

**Trilateral for the Future:
towards a stronger trilateral partnership**

Advice on the trilateral cooperation, the construction of wind farms in the North Sea, the scientific symposium and the Wadden Sea as a World Heritage site

Advice to the Minister of Agriculture, Nature Management and Food Quality

The Wadden Sea Council was instituted by Act of 26 September 2002 (The Wadden Council Act; Bulletin of Acts, Orders and Decrees 2002/554). The remit of the Council is to advise the government, both Chambers of the States General and the provincial and municipal authorities involved in the Wadden region on matters that are of general importance to the Wadden region.

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WADDEN SEA COUNCIL, Leeuwarden, 2005
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Advice to the Minister of Agriculture, Nature Management and Food Quality

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Summary

On the request of the Minister of Agriculture, Nature and Food Quality (LNV), the Council has published an advisory document on a number of important matters at trilateral level. Those matters concern trilateral cooperation aspects, the construction of wind farms in the North Sea and the role of the scientific symposium. In addition to the above, the Council has set out in the advice its position concerning the nomination of the Wadden Sea as a World Heritage Site.

Trilateral cooperation aspects

In keeping with the Minister's request, the Council has updated the Wadden Advisory Council's advice on trilateral cooperation (July 2000), in which an analysis of the trilateral cooperation is made. The onset that the Ministry of LNV has given to improving the communication with residents and organisations on the trilateral Wadden Sea policy is a favourable development, but this will have to be done in a more structured manner.

The Wadden Sea Forum (WSF), in which the stakeholders and public authorities have jointly developed prospects for sustainable development in the area, has proven to be a good way of involving residents and users in the trilateral cooperation.

The Wadden Sea countries are responsible for ensuring that the recommendations that have been made are implemented with the aid of the Wadden Sea Forum. For that reason, the WSF should be extended for a further period of four years.

The trilaterally formulated policy must serve as the starting point for the formulation of (additional) national policy in the three Wadden Sea countries. That will increase the transparency of the Wadden Sea policy, which in turn will increase support for the policy. It is important to harmonise the implementation of a number of EU Directives at trilateral level. This is necessary to ensure that the trilateral agreements are implemented consistently.

The Wadden Sea plan, accompanied by an action programme, must be given a central role in the Declaration of a Governmental Conference. That will give the Wadden Sea Plan a more obligatory nature and will clarify who is to be held to account in the event of non-compliance. The Council takes the view that the desirability of a further-reaching and more obligatory cooperation at trilateral level should be expressed in the Schiermonnikoog Governmental Declaration. The various options in that regard can be mapped out in the period leading up to the next Governmental conference.

The placing of wind farms in the North Sea within the preconditions of the objectives for the Wadden Sea

No pronouncement is made in the advice about the construction of onshore wind turbines. The advice concentrates on the placing of wind farms in the North Sea within the preconditions of the objectives for the Wadden Sea, as requested by the Minister.

There is not yet any question of a coordinated and integrated approach at trilateral level concerning how to incorporate wind farms. The Minister of LNV – and his fellow-ministers in Germany and Denmark – must ensure that existing agreements are complied with and that an integral plan is formulated for the placing of wind farms in the North Sea that could have an external effect that extends to the trilateral cooperation region. In relation to the above, it is desirable to underline the Wadden Sea Forum's recommendation for a trilaterally coordinated spatial planning procedure for the Exclusive Economic Zone and to elaborate it in a trilateral context.

Regarding the incorporation of wind farms in the landscape and their impact on nature, requirements should be formulated regarding the location and

construction of wind farms in the North Sea on the basis of the test framework of the Birds and Habitats Directive. This must be worked out in more detail in a trilateral context. With regard to the impact on the landscape, wind farms in the North Sea must not result in the obstruction of views from the Wadden islands on the basis of existing policy. The scenic qualities of the trilateral cooperation area and the bordering coastal area must therefore be included in the trilateral decision-making process on the construction of wind farms.

The decision on the large-scale use of sustainable energy should not be made until the (harmful) effects on the one hand and the social usefulness on the other can be considered on the basis of objective and scientifically substantiated arguments, resulting in a framework for the realisation of sustainable energy in the Wadden Sea region.

Scientific symposium

The Council concludes in its advice that there is (still) a role to be played by the Scientific Symposium in the preparatory process for the Governmental Conference. The scientific symposium must result in clear and unequivocal recommendations in the direction of policy, administration and management. This is however subject to the condition that there is a clear division between the scientific discussion, the policy and managerial translation of scientific conclusions and the political-social discussion in the preparation and course of the symposium and in the translation into recommendations for the Governmental Conference. It is recommended in this context that the Quality Status Report (QSR), which is drawn up once every four years – usually voluntarily by the scientists involved – and provides insight into the evaluation of the Objectives of the Wadden Sea Plan, be given formal status as scientific input for the scientific symposium. Other than that, the scientific symposium should be planned in such a way in relation to the Governmental Conference that the conclusions can still be effectively translated into recommendations for the Governmental Conference. Finally, a trilateral working group comprising independent scientists and governmental representatives must be instituted to carry out that translation.

An analysis of various instruments, such as the national progress reports, etc., should be carried out in order to further strengthen the role of research. This can be taken as the basis for ascertaining whether further adjustments to the way in which the research is organised are required. Finally, it will also be necessary to seek connection with the most recent developments in this area, both within and outside of the Wadden Region.

World heritage nomination

The Council believes that it is no more than logical for – preferably the entire trilateral - Wadden Sea to be nominated for inclusion in the world heritage list. It can be regarded as added value if the State ensures that a sound infrastructure for public information and education is created in and around the area and that sufficient resources are made available to maintain that infrastructure. The approach the Minister of LNV has taken to the concerns in the area in the form of preparing an agreement is greatly appreciated. It is however necessary for the agreement to be signed by the relevant authorities (State, provinces and municipalities) and by the various relevant interest groups in the area. To dispel any further concerns, it is desirable to provide access to the nomination file that serves as the basis for the nomination and the eventual inclusion on the world heritage list. Finally, the Council highlights the importance of continuing to work on gaining support in the future.

Introduction

The Minister of Agriculture, Nature Management and Food Quality has made a request for advice to the Wadden Sea Council on the following Trilateral Governmental Conference being held on Schiermonnikoog in October 2005. In the request for advice the Minister has asked for the advice to be concentrated primarily on the following subjects:

- 1 Trilateral cooperation aspects
- 2 The placing of wind turbines in the North Sea
- 3 The role of the scientific symposium.

In addition to the above, the Council is pleased to take the opportunity to set out its position regarding the possible nomination of the Wadden Sea as a world heritage site.

1 Trilateral cooperation

1.1 Request for advice

The cooperation between the three Wadden Sea countries has existed for over a quarter of a century. The cooperation was initially intended for the mutual exchange of information about the national policy of Denmark, Germany and the Netherlands. During the course of years, the trilateral cooperation has taken on a more substantive form.

At the end of the nineteen-nineties the Ministry of Agriculture, Nature and Food Quality (LNV) was faced with the question of which steps forward would have to be taken regarding the trilateral cooperation. After (at that time) eight governmental conferences, it appeared difficult to achieve leaps ahead. According to the Ministry, this situation could be largely attributed to the 'law of diminishing returns'.

The (then) Wadden Advisory Council (WAC) was therefore asked to provide advice on the question of how the trilateral cooperation could be given a new lease of life.

The Wadden Advisory Council published its recommendations on 13 July 2000. In this request for advice, the Minister of LNV asks for the Wadden Sea Council to provide updated advice on the trilateral cooperation.

The next section starts by discussing the objective of the trilateral cooperation. Section 1.3 then goes on to discuss a number of ways in which the trilateral cooperation could be improved. Finally, section 4 briefly addresses the form of cooperation.

1.2 Review of the trilateral cooperation up until now

At the beginning of the nineteen-seventies, scientists had already agreed that the eco system of the Wadden Sea could not be divided via the national borders. From an ecological viewpoint, the Wadden Sea is a single system. For that reason, the politicians of the three Wadden Sea countries were called upon to work on the joint protection and management of the region.

Politicians responded to the call and in 1978 organised the first trilateral governmental conference on the protection of the Wadden Sea. That conference was held in The Hague, followed two years later by a second conference in Bonn.

