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Agenda item 5. Possible Amendments to the Annexes of the Offshore Protocol

Review Regarding Possible Amendments to the Annexes of the Offshore Protocol

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Note by the Secretariat

1. Nearly 25 years have passed since the Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (hereinafter referred to as the Offshore Protocol) was adopted in October 1994, during which time significant regulatory, scientific and technical developments related to offshore activities have been achieved at both regional and global levels.
2. The Mediterranean Offshore Action Plan in the framework of the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (hereinafter referred to as the Mediterranean Offshore Action Plan) adopted by the Nineteenth Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Athens, Greece, 9 - 12 February 2016), requests, under Specific Objective 7.c, Contracting Parties to identify the required modifications of Annex I, II and III to the Offshore Protocol and the definition of which chemicals should be covered and not covered by such standards and under which conditions.
3. In response to Specific Objective 7.c of the Offshore Action Plan, the document UNEP(DEPI)/MED WG.434/3 '*List of pollutants*' was presented in April 2017 to the First Meeting of the Barcelona Convention Offshore Oil and Gas Group (OFOG) Sub-Group on Environmental Impact of Offshore Monitoring Programmes. Subsequently, this list was refined in 2018 on the basis of key findings drawn from a consultation process held in line with the conclusions and recommendations of the kick-off meeting which took place at the REMPEC offices, Valletta, Malta between 21 and 22 August 2017. The results of this update are presented in UNEP/MED WG. 476/Inf.4 "*Rationale for the Guidelines for the Conduct of Environmental Impact Assessment (EIA)*".
4. In parallel, the Secretariat undertook a thorough analysis of the Annexes to all the pollution-related Protocols, including the Offshore Protocol, which was presented as information document (UNEP(DEPI)/MED WG.439/Inf.14) to the MED POL Focal Points Meeting (Rome, Italy, 29-31 May 2017). This analysis resulted in the identification of additional possible revisions to the Annexes III, IV and VII to the Offshore Protocol.
5. In respect of the above and taking into consideration the outcomes of the different review processes, the present document aims at bringing to the attention of the Contracting Parties an initial list of possible revisions to the Offshore Protocol Annexes, with the view to enabling them to consider the need for a possible mandate for the elaboration of concrete proposed revisions in the next biennium (2020-2021).

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List of Abbreviations / Acronyms

ASME	American Society of Mechanical Engineers
Cefas OCNS	Cefas Offshore Chemical Notification Scheme
CHARM	Chemical Hazard and Risk Management
COP	Meeting of the Contracting Parties
ECHA	European Chemicals Agency
EHS	Environmental, Health and Safety
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
EU	European Union
GES	Good Environmental Status
LSPC	List of Substances of Possible Concern
MAP	Mediterranean Action Plan
MSFD	Marine Strategy Framework Directive
NPDES	National Pollutant Discharge Elimination System
OFOG	Offshore Oil and Gas Group Sub-Group
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic
PLONOR	List of Substances Used and Discharged Offshore which Are Considered to Pose Little or No Risk to the Environment
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
UNEP/UN Environment	United Nations Environment Programme
US	United States

1. Introduction

1. The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, known as '*the Offshore Protocol*', was adopted in 1994 and is complemented by seven Annexes and one Appendix, as follows:

- i. Annex I lists substances, materials and compounds the disposal of which is prohibited under the Protocol, selected on the basis of their toxicity, persistence and bioaccumulation;
- ii. Annex II lists substances, materials and compounds the disposal of which requires a special permit;
- iii. Annex III identifies factors that need to be considered by the competent authorities in view of issuing a permit. These include characteristics and composition of the waste and waste constituents, characteristics of discharge site and receiving marine environment, available waste-technologies, effects on human health, marine ecosystems and other legitimate uses of the sea;
- iv. Annex IV provides information on the Environmental Impact Assessment that may be required for the authorization of activities, in accordance with the article 5.1.a of the Offshore Protocol;
- v. Annex V sets out provisions for the formulation and adoption of common standards for the disposal of oil and oily mixtures from installations, and for the use and disposal of drilling fluids and drill cuttings pursuant to article 10 of the Protocol;
- vi. Annex VI lists safety measures that need to be taken with regard to the design, construction, placement, equipment, marking, operation and maintenance of installations;
- vii. Annex VII provides information for the development, coordination and direction of the contingency plan, pursuant to article 16 of the Protocol; and,
- viii. Appendix to the Protocol includes an indicative list of oils.

