

OSPAR Guidelines for the Preparation of draft OSPAR Decisions, Recommendations and other Arrangements Draft OSPAR Background Documents and Other Reports

(OSPAR Agreement: 2019-01)¹

Introduction

1. OSPAR's Group of Jurists and Linguists (JL) is responsible for the formulation of advice on draft OSPAR Decisions and Recommendations. JL plays an important role in carrying out legal and linguistic scrutiny of draft OSPAR Decisions, Recommendations and other Arrangements² before the OSPAR Heads of Delegation Meeting decides to forward such documents to the OSPAR Commission for adoption.
2. In 2004, the OSPAR Commission adopted the Revised Guidelines for the Preparation of Draft OSPAR Background Documents and Draft OSPAR measures (OSPAR Agreement: 2004-01), with the aim of achieving consistency in drafting such documents and measures. Considerable experience has been gained from their application at OSPAR Committee level since their adoption. This is reflected in this new version of the Guidelines.
3. The Guidelines comprise three parts. Part I introduces general language requirements for drafting OSPAR Decisions, Recommendations and Background Documents. They must be drafted in clear, unambiguous and coherent terms and a uniformity of drafting and layout must be applied. Part II contains detailed drafting requirements for drafting proposals for OSPAR Decisions or Recommendations. Part III identifies the elements that OSPAR Background Documents and other reports (e.g. periodic reports, implementation reports) should include. Appendix 1 provides more specific technical guidance on information contained in OSPAR Background Documents on Best Available Techniques. Appendix 2 provides guidance for the collection and assessment of data and information. Appendix 3 provides terminology to be used when drafting Memoranda of Understanding and other Arrangements.

¹ This Agreement replaces OSPAR Agreement 2004-01 and is in English only.

² This includes Memoranda of Understanding and Cooperation Arrangements with International Organisations (see Appendix 3)

OSPAR Guidelines for the Preparation of Draft OSPAR Decisions, Recommendations and other Arrangements, Draft OSPAR Background Documents and Other Reports

(OSPAR Agreement: 2019-01)

Contents

Part I	Language Requirements
Part II	Guidelines for the Preparation of Draft OSPAR Decisions and Recommendations
Part III	Guidelines for the Preparation of Draft OSPAR Background Documents and Other Reports
Appendix 1	Technical aspects relevant to the Guidelines for the Preparation of OSPAR BAT Descriptions and related OSPAR Measures
Appendix 2	Guidelines for the Collection and Assessment of Data and Information
Appendix 3	Terminology to be used when drafting Memoranda of Understanding and other Arrangements

Part I Language Requirements

General

1. OSPAR Decisions/Recommendations:
 - a. must be presented in a formal manner; in accordance with the Guidelines in Part II;
 - b. must be presented in clear, unambiguous and concise language;
 - c. must not contain in the main text explanations and detailed descriptions or examples which should be confined to footnotes or to an Annex.
2. All draft OSPAR Decisions, Recommendations and other Arrangements (ie., Memoranda of Understanding and Cooperation Arrangements with international organisations) should be translated by a competent language service. In particular, the drafting of OSPAR Decisions and Recommendations in both official languages of the Commission (English and French) is equally important in terms of legal interpretation of a measure. In this respect the drafting of OSPAR Decisions and Recommendations should be checked, in both official languages, by the Group of Jurists and Linguists in order to prevent misunderstandings and ambiguities.

OSPAR Decisions

3. The language used in formulating legally binding OSPAR Decisions must express mandatory obligations in terms of “must” or “shall” except when referring to exceptions or optional provisions under “Programmes and Measures”

OSPAR Recommendations

4. An OSPAR Recommendation has no binding force and the language used in such Recommendations should reflect this fact by using terms such as "should" or "may" as appropriate.

Background Documents, Implementation Reports and Other Periodical Reports

5. Background Documents, periodical reports and implementation reports are prepared with a view to publication. They should therefore be reader-friendly, well-structured and concise, using clear and unambiguous language.
6. In particular, Background Documents:
 - a. should be presented in a less formal manner than proposals for Decisions or Recommendations;
 - b. should not contain any mandatory obligations on Contracting Parties such as requirements expressed as “must” or “shall”.

