works primarily through the resources of the Contracting Parties to examine the background to new issues, to develop proposals for the actions and measures to be taken by OSPAR and to prepare assessments on the effectiveness of its work.

The OSPAR Secretariat administers the work under the Convention, coordinates the work of the Contracting Parties and runs the formal meeting schedule. The OSPAR Secretariat also manages reporting of Contracting Parties on the implementation of OSPAR measures and the reporting of data under OSPAR monitoring programmes. For some issues practical data management is handled by a lead Contracting Party or contracted to specialist data centres.

Meetings of the OSPAR Commission and its subsidiary bodies are chaired by elected representatives of the Contracting Parties. OSPAR Committees and Working Groups may be delegated to handle the practical implementation of the strategies and to prepare material for examination by the Commission. Observer organisations take also active part in the work of Committees and working groups.

For each main Committee a work programme is designed and implemented annually. The work programmes are composed of products to be delivered to the next meeting of the committee and the coming years. For each product a task manager from a lead country or the Secretariat is identified. Where issues require substantial work between meetings informal groups may be established, such as intersessional correspondence groups. These are usually convened by a lead country. Where necessary, OSPAR workshops may be convened by a Contracting Party to examine a particular issue following agreement of the OSPAR Commission.

#### **4. Actors and Agencies**

The OSPAR Commission brings together 15 countries (Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland) and the European Commission (representing the European Union) as Contracting Parties. Contracting Parties include nations bordering the North East Atlantic. Finland is a Contracting Party because some of its rivers flow to the Barents Sea (Region 1 in Figure 1). Luxembourg and Switzerland are Contracting Parties located within the Rhine catchment.

A number of organisations have the status of observer (see Table 1b). Observers include other intergovernmental organisations working in similar fields. OSPAR has special cooperative relationships with six of these. Observers also include international non-governmental organisations, largely environmental protection and nature conservation organisations, industry and trade organisations and organisations of regional and local authorities. While the primary responsibility of carrying out the OSPAR Convention lies with the Contracting Parties, the observer community plays an essential role in the promotion of protecting and conserving the North-East Atlantic and its resources. The observers not only take part in the various meetings of the OSPAR Commission but also contribute actively to its work and to shaping policy development. In this way non-governmental organisations are essential partners in the implementation of the Convention and translating its principles into practical action at local, national and regional level.

The structure of OSPAR is shown in Figure 1a. The OSPAR Commission – at the level of officials – meets once every year. It is supported by five main committees: the Hazardous Substances and Eutrophication Committee (HASEC); the Offshore Industry Committee (OIC); the Radioactive Substances Committee (RSC); the Biodiversity Committee (BDC); and the Environmental Impact of Human Activities Committee (EIHA). Each of these usually meets once a year, and is supported by working groups which prepare specific issues.

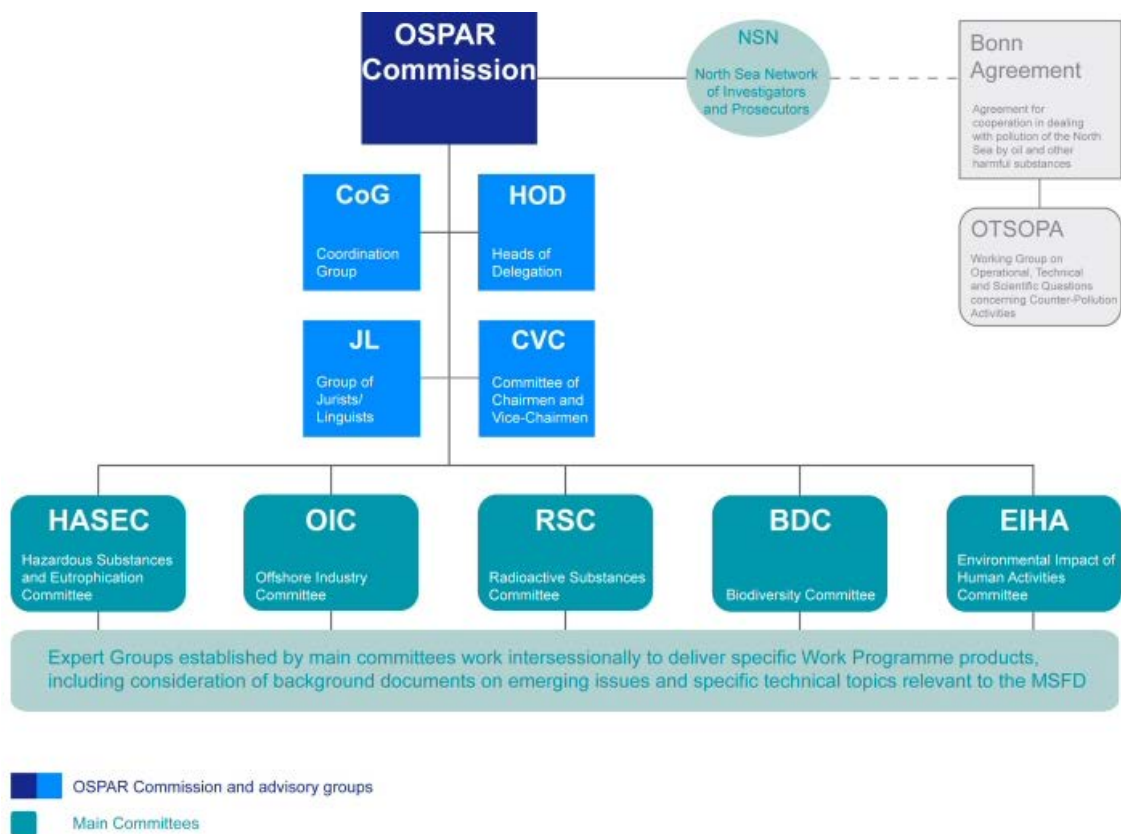


Figure 1a: Structure of the OSPAR Commission (<http://www.ospar.org/>)

Table 1b: Observers to OSPAR (<http://www.ospar.org/>)

Intergovernmental organisations	Non-governmental organisations
<p>Agreement on the conservation of small cetaceans of the Baltic and North Seas (ASCOBANS)</p> <p>Arctic Monitoring and Assessment Programme (AMAP) (ASMO only)<sup>2</sup></p> <p>Baltic Marine Environment Protection Commission (Helsinki Commission)</p> <p>Barcelona Convention</p> <p>Black Sea Commission</p> <p>Common Wadden Sea Secretariat (CWSS) (ASMO only)<sup>2</sup></p> <p>Cooperative Programme for Monitoring and Evaluation of Long-Range Transmission of Air Pollutants in Europe (EMEP)<sup>1</sup></p> <p>European Environment Agency (EEA) (ASMO only)<sup>1,2</sup></p> <p>Intergovernmental Oceanographic Commission (IOC)</p> <p>International Atomic Energy Agency (IAEA)<sup>1</sup></p> <p>International Commission for the Protection of the Rhine</p> <p>International Council for the Exploration of the Sea (ICES)<sup>1</sup></p> <p>International Maritime Organisation (IMO)<sup>1</sup></p> <p>International Seabed Authority (ISA)</p> <p>North Atlantic Marine Mammal Commission (NAMMCO)</p> <p>North-East Atlantic Fisheries Commission (NEAFC)<sup>1</sup></p> <p>Organisation for Economic Cooperation and Development (OECD)</p> <p>United Nations Environment Programme (UNEP)</p>	<p>Advisory Committee on the Protection of the Sea (ACOPS)</p> <p>BirdLife International</p> <p>Central Dredging Association (CEDA)</p> <p>Confederation of European Paper Industries (CEPI)</p> <p>Conference of Peripheral Maritime Regions of Europe (CPMR)</p> <p>Conseil Européen des Fédérations de l'Industrie Chimique (CEFIC)</p> <p>EUCC - the Coastal Union</p> <p>European Union of National Associations of Water Suppliers and Waste Water Services (EUREAU)</p> <p>European Wind Energy Association (EWEA)</p> <p>EURO CHLOR Federation</p> <p>European Apparel and Textile Organisation (EURATEX)</p> <p>European Boating Association (EBA)</p> <p>European Crop Protection Association (ECPA)</p> <p>European Federation of Pharmaceutical Industries and Associations (EFPIA)</p> <p>European Fertilisers Manufacturers Association (EFMA)</p> <p>European Oilfield Speciality Chemicals Association (EOSCA)</p> <p>European Soap and Detergent Industry (AISE)</p> <p>EUROPECHE, Association of National Fisheries Organisations</p> <p>Friends of the Earth (FOE)</p> <p>Greenpeace International</p> <p>International Association of Oil and Gas Producers (OGP)</p> <p>International Association of Ports and Harbors (IAPH)/European Sea Ports Organisation (ESPO)</p> <p>International Chamber of Shipping (ICS)</p> <p>International Navigation Association (PIANC)</p> <p>Kommunes Internasjonale Miljøorganisasjon (KIMO)</p> <p>Natural Resources Defense Council (NRDC)</p> <p>OCEANA</p> <p>Oil Companies' European Organisation for Environmental and Health Protection (CONCAWE)</p> <p>Robin des Bois</p> <p>Seas at Risk</p> <p>Union européenne des producteurs de granulats/European Aggregates Association (UEPG)</p> <p>Union of the Electricity Industry (EURELECTRIC)</p> <p>BUSINESSEUROPE</p> <p>World Nuclear Association</p> <p>World Wide Fund for Nature (WWF)</p>

1 ASMO: Environmental Assessment and Monitoring Committee

2 Memorandum of Understanding or Agreement of Cooperation with OSPAR

In addition, there are four other regular subordinate bodies. The function of the Coordination Group (CoG) is to ensure integration of OSPAR's work and delivery of the Ecosystem Approach in line with the OSPAR Strategy. CoG is a high-level subsidiary body of OSPAR comprising representatives of all Contracting Parties supported by their technical experts as appropriate, Observers, and the Chairmen of all main Committees. The Heads of Delegations meets usually twice a year to prepare issues for the Commission's meeting, to consider the implementation of the Commission's decisions and to advise on management and financial issues. The Committee of Chairmen and Vice-Chairmen meets as necessary to advise the Chairman and the Executive Secretary on their functions. The Group of Jurists and Linguists meets usually once a year to review the drafting of formal Commission instruments and to advise on legal questions.

To improve enforcement in a transboundary North Sea context, the Fifth North Sea Conference 2002 in Bergen, Norway, took an initiative to set up the North Sea Network of Investigators and Prosecutors (NSN), associated with the OSPAR Commission and its Secretariat. The NSN meets annually and members maintain a close contact intersessionally. The NSN cooperates closely with the Bonn Agreement, dealing with pollution of the North Sea by oil and other harmful substances. This includes joint workshops to identify and promulgate judicial lessons learned from surveillance operations and oil pollution cases.

Concern among North Sea states for the North Sea environment pre-dates OSPAR. Because neither OSPAR's predecessors nor EU developments suggested that any stringent international commitments would be initiated without additional political impetus [6], Germany took initiative in 1984 to host the first ministerial-level International Conferences on the Protection of the North Sea (INSC). Six INSCs have since been held, the first in Bremen in 1984 and the last in Gothenburg in 2006. The INSCs involve 'soft law' declarations and contrast with the legally binding norms under OSPAR and the EU. These declarations have sped up decision-making and strengthened OSPAR and EU rules. In turn, OSPAR, and particularly the EU, have improved domestic implementation of the original INSC declarations. Interaction among these three institutions has provided a political framework for a broad and comprehensive assessment of the measures needed to protect the North Sea.

The Ministers at the sixth INSC in Gothenburg, 2006 noted that there was no immediate plan for another North Sea Conference or Ministerial Meeting. The Ministers declared that many of the issues that had been discussed over the years were being treated in other fora, notably OSPAR and the EU. With a view to safeguarding the fulfilment of commitments from the various INSCs, the North Sea Ministers invited OSPAR, in cooperation with the EU, to facilitate a periodic follow-up to this effect. Consequently, the OSPAR Commission regularly reviews progress on the implementation of commitments from the North Sea Conference.

## 5. **Chronology**

The OSPAR Convention (Convention for the Protection of the Marine Environment of the North-East Atlantic of 1992) derives from the merging and modernising of the Oslo Convention, adopted in 1972 to prevent the dumping of hazardous substances at sea, and the Paris Convention, adopted in 1974 Paris Convention to deal with land-based sources of pollution. The OSPAR Convention entered into force in 1998 and is based on the following main principles: the 'precautionary principle'; the 'polluter pays principle'; the Best Available Techniques; and the Best Environmental Practice.

The main events and activities associated with OSPAR, with a focus on marine spatial planning, are summarised in Table 1c. Note that OSPAR specifically uses the term 'Marine Spatial Planning' and not 'Maritime Spatial Planning'. With regards to the North Sea, OSPAR does not work alone in addressing issues of environmental quality. In particular it cooperates with the International North Sea Conferences (INSCs) and the European Union. Table 1d presents the main events within this cooperation.

## 6. **Evaluation of Cooperation**

### 6.1 Introduction

The concepts of effectiveness and inclusiveness are used to evaluate this governance arrangement. Effectiveness relates to goal accomplishment; assessing effectiveness is about measuring progress towards that specific goal. Although this may sound straightforward, measuring effectiveness in a concrete case can be very complicated because of issues of goal definition, indicator selection and causality. An assessment of effectiveness is made against the internal goal of the governance arrangement itself, i.e. the OSPAR Convention, and bases causality on stakeholder statements. In sum, this means that the conclusions about the effectiveness of OSPAR will only be indicative.

Inclusiveness is defined as the extent to which a governance arrangement is based on involvement and participation of the stakeholders concerned in processes of consultation, policy preparation, decision-making, and policy implementation. A high level of inclusiveness is not considered as a value in itself but as a means of improving the quality of decision-making and the effectiveness of its implementation. A distinction is made between stakeholder involvement (who is involved?) and stakeholder participation (how are stakeholders involved?). Table 1f, which presents results, also provides a schematic overview of the analytical framework used in the analysis.