2. According to article 30, par.2. of the Offshore Protocol, the Contracting Parties shall keep under review the implementation of the Protocol and consider the efficacy of the measures adopted and the advisability of any other measures, in particular in the form of Annexes and Appendices; they shall also revise and amend any Annex or Appendix to this Protocol;

3. Article 23, par.2 of the Barcelona Convention, applying to the Offshore Protocol, sets out a specific procedure to be followed for the amendment of Annexes. According to this article, amendments to the Annexes may be proposed by any Contracting Party at the Meeting of the Contracting Parties (COP) and shall be adopted by a three-fourths majority vote of the Contracting Parties to the instrument in question. It also provides for the obligation of any Contracting Party that is unable to approve an amendment to the Annexes to notify the Depositary in writing within a period determined by the Contracting Parties concerned when adopting the amendment.

4. In line with the Contracting Parties' obligation to review and revise, as appropriate, the Annexes to the Offshore Protocol complemented by the more specific mandate to identify required modifications of Annex I, II and III, as set out in the Specific Objective 7.c of the Mediterranean Offshore Action Plan, the present document provides a synthetic presentation of possible revisions, on the basis of different reviews and analyses undertaken by the Secretariat and MAP Components in the last 3 years.

2. Methodology and resources used

5. In order to undertake an analysis of the Annexes to the Offshore Protocols in light of developments under key global and regional legal and regulatory instruments and relevant technical developments, a number of documents were taken into consideration.

6. The first source of information for the present document has been the document UNEP(DEPI)/MED WG.434/3 presented in April 2017 to the First Meeting of the Barcelona Convention Offshore Oil and Gas Group (OFOG) Sub-Group on Environmental Impact of Offshore Monitoring Programmes, which presents possible revisions to the lists of harmful or noxious substances and materials, the disposal of which is prohibited or subject to special permit (Annexes I and II to the Protocol) on the basis of the following documents:

- List of Chemicals for Priority Action of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention);
- OSPAR List of Substances of Possible Concern (LSPC);
- OSPAR List of Substances Used and Discharged Offshore which Are Considered to Pose Little or No Risk to the Environment (PLONOR);
- US EPA National Pollutant Discharge Elimination System (NPDES);
- US EPA 40 CFR Part 435;
- US EPA Priority Pollutant List (40 CFR Part 423, Appendix A);
- European Chemicals Agency (ECHA) REACH Regulations;
- World Bank Group Environmental, Health and Safety (EHS) Guidelines for Offshore Oil and Gas Development;
- Centre for Environment, Fisheries and Aquaculture Science (Cefas) Offshore Chemical Notification Scheme (OCNS) Chemical Hazard and Risk Management (CHARM);
- Norwegian Continental Shelf Guidelines for Offshore Environmental Monitoring (TA 2849 2011);
- American Society of Mechanical Engineers (ASME) Shale Shaker Committee Drilling Fluids Processing Handbook.

7. In line with the conclusions of the above-mentioned meeting, and with the view to consolidating the numerous applicable international guidelines that have emerged since the adoption of the Offshore Protocol in regard to the preparation of Environment Impact Assessments, REMPEC, in cooperation with the Secretariat, prepared the Guidelines for the Conduct of Environmental Impact Assessment (EIA) (UNEP/MED WG.476/3). This process enabled a review of existing best practices and guidance documentation from the Mediterranean region and beyond, based on a desk study analysing international and national legislation and guidance from areas and countries with a mature offshore oil and gas industry, as well as from industry organisations, while questionnaires were also distributed to the Contracting Parties and oil and gas producers and operators.

8. On the basis of the outcomes of this study and consultation process, the list of proposed revisions to the Annexes I and II to the Offshore Protocol was further refined and additional changes were identified as presented in the Appendix 1 of the document UNEP/MED WG.476/Inf.4, Rationale for the Guidelines for the Conduct of Environmental Impact Assessments (EIA).

9. In the meantime, the Secretariat undertook a thorough analysis of the Annexes to all the pollution-related Protocols, including the Offshore Protocol, with the view to identifying possible revisions, in line with recent legal and policy developments at regional and global levels. This analysis, presented to the MED POL Focal Points Meeting held in Rome, Italy in May 2017 (UNEP(DEPI)/MED WG.439/Inf.14), identified additional possible revisions to the Annexes III, IV and VII, aiming at further streamlining MAP Ecological Objectives, and taking into consideration key regional and global instruments including the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention), the Marine Strategy Framework Directive (MSFD) revised Annex III¹, the EU Directive 2013/30/EU addressing the safety of offshore oil and gas operations and the EU EIA Directive².