Part II Guidelines for the Preparation of Draft OSPAR Decisions or Recommendations

Article 2(1) of the OSPAR Convention requires Contracting Parties to take all possible steps to prevent and eliminate pollution and to take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected. To this end, Contracting Parties shall, individually and jointly, adopt programmes and measures and shall harmonise their policies and strategies. Further guidance as regards programmes and measures to be developed within the framework of OSPAR is given in the OSPAR strategies.

The need for the preparation of a new measure is either:

- a. based directly on requirements stipulated in the Convention; or
- b. stipulated in one of the OSPAR strategies and subsequently taken up in the Committee's work programmes;
- c. a result of policy decisions taken by the Commission.

To help ensure consistency in style and format, when drafting proposals for OSPAR Decisions and Recommendations it is recommended:

- a. to use the most recently adopted OSPAR Decisions and Recommendations as examples;
- b. to consult the OSPAR Secretariat for initial legal and linguistic advice.

More specific technical guidance for drafting OSPAR Decisions and Recommendations for the implementation of Best Available Techniques is given in Appendix 1.

Draft OSPAR Decisions and Recommendations should, if applicable, include the following elements:

Title

"Draft OSPAR Decision/Recommendation 20xx/xx on ..."

Preamble

- References in the preamble should be presented in the following sequence:
 - a. the Convention for the Protection of the Marine Environment of the North-East Atlantic ("OSPAR Convention",);
 - b. existing related OSPAR Decision(s)/Recommendation(s) and/or OSCOM or PARCOM³ Decision(s)/Recommendation(s) or OSPAR Agreements and other OSPAR Arrangements applicable within the framework of the OSPAR Convention;
 - c. related OSPAR publications, e.g. Background Documents and case reports;
 - d. relevant international measures e.g. UN Resolutions/Agreements. The order of reference to these measures should be global followed by regional;
 - e. explanation of the need for the Decision/Recommendation.

³ Oslo Commission and Paris Commission (OSCOM and PARCOM)

- When drafting recitals, it should be taken into account that:
 - a. recitals in a draft Decision and Recommendation should only recall the appropriate articles of the OSPAR Convention. If a quotation of the text is considered necessary, selective quoting (of parts of the text) should be avoided;
 - b. in general, recitals should not refer to legislation of Contracting Parties or groups of Contracting Parties, but such references, *inter alia* to EU Directives, are acceptable if they include references to corresponding legislation in all Contracting Parties (e.g. by adding the phrase: “.....and corresponding legislation of other Contracting Parties.”);
 - c. recitals should not contain references to agreements made by the OSPAR Commission (e.g. OSPAR Summary Records); in order to avoid any suggestion that reciting the agreement might change its status;
 - d. with regard to the order of recitals, preference should be given to recitals of a more general nature (e.g. OSPAR obligations, starting with Recalling the provisions of the Convention and followed by Recognising relevant Decisions and Recommendations applicable under the Convention). Such recitals should be followed by Noting those of a less general nature. Thus the order should be determined by the subsequent use of “Recalling”, “Recognising” and “Noting”, but would also depend on the content of the recitals.
 - e. the number of recitals should be restricted to a minimum. Each recital should end with a semi-colon. The last recital should end with a full stop;
 - f. depending on the context of the measure, recitals making reference to the need for the Decision and Recommendation should describe concisely the threat to the feature based on the Background Document, state any particular sensitivities of the feature which make it particularly vulnerable to the described threat, and, if relevant, refer to any other existing and regional action.

Statement

"THE CONTRACTING PARTIES TO THE CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT OF THE NORTH-EAST ATLANTIC DECIDE/RECOMMEND"

1. Definitions

- 1.1 The definitions which apply in the Decision/Recommendation should be set out along the following lines:

"For the purpose of this Decision/Recommendation

"x....." means.....

"y....." means.....etc."

- 1.2 When drafting definitions, it should be taken into account that:

- a. definitions should be consistent with definitions contained in the OSPAR Convention;
- b. definitions used in related measures should be consistent;
- c. all scientific and technical terms (e.g. “marine protected area”, “installation” “capacity”) should be clearly defined to ensure an unambiguous understanding (by non-specialists) in both official languages.