During the third conference, which was held in Copenhagen, agreement was reached on a Joint Declaration. On the basis of this joint declaration, the three countries announced their intention to coordinate their activities and measures for the implementation of a number of international regulations in the area of

nature protection (such as the Ramsar Convention, the EU Birds Directive). This would be of benefit to the effective protection of the Wadden Sea Region as a whole, including its flora and fauna. At that time the cooperation was still largely dominated by the exchange of information, coordination, support by instituting a joint secretariat (1984) and an agreement on seals (1988).

The trilateral cooperation gradually took on a more substantive form, aimed at the formulation of a joint trilateral policy. The sixth (Esbjerg, 1991), seventh (Leeuwarden, 1994) and the eighth (Stade, 1997) Trilateral Governmental Conferences are the most important in this context.

In 1991¹ there was a leap ahead in the trilateral cooperation. It was agreed at that time to direct the trilateral policy towards the integration of nature protection interests and human activities in the broadest sense of the words. Joint principles and joint objectives were formulated. The objectives concerned a number of human activities in the international Wadden Region that were described in terms of the intended aims.

Another step forward was taken in *Leeuwarden* (1994)². The Leeuwarden Declaration stipulated that human activities in the region would have to be embedded in a system of ecological and scenic objectives that are typical of the Wadden Region. The trilateral protection region and the trilateral cooperation region were also defined.

Finally, the relevant issues were laid down during the conference in *Stade*³ in a trilateral Wadden Sea Plan. This is a joint management plan for the Wadden Sea, which covers the policy, the measures, the projects and the actions of the three countries aimed at meeting the joint objectives. Those objectives are in the areas of (1) landscape and culture, (2) water and sediment, (3) salt marshes, (4) tidal areas, (5) beaches and dunes, (6) estuaries, (7) coastal waters, (8) rural area, (9) birds and (10) mammals.

During the *Esbjerg*⁴ conference, an initial evaluation⁵ of the Stade Declaration and the Wadden Sea Plan was discussed. It was also decided to register the Wadden Sea with the International Maritime Organization (IMO) as a Particularly Sensitive Sea Area. In addition, the trilateral Wadden Sea Forum was instituted, parties to which were governmental and non-governmental organisations (NGOs). The Forum's remit is to develop proposals for scenarios for sustainable development and strategies for their implementation as a contribution to the further development of the Wadden Sea Plan.

1.3 Factors that are important to the trilateral cooperation

One of the most important moments in the trilateral cooperation was the ratification of the Stade Declaration and the Wadden Sea Plan in 1997. The Wadden Sea Plan is in fact the result of agreements that were previously made concerning ecological objectives, with the addition of measures, projects and actions aimed at meeting them. The Wadden Sea Plan would thus (have to) form the basis for an effective (substantive) trilateral cooperation regarding the

¹ 6th Trilateral Governmental Wadden Sea Conference, Esbjerg 1991: Ministerial Declaration

² 7th Trilateral Governmental Wadden Sea Conference, Leeuwarden 1994: Ministerial Declaration

³ 8th Trilateral Governmental Wadden Sea Conference, Stade 1997: Ministerial Declaration

⁴ 9th Trilateral Governmental Wadden Sea Conference, Esbjerg 2001: Ministerial Declaration

⁵ Policy evaluation report in which a description is given of the progress and the omissions concerning the implementation of the Stade Declaration and the Trilateral Wadden Sea Plan, which were both adopted in 1997 at the Stade Conference. The report is based on an analysis of the joint progress report, the Quality Status Report (QSR) for the Wadden Sea dating from 1999 and additional information about the ecological condition of the Wadden Sea.

Wadden Sea. Despite that, the actual trilateral cooperation proceeded laboriously.

In 1999 the then State Secretary of LNV observed that it was necessary to breathe new life into the trilateral cooperation. On the basis of an analysis of the trilateral cooperation, the WAC, too, came to the conclusion in its advice of July 2000 that there were a number of hindering factors in the trilateral cooperation. According to the WAC, those factors were related to the lack of support for this policy and the fact that there was not enough political-administrative commitment to the trilateral cooperation. Both substantive and organisational improvements would therefore have to be made to the trilateral cooperation. The prospects for sustainable development for the area would have to be laid down, and previously agreed objectives would have to be met before new ones were developed. In organisational terms, it would be necessary to work towards a model that was less free of obligation when it came to compliance with the agreements.

Others, such as the NGOs, were of the opinion that the trilateral cooperation would have to be substantiated in a trilateral convention for the protection of the Wadden Sea.

Discussed in the sections below, partly on the basis of the advice published by the WAC in 2000, are a number of factors that the Council believes are important to the trilateral cooperation.

1.3.1 Support and communication

The WAC judged in 2000 that the lack of support and communication formed an obstacle to the trilateral cooperation. This partly had to do with the trilateral policy's lack of clarity and transparency. This also related to the fact that the inhabitants and users of the area were insufficiently involved and did not have enough ways of influencing the results of the policy. The WAC advised the Ministry of LNV to address these issues.

The Wadden Sea Council notes that the Ministry of LNV has since addressed this support problem in relation to the trilateral Wadden Sea policy. Reference can be made in that regard to the communication policy that the Ministry of LNV has pursued in the area on the basis of the 2001 Trilateral Governmental Conference. The inhabitants and users of the region were consulted before and after the Governmental Conference concerning the efforts for and the result of the Governmental Conference. The negative responses from the (Dutch) Wadden Region concerning the possible registration as a world heritage site contributed in part to a decision not to register during the Governmental Conference held in 2001. This implies that the Ministry of LNV has also done something with the results of the consultation round.

In the run-up to the next Trilateral Governmental Conference the Ministry of LNV also consulted the inhabitants and users on the possible registration of the Wadden Sea as a world heritage site. The Council regards this as a first step in the right direction, which will have to be followed by a more structured form of communication in which clarity is provided in advance about the means of communication, target groups, objectives, etc. For this purpose, use should be made of the Communication Masterplan for Wadden Sea Governments (KCOW)

The Council regards as a positive development the fact that the Ministry of LNV is communicating more actively on the trilateral cooperation; this can be regarded as a step in the right direction. The Council advises following this up by shaping the communication in a more structured manner, with due observance of the Communication Masterplan for Wadden Sea Governments.

The involvement in, but also the support for the trilateral Wadden policy can be increased by pursuing an effective communication policy.

1.3.2 Prospects for sustainable development (WSF)

The WAC also noted in 2000 that there were problems concerning the support for the jointly formulated objectives at trilateral level. Inhabitants and users of the area were said to be increasingly gaining the impression that increasingly less could be done. This problem could be responded to by offering the inhabitants and users prospects for sustainable development. That would change the character of the Wadden Sea policy from being mainly defensive (what is not permitted?) to being more proactive (what is possible?). At the same time, this would result in greater support for the (trilateral) Wadden Sea Policy, claimed the WAC.

During the governmental conference in Esbjerg (2001), this advice was followed up by deciding to institute the Wadden Sea Forum (WSF). The stakeholders (of both governmental and non-governmental organisations) are involved via the WSF in the trilateral Wadden Sea policy. The WSF has been given the remit of developing prospects for the sustainable development of the Wadden Region. The WSF presented its final report to the Minister of LNV on 10 February 2005.

The members of the WSF have had generally positive experiences of the WSF process. This mainly has to do with the fact that those involved have succeeded in coming up with jointly borne prospects for the development of the Wadden Region from the perspective of different and sometimes greatly divergent interests. According to Mr Nijpels, chairman of the WSF, the WSF must therefore be regarded as a way 'to break the ice between the interest groups'. The final report should in this context be regarded as a first step in that direction.

The presentation of the final report in fact brought the remit of the WSF to an end, and it is now up to the Trilateral Governmental Conference to actually take the WSF seriously and ensure that the report is taken as a basis for the further development of the Wadden Region. The WSF sees a task for itself in tackling and facilitating this in partnership with the national governments of the three countries. The WSF will draw up a plan of action for the summer of 2005. On the request of the Minister of LNV, the WSF will also formulate 5 points of action for the various parties that are members of the forum.