¹ COMMISSION DIRECTIVE (EU) 2017/845 of 17 May 2017 amending Directive 2008/56/EC of the European Parliament and of the Council as regards the indicative lists of elements to be taken into account for the preparation of marine strategies

² EU Directive 2014/52/EU

3. Outcomes

10. The present document provides a synthesis of key results of different processes undertaken in the last years by the Secretariat and relevant MAP Components, in consultation with the Contracting Parties and key stakeholders, aiming at analysing the Annexes to the Offshore Protocol in light of recent legal, policy, technical and scientific developments at regional and global levels.

11. A list of possible revisions to the Annexes I, II, III, IV and VII to the Offshore Protocol is therefore presented in Annex I to the present document for review by the present meeting and provision of feedback on appropriate next steps.

Annex I

Possible Revisions to the Offshore Protocol Annexes

ANNEX I: HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE DISPOSAL OF WHICH IN THE PROTOCOL AREA IS PROHIBITED

#	Original text	Possible revisions	Comments
1	A. The following substances and materials and compounds thereof are listed for the purposes of Article 9, paragraph 4, of the Protocol. They have been selected mainly on the basis of their toxicity, persistence and bioaccumulation:		<i>(Please note: the sources listed below may not be the only source(s) from which the information was obtained.)</i>
2	1. Mercury and mercury compounds	Mercury and mercury compounds, <i>with the exception of mercury within drilling mud/fluids and drilling cuttings up to a maximum of 1 mg/kg dry weight in stock barite. The above exception does not apply in Specially Protected Areas, as determined in Article 21, in coastal or inland waters, or in wetlands.</i>	US EPA NPDES
3	2. Cadmium and cadmium compounds	Cadmium and cadmium compounds, <i>with the exception of cadmium within drilling mud/fluids and drilling cuttings of 3 mg/kg dry weight in stock barite outside SPAs. The above exception does not apply in Specially Protected Areas, as determined in Article 21, in coastal or inland waters, or in wetlands.</i>	US EPA NPDES
4	3. Organotin compounds and substances which may form such compounds in the marine environment ¹	Organotin compounds and substances which may form such compounds in the marine environment, with the exception of those which are biologically harmless, or which are rapidly converted into biologically harmless substances.	<i>The only change here is that the existing footnote is added to the text.</i>
5	4. Organophosphorus compounds and substances which may form such compounds in the marine environment ¹	Organophosphorus compounds and substances which may form such compounds in the marine environment, with the exception of those which are biologically harmless, or which are rapidly converted into biologically harmless substances.	<i>The only change here is that the existing footnote is added to the text.</i>
6	<i>(addition)</i>	<i>Polynuclear aromatic hydrocarbons (PAHs), also known as polycyclic aromatic compounds</i>	OSPAR Convention
7	<i>(addition)</i>	<i>Oil & grease in production water, with the exception of permitted process</i>	US EPA NPDES;

¹ with the exception of those which are biologically harmless, or which are rapidly converted into biologically harmless substances.

#	Original text	Possible revisions	Comments
		<i>discharges with an oil in water concentration of less than 30 mg/l, as an average in any calendar month. The discharge concentration of oil in production water shall not exceed 100 mg/l at any time</i>	UNEP/MED WG.476/Inf.4 (Norwegian Oil and Gas Association)
8	(addition)	<i>Drilling fluids and drill cuttings within 1 mile / (or 1.61 km or 0.87 nm) from shore</i>	US EPA 40 CFR Part 435
9	(addition)	<i>Non-aqueous drilling fluids (NAFs), with the exception of NAFs associated with drill cuttings</i>	US EPA 40 CFR Part 435; UNEP/MED WG.476/Inf.4 (Norwegian Oil and Gas Association)
10	(addition)	<i>Copper</i>	US EPA Priority Pollutant List
11	(addition)	<i>Lead and organic lead compounds</i>	OSPAR Convention
12	(addition)	<i>Zinc</i>	US EPA Priority Pollutant List
13	(addition)	<i>Phosphorus</i>	ECHA REACH Regulations
14	(addition)	<i>Aliphatic hydrocarbons, also known as non-aromatic compounds</i>	REMPEC WG.434/3
15	(addition)	<i>Tin and organic tin compounds</i>	REMPEC WG.434/3
16	(addition)	<i>Free oil, diesel oil, formation oil</i>	US EPA 40 CFR Part 435
17	(addition)	<i>Organohalogens</i>	OSPAR Convention
18	(addition)	<i>4-(dimethyl butyl amino) diphenylamine (6PPD) (Organic Nitrogen Compounds)</i>	OSPAR Convention
19	(addition)	<i>Neodecanoic acid, ethenyl ester (Organic Esters)</i>	OSPAR Convention
20	(addition)	<i>Phthalate Esters</i>	OSPAR Convention
21	(addition)	<i>Dicofol, endosulfan, exachlorocyclohexane isomers (HCH), methoxychlor, pentachlorophenol (PCP), trifluralin (Pesticides/Biocides)</i>	OSPAR Convention
22	(addition)	<i>Phenols</i>	US EPA Priority Pollutant List