2. Purpose and Scope

- 2.1 The purpose (objective) of the Decision/Recommendation should be set out to guide the intention of the measure.
- 2.2 The scope (subject matter) of the measure should be clearly stated separately from any description of the purpose of the measure. Specific reference should be made to the processes/substances/activities to be included or excluded from the Decision/Recommendation. If there are any specific limitations, such as thresholds below which the proposal does not apply, these should be explicitly stated. If there are limitations in the geographical scope of the Decision/Recommendation, the area where it applies should be clearly described.

3. Programmes and Measures

- 3.1 Measures to be taken should be described in clear, unambiguous language. Sentences should be kept short and simple.
- 3.2 When outlining programmes and measures, the information taken from Background Documents should be as specific as possible (without going into the technical detail), focusing on actions that will lead to improvements in the status of the feature and actions that will enable understanding as to whether the status is improving.
- 3.3 Separate sections should be used to group those programmes and measures applicable to the individual OSPAR Contracting Party and those that apply to the OSPAR Commission acting collectively.
- 3.4 Separate paragraphs should be used for legislative provisions on different topics (e.g. “selection and designation of marine protected areas”, “monitoring and assessment”, “raising of awareness”, “cooperation with other international organisations and bodies” etc.).
- 3.5 Each paragraph in a section should relate to the main theme of the section. Sub subparagraph levels should be avoided.
- 3.6 Legislative provisions should not be hidden away in definitions or footnotes. Footnotes should be regarded as an integral part of the measure. Excessive cross-references should be avoided.
- 3.7 In a list of (sub)-indents, the absence of any link word between (sub)-indents implies “and”. If alternatives are meant (i.e. “or”), this should be specified.
- 3.8 All terms contained in the provisions should be clearly explained, or preferably defined under section 1 – Definitions (e.g. “relict population”, “OSPAR habitat mapping database”, etc.).
- 3.9 Tables (and figures) should be clearly anchored into the text (e.g. “The limit values for emissions and discharges set out in Table xx shall not be”).
- 3.10 All terminology used in related Decision and Recommendation should be consistent. Acronyms should not be used unless spelled out in the text or in an appropriate definition.
- 3.11 All activities specified in the draft Decision and Recommendation (e.g. sampling/analysis/monitoring) should be described clearly and unambiguously to ensure that their application in different Contracting Parties leads to results that can be compared.
- 3.12 Internationally accepted concepts, terms or standards (e.g. COD, TEQ, AOX, etc.) should:
 - a. be used consistently;
 - b. be spelled out entirely the first time it is used;
 - c. be defined by its international reference or include a footnote.

4. Entry into Force

4.1 Dates should be included for the entry into force of and/or compliance with the Decision/Recommendation.

4.2 An OSPAR Decision becomes binding 200 days after its adoption. Consequently a Decision:

- a. should not impose retrospective obligations;
- b. cannot enter into force before it has become binding.

A provision in a Decision concerning its entry into force should therefore contain a fixed date 200 days after the date of its adoption (normally the date of the adoption of the Summary Record of the meeting of the Commission).

4.3 An OSPAR Recommendation can enter into force on the date of its adoption. There is no implication of the entry into force of a Recommendation on that date for Contracting Parties which accept this Recommendation at a later date because a Recommendation does not impose legal obligations.

5. Implementation reports

The OSPAR Standard Implementation Reporting and Assessment Procedure (Reference Number: 2003-23) should be followed when drafting a provision concerning the timing of the submissions of implementation reports to OSPAR via the appropriate OSPAR Committee.

6. Amendment of Decisions or Recommendations

6.1 It is sometimes considered appropriate to develop an 'Amending' Decision or Recommendation to update the provisions of an existing Decision or Recommendation, rather than to develop a new Decision or Recommendation to supersede the original measure. This is done, for example, in the following cases:

- to ensure continuity in the implementation of the original measure;
- when there are very few modifications;
- if only an appendix of the Decision or Recommendation is changed, this can be a format for example the Harmonised Offshore Chemical Notification Format; or
- where the original measure is widely cross-referenced, by the authorities or by industry (eg., offshore), and it is considered appropriate to retain the number of the original measure.