In addition to a more active communication policy around the Trilateral Governmental Conference on the part of the Ministry of LNV, the inhabitants and users of the Wadden Region have also become more actively involved in a different way in the trilateral Wadden Sea Policy, namely via the Wadden Sea Forum. The WSF has proved to be a good way - in addition to this active involvement and via a bottom-up approach – of bringing divergent interests and viewpoints closer together, which has ultimately resulted in jointly borne prospects for the development of the trilateral Wadden Region.

The Council advises the Minister of LNV, together with his German and Danish counterparts, to take the final WSF report as a basis for the sustainable development of the Wadden Region and to implement the recommendations that have been put forward. The Trilateral Governmental Conference will bear final responsibility in that regard. The prospects for sustainable development should be incorporated in the trilaterally ratified Wadden Sea Plan.

The Council advises resolving during the next Trilateral Governmental Conference to extend the WSF for a further period of four years. In addition to the (support) role that the WSF must play in the writing of the final WSF report, the WSF as a forum could make an important contribution to bridging the contrasting views in the region and increasing support for the trilateral Wadden Sea policy. The question of whether the WSF is to be continued in the same form and with the same remit will have to be reviewed after four years.

Finally, the Council believes that the WSF can be used as an important building block for arriving at Integrated Management for the Coastal Region, in this case the Wadden Sea⁶.

1.3.3 Transparency of the (trilateral) policy

One of the factors that the WAC believes contributed to the support problem in 2000 was that the Wadden Sea policy lacks transparency. The Wadden Sea Council shares the view that improvements can be made on this point. The Wadden Sea plan (the most important trilateral document, central to which are the protection and management of the region), which was ratified in 1997 in Stade, should be given a clearer and more recognisable place in the Wadden Sea policy, for instance.

There are a number of ways of doing this.

1.3.3.a Trilateral policy: central role in national policy

The Wadden Sea plan (and, accordingly, the trilateral agreements) must be given a central position in the national Wadden Sea policy. Trilaterally formulated policy and management will in fact have to form the starting point for the national Wadden Sea policy (via the key national planning decision for the Wadden Sea) and management. This means that national policy should only be formulated as an addition to trilateral agreements.

The Council advises taking the trilaterally formulated policy as the starting point for the formulation of (additional) national policy in the three Wadden Sea countries. That will increase the transparency of the Wadden Sea policy, which in turn will increase support for the policy.

1.3.3.b Harmonisation of EU legislation at trilateral level

The trilateral agreements and the Wadden Sea plan in particular call for consistent implementation in all three Wadden Sea countries. It is therefore necessary to harmonise a number of essential parts of the policy that are based on European directives (such as those concerning the ecological objectives). The Wadden Sea Council has already referred on several occasions to the importance of harmonising directives such as the Birds and habitats Directive. The three Wadden Sea countries appear to be differently substantiating the free space that is offered by these directives. A clear example is the bordering of the Birds and habitats Directive regions in the Wadden Sea, which has not been done according to the same criteria in all cases. In that context, the Council refers to the study performed by Oxford Brookes University into international legal instruments, policy and management concerning the Wadden Region⁷. The study covers differences in the area of the Birds and habitats Directive and the Environmental Impact Assessment (EIA) Directive.

⁶ Recommendation of the European Parliament and the Council of 30 May 2002 concerning the implementation of integrated management of coastal regions in Europe

⁷ Oxford Brookes University, Review of International Legal Instruments, Policies and Management in respect of the Wadden Sea Region, August 2003, commissioned by the Wadden Sea Forum

A more consistent and harmonised policy in the trilateral Wadden Region (Final Report Wadden Sea Forum, chapter 3.2) is also being called for in the region.

The Council advises the Minister of LNV to provide for harmonisation of the implementation of a number of EU directives (such as the Birds and habitats Directive, European Water Framework Directive) at trilateral level, so that trilateral agreements can be implemented consistently.

1.3.3.c Wadden Sea plan: central role in Declaration

The Wadden Sea plan must play a central role in the Declaration of the Governmental conference. The Wadden Sea plan was ratified in 1997 during the governmental conference in Stade and was evaluated for the first time before the governmental conference in Esbjerg (2001). A summary of the policy evaluation is included in the Esbjerg Declaration. It is difficult to ascertain from the Esbjerg Declaration whether the evaluation has led to the Wadden Sea plan being adjusted. In the Council's opinion, the Declaration should explicitly address that issue.

The Wadden Sea plan must be given a central role in the Declaration of a Governmental Conference. The question of whether the plan needs to be updated should be clearly indicated on the basis of the evaluation. The Wadden Sea plan itself will also have to be incorporated in the Declaration (or in its appendix).

1.3.3.d Action programme added to Wadden Sea plan

As mentioned above, the Wadden Sea plan is the result of previous agreements regarding ecological objectives, with the addition of measures, projects and actions aimed at meeting those objectives. To ensure that the Wadden Sea plan is actually implemented, it is necessary to supplement the plan with an action programme with completion deadlines and an indication of the costs and financing involved, also indicating which bodies/authorities are responsible for implementation or have a role to play in getting implementation off the ground. Only in that way can the plan be implemented rather than being left to the 'free will' of the bodies/authorities to take action if it suits them. That will give the Wadden Sea plan a more obligatory nature.

The Council advises the Minister of LNV to arrange for an action plan to be added to the Wadden Sea Plan during the next Trilateral Governmental Conference. That action plan will have to indicate which bodies/authorities are responsible for the implementation of (parts of) the Wadden Sea Plan, how that will be financed and the completion deadlines. That will give the Wadden Sea Plan a more obligatory nature and will clarify who is to be held to account in the event of non-compliance.

1.4 Trilateral administrative aspects

One of the hindering factors that the WAC mentioned in its analysis in 2000 – and which was also regarded by the Oxford Brookes University as being a problem – is the non-obligatory nature of the agreements that are made at trilateral level. Trilateral agreements are made and laid down in a Wadden Sea Plan, but there is no obligation to actually comply with the agreements that are made. A clear example of this is the placing of wind turbines in the North Sea. This will be covered in more detail in chapter 2.

The Council believes that problem can be resolved in part by following the recommendations given in section 3. Incorporating an action programme in the Wadden Sea Plan (and any other agreements made), but also giving the trilateral policy a more recognisable place in the national policy, will create a stronger perceived obligation to actually comply with the agreements.

A more obligatory framework could be obtained by drawing up a Convention for the Wadden Sea, an international park for the Wadden Sea or a different form. It is however important that the three Wadden Sea Countries express their intention to work towards a different form of cooperation before holding discussions about the form.

The Council takes the view that the desirability of a further-reaching and more obligatory cooperation at trilateral level should be expressed in the Schiermonnikoog Declaration. The pros and cons of the various models (International Park, Convention, etc.) can be set out and discussed during the period up to the next Governmental Conference. The Council believes that the Wadden Sea Forum could also play an important role in this regard.

2 The placing of wind farms in the North Sea within the preconditions of the objectives for the Wadden Sea

2.1 The advice in categorised form

The Minister of LNV has asked the Council to advise on “the placing of wind turbines in the North Sea within the preconditions of the objectives for the Wadden Sea”. The request for advice has also been placed within the context of ‘the supply of energy’ [...] and ‘the search for alternatives and in particular sustainable sources of energy’. Wind energy is one of the forms of sustainable energy that are intended to contribute to the objective formulated in the Third Power Planning Report (1995) that 10% of the Dutch power consumption should be generated from sustainable sources by 2020. Specifically for offshore wind energy, the government has set an indicative objective of 6000 MW of installed power.

In this advice the Council has not included an exhaustive discussion of wind energy in relation to the choices that have to be made in the search for alternatives and sustainable energy sources. The Council will however make reference in its advice to a number of developments concerning sustainable energy and alternative power sources in the Wadden Region, also making reference in this context to the recent final report of the Wadden Sea Forum⁸. The Council assumes that ‘the placing of wind turbines in the North Sea’ refers to the construction of (large-scale) wind farms.