Table 1c: Main activities involving OSPAR, and specifically illustrating OSPAR's coordinating role in repeated measurement and assessment of the marine environment and in aspects related to marine spatial planning (in bold)

Date	Event	Description
1969	Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil (Bonn Agreement)	Following several oil spills, the coastal nations of the North Sea formed the Bonn Agreement to ensure mutual cooperation in the avoidance and combating of environmental pollution. The agreement was revised in 1983 to include the European Union.
1972	Oslo Convention	Convention to control the dumping of harmful substances from ships and aircraft into the sea; entered into force in 1974.
1972	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention)	OSPAR facilitates agreement on global ban on dumping and incineration at sea, which is part of the Convention [7].
1974	Paris Convention	Convention for the Prevention of Marine Pollution from Land-Based Sources; entered into force in 1978; European Community representing EU becomes a Contracting Party.
1992	Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)	Oslo and Paris Conventions combined with the following specific areas: Annex I - Prevention and elimination of pollution from land-based sources; Annex II - Prevention and elimination of pollution by dumping or incineration; Annex III - Prevention and elimination of pollution from offshore sources; Annex IV - Assessment of the quality of the marine environment
1998	Ministerial Meeting of the OSPAR Commission, Sintra, Portugal	OSPAR Convention entered into force; Annex V on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area adopted. Annex V entered into force in 2000.
2000	Quality Status Report 2000	First of a planned series of comprehensive reports on the quality of the marine environment for the whole North-East Atlantic, based largely on the work under the Joint Assessment and Monitoring Programme (JAMP)

2003	Ministerial Meeting of the OSPAR Commission, Bremen, Germany	<b>OSPAR Recommendation 2003/3: Network of Marine Protected Areas with the purpose of establishing an ecologically coherent network of well-managed MPAs in the North-East Atlantic by 2010.</b>
2006	OSPAR Commission (2006)	Two publications: General Report to North Sea Ministers On Follow-Up To The 2002 Bergen Declaration; Report on North Sea Pilot Project on Ecological Quality Objectives.
2008	Meeting of Helsinki and OSPAR Commissions	General Guidance on the Voluntary Interim application of the D1 Ballast Water Exchange Standard; guidelines to reduce the risk of non-indigenous species invasion in ballast water.
Date	Event	Description
2010	Ministerial Meeting of the OSPAR Commission, Bergen, Norway	Renewed Strategy for the Joint Assessment and Monitoring Programme (JAMP) for the period 2010 to 2014. This provides a framework for work to develop OSPAR's monitoring and assessment programmes, with a particular focus on supporting the work to implement the EU MSFD.  Six high seas MPAs designated: Milne Seamount Complex, Charlie Gibbs South, Altair Seamount, Antialtair Seamount, Josephine Seamount, Mid-Atlantic Ridge North of the Azores,
2010	Quality Status Report 2010	<b>MSP specifically mentioned in context of: renewable energy, climate change, tourism, dumped munitions, biodiversity, integrated management of human activities, and ecosystem approach</b>
2014	Expected further revision of JAMP	To focus on development of new general assessments for 2018. In this way OSPAR is co-ordinating repeated measurement and assessment of the marine environment over a 10 – 20 year timeframe.



Table 1d: Events relevant for OSPAR's cooperation with other institutions specifically to protect the environmental quality of the North Sea (aspects related to marine spatial planning in bold)

Date	Event	Description
1979	Convention on Long-range Transboundary Air Pollution	Convention endeavours to limit and prevent air pollution including long-range transboundary air pollution. Contributes to achieving OSPAR's objectives dealing with nutrients and eutrophication, which is relevant for the North Sea and INSC [7].
1979	Birds Directive (Council Directive 79/409/EEC)	In combination with the Habitats Directive, aims to conserve biodiversity through of a network of protected areas known as Natura 2000. Basis for a network of MPAs.
1983	Bonn Agreement	Mechanism by which North Sea States and the European Community work together: 1) to combat pollution in the North Sea Area from maritime disasters and chronic pollution from ships and offshore installations; and 2) to carry out surveillance as an aid to detecting and combating pollution at sea.
1984	First International Conference on the Protection of the North Sea (INSC), Bremen, Germany	<p>First of six conferences. Aim was not to create a new set of international agreements, but to provide political impetus for existing international bodies.</p> <p>Need derived from: i) most pressing problems in OSPAR area concerned the North Sea; ii) large scope of Oslo and Paris Conventions led to decisions close to the lowest common denominator; iii) while parties sought to establish a dynamic regime, it proved static and hard to change in practice, partly due to the legally binding nature of the Conventions[7].</p>
1987	First North Sea Quality Status Report	Prepared specifically for London Conference of North Sea Ministers in 1987; drew together for the first time all available information on inputs to the sea, concentration levels and effects.
1989	Montreal Protocol on Substances That Deplete the Ozone Layer	Helped implement INSC commitments on carbon tetrachloride and methyl chloroform [7].

1991	Urban Wastewater Treatment Directive (Council Directive 91/271/EEC)	Triggered by an INSC Declaration; helps implement INSC objectives on nutrients; includes an obligation to phase out sewage-sludge dumping, which was triggered by OSPAR.
1991	Nitrates Directive (Council Directive 91/676/EEC)	Triggered by an INSC Declaration; helps implement INSC and OSPAR objectives on nutrients [7].
1992	Habitats Directive (Council Directive 92/43/EEC)	In combination with the Habitats Directive, aims to conserve biodiversity through of a network of protected areas known as Natura 2000. Basis for a network of MPAs.
1993	Second North Sea Quality Status Report	Prepared by a North Sea Task Force established by the then Oslo and Paris Commissions and the International Council on the Exploration of the Sea (ICES) in response to the London Declaration of North Sea Ministers in 1987.
1999	Convention on the Protection of the Rhine	Rhine riparian nations and EC. Rhine Convention helps to achieve OSPAR's objectives with regards to land-based pollution; focuses on the North Sea.
Date	Event	Description
2000	Water Framework Directive (Council Directive 2000/60/EC)	Commits EU member states to achieve good ecological status of all water bodies (including marine waters up to one nautical mile from shore) by 2015; helps implement OSPAR's objectives on land-based source of pollution.
2002	Bergen Declaration, Fifth North Sea Conference, Bergen	<b>Item 11: 'Cooperation in the Process of Spatial Planning in the North Sea'. Ministers invite OSPAR within framework of its biodiversity strategy: i) to establish the current state of the use of the North Sea; ii) to investigate the possibilities for further international cooperation in planning and managing marine activities through spatial planning; and iii) to consider possibilities for improving environmental assessment.</b>
2002	Bergen Declaration, Fifth North Sea Conference, Bergen	North Sea Network of Investigators and Prosecutors (NSN) established to bring together international authorities responsible for enforcement of international rules and standards to protect the marine environment from pollution by shipping. NSN is associated to the OSPAR Commission and its Secretariat and cooperates closely with the Bonn Agreement.

2006	Sixth North Sea Conference, Gothenburg, Sweden	No plan for another North Sea Conference or Ministerial Meeting. With a view to safeguarding the fulfilment of commitments from the various North Sea Conferences, North Sea Ministers invite OSPAR, in cooperation with the EU, to facilitate periodic follow-up.
2006	Green Paper: Towards a Future Maritime Policy for the Union, COM(2006)275final	<b>Marine spatial planning (MSP) seen as a key instrument for the management of a growing and competitive maritime economy, while at the same time safeguarding marine biodiversity</b>
2008	Marine Strategy Framework Directive (Council 2008/56/EC)	Establishes common principles on the basis of which Member States develop strategies to achieve a good environmental status in the marine waters for which they are responsible. GES to be achieved using an Ecosystem Approach.
2008	EU MSP Roadmap	<b>Provided an overview of current approaches to MSP, both within and outside of the EU and reiterated the ecosystem approach as the overarching MSP principle.</b>

The stakeholder interviews had three purposes: 1) they helped to check factual information about the governance arrangement, reconstructed its history and determined the current state-of-affairs; 2) they provided input for the assessment of the arrangement in terms of effectiveness and inclusiveness; 3) they assisted identification of challenges for the near future and lessons learned for other regional governance arrangements. Stakeholders have been selected by consulting documents, websites and ‘snowballing’. Special attention was paid to identify those with an extensive knowledge and experience with OSPAR. Annex 2 provides the questionnaire used in the interviews, dealing with the functioning of the arrangement, its main results, and the level and quality of stakeholder involvement. The questions were formulated in a semi-open sense, leaving as much space as possible for own interpretation by interviewees.

Expert interviews have been held with four stakeholder representatives to learn from their experiences with the multilateral cooperation in the context of OSPAR. This augments a series of twelve interviews carried out in 2007 to assess the effectiveness of OSPAR [8]. The questions posed during the recent interviews are presented in Annex 2.

Table 1e. Interviewees and their affiliations

Name	Organisation	Function	Type of stakeholder
Harm Dotinga <sup>1</sup>	Birdlife; Netherlands Institute for the Law of the Sea	Legal researcher	NGO (nature) Academic
Vera Coelho	Seas-at-Risk	Assistant director	NGO (nature)
Hermien Busschbach	Ministry of Infrastructure and Environment (NL); previously at DG Mare	Senior policy officer	Governmental
Henk Offringa <sup>1</sup>	Ministry of Economics, Agriculture and Innovation	Senior policy officer	Governmental

1 Also interviewed in 2007

## 6.2 OSPAR's effectiveness

Stakeholders' perceptions about OSPAR's effectiveness varied between highly and partly successful depending on their perspective. All see the major role of OSPAR as providing a forum for identification of problems, exchange of scientific findings and deliberation about policy measures. OSPAR's role in bringing together all counties bordering and in the catchment of the North East Atlantic is seen as a major asset. The Quality Status Reports, compiled every 10 years, are seen as an important output from OSPAR. However, the interviewees consider OSPAR less relevant when it comes to taking concrete policy measures.

At the level of specific policy areas, OSPAR is claimed to have achieved good results in terms of dealing with hazardous substances and eutrophication. Both issues were instrumental in OSPAR's formation. Policies and measures that it pioneered have now become codified in EU legislation and are binding on the member states, and also on Norway and Iceland as countries in the European Trade Area. Progress on two, relatively recent issues that are given a priority by OSPAR (e.g. see [3], Bergen Declaration in Table 1c), is less straightforward.

The first issue is biodiversity. Interviewees notice positive results such as the listing of endangered species and habitats, and the recent breakthrough of the designation of marine protected areas (MPAs) in the high seas. At the same time, they argue that MPA coverage still needs to be improved and that protection measures are not binding on Contracting Parties. In order to comply with the CBD, there is a target of 10% coverage in 2012, while the area currently covered is less than 4%. OSPAR's role in facilitating ecological coherence and good management of MPAs is compromised by a tendency for protection measures to take the form of recommendations (*cf* decisions), and so without any solid mechanism for enforcement.

The second issue, marine spatial planning, overlaps somewhat with the biodiversity issue in that the need for a coherent system of MPAs implies marine spatial planning at a regional rather than national scale. While Contracting Parties are individually active in marine spatial planning, OSPAR has not succeeded in coordinating efforts because countries are unwilling to cooperate.

Along similar lines, interviewees have brought forward that, although there is a spirit of cooperation within OSPAR, countries still tend to put their own national interests above a coordinated approach. This might be partly explained by their anticipation of future judicial procedures to be started by the European Commission. For example, the EU member states could use the OSPAR QSR as a starting point for their national, initial assessments as required by the MSFD. However, practice shows to date that EU member states prefer to take their own approach and to start from scratch. A similar example relates to the development of documents with regard to biodiversity descriptor for Good Environmental Status, also within the MSFD. Countries are working on their own, demonstrating a lack of will to coordinate efforts for elaboration into regional targets and indicators. Consequently, there is now heterogeneity between countries. It remains to be seen how the MSFD process will address this heterogeneity, as the directive explicitly requires regional coordination.

Interviewees remarked that OSPAR was a direct source of inspiration for EU policies and legislation, particularly in the case of hazardous waste, biodiversity and the MSFD. They also highlighted two other interactions between OSPAR and EU policy. Firstly, they argued that the MSFD is encouraging OSPAR to reposition itself and so has given a new impetus to OSPAR's work. In response, OSPAR has reorganized its own working process and has developed a strategy and a roadmap of activities. OSPAR aims to provide a regional platform for the EU member states bordering on the North East Atlantic and to provide leadership in the regional implementation of the MSFD. In practical terms, it may assist the EU member states to prepare initial assessments and to establish monitoring programmes and programmes of measures. The interviewees argued that OSPAR will have a large potential as an executive organization for the MSFD.

Second, it was argued that Contracting Parties, most of which are also EU member states, put priority on compliance with EU rules above OSPAR. To illustrate, the designation of specific OSPAR

MPAs seems to be a lesser concern for Contracting Parties than the designation and management of Nature 2000 protection areas.

### 6.3 OSPAR's inclusiveness

According to the interviewees, stakeholder representation is well organised. All stakeholders interested in having an observer status with OSPAR are invited to apply and to prove their added value to the cooperation. Observer status allows stakeholders to attend meetings of the OSPAR Commission and its working groups. Observers are also included in mailing lists. Overall, the OSPAR process is seen as very open and transparent. Several interviewees gave examples of stakeholder initiatives that have been rewarded by OSPAR. Birdlife, for example, has prepared background documents and draft recommendations for seven bird species that have resulted in final recommendations. Birdlife took this opportunity because no Contracting Party would take responsibility. KIMO, an environmental organization of local governments, has done much preparatory work to put marine litter on the OSPAR agenda. WWF has been active in the designation of MPAs in the high seas.

Two industries with limited participation as stakeholders were identified by interviewees, viz. the fisheries sector and the oil industry. OSPAR has no authority in the area of fisheries and, as a consequence, cannot take any measures affecting the fisheries sector as it is exclusively regulated by the EU Common Fisheries Policy. This lack of authority makes the sector less interested in participating. There is some exchange of information as OSPAR has, for example, a Memorandum of Understanding with the North East Atlantic Fisheries Commission (NEAFC). The absence of these two industries and, with the rapid development of offshore wind farms, of the energy sector in general is an issue for OSPAR. Its QSR 2010 [3] highlights fisheries as a major source of marine environmental degradation; wind farms are seen as a new development with potential for causing habitat loss and damage, providing a barrier to species movement, underwater noise and electromagnetic changes, and visual disturbance. Concerns have been raised elsewhere, e.g. [9], that the artificial habitat provided by structures such as oil rigs and wind farms will facilitate the establishment of non-indigenous species.