6.2 Decisions amend Decisions, Recommendations amend Recommendations. 'Amending' Decisions and Recommendations are official documents.

6.3 Amending Decisions/Recommendations contain the following elements:

a. Preambular paragraphs

It is not necessary to repeat all the preambular paragraphs of the original Decision or Recommendation. The fundamental Articles of the Convention which are relevant to the Decision or Recommendation should be recalled, as should the original OSPAR Decision/Recommendation.

The reason for the 'Amending' measure should be stated:

WISHING to update OSPAR [Decision / Recommendation xxxx/xx.....] to take account of

The Contracting Parties to the Convention for the Protection of the Marine Environment of the North-East Atlantic [DECIDE/RECOMMEND]:

b. Purpose and scope

The purpose of this [Decision/Recommendation] is to amend and update [Decision/Recommendation] xxxx/xx.

c. Provisions

The 'Provisions' section should set out clearly all the amendments being made to the original Decision or Recommendation, following the order in the original Decision/Recommendation.

d. Entry into force

Unless the Committee responsible for drafting the measure decides otherwise, the date of entry into force is usually the date of the adoption of the 'Amending' Recommendation. Decisions enter into force 200 days from the date of their adoption (see paragraph 4.2 above).

6.4 Consolidated text

Following the adoption of an 'Amending' Decision or Recommendation, the Secretariat will produce a consolidated text, which shows the effect of the 'Amending' Decision/Recommendation on the original measure. The consolidated text is intended for ease of reference, but is not an official document. The consolidated text will be titled as follows:

Decision / Recommendation xxxx/xx, as amended by Decision / Recommendation xxxx/xx.
Consolidated text *

The following footnote should be inserted after the title:

**The consolidated text integrates the original OSPAR measure with subsequent amendments adopted by OSPAR in a single, non-official document to facilitate documentation. Only the original OSPAR measure and the subsequent measures adopted by OSPAR to amend the original measure are official documents.*

The consolidated text should contain a link to the original measure, and a link to the 'Amending' measure(s).

7. Annex

A draft OSPAR Decision/Recommendation must be accompanied by an implementation reporting format on compliance, and, if appropriate, by a separate reporting format for the assessment of the effectiveness of the measure (cf. the OSPAR Standard Implementation Reporting and Assessment Procedure; reference number: 2003-23).

Part III Guidelines for the Preparation of Draft OSPAR Background Documents and Other Reports

The role of background documents

Background documents have always played an essential role in compiling the relevant data and information to provide the basis and justification for a measure to be taken by OSPAR. The OSPAR strategies give guidance on the long-term policy of the Commission and stipulate (to a large extent) what and how issues have to be addressed in the development of OSPAR programmes and measures.

III.1 Background Documents

Background Documents should, where applicable, include the following elements:

1. Title:

For example:

"OSPAR Background Document concerning the elaboration of programmes and measures relating to"
"OSPAR Background Document for [species/habitat]"

1bis Acknowledgements

2. Contents

Pagination of Chapters, Tables, etc.

3. Definitions/Glossary

Brief definitions of technical and scientific terms which are specific to the sector should be appended and acronyms which are used should be explained, even if they seem to be self-explanatory.

4. Summary

A summary of the findings of the Background Document including conclusions and proposals.

5. Introduction

The introduction should include the justification for further work of OSPAR (e.g. on measures) and should outline the scope and objective of the Background Document.

