



**OSPAR  
COMMISSION**

*Protecting and conserving the  
North-East Atlantic and its resources*

# Guidelines for the Implementation of Articles 7 and 9 of Annex II to the OSPAR Convention

(Agreement 2012-01)

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# Guidelines for the Implementation of Article 7 of Annex II to the OSPAR Convention

PROCEDURES AND CRITERIA FOR DETERMINING AND ADDRESSING **FORCE MAJEURE** SITUATIONS AS REFERRED TO IN ARTICLE 7 OF ANNEX II OF THE OSPAR CONVENTION

## 1 LEGAL OBLIGATIONS

1.1 Under Article 7 of Annex II of the OSPAR Convention, Annex II does not apply in case of force majeure, due to stress of weather or any other cause, when the safety of human life or of a vessel or aircraft is threatened. Such dumping is to be conducted so as to minimise the likelihood of damage to human or marine life and must be reported immediately to the OSPAR Commission, together with full details of the circumstances and of the nature and quantities of the wastes or other matter dumped. Where the article applies, it permits the dumping, without a permit, of wastes and other matter which would otherwise be prohibited under Article 3. Article 7 focuses on extremely urgent situations involving vessels or aircraft in, on or over the ocean that have to dump wastes or other matter immediately or almost immediately in order to safeguard human life or the safety of a vessel or aircraft.

1.2 It should be noted that the 1996 London Protocol has adopted analogous guidance in respect of Article 8 of that Protocol that is available on the London Convention website. Consideration should also be given to other Conventions such as the Nairobi International Convention on the Removal of Wrecks (2007), the International Convention on Salvage (1989) and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and its 1973 Protocol.

## 2 GUIDANCE ON ACTIONS TO IMPLEMENT ARTICLE 7

2.1 Although a permit is not required for the dumping of wastes or other matter at sea under Article 7 of Annex II of the OSPAR Convention, it is required that such dumping be reported to the OSPAR Commission. This communication should include the available information regarding the details of the situation, including the nature of quantities of the matter dumped, the necessity of the emergency dumping, and the actions undertaken so as to minimize the likelihood of damage to human or marine life. A Party submitting the report of the occurrence of a *force majeure* situation to the OSPAR Commission Secretariat would generally use information obtained from the ship's master, aircraft captain or relevant authorities. This information serves to ensure that the case of dumping was in fact in accordance with Article 7 of Annex II of the OSPAR Convention. The reporting form at Appendix A sets out the information which should be submitted and should be used by the national dumping authorities to report *force majeure* incidents immediately to the OSPAR Commission Secretariat as required by Article 7.

2.2 Two *force majeure* situations can be envisaged. The first being a notification of a *force majeure* occurrence by a ship's master or aircraft captain to the relevant dumping authority of the Party before the dumping occurs; the second being an after the fact report by the ship's master, aircraft's captain or relevant authorities to the authority of the Party responsible for dumping. In the first situation there may be opportunity for the Party to provide guidance, in the second situation this is not the case.

2.3 The OSPAR Commission Secretariat should forward such reports to the next available meeting of either the OSPAR Commission or the Environmental Impacts of Human Activities Committee, whichever comes first.

### 3. ACTION TO BE TAKEN BY CONTRACTING PARTIES TO ENSURE REPORTING OF FORCE MAJEURE INCIDENTS

3.1 All Contracting Parties should take the necessary action at national level to ensure that whenever national shipping authorities receive reports of *force majeure* dumping incidents that occur within their jurisdiction, they should forward such reports to the appropriate national dumping authorities.

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APPENDIX A

REPORTING FORMAT FOR FORCE MAJEURE REPORTS IN ACCORDANCE WITH  
ARTICLE 7, OF ANNEX II OF THE OSPAR CONVENTION

Item	Information
<b>Time and Place:</b>	
Date of <i>force majeure</i> dumping	
Time of <i>force majeure</i> dumping	
Latitude and longitude of dumping event	
Depth of water, m	
Distance to the nearest land, Km	
<b>Vessel/Aircraft</b>	
Name of the vessel/aircraft	
Name of vessel's master/aircraft's captain	
Name and address of vessel's/aircraft's owner	
Port/place of registry	
Last point of departure and immediate destination of the vessel/aircraft at the time the disposal occurred	
<b>Wastes or other matter:</b>	
Description of wastes or other matter	
Quantity of material dumped, tonnes (or m <sup>3</sup> )	
Physical form e.g. solid, liquid, granular, powder	
Other characteristics, e.g. pH, density, does it float	
Type of packaging if relevant	
Was the packaging removed before disposal?	
Estimated time taken to disappear below the surface of the water.	
<b>Circumstances:</b>	
A description of the circumstances leading to the <i>force majeure</i> dumping including: <ul style="list-style-type: none"> <li>➤ the nature of the <i>force majeure</i> case caused by stress of weather, or in any other case which constitutes a danger to human life or a real threat to vessels or aircraft;</li> <li>➤ the necessity to secure the safety of human life or of vessels or aircraft.</li> </ul>	
Actions undertaken to minimize the likelihood of damage to human and marine life to the maximum extent possible.	
Procedures established, if applicable, to monitor the impact of the action	
Potential for further release and expected rate	
A description of any follow-up action	