The Minister makes indirect reference in the request for advice to the placing of onshore wind turbines. **The Council does not comment on the onshore placement of wind turbines in this advice.** The Council will address the (possible) effects on the Wadden Sea of placing wind farms in the North Sea as regards the aspects that affect the Wadden Sea in view of the fact that there is a direct relationship between the eco system of the Wadden Sea and that of the bordering North Sea. The starting point in this advice is formed by the preconditions that are set by the national and international objectives for the Wadden Sea regarding wind farms in the North Sea. The (policy) developments concerning offshore wind energy in relation to the trilateral cooperation are addressed first. The nature and landscape test is covered in section 2.3, after which paragraph 2.4 discusses the possible effects and uncertainties of offshore wind farms.

2.2 (Policy) developments concerning offshore wind energy in relation to the trilateral cooperation

The building of offshore wind farms is a relatively new addition to the package of measures aimed at meeting national and international sustainability objectives. Wind farms off the German and Danish coasts, outside of the 12 mile zone, are

⁸ Wadden Sea Forum. Final Report. Draft version, October 2004

currently being planned to the north of the trilateral cooperation region for the Wadden Sea. No firm plans have yet been developed and/or ratified to the north of the Dutch Wadden Region. Two wind farms are currently under development in the Netherlands: the pilot Near Shore Windpark off the coast of Egmond and the park Q7, outside of the 12 mile zone.

The only large operational offshore wind farm (within the Dutch, German and Danish Wadden Sea context) is the *Horns Rev Offshore Wind Farm*, off the Danish coast, outside of the trilateral cooperation area for the Wadden Sea. The wind farm Riffgat is planned above the German Wadden Sea Region, to the north of the German island of Borkum. Areas have also been designated and applications submitted for offshore wind farms to be developed (within and outside of the 12 mile zone). These developments will lead to various wind farms being placed in the North Sea (especially in the Exclusive Economic Zone) and need to be carefully weighed off against the other usage functions and interests.

The trilateral cooperation

During the last Governmental Conference in Esbjerg in 2001, the three Wadden Sea countries also paid attention to the building of wind farms in the context of the state of the Wadden Sea environment⁹. During the governmental conference it was reiterated that *'there is collective responsibility for the protection and sustainable development of the Cooperation Region as a communal nature area of broad international significance, as laid down in the State Declaration and the Wadden Sea Plan and 'that the Cooperation Area should be protected and managed [...] with a view to external activities that could affect the Objectives' (Esbjerg, 2001).*

It is noted in the Esbjerg Declaration (2001) in relation to wind farms in the North Sea and their effect on the Wadden Sea environment that a coordinated approach in a North Sea context is needed to prevent pressure from being placed on the set trilateral ecological objectives for species and habitats. Explicit reference is also made to the implications for shipping. Reference is also made in this regard to the North Sea ministerial conference that is intended to contribute to a coordinated approach to the placing of wind farms in the North Sea. During the North Sea ministerial conference in 2002 (Bergen Declaration, March 2002, section 71) the countries were asked to develop guidelines for the placing of wind farms in the North Sea, taking account of all relevant aspects (see appendix Policy and Legislation North Sea).

The Council notes that there is currently no national or international integral assessment framework for the North Sea¹⁰. The European Marine Strategy, on which the Council published a Statement in an EEAC (European Sustainable

⁹ It is laid down in the trilateral Management Plan Wadden Sea (Esbjerg Declaration, 2001) that the three Wadden Sea countries have agreed to:

23 **Continue to closely monitor** developments concerning installations in the Wadden Sea and the bordering North Sea in order to prevent them from adversely affecting the environment in the cooperation region and to intensify the trilateral information process.

24 **Recognise** the potential effects of wind farms in the North Sea on the Wadden Sea environment and for that reason to advocate a coordinated approach in a North Sea context to develop guidelines and starting points for the construction of wind farms off the coast, taking into account the protection of species and habitats and the high density of shipping in the region.

25 **Continue to closely monitor** existing and planned new activities outside of the cooperation region because they could have an effect on the objectives being met, and to **provide a reminder** of the Collective Principles (WP § 1.8 and § 13) of the State Declaration concerning external effects that are applicable to the whole of the Wadden Sea.

Appendix 5 of the Declaration also includes a special section on the subject of offshore wind energy, in which reference is made to the "gaps in knowledge concerning the effect of wind turbines off the coast on mammals, birds, fish and benthic fauna" and in which the North Sea ministers are invited to "Put in place a North Sea-wide, coordinated approach to the development of wind energy off the coast".

¹⁰ The Dutch integral discussion framework for the North Sea will be included in the Integral Management Plan North Sea 2015, which has yet to be published.

Development Advisory Councils) context, also highlights the absence of such frameworks for the marine environment. The Council makes reference to the appendix for a summary of the laws and regulations that are applicable to the North Sea.

It has been agreed in the trilateral cooperation to argue for a coordinated approach to the placing of wind farms off the coast. Both Denmark and Germany – acting independently of each other – are already planning and building/operating wind farms outside of the 12 mile zone to the west and north of the trilateral cooperation region.

In response to the 'Umweltverträglichkeitsprüfung' (the Environmental Assessment Report) for the Windpark Riffgat, the Ministry of LNV, Northern Directorate¹¹ and the State Secretary for Transport, Water Management and Public Works¹² have highlighted a number of aspects that require further attention. First of all, the attention of the competent authority is drawn to the external effect of this park on the trilateral cooperation region and, in particular, to the Birds and habitats Directive regions in the Dutch part of the North Sea and the Wadden Sea. Research into these aspects would be desirable. Reference is also made to the obstruction of the view and the importance of research into the cumulative effects of existing and planned wind farms on the North Sea and the Wadden Sea.

The formal responses on the Dutch side have not up to now led to a response on the German side or to altering the location of this park, which fairly directly borders on Dutch territory.

A development of this nature forms an example of an uncoordinated approach to placing wind farms to the north and west of the trilateral cooperation region and shows that, despite the agreements that have been made, there is not yet any question of actual coordination at trilateral level. Up until now the planning of offshore wind farms has proven to be a national matter in which steering at trilateral level has had little or no effect. In the case of Windpark Riffgat, the absence of trilateral coordination has led to concerns and questions on the Dutch side, questions that have not yet been sufficiently answered. To prevent situations such as these, a more integral approach is required, for which the Council believes the governmental conference forms an excellent platform.

The Council notes that there is not (yet) any question of a coordinated and integrated approach at trilateral level concerning how to fit in wind farms. The Council advises the Minister of LNV to ensure that existing agreements are complied with and recommends the formulation of an integral plan for the placing of wind farms in the North Sea that could have an external effect that extends to the trilateral cooperation region. The Council advises the Minister of LNV to bring about a coordinated approach to the wind farms that are already planned to the north and west of the trilateral cooperation region with Germany and Denmark as soon as possible in accordance with the relevant agreements. The Council further advises the Minister to request and where possible create clarity and transparency in the national and international policy and legislation for the North Sea and to press for a transparent integral assessment framework.

The findings of the Wadden Sea Forum

In its Final Report on the sector strategy for sustainable energy, the Wadden Sea Forum (WSF) indicates that an integrated plan for wind energy is required. The

¹¹ Ministry of LNV, Northern Directorate, letter on Antragskonferenz ENOVA Windpark OFFSHORE – RIFFGAT-, Groningen, 20 March 2003

¹² Ministry of Transport, Public Works and Water Management, letter on the Offshore-Windpark Riffgat von Enova, Den Haag, August 2003

purpose of this is to minimise environmental effects and to seek coordination and partnership with other sectors in order to avoid conflicts. The WSF mentions as obstacles to the development of offshore wind energy the lack of knowledge about the advantages and effects of offshore wind farms on the activities of other sectors and on the environment. According to the WSF, what is also lacking is a general concept for the storage and transportation of the offshore energy that is generated¹³. Partly in relation to the safety of shipping and the placing of wind farms at sea, the WSF recommends 'setting in motion a trilaterally coordinated spatial planning procedure for the Exclusive Economic Zone (EEZ) in order to prevent an increased risk to people and nature'.

In the context of the integral approach referred to above, the Council advises the Minister of LNV to underline the above recommendation and the safety aspects concerning shipping and to develop it in a trilateral context.

2.3 Preconditions from the perspective of the national Wadden Sea policy; the nature and landscape test

In addition to the agreements that have been made in a trilateral context, the preconditions from the perspective of the national objectives for the Wadden Sea are also applicable to the placing of wind farms in the North Sea.