6. Synopsis of Background Information

- 6.1 A brief description of each topic and an overview of the information provided by Contracting Parties or obtained from other sources, preferably by means of tables:
 - a. for example for hazardous substances, radioactive substances and nutrients, information on:
 - (i) properties of substances/ group of substances in question;
 - (ii) sources of pollution and/or activities which may affect the marine environment;
 - (iii) main pathways (e.g. water, atmosphere, product, waste) of introduction of contaminants to the marine environment and the loads from these different pathways;

- (iv) the mechanisms by which activities may adversely affect the marine environment;
 - (v) existing and/or potential obligations within the framework of OSPAR and other international organisations. The added value of an additional OSPAR measure should be outlined if the topic is already covered by EU legislation and/or other international agreements;
- b. for example for other human activities affecting the marine environment other than pollution, information on:
- (i) the extent, intensity and duration of the human activity under consideration;
 - (ii) actual and potential adverse effects of the human activity on specific species, communities and habitats;
 - (iii) actual and potential adverse effects of the human activity on specific ecological processes;
 - (iv) irreversibility or durability of these effects;
 - (v) existing and/or potential obligations within the framework of OSPAR and other international organisations. The added value of an (additional) OSPAR measure should be outlined if the topic is already covered by EU legislation and/or other international agreements. In the case where OSPAR is dependent on measures to be taken by other competent authorities (e.g. the exclusive competence of the EU to regulate fisheries), recommended actions should be formulated and communicated to these authorities;
- c. for example for species and habitats on the OSPAR List of Threatened and/or Declining Species and Habitats (OSPAR Agreement 2008-6), information on:
- (i) specification of OSPAR Regions where the feature occurs, the list of OSPAR Regions and Dinter biogeographic zones where the feature is under threat and/or in decline and the original evaluation against the Texel-Faial criteria (OSPAR Agreement 2003-13) for which the feature was included on the OSPAR List;
 - (ii) current status of the feature, i.e. its distribution in the OSPAR maritime area, and its population and condition (current/ trends/future prospects);
 - (iii) evaluation of threats and impacts;
 - (iv) existing management measures adopted at global, regional and national levels;
 - (vi) a brief summary of the proposed monitoring system.
- d. for example for the description of Marine Protected Areas (MPA) where these are designated collectively by the OSPAR Commission in Areas Beyond National Jurisdiction (ABNJ), information on:
- (i) the reason for the MPA, aims and objectives of the MPA, geographic location (including the coordinates and a map), size and characteristics of the area;
 - (ii) how the area meets the OSPAR MPA selection criteria as set out in the guidelines for identification and selection of MPAs in the OSPAR maritime area (OSPAR Agreement 2003-17) ;
 - (iii) the proposed management and protection status;
 - (iv) existing management and protection status.

6.2 More specific technical guidance on information contained in OSPAR Background Documents on Best Available Techniques is given in Appendix 1.

6.3 Updates to the Background Document should be recorded.

- 6.4 More specific guidance on information contained in OSPAR Background Documents on priority substances is given in the Procedure for the Development, Publication and Review of OSPAR Background Documents on Hazardous Substances Identified for Priority Action (reference number: 2003-26).

7. Conclusions

Conclusions on the overall status, on the basis of the information compiled in the synopsis section and the assessment of the consequences of the implementation of any additional OSPAR measures (for each Contracting Party or OSPAR acting collectively as appropriate) including a cost/benefit analysis.

8. Proposals

Proposals that can serve as a basis for an OSPAR Decision or Recommendation should also address any research needed.

9. References

III.2 Periodical reports

Periodical OSPAR reports on e.g. discharges, emissions and losses of substances should follow the same pattern as described under III.1. They will contain, *inter alia*, a description of the OSPAR measures relevant to the reported data, an assessment of the data and, as appropriate, conclusions whether or not the reporting should continue.

III.3 Implementation reports

Overview assessments of national reports on the implementation of OSPAR measures should follow the pattern in which the measures are structured. They should contain conclusions on the extent of compliance with the measures and an indication of the effectiveness of the implementation of the measures. As appropriate, conclusions should be drawn whether or not implementation reporting should continue”.