<b>Any other information:</b>	
Additional information	

# Guidelines for the Implementation of Article 9 of Annex II to the OSPAR Convention

## PROCEDURES AND CRITERIA FOR DETERMINING AND ADDRESSING EMERGENCY SITUATIONS AS REFERRED TO IN ARTICLE 9 OF ANNEX II OF THE OSPAR CONVENTION

### 1 LEGAL OBLIGATIONS

1.1 Under Article 9 of Annex II of the OSPAR Convention, a Contracting Party may allow the destruction or disposal of wastes or other matter at sea which would otherwise be prohibited under the Annex in emergency situations when the wastes or other matter concerned cannot be disposed of on land without unacceptable danger or damage. However, unlike Article 7, note that Article 9 does not disapply the permit requirements of Article 4.<sup>1</sup> Article 9 does not only cover wastes or other matter arising within the marine environment, but is also relevant to wastes arising on land. When relying on Article 9, Contracting Parties must first consult each other with a view to finding the most satisfactory methods of storage or the most satisfactory means of destruction or disposal in the circumstances. The OSPAR Commission is to be informed of the steps adopted following this consultation. Under the Article, Contracting Parties have pledged to help one another in Article 9 situations.

1.2 It should be noted that the 1996 London Protocol has adopted analogous guidance in respect of Article 8 of that Protocol that is available on the London Convention website.

### 2 GUIDANCE ON ACTIONS TO IMPLEMENT ARTICLE 9

2.1 In cases of Article 9 dealing with emergencies, more time is likely to be available compared to situations under Article 7, for example; for prior consultation, for consideration of other alternatives, and for consideration of conditions in relation to disposal at sea. However, time to consider actions will usually be limited and in some cases Article 9 emergencies are situations requiring action with a marked degree of urgency, and which may also preclude as thorough consultations and evaluations as might be done were more time available. The following text provides guidance on the issues to be considered in cases under Article 9.

#### 2.2 **Assessment of the emergency situation**

2.2.1 When it becomes apparent that an emergency situation involving the disposal of wastes or other matter at sea exists, the first step to be taken by the Contracting Party is to assess the threat or risk to human health, safety or the marine environment. Such assessment should include the following:

##### **The Emergency situation**

- .1 The circumstances of the emergency:
  - .1 type and amount of waste or other matter;
  - .2 physical characteristics/form and chemical composition of material involved;
  - .3 how the material is packaged and would be released;
  - .4 the proposed dumping site including geographical position (latitude and longitude), depth of water and distance from nearest coast;
  - .5 proposed date of release;

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<sup>1</sup> Note that Article 4 does not apply to activities that are prohibited outright under paragraph 1 or 3(a) of Article 3

- .6 potential for further release and expected rate; and
- .7 potential impact of no action on other countries.

### **Risks relating to human health**

- .2 The risks relating to human health with regard, *inter alia*, to:
- .1 toxicity to human life:
    - by inhalation;
    - by ingestion; and
    - by skin absorption.
  - .2 method of contact:
    - direct contact with material;
    - water supply;
    - food source.
  - .3 the impact on health of present and future generations:
    - chronic toxicity;
    - carcinogenic, teratogenic and mutagenic properties of the material; and
    - potential for causing long-term effects.

### **Risks to safety<sup>2</sup>**

- .3 The risks relating to safety with regard, *inter alia*, to:
- .1 the risk to human life;
  - .2 the risk to the vessel, aircraft, platform or other man-made structure and to other vessels, aircraft, platforms, or other man-made structures in the area;
  - .3 the risk to other legitimate uses of the sea; and
  - .4 in case the situation occurs in port, the risk to surrounding buildings and adjacent living and working areas.

### **Risks to the marine environment**

- .4 The risks relating to the marine environment with regard, *inter alia*, to:
- .1 acute and chronic toxicity;
  - .2 short- and long-range transport of air pollutants from incineration;
  - .3 risk to commercial or recreational fisheries from toxicity and tainting;
  - .4 the impact of disposal at sea versus uncontrolled release;
  - .5 habitat destruction or alteration;
  - .6 introduction of alien species, pests, or diseases;
  - .7 other legitimate uses of the sea ; and
  - .8 other marine environmental quality concerns.

2.2.2 Dumping at sea should only be considered by the Contracting Party after an assessment of the waste or other matter concerned and the proposed location for dumping, utilizing the most appropriate OSPAR guidance available. In the absence of applicable OSPAR Convention guidance, Contracting Parties should utilize London Convention/Protocol guidance where this exists i.e. "Guidelines for the Assessment of Wastes or Other Matter that may be Considered for Dumping" to

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<sup>2</sup> All safety aspects indicated in the operational plan for sea disposal to deal with a case of emergency should be identified, in advance, to the extent possible and considered in accordance with the applicable IMO safety requirements to the satisfaction of the authorities concerned.



the maximum extent possible under the circumstances and, where appropriate, the Specific Guidelines developed under the Protocol.