### 6.4 OSPAR as governance arrangement

Taking stock of the current state of nature protection in the North Sea, OSPAR is seen by the interviewees as an important organization to help protect nature. The OSPAR Quality Status Reports (QSRs) provide well-documented overviews of the state of the ecosystem, individual habitats and species, and of the uses that humans make of the marine environment and its environmental consequences. According to QSR 2010 [3], the North Sea is not in a good condition, as it estimated that its current state is about 50% of its natural state. Several species are in an unfavourable state of conservation. Benthic trawling is considered a major environmental problem but, as already mentioned, OSPAR is not able to take measures concerning this activity.

Considering the potential of expanding OSPAR's focus, the interviewees think that OSPAR should stick to its current mandate. However, some interviewees have noted that OSPAR is already broadening its remit by taking issues of marine spatial planning on board which they see as appropriate (see Bergen Declaration in Table 3). Furthermore, OSPAR could build on its linkages with other organizations, such as IMO and NEAFC, and by strengthening these relationships, could use the multilateral cooperation to take more effective measures.

The interviewees have identified several challenges for OSPAR for the next 10 years. Firstly, they expect that the implementation of the MSFD will remain a major issue for OSPAR and will secure its position. Secondly, it has been suggested that OSPAR could play a role in the development of regional marine spatial planning by providing a forum for cooperation. Overall, it is seen as a major challenge for OSPAR to adapt to new developments at EU and global level.

To conclude, the interviewees have been asked to draw lessons learned from the experiences with OSPAR for marine governance in other areas. They have formulated the following recommendations:

- Develop capacity to identify new issues and approaches
- Show flexibility to new developments
- Facilitate a true spirit of cooperation
- Strive for consensus and the willingness to come to joint conclusions
- Secure professionalism and dedication of the secretariat
- Aim at science-based policy making
- Foster stakeholder involvement
- Stimulate transparency of decision-making
- Use reporting as a compliance mechanism

## **7. Lessons for Marine Governance Arrangements**

OSPAR's remit relates to the North East Atlantic, of which the North Sea is only one region. However, the North Sea environment has been severely impacted by human-nature interactions, and issues in the North Sea have provided much impetus for OSPAR's existence and activity.

OSPAR has not acted alone in addressing the North Sea environment. The environmental quality of the North Sea has been the focus of interaction among three institutions: OSPAR, the International North Sea Conferences, and the EU. The INSCs came about largely because the then governance regime for the North Sea was deemed incapable of responding quickly or adequately to problems. That situation has since changed, and the tasks of the INSCs have been taken over by the other two parties.

There is a history of mutual interaction between the EU and OSPAR. On the one hand the EU leans on OSPAR for pioneering new issues and approaches. Examples here are pollution abatement agreements that provided the building blocks for directives such as the Nitrates Directive, and OSPAR's Ecological Quality Objectives (EcoQOs) and The Common Procedure for the Identification of Eutrophication Status, which provided building blocks for the MSFD.



On the other hand, OSPAR rests on the EU to provide enforcement so that objectives are met. OSPAR can, and does, make decisions that are binding on its Contracting Parties, but there is tendency towards making recommendations that are not binding. OSPAR has no vehicle to punish defaulters, unlike the EU which can take action against member states for infringement of its directives. OSPAR is ultimately dependent on the will of its Contracting Parties, and can be severely handicapped by a lack of political commitment. The failure of OSPAR to develop a network of MPAs of sufficient extent is an example. Further, while OSPAR's high seas MPAs are the result of legally binding decisions, measures needed to ensure their protection are encoded as non-binding recommendations. Further, a number of environmental issues relate to activities over which OSPAR has no authority. To address the adverse impacts of fishing, OSPAR needs the support of the EU and its Common Fisheries Policy. In not having its own capacity to enforce its decisions, and in a tendency to opt for non-binding recommendation, there is a risk that OSPAR will not achieve its objectives.

Together with its predecessors, OSPAR has existed for almost five decades. Its flexibility and ability to respond to new issues illustrates its promise for being a sustainable governance arrangement. This is further illustrated by the comments of one interviewee, who argued that OSPAR was becoming redundant until revived by the MSFD, which has permitted it to re-position itself as a regional forum facilitating compliance. OSPAR's potential in this regard is clear. Realisation of that potential is not yet certain, largely because of the national focus of the MSFD and the current choice of nations to pursue their own agendas. Much still rests on the MSFD process, which may, or may not, provide the necessary incentives to member states that will facilitate OSPAR's role as a regional forum.

With regards specifically to MSP, OSPAR provides a major opportunity. It has the potential to be an important forum for 'upscaling' national marine planning to regional marine planning. The Bergen Declaration at the Fifth International North Sea Conference specifically identifies OSPAR's role here in the context of the North Sea. The need for an institution such as OSPAR to fulfil a role in coordinating marine activities at the regional sea level, and particularly to ensure spatial and ecological coherence, is generally recognised, as also indicated by the available literature and interviews with stakeholders.

To conclude, the challenge for OSPAR lies in balances and particularly in its relationship with the EU. Firstly, it needs to continue developing innovative approaches for environmental assessment, in conjunction with, and perhaps even despite, the MSFD and its requirements on member states. Secondly, OSPAR's relevance is dependent on its role as a forum for international cooperation, which needs to be balanced by a capacity to enforce its decisions and so to achieve its objectives. Here it needs the EU.

Table 1f: Analysis of OSPAR as governance arrangement

Subjects	Interpretation/Criteria	Assessment
Status / Foundation of GA	Legal agreement	Successes booked wrt hazardous substances and eutrophication. Progress on biodiversity and MSP constrained by lack of a vehicle to enforce compliance.
Decision-making structure	(Ministerial Meeting of) the OSPAR Commission. Delegates from Contracting Parties, with stakeholders as observers	Tendency towards non-binding recommendations rather than legally binding decisions indicates reduced political will among Contracting Parties.
Inclusiveness: stakeholder involvement in the GA	Most stakeholders involved. Select industries, e.g. fisheries, shipping and energy, less actively involved.	Small number of important stakeholders, related to current and future sources of environmental degradation, missing.
Inclusiveness: stakeholder participation in the GA	Policy preparation (represented in working and project groups)	OSPAR procedures transparent, and stakeholder participation, initiative and activity are welcome.
Objectives/goals/drivers	Protection of the marine environment of the North-East Atlantic	Largely achieved for high profile issues when OSPAR was established. OSPAR's success with more recent issues limited; there is potential but it is unclear whether it can be realised.
Ambition level	Forum for coordinating regional implementation of MSFD and MSP.	Good potential, but the will to cooperate among Contracting Parties might be limited.
Effectiveness: goal accomplishment	Some goals met, others not	OSPAR faces considerable challenges to meet its current goals.
Governance challenges	Threatened obsolescence given MSFD and initiatives at EU level.	Re-positioning as a regional forum to support 1) compliance of MSFD and 2) a regional perspective on MSP. Includes non-EU states.
Substantive challenges	Limited capacity to regulate/ constrain key sources of environmental degradation.	Needs to work closely with EU, IMO, and other organisations to achieve its aims.

GA= governance arrangement

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## Annex 1. Questionnaire Multilateral Cooperation OSPAR

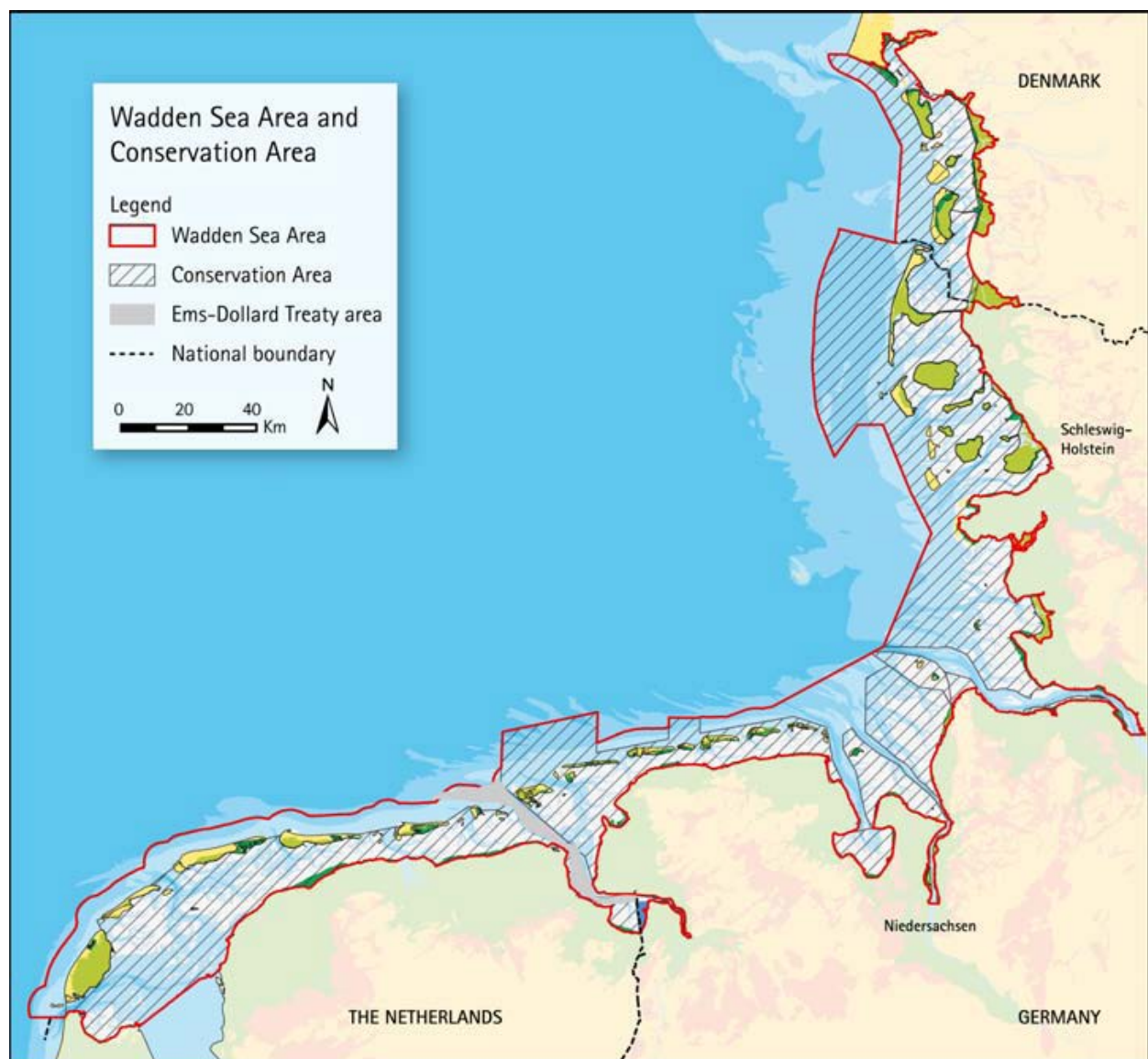
- 1) What is your professional relationship with the multilateral cooperation OSPAR?
- 2) How do you perceive the functioning of the multilateral cooperation? Do you see the cooperation as successful or unsuccessful? What are your main arguments?
- 3) To what extent are the stakeholders involved in the policy process? Do you think that they have sufficient influence?
- 4) What have been the main issues for the multilateral cooperation in the past years in your view?
- 5) To what extent has the cooperation succeeded in achieving positive results in relation to these issues?
- 6) Have there been any issues in which the cooperation has achieved less good results than expected/desired?
- 7) Taking stock of the current state of pollution protection in the OSPAR region: do you think the balance is positive or negative?
- 8) What are in your opinion the most important challenges for OSPAR in the next 10 years?
- 9) OSPAR is now mostly focused on protection against pollution. Do you think there is potential to expand its focus to other sectors?
- 10) What are in your view the most important lessons to be learned from the multilateral cooperation for governance arrangements in other marine areas?
- 11) Do you have additional comments related to the multilateral cooperation in OSPAR?

## North Sea Case Study 2:

### The Trilateral Wadden Sea Cooperation

Nicolien van der Grijp

March 2012



Source: Wadden Sea Plan 2010

**Abbreviations**

CBD	Convention on Biological Diversity
CWSS	Common Wadden Sea Secretariat
ICZM	Integrated Coastal Zone Management
IMO	International Maritime Organization
TMAG	Trilateral Monitoring and Assessment Group
TMAP	Trilateral Monitoring and Assessment Programme
TGC	Trilateral Governmental Conference
TWG	Trilateral Working Group
WSF	Wadden Sea Forum
WSP	Wadden Sea Plan
WWF	World Wide Fund For Nature / World Wildlife Fund

## 1. Introduction

This case study focuses on the Trilateral Wadden Sea Cooperation which is widely considered a pioneering model for the protection and management of a transboundary ecological system of international importance. The trilateral cooperation has been established since 1978 by the governments of the Netherlands, Germany and Denmark and focuses on the protection and conservation of the Wadden Sea. It resulted from calls from non-governmental nature conservation organisations and the scientific community, during the 1970s, for special measures to protect the Wadden Sea, and to treat it as a single ecological system [1]. Following an external evaluation in 2007, the cooperation was refreshed in 2010 with the agreement of the Sylt Declaration. Table 2a summarises the key features of the case study.