Technical aspects relevant to the Guidelines for the Preparation of OSPAR BAT Descriptions and related OSPAR Measures (Ref. Part III (§6) and II)

I. Preliminary considerations

1. The basis for work on BAT for (industrial) sectors, and any related measure concerning discharges, emissions and losses from these sectors, originates from specific requirements in:
 - a. the 1992 OSPAR Convention;
 - b. the OSPAR Hazardous Substances Strategy (see OSPAR Agreement 2010/3), in particular for the hazardous substances identified by the Commission for priority action⁴;
 - c. other considerations e.g. political commitments by the Commission.
2. A key consideration in deciding what a BAT description, and a subsequent measure, should cover is the relative importance of the hazardous substances released which reach or may reach the marine environment of the maritime area. Information already collected in (the preparation for) OSPAR Background Documents on hazardous substances identified by the Commission for priority action should be used to the extent possible in the preparation of BAT descriptions and related measures. The same is valid for any other relevant information which may be available in the development and application of OSPAR's mechanism for the dynamic selection and prioritisation of hazardous substances.
3. Work started within OSPAR on the preparation of a new OSPAR BAT Description, or the revision of an existing BAT Description should take into account any relevant information from related work being carried out or envisaged in the framework of Directive 2010/75/EU on industrial emissions (integrated pollution prevent and control) or from other international organisations dealing with BAT for the sector. Revision or development of OSPAR BAT Descriptions should aim, inter alia, at:
 - a. optimising of the resources of OSPAR and the EU for achieving the best results;
 - b. avoiding of duplication of EU IED/BREF work in the OSPAR context;
 - c. coordinating of the OSPAR-BAT and EU-IED/BREF work without causing delay in the work of OSPAR and the EU;
 - d. coordinating between the actions and timetables in both forums.
4. The guidance set out below should not be regarded as mandatory. Lead countries are at liberty to apply this guidance in a flexible manner. If a corresponding EU-IED BAT Reference Document is available, some of the contents as described in sections II-IV can be substantially reduced, or substituted by relevant references. A clear indication of the need for additional BAT work to be carried out within OSPAR would not only help industry to understand the rationale of OSPAR's work but will also encourage industries' support and cooperation in this work.

⁴ These technical aspects could equally apply to sectors with discharges, emissions and losses of radioactive substances and nutrients.

II. Scope of the BAT Description

5. The aim of the BAT Description should be to provide a comprehensive overview of the sector in question, including general information about the sector, a description of the techniques and processes which are emerging and are currently being applied, present energy consumption and emission levels achieved by the various techniques and processes, and a selection of what can be regarded as BAT. It should provide a transparent technical basis for any subsequent OSPAR measures, including when appropriate an estimation of the practicability and consequences of the replacement of the existing techniques.

III. Collecting the relevant information

6. In the first place, it will be necessary to assess any relevant international work which is already completed or underway in the sector and the extent to which this is relevant to the OSPAR process (cf. preliminary considerations). In the OSPAR framework, it will be necessary to agree a questionnaire which can be sent to Contracting Parties at an early stage in order to get the relevant information on which to base a BAT Description. Experience has shown that as well as the Contracting Parties, the relevant national and European industrial trade associations can also provide useful assistance and support in collecting the relevant data, and in advising on the practicability of various technical options.

IV. Chapter Headings for a BAT Description

7. The following chapter headings are proposed as guidance for the preparation of the BAT Description.

"General Information"

8. Under this chapter heading, issues could be addressed such as:
- a. manufacturing capacity and geographical location of the industry concerned in Europe (particularly in land territory of OSPAR Contracting Parties);
 - b. number of people employed;
 - c. turnover of the industry;
 - d. information on the products produced, toxicity of the emissions and possible routes to the marine environment;
 - e. the likely economic future of the industry, and general information of the sector on a global basis.

"Description of the techniques and Processes"

9. Under this chapter heading, issues could be addressed such as:
- a. the raw materials used;
 - b. diagrams of all the relevant stages of production and the various associated processes;
 - c. descriptions of the various processes and techniques and the various factors associated with these, together with an evaluation of how these processes and techniques affect the emissions, discharges and losses of hazardous substances and nutrients to the environment.

"Emission levels and Energy Consumption"

10. Under this chapter heading, an analysis could be carried out of the type and level of discharges, emissions and losses of hazardous substances during the various stages in production and the various associated processes and the options for controlling these substances. This analysis should be backed up

with figures from the relevant plants in land territory of OSPAR Contracting Parties. Where appropriate, information on the energy consumption of the various processes should be provided.