As briefly touched upon in the previous section, the Wadden Sea and the North Sea coastal zone north of the Wadden islands have been designated as special protection zones based on the European Birds and habitats Directive (BHD). For the designated regions, the implementation of a habitat test is required for activities that could have significant effects on protected species and habitats. Part of this test (the assessment framework article 6 of the Habitat directive, implemented in the Dutch Nature Protection Act of 1998) is formed by the 'external effect': for projects in the vicinity of the special protection zones account must be taken of significant effects of the activities on the special protection zones. The cumulative effects of activities in combination with other activities must also be included in the evaluation of the activities. If there are significant effects, a further discussion will have to be conducted on the basis of the public interest of the intended activities.

Placing wind farms in the North Sea could be subject to testing against the BHD on the basis of the external effect of the BHD for the Wadden Sea (and the North Sea coastal zone). For the purpose of this test, the effects of the wind farms on species and habitats will have to be charted.

The Council advises the Minister of LNV to formulate requirements on the basis of the test framework of the BHD concerning the location and the placing of wind farms in the North Sea and to develop the findings in a trilateral context. For this purpose it is necessary to gain insight into the effects of wind farms on the North Sea in the BHD areas.

PKB (Key National Planning Decision) for the Wadden Sea

On the grounds of the existing Wadden Sea Policy (Second Wadden Sea Policy Document and part 3 of the Third Wadden Sea Policy Document), no wind farms may be placed in the Wadden Sea or the North Sea Coastal Zone. In addition to testing activities for effects on habitats and species, testing the effects of activities on the open landscape will also form part of the Third Wadden Sea

¹³ The Wadden Sea Forum makes the recommendation to place the wind farms outside of the 12 mile zone, to carry out a careful evaluation by means of pilots and to pay attention to the safety standards for the management of the wind farms, for shipping and for other activities. Mention is made, for example, of new safety protocols, the stationing of extra salvage vessels and having other preventative measures put in place, such as widening the safety zones.

Policy Document in the PKB-Waddenzee¹⁴, which has yet to be published. The Dutch Nature Protection Act of 1998 also provides protection for scenic values. This could mean that a test can now also be carried out on activities that have an impact on the open landscape, such as the placing of wind farms outside of the designated special protection zones, which could have an impact on this open landscape of the Wadden Sea. In the Council's recently published advice on 'Nature and landscape borders, monitoring, knowledge audit and Wadden Academy', the Council advised the Minister of Housing, Spatial Planning and Environmental Management (VROM) 'to start the formulation of a state viewpoint on scenic development in the Wadden Region, and the scientific research into the non-usage values of the Wadden Region in general and the experience value of the landscape in particular' (Wadden Sea Council, advice 2004/06, 17 November 2004).

The Council takes the view that, on the basis of the existing policy, wind farms in the North Sea must not result in the obstruction of views from the Wadden islands.

In relation to the objective of the new Wadden Sea Policy, the Council advises the Minister of LNV to include the scenic qualities of the trilateral cooperation region and the bordering coastal region in the trilateral decision-making process concerning the placing of wind farms.

2.4 Uncertainties and possible effects of offshore wind farms on the Wadden Sea

To be able to evaluate the placing of wind farms in the North Sea within the preconditions of the objectives for the Wadden Sea, it is necessary, not least from the perspective of the conditions of the Birds and habitats Directive, to gain insight into the potential effects on the Wadden Sea.

The final report 'Connect 6000 MW' of the Ministry of Economic Affairs (July 2004) stipulates that 'much is still unknown about the future development of offshore wind farms (regulations, economic, technical, nature and environment effects)'. The Wadden Sea Forum also mentions the lack of knowledge about the effects of offshore wind energy on other sectors and on the environment as an obstacle, in addition to the lack of knowledge about the advantages of this form of energy. The OSPAR Commission also mentions in its document about the placing of offshore wind farms a number of gaps in knowledge (OSPAR Commission, BDC 03/4/2-E). The Council will briefly address what the Council believes could be the most important effects and uncertainties affecting the Wadden Sea of placing wind farms in the North Sea.

Effects on other usage functions

Wind farms in the North Sea represent a potential danger to shipping and could lead to an increased risk of a shipping disaster as a result of a collision with a wind turbine. A collision of that nature could result in the water being polluted (oil or chemical substances) and could ultimately affect the water quality and the ecosystem of the Wadden Sea. Pollution could also be caused by leakage from the lubricants used in the wind turbines.

¹⁴ It is stipulated in the Second Wadden Sea Policy Document that the placing of wind turbines is not permitted in the Wadden Sea. This also applies to a strip of 1 to 2 kilometres landward of the key national planning decision (PKB) border along the coast of Noord-Holland, Friesland and Groningen. Clusters of wind turbines may only be placed there if they do not disturb the landscape image. On the basis of the external effect of the discussion framework of the PKB Wadden Sea, stringent requirements can also be set for activities outside of the Wadden Sea which have an impact on the Wadden Sea itself, including the open landscape. Viewed from the perspective of the preconditions for the objectives for the Wadden Sea, this could mean, for example, that on the basis of the external effect wind turbines in the North Sea must not have any effect on the open landscape of the Wadden Sea and the bird migration routes.

Fishing and the extraction of deep minerals such as oil and gas, form important economic sectors in the Wadden Sea Region. Placing wind farms in the North Sea calls for the fitting in of wind farms in spatial terms and weighing them off against other functions. Approximately 0.5 km² of space will be needed for each 5 MW wind turbine; a simple calculation shows that to achieve the indicative objective of approx. 6000 MW, approx. 600 km² will be taken up by offshore wind energy. The usage of so much space justifies explicit consultation with these sectors, among others.

Effects on nature, landscape and sedimentation processes

The installation and operation of wind farms in the offshore area could first and foremost have an effect on bird migration routes towards the Wadden Sea as a result of a barrier effect, and this could potentially lead to the death of birds that fly into the windmill blades.

Sea mammals, such as the protected porpoises and seals that also inhabit the Wadden Sea, could be disturbed by activities and noise during the placing of the wind farms and during maintenance. Noise pollution can also occur during normal operation. These animals could also be disturbed and forced to relocate by the electromagnetic field around the cables that transport the energy to land. The installation, maintenance and inspection, and the physical presence of wind farms in the North Sea could result in the obstruction of views and adversely affect the open landscape.

The installation of the wind farms and the laying of power cables and pipelines have an impact on the sea bed and could lead to effects on the sediment transportation and the currents conditions, with a possible effect on the Wadden Sea. It is also possible that power cables and pipelines will have to be routed to land via vulnerable areas.

Experiences with existing wind farms, such as Horns Rev in Denmark will have to provide the necessary knowledge about specific effects in the offshore region. The first monitoring results for the Danish wind farm, in which extensive research is conducted into the effects on the ecosystem and the abiotic system show a number of (small-scale) effects on birds and porpoises, but because of the short lead time of the programme it is too early to draw any unequivocal conclusions from this¹⁵.

2.5 Conclusion

Wind energy is a clean form of energy that is regarded as an important sustainable energy source of the future. The Council subscribes to the objectives of a sustainable energy economy and the role that wind energy could play in that regard.

In that context, and in relation to the point in and need for sustainable energy sources and the consideration of alternatives, the Council wishes to draw the Minister's attention to the following. There are various initiatives aimed at the development of sustainable energy in the Wadden Region. Those initiatives include the 'Energy Valley' project, the growing of biomass crops and the use of biomass remnant flows and biomass waste. The Council advises the Minister also to take a closer look at these options.

The WSF concentrates its sustainable energy strategy in the Wadden Region primarily on wind energy, the extraction of hydrocarbons (oil and gas), combined heat and power, biomass, solar energy, the construction of terminals for the storage of liquid gas (LNG terminals), energy savings and increasing efficiency.

¹⁵ Elsam Havmoller Horns Rev, Annual status report for the environmental monitoring programme 1 January 2003-31 December 2003, 16 June 2004.

The Council is of the opinion that the large-scale deployment of the alternatives listed above should not go ahead until the (harmful) effects on the one hand and the social usefulness on the other can be considered on the basis of objective and scientifically substantiated arguments. The Council therefore advises the Minister of LNV to involve the above-mentioned developments in a more broadly formulated trilateral framework relating to the realisation of sustainable energy in the Wadden Sea region.