Table 2a. Key features of case study

Governance arrangement	European Sea	Spatial breakdown	Legal status	Key documents	Website
Trilateral Wadden Sea Cooperation	North Sea	Denmark, Germany, the Netherlands	Political agreement	<ul style="list-style-type: none"> <li>•Sylt Declaration 2010</li> <li>•Wadden Sea Plan 2010</li> <li>•Governance arrangements 2010</li> <li>•Quality Status Report 2010</li> <li>•Policy Assessment Report 2010</li> </ul>	<a href="http://www.waddensea-secretariat.org/">www.waddensea-secretariat.org/</a>

The objective of the case study is to examine to what extent the governance arrangement is effective from the perspective of the stakeholders concerned, what are its strong and weak points, whether and how stakeholders are involved in policy making, and what lessons can be learned for other regional governance arrangements and marine spatial planning.

The concepts of effectiveness and inclusiveness have been central in the analysis. Effectiveness relates to goal accomplishment and assessing effectiveness is about measuring progress towards that specific goal. Although this may sound straightforward, measuring effectiveness in a concrete case can be very complicated because of issues of goal definition, indicator selection and causality. This case study makes an assessment of effectiveness against the internal goal of the governance arrangement itself and bases causality on stakeholder statements. In summary, this means that the conclusions about the effectiveness of the Trilateral Wadden Sea Cooperation will be only indicative.

Inclusiveness is defined in this study as the extent to which a governance arrangement is based on involvement and participation of the stakeholders concerned in processes of consultation, policy preparation, decision-making, and policy implementation. A high level of inclusiveness is not considered as a value in itself but as a means of improving the quality of decision making and more effective implementation. In this case study, a distinction is made between stakeholder involvement (who is involved?) and stakeholder participation (how are stakeholders involved?). Annex 1 provides a schematic overview of the analytical framework used in the analysis.

The paper is based on a study of the main documents of the governance arrangement itself and the literature. In addition, interviews were undertaken with key stakeholders in February 2012 (see Table 2b). Further information has been collected through the attendance of a symposium on Wadden Sea governance in December 2011 and an academic lecture series on Wadden Sea management in November-December 2011.

Table 2b. Interviewees and their affiliations

Name	Organisation	Function	Type of stakeholder
Jens Enemark	Common Wadden Sea Secretariat	Secretary of CWWS	Government
Tineke Schokker	Deputy of Province of Friesland	Deputy of Province of Friesland; member Wadden Sea Board; vice chairman of Wadden Sea Forum; member of Regiecollege Waddenzee	Government
Herman Verheij	Dutch Wadden Sea Society	Policy officer; advisor Wadden Sea Board; member of Wadden Sea Forum; chairman Seas-at-Risk	NGO: nature conservation
Klaas Deen	Wadden Academy (Royal Netherlands Academy of Arts and Sciences – KNAW)	Secretary	Science: management
Daniel Puente Rodriguez	University of Groningen and VU University Amsterdam	Postdoc researcher	Science: policy studies
Paddy Walker	Centre for Marine Policy and Dutch Wadden Sea Society	Researcher of Programme Towards a Rich Wadden Sea	Science: marine ecology NGO: nature conservation



The expert interviews had three purposes. First, they helped to check factual information about the arrangement, reconstruct its history and determine the current state-of-affairs. Second, they provided input for the assessment of the arrangement in terms of effectiveness and inclusiveness. Third, they assisted to identify challenges for the near future and lessons learned for other regional governance arrangements. The experts have been selected by consulting documents, websites and 'snowballing'. Special attention is paid to identify those with an extensive knowledge and experience in the area.

Annex 2 provides the questionnaire used in the interviews, dealing with the functioning of the arrangement, its main results, the present state of nature (conservation) in the area, and the level and quality of stakeholder involvement. The questions were formulated in a semi-open sense, leaving as much space as possible for interpretations by the interviewees.

The structure of the paper is as follows. Section 2 provides an overview of the geographical and ecological context of the Wadden Sea and the main human-nature interactions. Section 3 focuses on the Trilateral Wadden Sea Cooperation, its organisational structure and main outputs. Section 4 reports about the external evaluation of the trilateral cooperation in 2007. Section 5 elaborates on the outcomes of the stakeholder interviews. Section 6 presents conclusions.

## **2. Context and conditions of the Trilateral Wadden Sea Cooperation**

As illustrated by the map on the cover, the Wadden Sea Area is located in the North Sea and falls under the jurisdiction of the Netherlands, Germany and Denmark. It covers about 14,700 km<sup>2</sup> and the conservation area is about 11,200 km<sup>2</sup>. The Wadden Sea is considered one of the largest areas of intertidal mudflat in the world with abundant shellfish, including mussel beds and patches of seagrass [3]. It is a crucial stopover for 10-12 millions of migrating birds each year. Oceanic waters dominate river influence, and dynamic sandy shoals and dune islands provide a partial shelter against waves and sea winds [4]. A number of about 10,000 species of plants, fungi and animals thrive in the Wadden Sea.

However, major human activities in the area are providing potential threats to the ecosystem, including: shipping and port development; extraction and transport of natural gas; dredging and extraction of sand and shells; wind farms; fisheries for fish, cockles, blue mussels and shrimp; cultivation of mussels, oysters and fish; and tourism [2]. Over the years, there have been several controversies between stakeholders, focusing for example on mechanical cockle fisheries and gas exploration and exploitation [5]. The quality of the habitats in the Wadden Sea remains under pressure, especially from fisheries [6;7]. Water quality has improved in the past decades but not sufficiently, and is still a concern.

The protection and management of the Wadden Sea is organized at different geographical levels, including international, regional, European, trilateral and national, and is regulated via treaties, agreements, directives and various laws. The different levels are strongly interconnected. The acquired status of UNESCO World Heritage Site in 2009 has not changed anything in the legal regime for the protection of the Wadden Sea. Rather, the designation should be seen as the crowning of years of efforts by many residents, organizations and governments in the region. The World Heritage Site is 400 kilometers long and has a surface area of 9,683 km<sup>2</sup>, consisting of salt marshes, emerged tidal flats,

permanently flooded flats and channels, islands and sandbanks, and North Sea coastal zone area. Presently, 66% of the total Wadden Sea region falls under the World Heritage Site, and is located in Germany and the Netherlands.

In the Netherlands, the nature conservation status of the Wadden Sea area is secured by the Key Planning Decision Wadden Sea (PKB Waddenzee), in combination with a designation under the Nature Conservation Act 1998. In addition, several other acts are applicable dealing with environmental and economic issues and involving different layers of government. Germany and Denmark have opted for a different approach by establishing national parks in the area. In Germany, the Wadden Sea is protected by national park designations in Schleswig-Holstein (1985), Lower Saxon (1986) and Hamburg (1990). Denmark declared most of its Wadden Sea Area, including the islands and some embanked marshlands on the mainland, as national park in 2010.

Within this multi-level institutional context, the Trilateral Wadden Sea Cooperation aims to protect and manage the Wadden Sea as a single ecological entity shared by the three countries in accordance with the guiding principle for the nature conservation area, which is “to achieve, as far as possible, a natural and sustainable ecosystem in which natural processes proceed in an undisturbed way.” This is done in the recognition that this can only be attained in cooperation with those who live, work and recreate in the area and are willing to endow its protection.

### **3. The Trilateral Wadden Sea Cooperation: organisational structure, focus and main outputs**

The terms of cooperation of the Trilateral Wadden Sea Cooperation were originally elaborated in the Joint Declaration on the Protection of the Wadden Sea which was signed in Copenhagen in 1982 (Copenhagen Declaration) and provided the political foundation of the cooperation. According to this Declaration, the cooperation aimed to provide a forum to consult each other to coordinate activities and measures to implement international and EU legal instruments with regard to the comprehensive protection of the Wadden Sea region as a whole including its fauna (marine, terrestrial and avian) and flora with special emphasis on:

- Resting and breeding areas for seals;
- Areas being important as resting, feeding, breeding, or moulting grounds for waterfowl, both in themselves and in their interdependencies.

To facilitate information exchange and coordination, the Common Wadden Sea Secretariat (CWSS) was established in 1987 in Wilhelmshaven (Germany), as the secretariat for the trilateral cooperation. Its primary task was to support, initiate, facilitate and coordinate the activities of the collaboration (Administrative Agreement, 1987). Over the years, the Joint Declaration has remained the political foundation of the cooperation, although various new elements have been added by the Declarations issued at each Trilateral Governmental Conference. The strong nature conservation focus has been

broadened, with the adoption of the Wadden Sea Plan in 1997 which is moving in the direction of integrated management and sustainable use. According to this plan, the shared vision is:

- “A healthy environment which maintains the diversity of habitats and species, its ecological integrity and resilience as a global responsibility;
- Sustainable use;
- Maintenance and enhancement of values of ecological, economic, historic, cultural, social and coastal protection character, providing aspirations and enjoyment for the inhabitants and users;
- Integrated management of human activities which take into account the socio-economic and ecological relationships between the Wadden Sea Area and the adjacent areas; and
- An informed, involved and committed community”.

In 2010, the Joint Declaration of 1982 was replaced by the renewed Joint Declaration on the Protection of the Wadden Sea, or Sylt Declaration. This Joint Declaration 2010 does not alter the spirit or legal status of the cooperation. This will remain a formal, but not legally binding, cooperation between the governments of the three countries. In conjunction with the signing of the Joint Declaration 2010, new governance structures have been launched replacing the existing structures. Figure IIa gives an overview of the organisational structure of the Trilateral Wadden Sea Cooperation as decided in 2010.

## TRILATERAL WADDEN SEA COOPERATION

### ORGANISATIONAL STRUCTURE

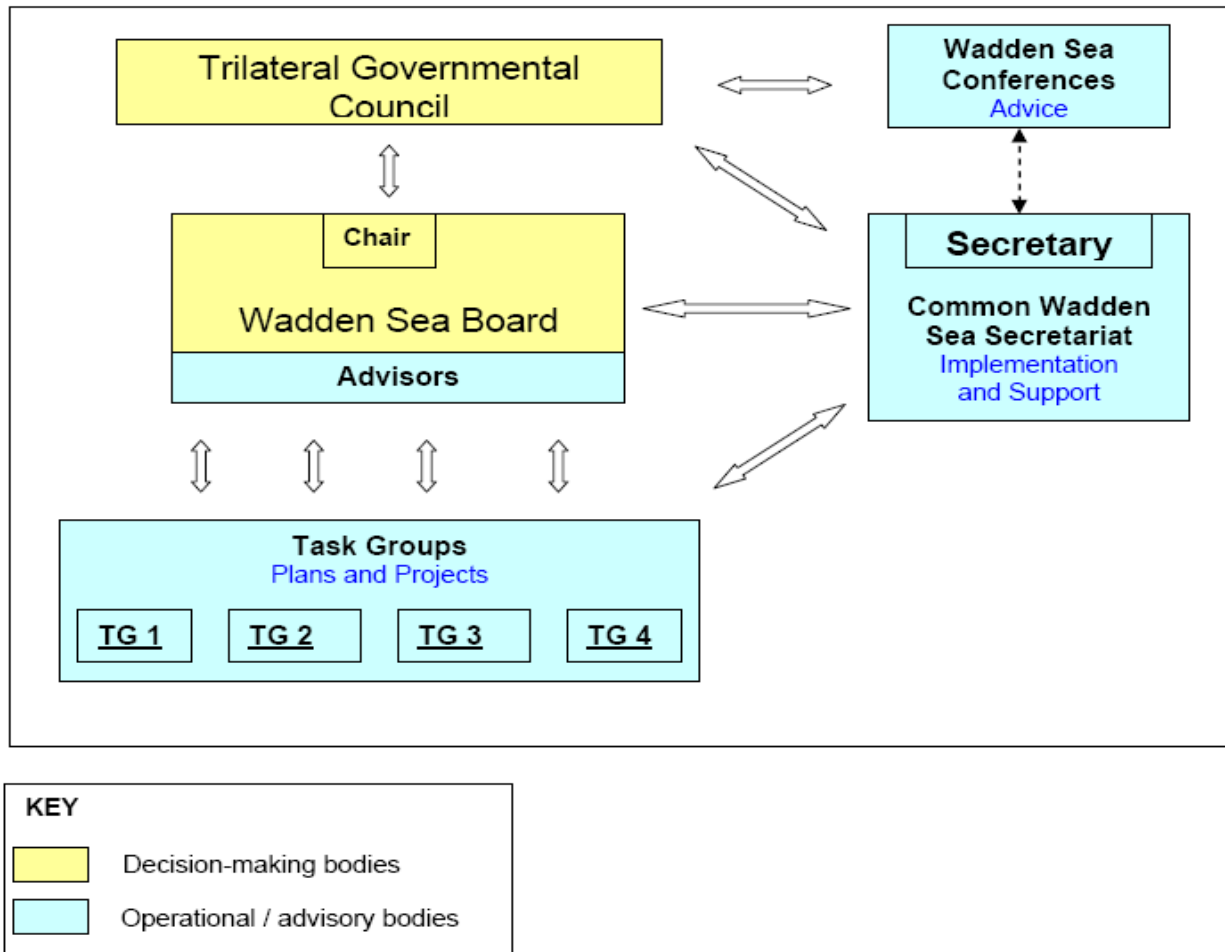


Figure IIa. Organisational structure of the Trilateral Wadden Sea Cooperation as decided in 2010

The Trilateral Wadden Sea Governmental Council is the highest level of decision-making of the cooperation, representing the participating countries by national ministers responsible for environment and/or nature protection. The Council gives political leadership, assures international policy development, and promotes harmonisation and decision-making between the three governments. The Council convenes at the Trilateral Governmental Conferences (TGCs) which is the highest level of decision-making in the cooperation. These conferences, held with intervals of 2-5 years, have been the driver to review and advance the cooperation. Table 3 provides an overview of the TGCs between 1978 and 2010, and their main outcomes.