"Candidate Best Available Techniques"

11. Under this chapter heading, a list could be established with respect to the various available techniques described above and how they can be operated to best effect with respect to minimising discharges, emissions and losses.

"Best Available Techniques"

12. Under this chapter heading, a justified statement could be made of what represents the best available techniques for the sector.

"Emerging Techniques"

13. Under this chapter heading, it may be appropriate for some sectors to describe emerging techniques which are not yet proven on a wide industrial scale, or are very new, and being used in one particular country only. There may also be associated commercial licensing problems with respect to the application of such techniques which would need to be highlighted.

"Conclusions and Recommendations"

14. Under this chapter heading, the views of the lead country could be set out on what represents BAT for the sector and an indication of the types of measures which could be brought forward in OSPAR to bring plants in land territory of the OSPAR Contracting Parties up to this level of BAT, the timescale that would be required, together with a brief assessment of the advantages and draw backs associated with such measures.

V. Preparation of draft OSPAR Measures for the implementation of BAT

15. When preparing draft OSPAR measures for the implementation of BAT the following should be considered:

- a. when presenting a new draft measure proposing limit values for discharges, emissions and losses, the lead country should provide a justification document, annexed to the measure, which sets out the rationale for the choice of the limit values proposed, and the practicability of meeting these values within the time frames proposed in the measure. The justification should be based on the analysis of BAT processes and limit values contained in the BAT Description, and should make reference to any other international limit values or BAT measures in the sector;
- b. the advice issued by OSPAR's Group of Jurists/Linguists with respect to the drafting and content of OSPAR measures, and which is included in the guidelines, should be followed in an early stage of the drafting of measures. It is recommended to consult the Secretariat in this stage for initial legal and linguistic advice;
- c. particular attention should be paid to the definitions of the various technical and scientific terms and units used, so that the measures can be clearly understood by national regulators who have to implement the measure;
- d. the implementation report format on effectiveness should be focussed on the techniques used, on reductions in discharges, emissions and losses of hazardous substances, and on the problems encountered to fully implement the measure. The administrative effort required to complete the report by Contracting Parties should also be considered, bearing in mind that if it is over burdensome, it is unlikely to be completed.

Guidance for the Collection and Assessment of Data and Information

1. Introduction

1.1 The North-East Atlantic Environment Strategy (NEAES) underpins OSPAR's work towards the shared vision of a "clean, healthy and biologically diverse North-East Atlantic, used sustainably". This updated guidance contributes to the implementation of the Joint Assessment and Monitoring Programme (JAMP), which answers the main threats identified under the NEAES thematic strategies. The JAMP describes the strategy, themes and products that OSPAR Contracting Parties are committed to deliver through collaborative efforts, with reference to the OSPAR Convention and the implementation of the OSPAR NEAES, and the EU Marine Strategy Framework Directive (MSFD 2008/56/EC). Further, the Coordinated Environmental Monitoring Programme (CEMP) is the part of OSPAR's monitoring and assessment work where Contracting Parties seek to coordinate the operation of monitoring, data collection and assessment activities with the aim of facilitating development of common and coherent assessments that address the questions identified in the JAMP. The information in this guidance should be used in association with all of the additional information provided in the documentation noted above, as well as with the separate procedures and arrangements published by the relevant OSPAR subsidiary bodies.

2. The role of Expert Assessment Panels / Intersessional Correspondence Groups in the collection of data and information

2.1 Expert assessment panels or Intersessional Correspondence Groups (ICGs) may be established to examine OSPAR's data reports in order to provide an expert judgement of draft reports, which could serve as a basis for the consideration of the draft reports by the responsible Committee. Expert assessment panels/ ICGs should:

- a. consist of a small group of experts from different Contracting Parties (to be appointed by the responsible Committee or working group);
- b. work (under the responsibility of the Committee or working group concerned) intersessionally under the lead of one of its members;
- c. review the draft reports as compiled by the Secretariat and prepare an expert assessment for the draft report concerned for examination by the responsible Committee and/or working group.