3 The role of the scientific symposium

3.1 Request for advice

The third subject on which the Minister of LNV has requested advice is the question of whether there is still an important role to be played by a scientific Wadden symposium *in the preparatory process towards the governmental conference*, and, if so, *the nature of the symposium*. The reason for this question is that the Minister notes that *'the symposium has been given a more scientific nature with a smaller contribution to the ministerial declarations'*.

Given below is a brief description of the role of the scientific symposium within the trilateral cooperation and how the link between knowledge, management and policy could be improved in a broader context.

3.2 Role and character of the scientific symposium

The first scientific symposium was held in 1979 in response to the Dutch government's request to IUCN The World Conservation Union to formulate a Wadden Convention following on from an exploration of this subject by the Danish and German governments. The proposal for a Wadden Sea Convention ran aground owing to differences of opinion concerning the division of authority within and between the three Wadden Sea countries. To resolve this, a conference for scientists was proposed with the aim of evaluating the management situation in the three Wadden Sea countries and making recommendations to governments to take action on a number of points.

In subsequent years the symposium continued to develop and was given official status in the run-up to the Trilateral Governmental Conference. The symposium is currently held prior to the Governmental Conference (this time in April 2005, whereas the Governmental Conference is being held in November 2005). In its current form, the scientific conference provides a platform for the exchange of knowledge about the Wadden Sea and usually has a certain central theme (the monitoring and assessment methods themselves will be the main subject of the next symposium). A substantial amount of the information presented is based on topical monitoring data from the trilateral monitoring and assessment programme (Trilateral Monitoring and Assessment Program) (TMAP) and on the interpretations of this data in the Quality Status Report (QSR). A variety of aspects concerning the state of nature and the environment in the trilateral Wadden Sea are described in the QSR by a wide range of experts.

As well as the Minister, the researchers involved have also expressed doubts about the direction in which the symposium is developing. Researchers note that the number of scientists at the symposiums is decreasing, while the number of policy makers and politicians is increasing¹⁶. It is also noted that the symposium was organised mainly by scientific researchers at the beginning, but that as time

¹⁶ Ministry of LNV/Marine Biology department of the University of Groningen, *'Challenges to the Wadden Sea Area. 10 International Scientific Wadden Sea Symposia in 25 years: what did we achieve? Opening lecture delivered at the 10th International Scientific Wadden Sea Symposium'*, University of Groningen, 2003

has passed the initiative has shifted increasingly to the public authorities. According to the article referred to above, there are a number of trends that appear to indicate that the independent status of the scientific symposium is under threat and that the symposium is being steered more by politicians and officials than previously. According to the author (see footnote 16), the solution depends on how the role of science is embedded in the current trilateral structure.

The Minister indicates in his request for advice that the symposium, in view of the smaller contribution to the ministerial declarations, has taken on a more scientific nature. According to the Council, this assumes that the symposium used to be less scientific and had a greater contribution to the governmental declarations. The 'more scientific nature' appears to be at odds with the observations made in the article referred to above.

The Council will first briefly review the latest scientific symposium in 2000 in relation to the latest Governmental Declaration.

3.2.1 The tenth scientific symposium, "Challenges to the Wadden Sea Area", Groningen, November 2000

In 2000 the tenth scientific Wadden Sea symposium was held in Groningen, with the central theme 'Challenges to the Wadden Sea Area'. The findings of the symposium are laid down in the 'proceedings', a compilation of scientists' contributions to this symposium. A number of conclusions are also drawn, on which basis recommendations are formulated for the trilateral policy and management¹⁷.

The recommendations made concern both the research proposals and measures for the trilateral policy and the management and the process for arriving at recommendations and the translation of those recommendations in respect of the Governmental Conference and Declaration, which followed a year later.

In the 'Proceedings' of 2000, the following conclusion is drawn concerning the structure of the symposium and the translation of the results into policy and management: *"The process of arriving at scientific conclusions at the Wadden Sea symposia and translating these into recommendations for management and*

¹⁷

- coastal erosion: sand replenishments on beaches and the foreshore are preferable when it comes to protecting the coast. This sand must be extracted at locations in the North Sea where the least damage is caused to the submarine ecosystem;
- management of salt marshes: the management of salt marshes must be based on clearly defined objectives, followed by the right management measures;
- growth of the (common) seal population: conduct research into the protection of the seal population in relation to recreation and tourism and fishery management;
- shrimp fishing: look into options for reducing the fishing intensity, with the addition of measures aimed at reducing by-catches;
- mussel and cockle banks that have run dry: conduct research into the ability of both banks to be restored and incorporate this in the shellfish fishing management;
- eider mortality: arrange for more information about the availability and quality of shellfish. The Trilateral Monitoring and Assessment Group (TMAG) must draw up an overview of details that require monitoring, in line with the annual reports of the ICES working group (International Council for the Exploration of the Sea). Openness of information and peer review concerning evaluation of the impact of shellfish fishing. Monitoring of the Eider Flyway population is required, as is an analysis protocol for calamities such as Eider mortality drawn up by the Common Wadden Sea Secretariat (CWSS);
- monitoring of fish and fishing: including the monitoring of fish in the 'TMAP Common Package', in line with existing monitoring programmes and those that are under development;
- socio-economic objectives: install a working group to elaborate socio-economic objectives at trilateral level and develop a monitoring system based on this and include parameters in the 'TMAP Common Package' and implement this in the spirit of Agenda 21 and Integrated Management of Coastal Areas.

policy may be optimised." A recommendation is then made to institute a small trilateral working group of scientists and governmental representatives to efficiently and independently translate the scientific information into management and policy, via the Trilateral Working Group and the Trilateral Governmental Conference. The input of scientists to the formulation of the trilateral policy would thus be more effectively guaranteed.

3.2.2 The Esbjerg governmental declaration

The Trilateral Governmental Conference in Esbjerg was held in 2001, a year after the scientific symposium. It is stipulated in the foreword of the Declaration that the relevant Ministers welcome " the recommendations of the 10th International Scientific Wadden Sea Symposium 2000 entitled The Challenges to the Wadden Area as an important contribution to the further development of policy and management in the context of the Trilateral Cooperation". The role of the scientific symposium is restricted here to the recommendations that were made, which were welcomed as a valuable contribution to the Trilateral Cooperation. The way in which the recommendations of the scientific symposium affect the Trilateral Cooperation and the policy is not however sufficiently highlighted.

3.3 Towards a better relationship between scientific symposium and Governmental Conference

It can be concluded that the most important problems that came to the fore regarding the relationship between the scientific symposium and the Governmental Conference were as follows:

- 1 from the perspective of the government: the low output of the symposium in the form of adequate recommendations towards the Governmental Conference; it is assumed that this is a result of the increasingly emphatic scientific nature of the symposium;
- 2 from the perspective of research: the declining interest in the symposium on the part of the scientists and the increasingly dominant role of officials and administrators, in which regard it is suggested that the independence of the symposium is adversely affected.

As mentioned above, these conclusions appear to be at odds with each other or in any event indicate conflicts of interest between public authorities and researchers. The Council takes the view however that this is an apparent conflict of interests, because a number of incorrect assumptions are taken as the basic premise. A symposium with an emphatic scientific nature, as was intended for this trilateral symposium from the very beginning, can, believes the Council, lead to very clear and unequivocal recommendations in the direction of policy, administration and management. And neither does a translation of scientific conclusions into practical recommendations *by officials/politicians* necessarily imply a weakening of the original conclusions. On the contrary, the effect of scientific conclusions can be strengthened if they are successfully translated into policy measures and/or management measures that lend themselves well to implementation. The Council believes that it is vital to be aware of the role played by each party throughout the entire process and that each party's contribution is also clear and presented independently. The Council is of the opinion that the independence of researchers and – just as importantly – of managers, politicians and administrators is very well served by an attitude of that nature among the participants to the trilateral cooperation, of which the symposium is in fact only a part.

The Council believes that a clear division between the scientific discussion, the policy and managerial translation of scientific conclusions and the political-social discussion forms an important condition for the preparation and course of the symposium and in the translation into recommendations for the Governmental Conference.