Table 2c. Trilateral Governmental Conferences and their main outcomes (1978-2010)

TGCs	Year	Location	Main outcomes
TGC1	1978	The Hague	Establishment of the Trilateral Wadden Sea Cooperation
TGC2	1980	Bonn	Coordination of scientific research
TGC3	1982	Copenhagen	Joint Declaration on the Protection of the Wadden Sea
TGC4	1985	The Hague	Establishment of the Wadden Sea Secretariat
TGC5	1988	Bonn	Adoption of the Agreement on the Protection of Seals
TGC6	1991	Esjberg	Adoption of the guiding principle, management principles and human use objectives
TGC7	1994	Leeuwarden	Adoption of a common delimitation and common ecological targets
TGC8	1997	Stade	Publication of 1st Wadden Sea Plan
TGC9	2001	Esjberg	Establishment of Trilateral Wadden Sea Forum
TGC10	2005	Schiermonnikoog	Decision to start nomination UNESCO World Heritage Site, and establishment of the International Wadden Sea School
TGC11	2010	Sylt	Joint Declaration 2010, new governance structure, and revised Wadden Sea Plan

The TGCs will in the future be prepared by the Wadden Sea Board (WSB), which is a newly added element to the organisational structure. It is the governing body of the cooperation and prepares, adopts and implements the strategy, oversees the operational and advisory bodies, and secures relations with key stakeholders. Task groups advising the WSB focus on Climate (TG-C), Sustainable Tourism Strategy (TG-STs), Shipping (TG-S), Management (TG-M), and World Heritage (TG-STs). The trilateral cooperation is supported by the Common Wadden Sea Secretariat (CWWS). Its primary task is to support, initiate, facilitate and coordinate the activities of the collaboration.

Stakeholder involvement and participation is secured through the Wadden Sea Forum (WSF). The WSF is an independent platform of stakeholders from Denmark, Germany and The Netherlands aiming to contribute to an advanced and sustainable development of the trilateral Wadden Sea Region. In particular, this means integrating specific cross-sectoral and transboundary strategies, actions and techniques which are environmentally sound, economically viable and socially acceptable. The WSF consists of representatives of the sectors agriculture, energy, fisheries, industry and harbour, nature protection, tourism, as well as local and regional governments. National governments are represented in this forum as observers.

In addition to the WSF, and in accordance with the Joint Declaration on the Protection of the Wadden Sea, The Wadden Sea Plan 2010 (WSP-2010) constitutes the framework for the integrated management of the Wadden Sea Area as an ecological entity, as well as recognizing its landscape and cultural heritage. It elaborates on the vision of the Trilateral Wadden Sea Cooperation of a Wadden Sea which is a unique, natural and dynamic ecosystem with characteristic biodiversity, vast open landscapes and rich cultural heritage, enjoyed by all, and delivering benefits in a sustainable way to present and future generations. WSP-2010 sets out a series of targets, as well as policies, measures, projects and actions to achieve these targets, which are to be implemented by the Wadden Sea countries. Furthermore, WSP-2010 aims

to ensure a coordinated and consistent implementation of the European legislation in a transparent way, although acknowledging diverging interpretations of the EU Habitat Directive. The plan was developed with the participation of local and regional authorities and interest groups.

Wadden Sea policies rely heavily on scientific knowledge to provide a basis for decisions regarding conservation and management [5]. Scientific experts are not only involved in determining and monitoring the natural values of the Wadden Sea, but also in determining the effects of economic activities on these natural values and in the evaluation of policy. Much of the scientific effort takes place in the context of the Trilateral Monitoring and Assessment Programme (TMAP).

In summary, in the nearly 35 years of its existence, the focus of the trilateral cooperation has evolved from nature conservation to encompass sustainable use and aspects of sustainable development [1]). Essentially, three different periods can be distinguished. During the first period (1978-1985), the emphasis has been on information exchange and coordination of measures as stipulated in the Joint Declaration 1982. During the second period (1985-2000), with the establishment of the CWWS, a start was made with a more integrated approach to nature conservation, taking into account the whole range of human activities in the Wadden Sea. This culminated in 1997 in the adoption of the trilateral Wadden Sea Plan (WSP), which included a system of ecological targets covering typical Wadden Sea habitats and species and water and sediments, as well targets on landscape and culture. For each target, the baseline and target conditions were defined, and policy and management actions proposed. During the third period beginning around 2000, the integrated approach was further consolidated and institutionalised, with as main achievements the designation of the Wadden Sea as a Particularly Sensitive Sea Area (PSSA) by the International Maritime Organization (IMO), the publication quality status and policy assessment reports, the designation as a UNESCO World Heritage Site, and the revised Joint Declaration and Wadden Sea Plan.

#### **4. External evaluation of the Trilateral Wadden Sea Cooperation**

In 2007, the functioning of the Trilateral Wadden Sea Cooperation has been externally evaluated for the first time in its existence [1]. Focus of the evaluation was the relevance of the cooperation, its legal status and governance, its secretariat, its relations to international and EU legislation, its stakeholder relations, and its finances. The focus of the evaluation has been highly internal. The questionnaires for the evaluation have been distributed among stakeholders involved in the cooperation's key structures. The same accounts for the interviews. Furthermore, the evaluators focused solely on aspects of governance, defining the latter as "the decision-making structures and processes of the cooperation" [1]. It has not been their task to assess the conservation outcomes achieved by the cooperation, nor individual project results.

Overall, the evaluators concluded that the trilateral cooperation has been very effective in meeting the objective of a comprehensive protection of the Wadden Sea and has delivered significant added value to the work of the individual countries. According to the evaluators, the TGCs have provided the building

blocks for the cooperation, having given a clear political mandate and impetus to the process and secured commitment from below. In addition, the role of the Common Wadden Sea Secretariat (CWWS) has been pivotal. In the evaluation it has been widely praised, because it has provided a stable focal point for support and coordination of activities and significant leadership in setting a common conservation and management agenda, as well as coordinating research and monitoring [1].

As significant substantive achievements, the evaluators mentioned the politically-adopted ecological, physico-chemical and cultural targets, the Wadden Sea Plan, the harmonised monitoring programme, the quality status and policy assessment reports, and the Seal Agreement and Management Plan. Most notably, Moser and Brown [1] stated that:

“Although not all of these achievements can be 100% ascribed to the Cooperation, the evaluators believe that this is the most advanced and effective international cooperation in the world for a trans-boundary wetland of international importance (a view endorsed by the Secretary General of the Ramsar Convention (P. Bridgewater *pers comm.*)). There can be little doubt that most of these achievements would not have occurred without the commitment of the 1982 Joint Declaration and the establishment of a Common Wadden Sea Secretariat.”

However, the evaluators also argued in their report that there was ample room for improvement. They observed a loss of direction of the cooperation and weakening of commitment. In their view, the Joint Declaration on the Protection of the Wadden Sea needed revision to update it to current standards and practices and to incorporate a long-term vision and a planning mechanism. Furthermore, the evaluators noted that many concerns were expressed over the effectiveness of the Cooperation’s governance due to overlapping and resource-intensive structures, unclear responsibilities and accountabilities, and inadequate strategic and collective leadership. The evaluators proposed replacing the existing governance structures with new and streamlined arrangements, which were fit for purpose and could lead the trilateral cooperation towards its agreed vision. They especially recommended the creation of a Trilateral Wadden Sea Board with an independent chairman who could function as an ambassador for the trilateral cooperation. This Board should have a strong policy coordination function and should govern the Secretariat. Furthermore, the evaluators advised closer with key stakeholders including environmental NGOs to develop common views how to address the challenges ahead.

In their report, the evaluators considered whether the legal status of the trilateral cooperation should be strengthened in the near future, comparing the options of: 1) business-as-usual on the basis of the 1982 Joint Declaration, 2) a refreshed Joint Declaration, and 3) a Wadden Sea Convention. They concluded that because of the plethora of existing international treaties and EU legislation covering the Wadden Sea, there is no justification for establishing a treaty. However, they argued that instead there was a strong case for the option of refreshing the political declaration of commitment which should encompass the recommendations of the evaluation.

Almost all recommendations of the evaluators have been subsequently implemented at the 11th Trilateral Governmental Conference in 2010. This has resulted in a refreshed Joint Declaration, a

document outlining the new governance structure, and a revised Wadden Sea Plan. However, it has been decided to opt for a rotating presidency, instead of an independent chairman. Mr Peter Ilsøe, a senior official of the Danish government, has been designated as the first chairman of the Wadden Sea Board. Mr Ilsøe has played a key role in the recent establishment of the Danish Wadden Sea National Park.

Moser & Brown [1] conclude that the need for an effective Trilateral Wadden Sea Cooperation is as great today as it was in 1978. In this respect, they refer to emerging challenges from the effects of globalization (such as harbours, shipping, energy sector, invasive alien species) and particularly from the impacts of climate change. They also mention governance-related issues, such as the nomination of the Dutch/German Wadden Sea as a UNESCO World Heritage Site, the coherence of the Natura 2000 network, and new EU legislation, including the Marine Strategy Framework Directive, which require trilateral coordination.

## **5. Results of stakeholder interviews**

As explained in Section 1, expert interviews have been held with six stakeholder representatives in order to learn from their experiences with the Trilateral Wadden Sea Cooperation. All interviewees perceived the trilateral cooperation as effective, arguing that the cooperation had succeeded in bringing all parties to the table and had been instrumental in making progress in several areas of nature conservation and management. The cooperation is also considered in having been effective in creating a common knowledge base and increased awareness about the issues at stake. Some interviewees commented on the specific situation in the Netherlands, arguing that the trilateral cooperation functions as a clear cut line of thinking in the current national ‘administrative and institutional spaghetti’. Several interviewees also mentioned the professionalism of the trilateral cooperation and the good work of the secretariat (CWSS) in particular. They considered as highlights of the trilateral cooperation the establishment of the Wadden Sea Plan, the joint monitoring and reporting efforts, and the nomination of the region as a UNESCO World Heritage Site.

However, the interviewees differed in their opinions about the degree of effectiveness of the trilateral cooperation. For some, the cooperation is highly successful, and may be even compared to the icon of nature protection worldwide, the Great Barrier Reef. Others argue that its success is limited, with as main argument the noncommittal character of the cooperation. In their view the trilateral cooperation provides a forum for discussion but lacks the mandate for effective trilateral policy coordination. As a result, the cooperation may run the risk that it comes down to pursuing national interests in a trilateral context. For example, several interviewees have pointed at the differences in implementation of EU policy by the three countries, as they do not follow a coordinated approach in relation to Natura 2000 and fisheries policies. It was hinted at that the policies of Germany and Denmark are stricter than those of the Netherlands. Significantly, the cooperation does not have a separate task group for EU policy. The issue of harmonization and coordination seems not to be a high priority. In this respect, it could be seen as a hindering factor that EU legislation is focused on national implementation by member states and



does not recognize the concept of regional implementation. Consequently, the EU looks at the conservation status of individual habitats at the national level, instead of considering a transboundary habitat as a whole.

According to the interviewees, the level of inclusiveness of the trilateral cooperation has been quite high. The main venue for stakeholder involvement and participation is the Wadden Sea Forum (WSF) that was established in 2002. It provides an advisory role to the trilateral cooperation but has not any decision making authority although there are some indirect links, with WSF members acting as advisors to the WSB. The WSF is perceived as providing much added value as it succeeds in providing a forum for constructive discussion and in building bridges between and within sectors. The WSF has a broader mandate than the trilateral cooperation: its mission is to achieve sustainable development in the Wadden Sea cooperation area which is larger than the conservation area.

In addition to the WSF, stakeholders are represented in task groups to the trilateral cooperation and are allowed to comment on the draft version of the declarations issued at each trilateral governmental conference. However, the interviewees indicated that the level and quality of actual participation may differ per issue. Overall, it seems that the fisheries sector is less willing to participate than other commercial sectors.

The interviewees agreed that the trilateral cooperation has succeeded in achieving positive results in relation to the issues at stake. However, they also identified areas where the cooperation had achieved less good results than expected and/or desired. Besides harmonized implementation of EU legislation, fisheries, tourism and safety of shipping and navigation were mentioned as areas where progress was less than hoped for. Explanations for a lack of results included the dominance of commercial interests and the fact that the ministries responsible for these issues are not represented in the trilateral cooperation, but only their colleagues for environment and nature protection.

Taking stock of the current state of nature protection in the Wadden Sea region, the interviewees were of the opinion that the balance is slightly positive although there remain several threats. The main arguments for the positive perceptions are improved water quality and the coverage of the area by several nature protection regimes, especially the UNESCO World Heritage Status. However, a good protection status is not sufficient but requires that protection measures are taken. Significantly, research has shown that the ecosystem of the Wadden Sea has become less robust over the years. This is caused by changes in soil structure and vegetation. Furthermore, several interviewees have pointed at negative developments at the fringes of the area, such as the new coal power plant in the Eemshaven and the waste incineration facility in Harlingen.

Asked for the main challenges in the next 10 years, the interviewees mostly referred to climate change and biodiversity related issues. In concrete terms, they mentioned sea level rise, shifts in ecosystems, and the intrusion of invasive species (e.g. Pacific Oyster) as threats to the dynamic Wadden Sea ecosystem. Furthermore, they considered economic activities, governmental expenditure cuts for nature protection, and decentralization of governmental authority as potentially problematic.

The trilateral cooperation is now mostly focused on nature conservation, allowing wise and sustainable use under certain conditions. Most interviewees are in favour of this integration of nature protection and socio-economic functions, recognizing the need to find the right balance. One interviewee mentioned that the acquired status of UNESCO World Heritage Site may be used as a 'place making catalyst'. Possibly, the time has come for developing a regional agenda in order to strengthen the identity and quality of the region. A second interviewee argued that there was a need to expand cooperation in the areas of energy and shipping and start developing innovative and cutting-edge approaches aiming at true sustainability. A third interviewee suggested developing a joint strategy for sustainable development in the region along similar lines as the recommendation of the European Commission about integrated coastal zone management envisages.

To conclude, the experts have been asked to draw lessons learned from the experiences with the Trilateral Wadden Sea Cooperation for marine governance and planning in other areas. In response, they formulated the following recommendations:

- Foster the importance of cooperation;
- Secure political commitment;
- Stimulate stakeholder involvement and participation;
- Pursue integrated ecosystem objectives;
- Develop an assessment and monitoring programme, and
- If feasible, aim for a special nature protection status.