#	Original text	Possible revisions	Comments
23	(addition)	<i>Clotrimazole (Pharmaceuticals)</i>	OSPAR Convention
24	(addition)	<i>Musk xylene (Synthetic musks)</i>	OSPAR Convention
25	(addition)	<i>Non-aqueous based drilling fluids (except that fluid which adheres to cuttings) and small volume discharges</i>	US EPA 40 CFR Part 435
26	(addition)	<i>Oil-based drilling fluids and associated cuttings</i>	US EPA 40 CFR Part 435
27	(addition)	<i>Diesel oil</i>	US EPA 40 CFR Part 435
28	(addition)	<i>Formation oil</i>	US EPA 40 CFR Part 435
29	B. The present Annex does not apply to discharges which contain substances listed in section A that are below the limits defined jointly by the Parties and, in relation to oil, below the limits defined in Article 10 of this Protocol.	<i>Annex 1</i> does not apply to discharges which contain substances listed <i>above</i> that are below the limits defined jointly by the Parties and, in relation to oil, below the limits defined in Article 10 of this Protocol.	UNEP/MED WG.476/Inf.4

ANNEX II: HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE DISPOSAL OF WHICH IN THE PROTOCOL AREA IS SUBJECT TO A SPECIAL PERMIT

#	Original text	Possible revisions	Comments
1	A. The following substances and materials and compounds thereof have been selected for the purpose of Article 9, paragraph 5, of the Protocol.		
2	<ol style="list-style-type: none"> 1. Arsenic 2. Lead 3. Copper 4. Zinc 5. Beryllium 6. Nickel 7. Vanadium 8. Chromium 9. Biocides and their derivatives not covered in Annex I 10. Selenium 11. Antimony 12. Molybdenum 13. Titanium 14. Tin 15. Barium (other than barium sulphate) 16. Boron 17. Uranium 18. Cobalt 19. Thallium 20. Tellurium 21. Silver 22. Cyanides 	<ol style="list-style-type: none"> 1. Arsenic Lead Copper Zinc 2. Beryllium 3. Nickel 4. Vanadium 5. Chromium 6. Biocides and their derivatives not covered in Annex I 7. Selenium 8. Antimony 9. Molybdenum 10. Titanium Tin 11. Barium (other than barium sulphate) 12. Boron 13. Uranium 14. Cobalt 15. Thallium 16. Tellurium 17. Silver 18. Cyanides 	US EPA NPDES
3	B. The control and strict limitation of the discharge of substances referred to in section A must be implemented in accordance with Annex III.	--	
4		<i>Substances currently listed on the OSPAR List of Chemicals for Priority Action should be phased out. Developers should try and avoid using products with a substitution warning if an appropriate alternative is available. A permit application containing any chemicals with a substitution warning should include a robust</i>	UNEP/MED WG.476/Inf.4

#	Original text	Possible revisions	Comments
		<i>justification for the use for these chemicals.</i>	
5		<i>Substances currently listed in the OSPAR List of Substances of Possible Concern (LSPC) require further evaluation prior to permit approval.</i>	REMPEC WG.434/3; UNEP/MED WG.476/Inf.4
6		<i>Substances currently listed in the OSPAR List of Substances Used and Discharged Offshore which Are Considered to Pose Little or No Risk to the Environment (PLONOR) must be included on the permit application, but do not require further evaluation prior to permit approval.</i>	UNEP/MED WG.476/Inf.4
7		<i>Substances currently listed in the Cefas Offshore Chemical Notification Scheme (OCNS) Chemical Hazard and Risk Management (CHARM) as Category E do not require further evaluation prior to permit approval.</i>	UNEP/MED WG.476/Inf.4