2.2.3 In particular, the following factors should be evaluated:

- .1 Alternatives to disposal to be considered as a first priority, including:
  - .1 re-use, reclamation and recycling;
  - .2 off-site recycling;
  - .3 destruction of hazardous constituents; and
  - .4 treatment to reduce or remove the hazardous constituents through biological, chemical or physical treatment.
  
- .2 Alternative methods of disposal to be considered, including:
  - .1 landfill and soil disposal;
  - .2 well injection;
  - .3 incineration on land;
  - .4 storage; and
  - .5 partial treatment prior to ocean disposal.
  
- .3 Assessment of the environmental impact of each alternative:
  - .1 adverse environmental effects of alternative actions;
  - .2 impact on living and non-living marine resources, navigation, recreation and other uses of the ocean; and
  - .3 evaluation to determine which alternative has least overall environmental impact.
  
- .4 The disposal site designation and monitoring:
  - .1 physical, chemical and biological information relating to the proposed disposal site;
  - .2 proposed method of release of material at the site;
  - .3 proposed times and dates of disposal; and
  - .4 proposed monitoring to assess the impact of the material on the marine environment.
  
- .5 Other matters:
  - .1 potential impact of these actions on other countries; and
  - .2 proposed actions to minimize potential adverse impacts on the marine environment.

## 2.3 Notification and Consultation

2.3.1 With reference to paragraph 2.2.2 above, once it has been determined that the waste or other matter concerned cannot be disposed of on land without unacceptable danger or damage and that ocean disposal is the only feasible solution, the Contracting Party shall consult with OSPAR Contracting Parties with a view to finding the most satisfactory methods of storage or the most satisfactory means of destruction or disposal under the prevailing circumstances.

2.3.2 While not an obligation under the OSPAR Convention<sup>3</sup>, it would also be sensible to consult with other countries which may be affected as well as the Secretariats of other regional agreements and programmes where appropriate. In addition, it would also be sensible to notify the OSPAR Commission Secretariat on the same basis together with a list of all those countries and organisations consulted. The information provided initially by the Contracting Party will be dependent upon the urgency of the emergency situation.

2.3.3 All the significant information used in making the determinations in 2.3.1 above, together with the information covered under 2.2 above, should be provided to all the consultees indicated above.

2.3.4 The Contracting Party concerned should, after consultation with other Contracting Parties, other countries which may be affected, other regional agreements and programmes, competent international organizations and experts, as appropriate, take due account of their recommendations for satisfactory methods of storage, destruction or disposal under the prevailing circumstances.

2.3.5 The Contracting Party concerned shall inform the OSPAR Commission Secretariat forthwith of actions taken following consultation. This should include the extent to which the recommendations from other countries and organisations have been adopted and may provide any additional facts relating to the disposal of the material it considers appropriate. The OSPAR Commission Secretariat should inform all Contracting Parties of the emergency situation and actions taken as soon as practicable.

### **3. ACTION TO BE TAKEN BY CONTRACTING PARTIES TO ENSURE REPORTING OF EMERGENCY INCIDENTS**

3.1 All Contracting Parties should take the necessary action at national level to ensure that whenever national shipping authorities receive reports of emergency dumping incidents that occur within their jurisdiction, they should forward such reports to the appropriate national dumping authorities.

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<sup>3</sup> There may be obligations under other international agreements such as the 1996 London Protocol

CHECK LIST OF THE LIKELY SEQUENCE OF ACTIONS IN IMPLEMENTING THE PROVISIONS  
OF ARTICLE 9

In the implementation of the provisions of Article 9, the following sequence of actions can be envisaged:

- .1 In order to decide that an emergency under Article 9 does in fact exist, the Contracting Party proposing to issue a permit for the disposal of wastes or other matter at sea would:
  - .1 investigate the situation to decide whether or not the wastes or other matter cannot be disposed of on land without unacceptable danger or damage; and
  - .2 investigate possible alternative methods of disposal in order to decide that no feasible solution other than disposal at sea can be found.
- .2 Having decided that disposal at sea is necessary, the Contracting Party concerned would:
  - .1 notify the OSPAR Commission Secretariat
  - .2 inform other coastal states that may be affected
  - .3 consult with other OSPAR Contracting Parties with a view to finding the most satisfactory methods of storage or the most satisfactory means of destruction or disposal under the prevailing circumstances; and
  - .4 consult with any relevant regional agreements or programmes, as appropriate.
- .3 Upon being informed of the situation, the OSPAR Commission Secretariat would:
  - .1 where requested to do so by the relevant Contracting Party, consult with other competent international organizations; and
  - .2 promptly pass on any recommendations for satisfactory methods of storage, destruction or disposal under the prevailing circumstances from such organisations to the Contracting Party.
- .4 In issuing the permit for the disposal at sea the Contracting Party concerned would:
  - .1 inform the OSPAR Commission Secretariat of the steps adopted following this consultation; and
  - .2 inform the OSPAR Commission Secretariat of the action taken.