## 6. Conclusions

The Trilateral Wadden Sea Cooperation, based on a political agreement, has been established for nearly 35 years. Over the years, the option of a Wadden Sea Convention has been discussed but never been seriously considered. However, the trilateral cooperation provides a good example of a non-binding governance arrangement that has proven to be effective. The major focus of the trilateral cooperation is on nature protection, albeit allowing sustainable use. Within its mandate, the ambition level of the trilateral cooperation is largely focused on the implementation of international agreements and EU legislation, and less on exploring new avenues ahead of existing policies. The designation of the Dutch and German parts of the Wadden Sea as a UNESCO World Heritage Site in 2009 is considered a major achievement of the trilateral cooperation. Other important results have been the Wadden Sea Plan and the quality status and policy assessment reports.

Table 2d. Main case study findings on the Trilateral Wadden Sea Cooperation

<b>Subjects</b>	<b>Interpretation</b>	<b>Assessment</b>
Status of governance arrangement	Political agreement between Denmark, Germany and the Netherlands	Terms of cooperation elaborated in Joint Declaration on the Protection of the Wadden Sea
Highest level of decision-making structure	Trilateral Governmental Conference	Involvement of national ministers responsible for environment and/or nature protection
Stakeholder involvement	All stakeholders	Fisheries sector relatively less well involved.
Stakeholder participation	Consultation on structural basis, policy preparation and implementation	Stakeholders represented in the Wadden Sea Forum in a mostly advisory role; fisheries sector less keen on participation
Objectives/goals/drivers	Nature protection, but allowing sustainable use of the Wadden Sea area	Major pressures from commercial sectors, such as shipping, fisheries, tourism and energy
Ambition level	Strictly implementing EU policy	Implementation not trilaterally harmonized and coordinated
Goal accomplishment	Some goals met, others not	Well protected status of the area achieved but the state of the ecosystem is still insufficiently robust
Governance challenges	Harmonised implementation of EU legislation and reaping benefits of UNESCO World Heritage Status	New status could be instrumental in strengthening the identity and quality of the region to secure its sustainable development
Substantive challenges	Climate change; biodiversity; tourism	

Over the years, the trilateral cooperation has shown flexibility in adapting its objectives and policies to new developments, resulting in a refreshed Joint Declaration and a revised Wadden Sea Plan in 2010. An additional strength of the trilateral cooperation has been its willingness to critically review its own functioning which has led to a new governance structure with a more clear-cut division of responsibilities. Most importantly, the new layer of a governing body, the Wadden Sea Board, has been added to the structure. Furthermore, a better structured planning, reporting and evaluation cycle has been implemented. Stakeholder involvement and participation has been well secured by the Wadden Sea Forum, although it has not a formal position in the decision-making structure. Concerning the level of participation, it is evident that the fisheries sector is less keen to join the discussions.

The trilateral cooperation is considered to have provided significant added value to the work of individual countries by providing a forum for information exchange and coordination. However, it has been less successful in coordinating a harmonised implementation of EU legislation. Practice shows that participating countries pursue their own national approaches, resulting in diverging interpretations of directives.

Focusing on the future, the major challenge for the trilateral cooperation will be to take advantage of the new status of UNESCO World Heritage Site, which could be instrumental in strengthening the identity and quality of the region in the longer term. Major lessons to be learned for marine governance and planning in other areas are especially related to the importance of a true spirit of cooperation towards a joint objective, with policies based on scientific evidence, stakeholder participation and political commitment.

**Policy documents**

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Programma Naar een rijke Waddenzee (2010). Vissen in overvloed. Programmaplan naar een rijke Waddenzee. Leeuwarden: Programma Naar een rijke Waddenzee.

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## Annex 1. Analytical scheme for assessing governance arrangements

Subjects	Interpretation/Criteria	Assessment
Status / Foundation of GA	<ul style="list-style-type: none"> <li>•Legal agreement</li> <li>•Political agreement</li> <li>•Administrative covenant</li> <li>•Gentleman's agreement</li> <li>•Public-private partnership</li> <li>Loosely structured cooperation</li> <li>•Other</li> </ul>	
Decision-making structure	<ul style="list-style-type: none"> <li>•What is the highest level of decision-making in the GA?</li> <li>•Who are involved?</li> </ul>	
Inclusiveness: stakeholder involvement in the GA	<ul style="list-style-type: none"> <li>•All stakeholders involved</li> <li>•Most stakeholder involved</li> <li>•Some stakeholders involved</li> <li>•(Almost) no stakeholders involved</li> </ul>	
Inclusiveness: stakeholder participation in the GA	<ul style="list-style-type: none"> <li>•Ad hoc consultation</li> <li>•Consultation on structural basis (advisory role)</li> <li>•Policy preparation (represented in working and project groups)</li> <li>•Decision-making</li> <li>•Policy implementation (operational)</li> </ul>	
Objectives/goals/drivers	Issue areas covered by the governance arrangement	
Ambition level	<ul style="list-style-type: none"> <li>•Exploring new avenues ahead of EU policy</li> <li>•Strictly implementing EU policy</li> <li>•Following EU policy but lack of compliance</li> <li>•Other:</li> </ul>	
Effectiveness: goal accomplishment	<ul style="list-style-type: none"> <li>•All goals met</li> <li>•Some goals met, others not</li> <li>•Goals partly met</li> <li>•No goals met</li> </ul>	
Governance challenges	Challenges to the arrangement as such	
Substantive challenges	New problematic issue areas	

GA= governance arrangement

## Annex 2. Questionnaire Trilateral Cooperation Wadden Sea

- 12) What is your professional relationship with the trilateral cooperation Wadden Sea?
- 13) How do you perceive the functioning of the trilateral cooperation? Do you see the cooperation as successful or unsuccessful? What are your main arguments?
- 14) To what extent are the stakeholders involved in the policy process? Do you think that they have sufficient influence?
- 15) What have been the main issues for the trilateral cooperation in the past years in your view?
- 16) To what extent has the cooperation succeeded in achieving positive results in relation to these issues?
- 17) Have there been any issues in which the cooperation has achieved less good results than expected/desired?
- 18) Taking stock of the current state of nature protection in the Wadden Sea region: do you think the balance is positive or negative?
- 19) What are in your opinion the most important challenges for the trilateral cooperation in the next 10 years?
- 20) The trilateral cooperation is now mostly focused on nature conservation. Do you think there is potential to expand its focus to other sectors?
- 21) What are in your view the most important lessons to be learned from the trilateral cooperation for governance arrangements in other marine areas?
- 22) Do you have additional comments related to the trilateral cooperation Wadden Sea?

## North Sea Case Study 3:

### Flemish-Dutch cooperation on the Scheldt estuary

Nicolien van der Grijp

March 2012



Source: ProSes (2005)



**Abbreviations**

ICS	International Scheldt Commission
LTV2030	Long Term Vision Scheldt 2030 (Lange Termijn Visie Schelde 2030)
OAP Partijen)	Consultative Committee of Advisory Parties (Overlegorgaan Adviserende Partijen)
OS2010	Scheldt Estuary Development Outline 2010 (Ontwikkelingsschets 2010 Schelde-estuarium)
ProSes	Project directorate Development Outline Scheldt Estuary (Projectdirectie ontwikkelingsschets Schelde-estuarium)
TCS	Technical Commission Scheldt (Technische Commissie Schelde)
VNSC	Flemisch-Dutch Scheldt Commission (Vlaams-Nederlandse Schelde Commissie)
WG-OS2010 2010)	Working Group Development Outline 2010 (Werkgroep Ontwikkelingsschets 2010)

## 1. Introduction

This case study focuses on the Flemish-Dutch cooperation on the Scheldt estuary, which is situated in the northwest of Flanders (Belgium) and the southwest of the Netherlands. The Scheldt estuary is both an important agricultural and industrial area. It has specific economic relevance because it provides the only maritime route linking Antwerp to the North Sea. At the same time, the Scheldt estuary is one of the few remaining natural estuaries in North West Europe. It has a tidal range of six metres. The transition from fresh to salt water, including a 60-kilometre freshwater tidal area and the flora and fauna associated with it, make the Scheldt estuary an exceptional ecosystem in Europe. The estuary has an important function as a breeding area for birds.

Because of this significance of the Scheldt, Flanders and the Netherlands have a joint interest in good bilateral relationships and cooperation in order to develop a sustainable and balanced policy which is focused on ensuring maximum security against floods, an optimal accessibility of the Scheldt ports and a healthy and dynamic estuary ecosystem. The basis for the present cooperation has been established in a number of Scheldt treaties, including the most recent of December 21, 2005. The substantive outcome of this treaty is based on the Long Term Vision Scheldt 2030 (LTV2030) and the Scheldt Estuary Development Outline 2010 (OS2010). This case study will primarily examine the preparation and implementation stages of the OS2010 and the resulting Scheldt Treaty of 2005, covering the period between 1999 and 2012. Table 3a summarises the key features of the case study.

Table 3a. Key features of case study

<b>Governance arrangement</b>	<b>European Sea</b>	<b>Spatial breakdown</b>	<b>Legal status</b>	<b>Key documents</b>	<b>Website</b>
Flemish-Dutch cooperation on the Scheldt estuary	North Sea	Belgium (Flanders) and the Netherlands	Legal agreement	<ul style="list-style-type: none"> <li>• Long Term Vision Scheldt 2030</li> <li>• Scheldt Estuary Development Outline 2010</li> <li>• Scheldt Treaty of 2005</li> </ul>	<a href="http://www.vnsc.eu">www.vnsc.eu</a>

The objective of the case study is to examine to what extent the Flemish-Dutch bilateral cooperation is effective from the perspective of the stakeholders concerned, what are its strong and weak points, whether and how stakeholders are involved in policy making, and what lessons can be learned for other regional governance arrangements in marine spatial planning.

The concepts of effectiveness and inclusiveness have been central in the analysis. Effectiveness relates to goal accomplishment and assessing effectiveness is about measuring progress towards that specific goal. Although this may sound straightforward, measuring effectiveness in a concrete case can be very complicated because of issues of goal definition, indicator selection and causality. This case study makes an assessment of effectiveness against the internal goal of the governance arrangement itself and bases causality on stakeholder statements. In sum, this means that the conclusions about the effectiveness of the bilateral cooperation on the Scheldt will be only indicative.

Inclusiveness is defined in this study as the extent to which a governance arrangement are based on involvement and participation of the stakeholders concerned in processes of consultation, policy preparation, decision-making, and policy implementation. A high level of inclusiveness is not considered as a value in itself but as a means of improving the quality of decision making and more effective implementation. In this case study, a distinction is made between stakeholder involvement (who is involved?) and stakeholder participation (how are stakeholders involved?). Annex 1 provides a schematic overview of the analytical framework used in the analysis.

The paper is based on a study of the main documents of the governance arrangement itself and the literature. In addition, interviews have been done with key stakeholders in February and March 2012 (see Table 3b).

Table 3b. Interviewees and their affiliations

<b>Name</b>	<b>Organisation</b>	<b>Function</b>	<b>Type of stakeholder</b>
Carla Michielsen	Zuidelijke Land- en Tuinbouworganisatie (ZLTO)	Senior policy officer, water management specialist	Farmers' organisation
Jon Coosen	Ministry of Infrastructure and Environment and VNSC	Senior policy officer water management	Government
Peter Symens	Natuurpunt	Policy coordinator	Nature protection organisation
Jeroen Warner	Wageningen University	Assistant professor: conflict and disaster studies	Science
Arwin van Buuren	Erasmus University Rotterdam	Associate professor: public administration	Science
Sander Meijerink	Radboud University Nijmegen	Associate professor: river basin management and governance	Science

The expert interviews had three purposes. First, they helped to check factual information about the arrangement, reconstruct its history and determine the current state-of-affairs. Second, they provided input for the assessment of the arrangement in terms of effectiveness and inclusiveness. Third, they were used as means to identify challenges for the near future and lessons learned for other regional governance arrangements and marine planning. The experts have been selected by consulting documents, websites and 'snowballing'. Special attention is paid to identify those with an extensive knowledge and experience in the area.

Annex 2 presents the questionnaire used in the interviews, dealing with the functioning of the arrangement, its main results, the present state of nature (conservation) in the area, and the level and quality of stakeholder involvement. The questions were formulated in a semi-open sense, leaving as much space as possible for own interpretations of interviewees.

The structure of the paper is as follows. Section 2 provides an overview of the geographical context of the Scheldt estuary and the main human-nature interactions. Section 3 focuses on the preparation and content of the Scheldt Estuary Development Outline 2010. Section 4 describes its implementation. Section 5 reports about studies evaluating the policy process. Section 6 elaborates on the outcomes of the stakeholder interviews. Section 7 presents conclusions.

## **2. Context and conditions of the Flemish-Dutch cooperation on the Scheldt**

The river Scheldt rises near the village of Gouy-Le-Catelet, in the North of France.<sup>2</sup> The Scheldt then flows through Wallonia, Flanders and the Netherlands, and discharges in the North Sea at Vlissingen. The river is 350 km long and large sections have been canalized. Over 250 dams and locks artificially connect parts of the river, also linking the river to its tributaries and canals. Upstream from Ghent, the Scheldt has been canalized over a distance of 138 kilometres. The river section between its source and Ghent is called 'the Upper Scheldt', between Ghent and Antwerp, it is 'Maritime Scheldt' (Zeeschelde), and beyond Antwerp the river is called 'Western Scheldt' (Westerschelde). Along with the Western Scheldt, the Maritime Scheldt makes up the Scheldt estuary, which is about 160 km long. Near Ghent, the river is some 65 metres wide; near Antwerp it is 450 metres. It widens subsequently to some 5 kilometres near the mouth at Vlissingen. The Scheldt and a number of its tributaries (Durme, Rupel, Grote and Kleine Nete, Dijle, Zenne and Dender) are subject to tidal movement. The tidal waters coming from the river mouth invade the estuary. This explains why near Vlissingen, over 1 billion m<sup>3</sup> of water flows in and out the river twice a day, whereas the yearly river drainage amounts, roughly speaking, to 4 billion m<sup>3</sup>.

