

# MEETING DOCUMENT

## Wadden Sea Board (WSB 31)

18 June 2020  
Online meeting



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<b>Agenda Item:</b>	<b>5.1 Wadden Sea World Heritage</b>
<b>Subject:</b>	<b>Trilateral Wadden Sea World Heritage Foundation</b>
<b>Document No.:</b>	WSB 31/5.1/4
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<b>Submitted by:</b>	<b>Germany</b>

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As announced at WSB 30, Germany would like to continue the Netherlands' initiative for the founding of a "Trilateral Wadden Sea World Heritage Foundation". To this end, Germany has further developed the draft statutes on the basis of discussions under the Netherlands' presidency and proposes to set up a trilateral ad hoc group focused on coordinating preparatory steps for the establishment of the foundation and making a proposal to the WSB on how to proceed.

**Proposal: The WSB is invited to**

- acknowledge the attached draft statutes for a foundation including the detailed explanations as a basis for further coordination and welcome the proposed approach;  
**in particular**
- set up a trilateral ad hoc group that will, by WSB 33, submit proposals for the foundation statutes, the endowment transaction, financing and procedure in the starting phase and for business operations.
- task the CWSS with supporting the preparatory work and reviewing the option of using external advisory services and engaging such services if appropriate.

## **Proposal to establish a Trilateral Wadden Sea World Heritage Foundation**

At the 12<sup>th</sup> Trilateral Governmental Conference on the Protection of the Wadden Sea in February 2014, Denmark, Germany and the Netherlands met in Tønder, Denmark and agreed to consider a joint foundation for the transnational UNESCO Wadden Sea World Heritage property (Tønder Declaration of 2014, Point 9) The benefit and feasibility of an international foundation with this purpose were examined in a feasibility study and assessed as extremely useful and feasible.

It has also become apparent that adequate compliance with the new requirements that have arisen due to the Wadden Sea's designation as a World Heritage property call for additional financial and staffing resources. Additional resources are also needed for the desired intensification of trilateral cooperation with partners from science and education, environmental associations, local authorities and tourism through a network platform, the Trilateral Partnership Hub for the Wadden Sea World Heritage. A foundation could make a significant contribution to this, complementing existing structures of the Trilateral Wadden Sea Cooperation and relieving pressure on them.

Germany has therefore continued the initiative, begun under the Netherlands presidency, to establish an international foundation. We are submitting a further developed draft of the statutes as a basis for further discussions. It is proposed that the further formulation of specific rules take place in the above-mentioned trilateral ad hoc group, which is to submit a corresponding proposal to WSB 33 for a decision. The ad hoc group should comprise representatives of the founders, the Common Wadden Sea Secretariat and, if needed, external advisers. Partners envisioned as part of the foundation council should also participate in these discussions as appropriate. Germany would be willing to take on chairing the ad hoc group, if need be.

As a next step, in its 33<sup>rd</sup> meeting, the WSB should hold final discussions on establishing the foundation following the presentation of the ad hoc group's recommendations and submit a joint recommendation to the political decision-makers.

The creation of an international foundation with a transboundary sphere of activity requires careful trilateral harmonisation, planning and coordination so that it can fulfil its object in line with its statutes and national specifications. The organisational structure, the statutes and the inclusion of the foundation in the overall fabric of the trilateral governmental cooperation to protect the Wadden Sea are all of key importance in this.

The attached draft statutes contain proposals, particularly for the legal form of the foundation, the foundation object, the foundation assets and the bodies of the foundation. The statutes require supplementation with an endowment transaction (declaration of the founders governing basic aspects and containing the statutes as a key component) and, after founding, with rules of procedure and a funding guideline.

It is assumed that the foundation will support itself solely via donations in the long term, but that start-up financing will be needed that should be secured by the founders. The acquisition of potential ambassadors and funders is therefore an essential component of the foundation work.

The following highlights and explains sections of the draft statutes, where points are not explicitly present or self-evident:

**Section 1** The **founders** are the Netherlands, Germany and Denmark and the German states Lower Saxony, Hamburg and Schleswig-Holstein (to be enshrined in the endowment transaction).

The foundation shall have its seat in Wilhelmshaven in Lower Saxony. It will therefore be subject to the foundation law of Germany and Lower Saxony, to the foundation supervisory authority of Lower Saxony's ministry of the interior and sport and to Lower Saxony's ministry for the environment, energy, building and climate action as foundation authority.