ANNEX III: FACTORS TO BE CONSIDERED FOR THE ISSUE OF THE PERMITS

#	Original text	Possible revisions	Comments
1	For the purpose of the issue of a permit required under Article 9, paragraph 7, particular account will be taken, as the case may be, of the following factors:		
2	C. Characteristics of discharge site and receiving marine environment		
3	C.5. Receiving water characteristics with respect to physical, chemical, biological and ecological conditions in the discharge area;	5. Receiving water characteristics with respect to physical, hydrological , chemical, biological and ecological conditions in the discharge area, including: temperature, hydrology (wave and current regimes, upwelling, mixing, residence time, freshwater input, sea level), bathymetry, turbidity, transparency, sound, salinity, nutrients, organic carbon, dissolved gases, pH, links between species of marine birds, mammals, reptiles, fish and cephalopods and habitats, pelagic-benthic community shifts and productivity;	MAP EOs 1, 5, 7, 9, 10, & 11; MSFD Annex III
4	E. Potential impairment of marine ecosystem and sea-water uses		
5	E.2. Effects on marine ecosystems, in particular living resources, endangered species and critical habitats.		More guidance may be needed to better define the main effects on marine organisms, in line with relevant MAP EOs (mainly 1, 2, 5, 7, 9, 10, 11), GES and targets.

ANNEX IV: ENVIRONMENTAL IMPACT ASSESSMENT

#	Original text	Possible revisions	Comments
1	Each Party shall require that the environmental impact assessment contains at least the following:		
2	(a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable;	(a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable, <i>with particular regard to the environmental sensitivity of areas likely to be affected. Safety zones, where applicable, shall cover areas within a distance of 500 metres from any part of the installation, established by the Member State;</i>	Espoo (EIA) Convention; EU EIA Directive
3	(b) A description of the initial state of the environment of the area;	(b) A description of the initial state of the environment of the area (<i>baseline scenario) and the likely evolution of the state in a “no- project scenario”, on the basis of available information and scientific knowledge;</i>	EU EIA Directive
4	(c) An indication of the nature, aims, scope and duration of the proposed activities;	(c) An indication of the nature, aims, scope and duration of the proposed activities, <i>including description of reasonable alternatives and an indication of the main reasons for selecting the chosen option supported by a comparison of environmental effects;</i>	Espoo (EIA) Convention; EU EIA Directive
5	(e) A description of the foreseeable direct or indirect short and long-term effects of the proposed activities on the environment, including fauna, flora and the ecological balance;	(e) A description of the foreseeable direct or indirect, short and long-term, <i>and cumulative</i> effects of the proposed activities on the environment, including fauna, flora, <i>soil, air, water, climate</i> , and the ecological balance, <i>including possible transboundary impacts. This description shall include an estimate by type and quantity of expected discharges and emissions (pollutants, water, air, noise, vibration, heat, light, radiation) produced during the construction and operation phases, as well as demolition works, where relevant;</i>	Espoo (EIA) Convention; EU EIA Directive

#	Original text	Possible revisions	Comments
6	(g) An indication of the measures to be taken for the protection of the environment from pollution and other adverse effects during and after the proposed activities;	(g) An indication of the measures to be taken for the protection of the environment from <i>in order to avoid, prevent, reduce and if possible offset pollution and any other likely pollution and other</i> adverse effects during and after the proposed activities;	Espoo (EIA) Convention; EU EIA Directive

ANNEX VII: CONTINGENCY PLAN

#	Original text	Possible revisions	Comments
1	A. The operator's contingency plan		
2	1. Operators are obliged to ensure:		
3	(h) That the most appropriate methods and techniques are known to the specialized crew responsible for reducing and preventing long-term adverse effects on the environment;	(h) That the most appropriate methods and techniques are known to the specialized crew responsible for reducing and preventing long-term adverse effects on the environment, <i>in order to mitigate the negative impacts on wildlife both onshore and offshore including the situations where oiled animals reach shore earlier than the actual spill;</i>	EU Directive 2013/30 (offshore oil and gas operations)
4	(addition)	<i>(j) That the names and positions of persons authorised to initiate emergency procedures are known to the crew and the authorities;</i>	EU Directive 2013/30 (offshore oil and gas operations)
5	(addition)	<i>That there is evidence of prior environment and health assessments of any chemicals foreseen for use as dispersants.</i>	EU Directive 2013/30 (offshore oil and gas operations); also, UNEP(DEPI)/MED WG.434/10, par.17