This case study focuses only on the estuary part of the river Scheldt, consisting of the Maritime Scheldt and the Western Scheldt. The main economic functions of this estuary are navigation, recreation and fisheries. It gives maritime access not only to the port of Antwerp but also to

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<sup>2</sup> This paragraph is largely based on information on the website of the International Scheldt Commission ([www.isc-cie.org](http://www.isc-cie.org)).

those of Ghent, Terneuzen and Vlissingen. Recreation in the Scheldt basin mainly concerns riverside recreation. Recreational and commercial fishery activities take place in the relatively clean areas in the river catchment. Figure IIIa illustrates the main functions of the Scheldt estuary.

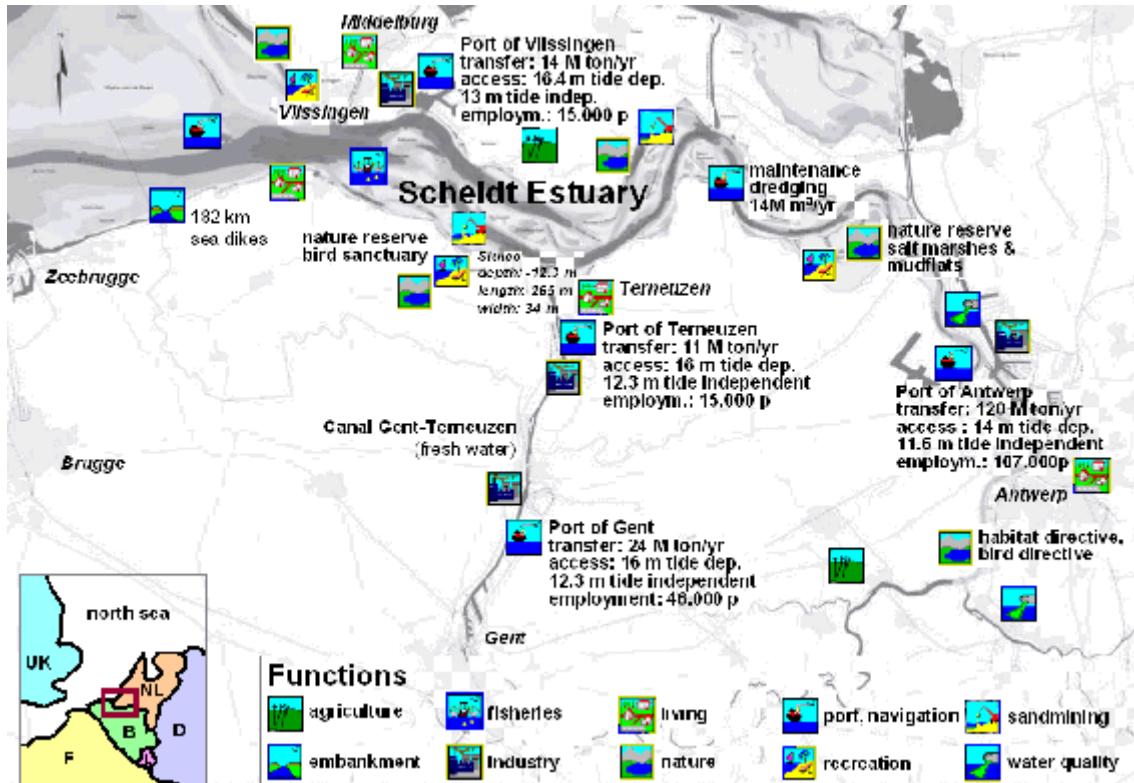


Figure IIIa. Activities of the Scheldt Estuary. Source: [1]

Over time, the bilateral relationships focused on the Scheldt have shown periods of both conflict and cooperation [2; 3]. Controversies date back to at least the 17<sup>th</sup> century, when the Spanish occupied a large part of the territory of the low-lying countries. First the Spanish blockaded the entrance to the port of Antwerp for several decades and later the Dutch for more than a century. The conflicts about the Scheldt mainly had to do with the competition between the port of Antwerp and the ports of Amsterdam and Rotterdam. The right of unrestricted entrance to the port for shipping was finally guaranteed by the Treaty of 1839 that settled the division of the Netherlands and Belgium.

Referring to the more recent past, Van Buuren [4] distinguishes three different periods in the bilateral relationships that are still balancing between conflict and cooperation. He characterizes the period from 1985 to 1987 as 'opposing neighbours and laborious negotiations', explaining that the cooperation was dominated by conflict and a top-down technocratic approach. The period from 1998 to 2001, he labelled as 'cautiously together', however noting that there was not any serious involvement of stakeholders. The period from 2002 to 2006, he considered 'interactive and connected', because of a true spirit of cooperation and increased stakeholder involvement.

The governance of the Scheldt region is organized at different geographical levels, including international, European, bilateral and national. It is regulated via treaties, agreements, directives and various national laws. Relevant from the perspective of nature conservation are especially the Ramsar Convention and the EU birds and habitat directives. The issue of water quality, including the implementation of the EU Water Framework Directive is covered by a separate Scheldt Treaty that has been concluded between France, Belgium and the Netherlands in 1994 and revised in 2002. The International Scheldt Commission (ISC) has been established to monitor the implementation of the latter treaty.

### **3. Preparation and content of the Scheldt Estuary Development Outline 2010**

After a long period of conflict, distrust and contra-productivity, the bilateral relationships between Flanders and the Netherlands slowly developed into a more cooperative and interactive style of policy-making [5]. In 1999, the governments of Flanders and the Netherlands asked the bilateral Technical Commission Scheldt (TSC) to prepare a long term vision for the Scheldt region, in order to create a healthy and multifunctional estuarine water system allowing sustainable use for human purposes by 2030. This TSC, directed by two chairmen, one Flemish and one Dutch, had as its primary task to implement the already existing treaties between the Netherlands and Flanders relating to shipping, pilotage and the deepening of the waterway and to advise Flemish and Dutch politicians on technical issues such as water infrastructure and general management. The TSC took the lead in drawing up an integral vision, called Long Term Vision Scheldt 2030 (Lange Termijn Visie Schelde 2030, or LTV2030), and presented it to the competent government representatives in January 2001.

Subsequently, the two governments of Flanders and the Netherlands created a special bilateral project organisation, ProSes, in order to draw up a Development Outline for 2010, based on the LTV2030. This Development Outline should be followed in later stage by similar outlines for 2020 and 2030. The preparations of the Development Outline 2010 should have taken place, in close consultation with all stakeholders and under the supervision of the Technical Scheldt Commission. During the process, the stakeholders were represented on a structural basis in an advisory organ (Overlegorgaan Adviserend Partijen (OAP)) that reported to the national governments of both the Netherlands and Belgium.

The Development Outline was to define those projects and measures which had, as a first stage, to be started no later than 2010 to ensure the realisation of the long term vision for 2030. Several supporting studies were carried out in bilateral settings, including a strategic environmental impact study, a social cost-benefit analysis and a study focusing on measures for developing the natural environment. Concerning the latter, the joint governments investigated how to improve and restore the ecological values of the Scheldt estuary in order to make the natural environment more robust.

After intensive communication with all stakeholders and a public consultation, ProSes reached a consensus in December 2004, and presented the Scheldt Estuary Development Outline 2010 (Ontwikkelingsschets 2010 Schelde-estuarium) to the government representatives. In March 2005, the governments of Flanders and the Netherlands decided positively to support the execution of the full 2010 Development Outline. Subsequently, the cooperation between the two countries was formalised in the Treaties of December 21, 2005 on cooperation in respect of policy and management in the Scheldt estuary. The Flemish-Dutch Scheldt Commission (VNSC) was assigned with the task of the realisation of the common objectives. In addition, both countries agreed to jointly monitor the evolution of the estuary and the effects of the implemented projects in order to extend the knowledge of the estuary and to facilitate possible corrections. As a next step, the Flemish government updated its Sigma Plan of 1977, refocusing it on both flood risk safety and nature development. The execution of this updated Sigma Plan would in stages result in 3000 ha of newly developed nature in 2030, exceeding the target of 1100 ha in the Development Outline.

As already indicated above, the content of the Scheldt Estuary Development Outline 2010 combines the functions of flood risk protection, accessibility and nature in one integral and coherent plan. Its basic principle is that the Scheldt estuary must remain a dynamic estuary, referring to a constantly changing pattern of channels and intertidal flats, regular variation in salinity, and the formation of new salt marshes and mud flats while old ones disappear (ProSes, 2005). Safety, navigability, and the natural environment are all considered to benefit from maintaining the dynamic vitality of this system. In short, the Scheldt Estuary Development Outline proposes the following measures:

- Increasing dyke heights and establishing flooding areas along the Maritime Scheldt;
- Deepening and widening of the navigation channel;
- Using flexible dumping locations for dredging material;
- Creating additional space for estuarine habitats of at least 1000 ha;
- Increasing vitality of existing habitats;
- Creating a multifunctional environment.

With respect to the development of additional estuarine habitats, the two countries decided to execute a number of measures in both Flanders and the Netherlands (see Box 1). Especially relevant for this case study is the decision to develop a 440-hectare intertidal area in the Hedwigepolder (Dutch territory) and the northern part of the Prosperpolder (Belgian territory) which border on an existing nature reserve called 'Het Verdrongen Land van Saeftinghe'. This will create a large, contiguous nature reserve to be called 'Groot Saeftinghe', lying partly on Dutch territory (295 hectares) and partly on Flemish territory (145 hectares).

**Box 1: Nature development measures as agreed in the Development Outline 2010 and the Scheldt Treaties**

**Cross-border:**

- Designation of the Vlakte van de Raan as a 'marine reserve';
- Enlarging the Zwin by at least 120 ha, and possibly 240 ha;
- Developing a 440-ha intertidal area in the Hedwigepolder and the northern part of the Prosperpolder.

**Flanders:**

- Restoring the conditions necessary to allow fish migration in the Maritime Scheldt;
- Reconfiguring the Durme and its valley;
- Developing 125 ha of estuarine environment in existing controlled flooding areas;
- Establishing 600 ha of wetland in the Kalkense Meersen;
- Developing 210 ha of estuarine environment in locations to be chosen, in combination with establishing flooding areas.

**The Netherlands:**

- Developing approximately 300 ha of estuarine environment in locations still to be chosen.

Source: ProSes, 2005

#### **4. Implementation of the Scheldt Estuary Development Outline 2010**

A major objective of the Scheldt Estuary Development Outline 2010 was to secure decision-making on the necessary projects and measures that had to be implemented in the period between 2005 and 2010. In order to further secure the implementation of the agreements, the Dutch Government and the province of Zeeland concluded a covenant, immediately after the Scheldt Treaties had been agreed. This covenant linked the execution of several decisions in the Development Outline 2010 with a compensatory package of infrastructural measures worth 200 million euro that would benefit the province in Zeeland.



To facilitate and coordinate the implementation process in its totality, the governments established a joint project organization ProSes2010 as the successor of ProSes. ProSes2010 aimed at promoting politically and socially supported decisions on the projects and measures to be undertaken. The projects themselves were considered the responsibility of the public administrations concerned. The projects were organized in four thematic programmes: safety against flooding, accessibility, natural quality of the system and general. The project managers prepared the decision-making on the projects and measures. They commissioned research, supervised this research, accompanied the administrative procedures, assured the contribution of interested parties and dealt with the communication about the projects. Stakeholder input was organised for each project separately. However, there was no an advisory body with a general mandate comparable to OAP. In a later stage, the tasks of ProSes2010 have been transferred to the Flemish-Dutch Scheldt Cooperation (VNSC), more precisely to the Working Group Scheldt Estuary Development Outline 2010 (WG-OS2010) and the Executive Secretariat. Thus far, the VNSC has not created a forum for stakeholder input.

In 2010, the deepening of the navigation channel in the Scheldt to a minimum depth of 14.5 m was initiated after some heated discussions between Flanders and the Netherlands. Dredged sediments were disposed to reshape or extend existing sandbars instead of disposition in nearby secondary channels. A monitoring program was in place to evaluate the effects of this disposal, including the stability of the disposed material and the evolution of the existing and newly created habitats. If necessary, additional steps could be taken to adjust policies and operational activities.

As part of the package deal, it had been agreed that nature development projects would be executed in both Flanders and the Netherlands to compensate for the deepening of the Scheldt. The Flemish partners were quick to deliver on their share. However, the realisation of nature compensation measures in Dutch territory came soon to a halt, as the debate on de-poldering by inundation was re-launched, taking advantage of changed political circumstances. More precisely, discussions in the Netherlands focused on the definition and interpretation of the concept of nature development. Opponents of de-poldering considered the current ideas about nature development too restricted. They preferred other options such as nature development outside of the dikes or in other areas in the province. However, the latter option interferes with the EU habitat directive and the Dutch choices made for its implementation.

The political conflict especially focused on the arrangements made about nature development in the Hedwigepolder, as the Netherlands refused to start the necessary inundation of the area, because of the opposition from a Belgian land owner land Mr De Cloedt, local farmers and the population of the province. Currently, the Dutch government is again looking for alternative locations for nature development. However, the European Commission has threatened to start a procedure against the Netherlands, based on infringement of the habitat directive. In addition, Birdlife International and other nature protection organizations are preparing a civil court case against the Dutch government. As a party to the treaty, Flanders could consider starting a procedure against the Netherlands, following the treaty provisions on dispute settlement.

As a summary of the preceding two sections, Table 3c provides a timeline of events in the Flemish-Dutch cooperation on the Scheldt estuary in the past 13 years.