The annual financial statement and the report on achievement of the foundation object will be forwarded to all founders, including Denmark and the Netherlands. The Courts of Auditors of the founders will be granted autonomous right to audit.

**Section 2** The **object of the foundation** is geared to supporting the goals of the Trilateral Wadden Sea Cooperation. Therefore, the object of the foundation – also to differentiate it from existing nature conservation foundations in the area of the Wadden Sea – particularly focuses on transnational or transboundary initiatives, measures and projects that serve to protect and preserve the OUV and integrity of the UNESCO Wadden Sea World Heritage property as a whole. Initiatives, measures and projects for cooperation among various actors and organisations at international, trilateral or regional levels are eligible for funding.

**Section 4** The **foundation assets** are to be set up as basic assets and donations. **Costs** for management will be borne by Denmark, the Netherlands and Germany (Federation and states), in the event that the foundation cannot bear the costs itself.

**Sections 5, 6, 8 and 10** **Structure of the foundation bodies**

**Foundation board:** 3 members of the foundation council

- voted in by the foundation council from among its number
- 1 chair, 2 vice chairs
- board members are not able to vote in the foundation council

**Foundation council:** up to 18 members

- 6 members appointed by the Wadden Sea Board (WSB), each state appoints 2 members
- 3 members appointed by the Wadden Sea Team (advisors to WSB, representing the environmental NGOs)
- 3 members appointed by the Wadden Sea Forum
- up to 3 members can be called on by the WSB to act as ambassadors in the foundation council for the duration of the ongoing term of office
- up to 3 members can be called on by the foundation council to act as foundation partners for the duration of the ongoing term of office

Appointments should ensure a balanced representation of genders and of members from the 3 Wadden Sea countries.

**Management board:**

- The CWSS or a professional managing director carries out management.

- Option 1: CWSS selects, in agreement with the board, an employee/project officer to act as managing director;
- Option 2 (as needed and subject to availability of adequate funding, the board can hire a professional managing director upon decision by the foundation council.)

**Sections  
7, 9 and  
10**

**Tasks  
Foundation board:**

- represents the foundation in and out of court
- carries out day-to-day administration
- decides on use of foundation funds up to €50,000

**Foundation council:**

- elects the board
- adopts funding guideline and rules of procedure
- takes decisions on all matters that are of fundamental relevance to the foundation and its development
- decides on use of foundation funds in amounts greater than €50,000

**Management board:**

The tasks of management are, in particular:

**I. Administering the foundation/managing day-to-day business**

- drawing up draft budget
- annual statement (auditing and presentation to the board)
- drawing up annual report
- reports for supervisory authorities and founders
- advisory participation in board meetings
- minutes of foundation board and foundation council meetings

**II. Contact and acquisition**

- contact/appeals to (potential) funders/donors and partners
- acquisition of funds e.g. from other foundations, national and EU funding programmes, donations from businesses, compensation payments

**III. Review of funding applications/projects and use of funds**

- evaluation and processing of incoming project applications
- decision on use of foundation funds up to €20,000, preparation of decisions by the board
- support of funded projects
- cataloguing and developing project ideas and, if necessary, implementation of own projects in cooperation with strategic partners
- raising public profile
- advisory services for funds recipients
- management of incoming funds and an orderly disbursement in line with the foundation object; the foundation management guarantees compliance with the special-purpose conditions of the funds to the donors and the foundation council

**Section 14** After 5 [10] years, the **effectiveness of the foundation** will be reviewed with regard to achievement of the object of the foundation. On the basis of this evaluation, the

founders can make course corrections if necessary and take a decision on continuing the foundation.

**Attached:**

Draft statutes WSB31/5.1/4-appendix

As at 22 May 2020

*Draft*

**Statutes of the  
Trilateral Wadden Sea World Heritage Foundation**

**Section 1 Name, legal form, seat of the foundation**

1. The name of the foundation shall be  
“Trilateral Wadden Sea World Heritage Foundation”.
2. It shall be a civil law foundation with legal personality.
3. The seat of the foundation shall be Wilhelmshaven.