The Council also believes that it is possible – even within the current form of the trilateral cooperation – to meet the above condition to a greater extent than is presently the case. There is an impression that the tools that have been developed up to now (particularly the trilateral monitoring and assessment programme TMAP and the Quality Status Report QSR), which are used to chart the progress of the Objectives of the Trilateral Wadden Sea Plan of 1997, are of good quality but that the conclusions and recommendations barely have any effect on the Governmental Conference.

The TMAP monitoring programme

The TMAP monitoring programme, which was set up in a trilateral context, supplies information that makes it possible to chart the progress or decline of the Objectives of the Trilateral Wadden Sea Plan. The programme is not yet functioning in such a way that the progress of the Objectives can be effectively evaluated, as also indicated above. It is stipulated in the Esbjerg Declaration that the TMAP monitoring programme must be further optimised, especially in relation to the European directives (Birds and habitats Directive/Water Framework Directive).

The monitoring system has since been adapted to the requirements of the Birds and habitats Directive and work is being done on harmonising the database for the Water Framework Directive.

The monitoring programme was evaluated in 2004 (The Orbis Institute, September 2004, Ottawa, Canada). The overall conclusion of this evaluation is the recommendation to continue the monitoring programme and to release resources for that purpose. The evaluation also stipulates that national contributions to the programme must also be more firmly anchored within the trilateral programme.

The Quality Status Report

The trilateral Quality Status Report (QSR), contains a sizeable and accessible evaluation of the Wadden Sea ecosystem and the effect of human activities on that ecosystem. The QSR also contains problem analyses and directions in which solutions can be sought for policy. In concrete terms, the Objectives of the Trilateral Wadden Sea Plan are evaluated in the QSR on the basis of information from the trilateral monitoring programme (Trilateral Monitoring and Assessment Program, TMAP) and other national and trilateral research data. The QSR is used as a background report for the preparation of the Governmental Conference. It is indicated in the 1999 QSR that the scientific evaluation of the Objectives is restricted by a number of factors. The Objectives of the Wadden Sea Plan are of too general a nature, a lot of correct information is missing, which makes it difficult to measure progress, it is difficult to interpret and evaluate various parameters because of differences between national methodologies.

As indicated in the Esbjerg Declaration, the QSR is currently recognised only as a technical report that has been drawn up by experts, usually on a voluntary basis.

In the opinion of the Council, the Quality Status Report must in future be given a prominent role in the evaluation of the Objectives. This implies that the report should be given formal status as scientific input for the Governmental Conference. This also implies that the proceedings concerning the QSR should be a fixed and important element of the scientific symposium.

The Council also believes that a clearer division of roles and responsibilities between administrators/policy makers/managers on the one hand and researchers on the other would be served by clearer agreements about the *organisation* of the intermediate process between the symposium and the Governmental Conference. This relates primarily to the following two elements:

- 1 the creation of sufficient space and time to conduct discussions on the significance of scientific findings to the practical policy and management over the entire line, and
- 2 the creation of a simple but clear organisational structure for conducting this discussion.

The Council advises planning the scientific symposium in such a way in relation to the governmental conference that the scientific findings can be effectively translated into recommendations to the national administrators; on the other hand, there must not be too much time between the symposium and the conference because otherwise there will be a risk of the recommendations no longer being topical.

Further to the recommendation in this regard from the latest scientific symposium, the Council advises the Minister of LNV to institute a trilateral working group of independent scientists and government representatives charged with carrying out the translation as described above.

3.4 Towards increased and more structural strengthening of the role of knowledge in the trilateral Wadden circuit

Finally, the Council wishes to emphasise that the scientific symposium is in fact one of the means being used with the aim of strengthening the role of research, the further accumulation and – in particular – the exchange of knowledge in the trilateral Wadden circuit. The suggestions made in the previous section for giving the symposium a more important function relate primarily to improvements within the current structure and culture of the trilateral cooperation.

In the opinion of the Council, it is only possible to strengthen the role of knowledge by making changes that extend beyond strengthening the role of the scientific symposium. For this purpose, however, an analysis must first be made of the role that the 'national progress reports' and the Joint Progress Report (both concerning the progress of meeting the objectives of the Trilateral Wadden Sea Plan of 1997) play and could play, as well as the role of the policy assessment report based on these progress reports and the QSR, etc. etc. It can be concluded that as things stand there is still a considerable lack of clarity – in any event among the members of the Council – about the role of and the way in which the various assessment processes are integrated in a summarising policy assessment for the Governmental Conference.

The Council also wishes to point out that there are currently developments in the Dutch part of the Wadden Sea concerning the position and role of knowledge (the possibility of setting up a Wadden Academy, in whichever form) that could be significant to how knowledge is used at trilateral level and vice versa. Finally, the Council wishes to draw attention to the favourable experiences gained during the past 15 years in the Netherlands with the cooperation between management/policy and ecological research in the context of implementing the Survival Plan Forestry and Nature Conservation under the auspices of the Ministry of LNV. In particular, the direct link between the management measures being taken and accompanying research in a highly practical organisational structure set up for that purpose proves to work extremely efficiently.

The Council is of the opinion that further and more structurally strengthening the role of knowledge in the trilateral Wadden Circuit would benefit from an analysis of the entire policy cycle and the role that knowledge development plays in it. The Council also believes that to further shape the role of research in the Wadden Circuit it will be

necessary to seek connection with the most recent developments in this area, both within and outside of the Wadden Region.

4 World heritage nomination

In his request for advice the Minister of LNV has left space for the Council to raise other subjects in the advice. The possible nomination of the Wadden Sea as a world heritage site is a topical subject in the preparation of the Trilateral Governmental Conference. The Council would like to take the opportunity in this advice to express its viewpoint on the world heritage nomination. The Council will start by reviewing the reason for the nomination, and will then set out its viewpoint.

4.1 Reason for the nomination

The proposal to nominate the Wadden Sea as a world heritage site originates from the signing of the Agreement on World Heritage as formulated in 1972 by UNESCO (United Nations Educational, Scientific and Cultural Organisation). The purpose of the agreement is to map out and preserve for the future worldwide culture and natural heritage of exceptional and universal significance to the history of the earth and its inhabitants. The Netherlands became a signatory to this agreement in 1992, Germany in 1976 and Denmark in 1979. On the request of the trilateral cooperation, professor Peter Burbridge of Newcastle University in England performed a study into the possible nomination of the Wadden Sea in 1991. Professor Burbridge¹⁸ makes a favourable judgement in his report. Partly as a result of this, efforts towards having the Wadden Sea nominated as a world heritage site were stipulated in the Final Esbjerg Declaration in 1991 and the subsequent declarations (up to and including 2001).

4.2 Significance and implications of the nomination and positioning

During the most recent round of consultations the Ministry of LNV provided detailed information about the significance and the implications of the nomination and subsequent listing (if approved by UNESCO). That significance amounts to no more or less than recognition of the Wadden Sea as a unique and irreplaceable area of natural beauty. It therefore has no implications for the regulations in and around the Wadden Sea. All that is required by the world heritage convention is that a country has a plan for the area and sufficient long-term protection, based on its own existing laws and regulations. The Wadden Sea meets that requirement.

In essence, the Council believes that in that respect it is no more than logical for – preferably the entire trilateral - Wadden Sea to be nominated for inclusion in the world heritage list.

4.3 Nomination conditions

Inclusion in the world heritage list does not result in extra restrictions, but can yield advantages. A world heritage listing can lead to an additional boost for recreation and tourism in the area (especially from abroad) and can be used as a marketing instrument.

It is however essential to ensure that a sound infrastructure for public information and education is created in and around the area. That infrastructure is not yet in place. The Council is referring in this context to visitors centres that are also equipped to a level of quality that enables them to serve the various target groups, information panels, use of radio, television, Internet site, etc.

¹⁸ An updated version of Professor Burbridge's report was published in 2000, entitled "The nomination of the Wadden Sea Conservation Area as a World Heritage Site".

The Council believes that added value will be created if the State ensures that a sound infrastructure for public information and education is created in and around the area and that sufficient resources are made available to maintain that infrastructure.

An actual nomination has not been made up to now because it turned out that there was no support in the area for it. The main point at issue here is the concern that the world heritage listing will in fact result in extra regulations and/or restrictions.