Table 3c. Timeline of events in the Flemish-Dutch cooperation on the Scheldt estuary (1999-2012)

Year	Event
1999	The governments of Flanders and the Netherlands ask the bilateral Technical Scheldt Commission to develop a long term vision for the Scheldt region
2001	The Technical Scheldt Commission publishes the Long Term Vision Scheldt 2030
2002	The government of Flanders and the Netherlands establish the bilateral project organisation ProSes and the multi-stakeholder forum OAP
2004	ProSes achieves consensus about the Scheldt Estuary Development Outline 2010
2005	The governments of Flanders and the Netherlands endorse the Scheldt Estuary Development Outline 2010
2005	The Scheldt Estuary Development Outline is formalised in a corresponding Scheldt Treaty
2005	The government of Flanders revises the Sigma Plan of 1977, giving it both a high water protection and nature protection focus
2006	The Dutch Government and the province of Zeeland conclude a covenant about the execution of several decisions in the Scheldt Estuary Development Outline 2010
2006	The Dutch Commission Majers reports on alternatives to de-poldering
2008	The Dutch Commission Nijpels reports on alternatives to de-poldering
2008	The Netherlands ratifies the Scheldt treaties
2010	Works are started for deepening of the Scheldt
2011	The Dutch research institute Deltares reports on alternatives to de-poldering
2012	The European Commission puts pressure on the government of the Netherlands to comply with the habitat directive

## 5. Evaluation of the policy process of the Scheldt Estuary Development Outline 2010

The process in the bilateral project group ProSes has been extensively documented. First, it has been externally evaluated by a consultancy [6]. Second, it has been the object of study in two dissertations. Van Buuren [7] examined the science-policy interface and the role of joint fact finding in ProSes, and Lasse Gerrits [8] investigated co-evolution in estuarine decision-making. Third, several authors have published about the Scheldt case [9; 10; 11; 12; 13]. Fourth, the process has been evaluated in the context of the EU project OURCOAST [14].

A few findings from the latter study are highlighted here. Peeters et al [14] conclude that the ProSes organisation and the Scheldt Estuary Development Outline 2010 were the result of a new way of looking at the cooperation between countries and stakeholders: from conflict to cooperation, towards common policy and management. In their view, the making of the Scheldt Estuary Development Outline 2010 was successful, creating a higher knowledge and understanding of the estuary of the Scheldt, bilateral networks on all levels, a legal framework

for future cooperation and growing awareness of the public. According to the researchers, the triangle formed by ProSes, the Technical Scheldt Committee and the multi-stakeholder platform (OAP) proved to be a successful concept for process directed decision making. In addition, 'joint fact finding' played a prominent role to ensure the commitment of the different participants. However, the researchers also observed tensions, particularly with respect to participation and communication. Different stakeholders had diverging expectations, for example the interests of the port of Antwerp did not coincide with those of nature conservation organisations or those of agriculture. Most importantly, the Dutch province of Zeeland felt that the advantages of the Development Outline 2010 did not outweigh its disadvantages, resulting in major objections against it. Importantly, the researchers concluded that the coherent execution of the Development Outline was still not guaranteed since difficulties concerning any one of the separate projects could jeopardize others.

## **6. Results of stakeholder interviews**

As explained in Section 1, expert interviews were held in February and March 2012 with six stakeholder representatives in order to learn from their experiences with the Flemish-Dutch cooperation on the Scheldt. At this moment in time, the conflict about the execution of the Development Outline 2010 and the Scheldt Treaty had reached a new high. Consequently, the interviewees perceived the cooperation as a right out failure at the political level, because the Dutch government refuses to implement the provisions on nature development as has been legally agreed in 2005. The Netherlands is seen as a partner to be mistrusted that has sacrificed good bilateral relationships for political gain in other areas. This has fuelled distrust on the Flemish side and frustrated the execution of the treaty. The interviewees were disappointed that after putting years of effort in elaborating a compromise in the form of a package deal, the Dutch government does not live up to its commitments. Several of them are not only critical about the role of the national government but also about the attitude of the province of Zeeland. However, the interviewees underlined that the failure especially relates to the political level and that the cooperation is much more effective at the level of daily management. Several of them observed that the preparatory process organized by the bilateral project group ProSes had been based on mutual trust and willingness to cooperate.

According to the interviewees, the level of stakeholder involvement has been adequate during the preparation of the Scheldt Estuary Development Outline 2010. Represented in the advisory organ to the bilateral cooperation (OAP) were the port of Antwerp, Zeeland Seaport, nature organizations, farmers' organizations, technical consultants, and public officials. These stakeholders have been involved in all stages of the project development, from the first consultations to the final decision-making. Interviewees observed that the participatory model used by the OAP worked well, and was accompanied by full transparency from the side of ProSes which laid all project documents on the table. However, despite an adequate level of stakeholder involvement, the quality of stakeholder participation may be considered less adequate. Several interviewees observed that the involvement of the farmers' organizations was less well organized and that especially the feedback mechanism to individual farmers did

not work out well. Furthermore, the communication with the population of Zeeland started at a very late stage. In the original project set-up, a considerable budget had been reserved for external communication purposes but had subsequently been cut by the government for budgeting reasons. Consequently, public consultation started when the Development Outline was nearly finished. In hindsight, this was too late.

The major substantive challenge for the bilateral cooperation has been, and still is, to combine the functions of port access, nature development, and high water protection in one integrated approach. In order to cope with this multi-faceted challenge, the first step was to build trust between the parties involved. According to the interviewees, the cooperation has initially succeeded in both respects. However, during the execution phase of the Development Outline 2010 all stakeholders from Flanders have kept to their commitments, but their Dutch colleagues have not. The current state-of-affairs is such that from the 26 projects listed in the Scheldt Treaty, 20 have been realized. The other 6 projects have not been started, as local opposition against de-poldering has been refuelled in the province of Zeeland, finding support from the provincial and national governments. Even the nature protection organisations in the province of Zeeland have made a U-turn and are now opposing de-poldering.

Furthermore, some interviewees argued that during the preparation of the Development Outline, the discussions have become polarized on the economy-nature dichotomy. The issue of high water protection has by comparison received less attention, certainly from the Dutch partners. However, it may be expected that under the Delta Programme, started by the Dutch government in 2010, this issue will get a higher priority. This programme requires that a Delta decision will be prepared focusing on regional flood risk protection combined with freshwater provision. Importantly, the Flemish partners have stated their intention to participate in these discussions but referring to the present deadlock in the execution of the Scheldt Treaty they seem less willing to start a new joint planning exercise.

Taking stock of the current state of nature protection in the Scheldt estuary, the interviewees are of the opinion that the situation needs considerable improvement, although it is perhaps less dramatic than 20-30 years ago. Positive aspects include the protected status of Natura 2000 areas and the formulation of protection objectives for these areas. Furthermore, water quality has improved, seals have reappeared, dredging materials are deposited in a less environmentally harmful manner, and several nature development projects have been executed. However, the Scheldt remains an intensively used waterway and the nature protection objectives are still far from being achieved. In the eyes of some, accepting non-compliance by the Netherlands may jeopardise the credibility of the EU Natura 2000 policy in its totality.

With respect to the future, several interviewees think that the challenges will remain largely the same and that improvement of the mutual relationships deserves a high priority. Referring to the existing cooperation between the ports of Rotterdam and Antwerp, some interviewees have argued that the time has come to consider the Dutch-Flemish delta and its infrastructural complex as one entity, instead of solely focusing on the Western Scheldt.

To conclude, the experts have been asked to draw lessons learned from their experiences with the bilateral cooperation on the Scheldt for marine governance in other areas. In response, they have formulated the following recommendations:

- Take time to get to know each other and create a certain level of trust;
- Take different political and administrative cultures into account;
- Prioritize information, communication and feedback processes, especially in relation to the local population and interest groups;
- Recognise the dynamic between multiple levels of governance;
- Foster political decisiveness by anchoring decisions at all governmental levels;
- Secure compliance to a treaty at the financial and political level by developing a solid legal construction;
- Tackle controversial issues as soon as possible instead of postponing them;
- Pursue an incremental approach instead of an all encompassing approach;
- Perform joint research in order to create a (transboundary) network of experts;
- Choose a pragmatic approach as divergence of interests will not easily lead to convergence of opinion;
- Develop solid legal constructions providing a maximum guarantee for compliance with agreements made, for example with the European Commission included as third party.

## **7. Conclusions**

Over the years, the Flemish-Dutch cooperation on the Scheldt has shown a dynamic of conflict and conciliation, of building trust and destroying it. The new participatory approach to cooperation that was adopted around 2000 first seemed to provide a breakthrough in the existing deadlock situation, as two parties that were previously opposed to each other, namely the port of Antwerp and the nature protection organisations, succeeded in making a deal, and the other stakeholders went along. However, by 2012, the execution of nature development measures on Dutch territory has come to a standstill, as, helped by the new political constellation, the Dutch stakeholders have re-opened the discussion about the course of action and the government tries to escape from its commitments. Evidently, the focus of the debate in the Netherlands has shifted from the package deal made in the Scheldt Treaty to specific local interests. Importantly, this case study shows that even a well-prepared, legally binding agreement which was ratified by the parties concerned is still not a waterproof guarantee for compliance. Ultimately, it depends on the respective will of the countries themselves to implement whatever has been agreed. In the Scheldt estuary case, politics has taken over from decision-making based on rational arguments, which is for many of those concerned is hard to comprehend.

Table 3d. Summary of the case study on the bilateral cooperation on the Scheldt

Subjects	Interpretation	Assessment
Status of governance arrangement	Legal agreement	Scheldt Estuary Development Outline 2010 has been formalised by the Scheldt Treaty of 2005, which have been ratified by both countries
Highest level of decision-making	Governmental level	Agreement between regional government of Flanders and national government of the Netherlands; Flemish-Dutch Scheldt Commission (VNSC) is responsible at executive level
Stakeholder involvement	All stakeholders involved	Multi-stakeholder forum has stopped to exist
Stakeholder participation	Consultation on a structural basis	Failing feedback mechanism and communication with local farmers and population
Objectives/goals/drivers	Port accessibility, nature development and flood risk protection	Main challenge is to combine these functions in one integrated and coherent approach
Ambition level	Strictly implementing EU policy	The European Commission is considering an infringement procedure against the Netherlands for non-compliance with the habitat directive
Goal accomplishment	Some goals met, others not	Goals of accessibility and safety have been met, goals of nature development have not
Governance challenges	Deadlock situation	Restoring trust and proceeding with full implementation of the OS2010 and Scheldt Treaty
Substantive challenges	Long Term Vision Scheldt 2030	Starting next stages in implementation process of LTV2030

### Key policy documents

- Rijkswaterstaat (Directie Zeeland) and Ministry of the Flemish Community (2001). Langetermijn visie Schelde-estuarium.
- Commissie Majers (2006). Rapport van de Commissie Onderzoek Alternatieven Ontpoldering Westerschelde. The Hague: Commissie Majers.
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- Covenant between Government and the province of Zeeland (2006) about the execution of several decisions in the Scheldt Estuary Development Outline 2010
- Deltares (2011). Natuurherstel in de Westerschelde: de mogelijkheden nader verkend. Delft: Deltares.
- ProSes (2005). Ontwikkelingsschets 2010 Schelde-estuarium. Besluiten van de Nederlandse en Vlaamse regering. Bergen op Zoom: ProSes.
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- [7] Buuren, A. van (2006). Competente besluitvorming. Het management van meervoudige kennis in ruimtelijke ontwikkelingsprocessen. PhD dissertation. Rotterdam: Erasmus University.
- [8] Gerrits, L. (2008). The gentle art of coevolution. A complexity theory perspective on decision making over estuaries in Germany, Belgium and the Netherlands. Erasmus University Rotterdam, 284 p.



- [9] Meijerink, S. (2008). Explaining continuity and change in international policies. Issue-linkage, venue change and learning on policies for the river Scheldt estuary 1967-2005. *Environment and Planning A*, 40(4), 848-866.
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## Annex 1. Analytical scheme for assessing governance arrangements

Subjects	Interpretation/Criteria	Assessment
Status / Foundation of GA	<ul style="list-style-type: none"> <li>•Legal agreement</li> <li>•Political agreement</li> <li>•Administrative covenant</li> <li>•Gentleman's agreement</li> <li>•Public-private partnership</li> </ul> Loosely structured cooperation <ul style="list-style-type: none"> <li>•Other</li> </ul>	
Decision-making structure	<ul style="list-style-type: none"> <li>•What is the highest level of decision-making in the GA?</li> <li>•Who are involved?</li> </ul>	
Inclusiveness: stakeholder involvement in the GA	<ul style="list-style-type: none"> <li>•All stakeholders involved</li> <li>•Most stakeholder involved</li> <li>•Some stakeholders involved</li> <li>•(Almost) no stakeholders involved</li> </ul>	
Inclusiveness: stakeholder participation in the GA	<ul style="list-style-type: none"> <li>•Ad hoc consultation</li> <li>•Consultation on structural basis (advisory role)</li> <li>•Policy preparation (represented in working and project groups)</li> <li>•Decision-making</li> <li>•Policy implementation (operational)</li> </ul>	
Objectives/goals/drivers	Issue areas covered by the governance arrangement	
Ambition level	<ul style="list-style-type: none"> <li>•Exploring new avenues ahead of EU policy</li> <li>•Strictly implementing EU policy</li> <li>•Following EU policy but lack of compliance</li> <li>•Other:</li> </ul>	
Effectiveness: goal accomplishment	<ul style="list-style-type: none"> <li>•All goals met</li> <li>•Some goals met, others not</li> <li>•Goals partly met</li> <li>•No goals met</li> </ul>	
Governance challenges	Challenges to the arrangement as such	
Substantive challenges	New problematic issue areas	

GA= governance arrangement

**Annex 2. Interview questions bilateral cooperation Scheldt**

- 1) What is your professional relationship with the bilateral cooperation on the basis of the Scheldt Treaty?
- 2) How do you perceive the functioning of the bilateral cooperation? Do you see the cooperation as successful or unsuccessful? What are your main arguments?
- 3) To what extent are the stakeholders involved in the policy process? Do you think that they have sufficient influence?
- 4) What have been the main issues for the bilateral cooperation in the past years in your view?
- 5) To what extent has the cooperation succeeded in achieving positive results in relation to these issues?
- 6) Have there been any issues in which the cooperation has achieved less good results than expected/desired?
- 7) Taking stock of the current state of nature protection in the Scheldt region: do you think the balance is positive or negative?
- 8) What are in your opinion the most important challenges for the bilateral cooperation in the next 10 years?
- 9) What do you think are the most important lessons to be learned from the bilateral cooperation on the Scheldt for governance arrangements in other marine areas?
- 10) Do you have additional comments related to the bilateral cooperation on the Scheldt?