2.2 The draft assessment prepared by the expert panel/ ICG should:

- a. analyse whether or not the current data collection activities fulfil appropriately the requirements given in the underlying measures, the relevant Strategy or the Convention. This analysis should also take into account the possibilities of cooperation with other international organisations with a view to avoiding duplication of work and to use the relevant data collection activities which are being carried out within these organisations;
- b. evaluate whether the existing data are transparent, consistent and quality assured enough to allow a rational and, if possible, scientifically sound assessment (e.g. in form of a trend analysis);
- c. based on points (a) and (b) above, make proposals to the responsible Committee or working group as regards the continuation or termination of the data collection activity and, if appropriate, the need for further programmes and measures;

- d. if the continuation of the data and information collection was deemed necessary, to make proposals for changes to the existing reporting formats in order to optimise the collection and assessment process, e.g. as regards:
 - i. issues to be included or deleted from the reporting requirements;
 - ii. the most appropriate interval for the collection and for the assessment of the data and information (e.g. reporting annually, assessment every three years).

2.3 The responsible Committee and/or working group have the task to review and to assess the draft OSPAR report and its draft expert assessment, inter alia with view to evaluating whether:

- a. the data and information contained in the draft report are correct;
- b. the draft report (together with its assessment as agreed by the working group) should be recommended to OSPAR for publication;
- c. the extent of the data and information being reported and compiled is necessary to fulfil the requirements stipulated in the underlying measure(s), the relevant Strategy or the Convention;
- d. the links between the requirements and the ongoing data and information collection activities have to be re-established;
- e. there is a need to:
 - i. review (and revise) the reporting formats for the report;
 - ii. continue with the data collection activity;

and to make amendments, or make recommendations for such amendments to the Committee accordingly. These amendments/recommendations should also take into account cost/benefit considerations in order to make maximum use of the limited resources of Contracting Parties and the Secretariat.

3. The role of external data managers in the collection and management of data and information

3.1 Accredited OSPAR observer organisations are closely involved in the work of OSPAR. Observer organisations can considerably contribute to the collection of data and information for the preparation of OSPAR reports, for example: the annual submission of data (on a plant-by-plant basis) by EuroChlor for the preparation of the draft OSPAR report on Mercury Losses from the Chlor-alkali Industry; the provision of Seabed Litter data from the International Council for the Exploration of the Seas (ICES) from the Database on Trawl Surveys (DATRAS); Comprehensive Atmospheric Monitoring Programme (CAMP) data are provided by the Norwegian Institute for Air Research (NILU), from the EBAS database; Comprehensive Study of Riverine Inputs and Direct Discharges (RID) data are managed and provided by the Norwegian Institute of Bioeconomy Research (NIBIO).

3.2 The ultimate responsibility for any data and information which are being collected by observer organisations with a view of being used in the framework of OSPAR lies with Contracting Parties, which have to approve the correctness and completeness of the data and information prior to their use and publication.

Terminology to be used in the drafting of Memoranda of Understanding (MoU) and other Arrangements to indicate that they are not Treaties

This Appendix provides guidance on the terminology to be used when drafting Memoranda of Understanding and other Arrangements (ie., Cooperation Arrangements with international organisations).

The document should not be titled or referred to as an Agreement. The word agree and its derivatives should be avoided. Say instead the "Participants enter into arrangements" or "have reached the following understandings".

The provisions should be cast as expressions of intent rather than as obligations in order to avoid it being a treaty.

Certain words should never be used. Some alternatives are suggested below.

Treaty and MoU Terminology

Treaty language (Potentially Legally binding)	(Could replace with -) MoU language
Article	paragraph
Agree	accept, approve, decide
Agreement	arrangement, understanding
Agreed	decided, accepted, approved
Authentic	equally valid
Authoritative	equally valid
Clause	paragraph
Conditions	provisions
continue in force	continue to have effect
Done	signed
enter into force	come into effect, come into operation
mutually agreed	jointly decided
Obligations	commitments
Parties	Participants, Governments
Preamble	Introduction
Rights	benefits
Have the right	be permitted to
shall, must	Will, decide
Terms	Provisions
undertake	carry out
undertakings	understandings

Source: Treaty Section – Legal Directorate UK Foreign and Commonwealth Office