To break the impasse, the Minister of LNV has given an undertaking to set out to enter into an agreement in which it is agreed that no additional restrictions will arise from the world heritage listing.

The Council appreciates the approach the Minister of LNV has taken to the concerns in the area in the form of preparing an agreement. The Council does however advise having the agreement signed by the relevant authorities (State, provinces and municipalities) and by the various relevant interest groups in the area.

It is not yet certain whether the proposed agreement will ultimately lead to sufficient support being gained. Additional efforts on the part of the State may be desirable in order to convert the current fears and suspicions into a favourable judgement. This could be done, for example, by giving people access to the nomination file (which serves as the basis for the nomination and provides insight into the actual policy for and management of the area).

The Council advises the Minister to provide access to the nomination file that serves as the basis for the nomination and the eventual inclusion on the world heritage list. Finally, the Council highlights the importance of continuing to work on gaining support in the future.

Leeuwarden, 14 March 2005

appendices

North Sea policy and legislation

Composition of the Wadden Sea Council

North Sea policy and legislation

An initial examination of the national policy indicates that the policy and the permit issuing process for the North Sea are fragmented over various ministries. The Ministry of Transport, Public Works and Water Management (V&W) acts as the coordinating ministry. The integral assessment framework for the North Sea is currently still being formulated and will be laid down in a Management Plan 2015 that has yet to be published.

For the construction of offshore wind farms, the key points for spatial incorporation are laid down in the Spatial Planning Policy Document and for the protection of region-specific ecological values reference is made to the policy development within the scope of OSPAR and the European Union (EU) (Birds and habitats Directive (BHD) and the Marine Strategy). According to the *Nota Ruimte*, or 'Spatial Planning Policy Document', the line of policy being pursued for the assessment of projects in areas to be designated for protection will be detailed in the Integral North Sea Management Plan 2015 and the applicable legal frameworks. As a result of the current fragmentation and the North Sea Management Plan being developed, there is not yet an integral testing framework for plans such as wind farms in the North Sea. In its recent advisory document "*De zee kent geen grenzen*" ('The sea has no borders') (October 2004), the Council for Spatial, Environmental and Nature Research (RMNO) charted this situation and included among its recommendations a review of the administrative organisation for the North Sea and the formulation of an integral vision. The RMNO also points out that extra attention is needed for the implementation of offshore wind energy and that the necessary knowledge in this context must be developed so that it can form the input for the policy being developed.

The objective of the Dutch offshore wind energy policy, which comes under the auspices of the Minister of Economic Affairs, is to bring about 6000 MW in 2020 in the North Sea within the Dutch Exclusive Economic Zone (EEZ, outside the 12 mile zone), with the exception of the agreed projects that can be implemented within the 12 mile zone (Territorial Zone) (Spatial Planning Policy Document, 2004).

In his letter to the Dutch House of Representatives, the Minister of Economic Affairs announced new regulations to facilitate the construction of offshore wind farms. The Minister cancelled the moratorium on the granting of permits for the construction of wind farms in the Exclusive Economic Zone (EEZ) with effect from 1 January 2005.

Applicable to the North Sea environment are the national obligations that arise from the state policy of the Ministry of LNV, the Ministry of Housing, Spatial Planning and the Environment (VROM) and the Ministry of V&W. In the state policy of the Ministry of LNV, the North Sea is deemed to be a key region of the Ecological Main Structure.

The primary objective for the North Sea is worded in the Spatial Planning Policy Document as "*[...]strengthening the economic significance of the North Sea and maintaining and developing international nature and landscape values by sustainably developing the spatial-economic activities in the North Sea and gearing them to each other with due observance of the ecological and scenic values present in the North Sea. Part of this is formed by an unobstructed view from the coast.*" As a supplement to this, a step-by-step plan is included in the Spatial Planning Policy Document, setting out the general conditions for human activities in the North Sea and a spatial framework in which more specific conditions are set regarding the spatial incorporation of the wind farms (also for the EEZ).

With regard to the protection of areas with special ecological values, the State is acting in keeping with the policy development within the scope of OSPAR and the EU (BHD, Marine Strategy). In this context, a cohesive network of protected offshore areas will be created. With regard to the assessment of projects in the vicinity of the areas indicated in the Spatial Planning Policy Document, it is stipulated that existing usage can in principle be continued. The assessment framework included in section 4.7.4.9 of the Spatial Planning Policy Document is applicable to new projects, plans or actions. This line of policy will be elaborated in the Integral North Sea Management Plan 2015 and possibly, once the Nature Conservation Act has been declared applicable in the EEZ, in designation decisions pursuant to that Act. The Spatial Planning Policy Document stipulates that, "For the construction of permanent works within the 12 mile zone that are visible from the Coast, permits will only be issued for outside of the areas that come under the BHD regime for reasons of major public interest, on the basis of the Dutch Water Works Administration Act and the Environmental Management Act."

The Water Works Administration Act (under the authority of the Minister of V&W) currently forms the statutory test framework for offshore construction projects both within and outside of the 12 mile zone. The planned extension of the scope of application of the Nature Conservation Act and the Flora and Fauna Act will make it possible to also include the interests of nature in the assessment. An Environmental Impact Assessment in which various environmental-technical aspects are charted must be drawn up before a permit can be issued.

In addition to this state framework, the OSPAR Convention and the Bergen Declaration – declarations in which the protection of the marine environment occupy a central position – are also applicable to the North Sea. In the Bergen Declaration (March 2002, in response to the most recent North Sea Ministerial Conference), in addition to the positive contribution of wind energy and a sustainable energy economy, a call is also made in section 71 for attention to be paid to the careful incorporation of offshore wind farms and the countries are invited to develop guidelines that also include the safety and nature and environment aspects.

The UNCLOS (United Nations Convention on the Law of the Sea), in which a general legal framework is drawn up for the use of the sea, is applicable to the EEZ. In common with other declarations, the UNCLOS does not have any direct binding force, but does however form a test framework for activities that take place within this zone. What is not entirely clear is how the BHD will affect the Territorial Zone and the EEZ, given that no areas other than the North Sea Coastal Zone have yet been designated as protected areas.

The Marine Strategy is currently in the making at European Level. The strategy forms a theme-based elaboration of the 6th Environmental Action Programme of the EU. The strategy is aimed explicitly at the protection of the marine environment, as part of the Europe-wide sustainability policy. The objective of the strategy is "*to promote the sustainable use of the seas and conservation of marine ecosystems, including seabeds, estuarine and coastal areas, paying special attention to sites holding a high biodiversity value*" (COM (2002) 539 final). The Marine Strategy will be completed by the European Commission in July 2005. It is not yet clear whether the strategy will be converted into a directive. If a new directive is formulated it will have to include obligations concerning the marine environment that also have implications for the construction of offshore wind farms.

As a member of the European and Sustainable Development Advisory Councils (EEAC) the Council has jointly formulated a Statement in which

recommendations are made concerning the elaboration of the Marine Strategy ("Towards a European Marine Strategy", EEAC, Berlin, 2004).

Composition of the Wadden Sea Council

Mr. R.S. (Roel) Cazemier; *chairman*

Ir. R. (Rindert) Dankert; *rural development and agriculture*

Prof.Dr. F. (Fred) Fleurke; *public administration*

Prof.Dr.Drs. H. (Henk) Folmer; *relationships between economy and ecology*

Dr. W.P. (Wim) Groenendijk; *(sustainable) energy*

Prof.Dr. V.N. (Victor) de Jonge DSc; *ecosystem*

Mrs Drs. J.D. (José) Kimkes; *social-economic activity*

Drs. M.J. (Martinus) Kusters; *recreation and tourism*

Dr.ir. J. (Jan) Kuiper; *communication*

Ing. J. (Johan) Nooitgedagt; *Wadden Sea fishery*

Mrs Dr.ir. E.C.M. (Elisabeth) Ruijgrok; *experience value*

Ir. P. (Paul) Scholte; *management of nature areas*

Drs. M. (Meindert) Schroor; *human sciences*

Mrs *mr.* S.M.A. (Susanna) Twickler; *legal knowledge*

Drs. W. (Pim) Visser; *social-economic activity*