**Section 2 Object of the foundation**

1. The object of the foundation shall be to support, coordinate and promote initiatives, measures and projects, especially with transnational or transboundary impacts, for the advancement of the protection and preservation of the Outstanding Universal Value and integrity of the UNESCO Wadden Sea World Heritage Property.
2. In doing so, the foundation shall base its actions on the focuses of the joint trilateral world heritage strategy, in particular the promotion of:
  - international cooperation in the UNESCO World Heritage Marine Programme, the cooperation along the East Atlantic Flyway (Wadden Sea Flyway Initiative - WSFI) and other initiatives,
  - environmental education/education for sustainable development and knowledge transfer,
  - partnerships and cooperation to strengthen sustainable tourism, for example in the framework of the UNESCO World Heritage Sustainable Tourism Programme,
  - sustainable development through cooperation with the private sector and local partners,
  - the Wadden Sea World Heritage brand and
  - science and monitoring related to the Wadden Sea.

The transnational or transboundary initiatives, measures and projects shall take place in or around the UNESCO Wadden Sea World Heritage Property in Denmark, Germany and the Netherlands and in World Heritage Properties and regions connected to the Wadden Sea World Heritage Property.

3. The foundation shall pursue its goals in cooperation with government agencies in the three above-mentioned countries and work together with other institutions and initiatives to protect the UNESCO Wadden Sea World Heritage Property.
4. The foundation shall use the revenues from the foundation assets, grants, financial support and donations to achieve its objects.
5. The objects of the foundation shall be achieved by supporting, coordinating and promoting measures and projects as described above in or around the UNESCO Wadden Sea World Heritage Property and by promoting projects, non-profit organisations or corporations under public law. The foundation may also achieve its statutory objects through cooperation projects or by carrying out projects on its own initiative.
6. The foundation shall not carry out or support initiatives, measures or projects which have the potential to compromise, directly or indirectly, the Outstanding Universal Value of the World Heritage Property and its integrity, or projects which contradict the goals of the Trilateral Wadden Sea Cooperation.
7. The foundation shall not support mandatory tasks of public authorities.
8. The foundation shall establish a funding guideline which specifies its objects.
9. The foundation shall adopt its own rules of procedure which regulate the internal distribution of tasks and work processes.

### **Section 3 Public-benefit purpose**

1. The foundation shall exclusively and directly serve public-benefit purposes within the meaning of the chapter on tax-privileged purposes of the Fiscal Code (Abgabenordnung). It shall act altruistically and shall not primarily pursue its own economic interests.
2. The funds of the foundation may only be used for the objects set out in the statutes and to cover administrative costs. No individual or institution may benefit from expenses which are not consistent with the foundation objects, from disproportionately high remuneration or other payments from the foundation assets.
3. The foundation may also achieve its objects by making its funds available to other tax-privileged organisations or to corporations under public law to be used for tax-privileged purposes within the meaning of section 2.

#### **Section 4 Foundation assets**

1. By means of the endowment transaction, the foundation shall be endowed by its founders with basic assets totalling € ##### and with the entitlement for costs arising from section 10(1) and (2) to be covered.
2. The foundation may increase its assets by accepting additional donations (financial contributions, rights and in-kind contributions). If donations are not explicitly dedicated to the foundation assets, they shall be used to directly achieve the objects of the foundation. Donations made by third parties cannot be subject to conditions which adversely affect the achievement of the objects of the foundation.
3. As a matter of principle, the value of the foundation assets shall be preserved and capital shall be invested in value assets which are selected exercising the due care and diligence of a prudent businessperson and considered secure, and which are consistent with the object of the foundation as defined in these statutes.
4. In line with its needs, the foundation may allocate funds to general or special-purpose reserves in line with the provisions of the Fiscal Code. General reserves may be transferred, to the extent legally permitted, to the foundation assets.
5. The foundation may maintain special-purpose enterprises (“Zweckbetriebe”) for the achievement of its objects.
6. Subject to availability of the required budget funds, the three Wadden Sea countries Denmark, the Netherlands and Germany shall undertake to bear the costs for managing the foundation in the event that the foundation itself does not have the means necessary to cover them. This commitment can also be met through the Common Wadden Sea Secretariat (CWSS), which is financed by the countries, taking over management without payment.

#### **Section 5 Bodies of the foundation**

1. The bodies of the foundation shall be the foundation council and the foundation board.
2. Membership of these bodies is an unsalaried position. The members shall be entitled to compensation for expenses, provided that the foundation has the necessary funds and the costs are not covered by another institution.
3. Members of the bodies shall be appointed or elected for a five-year term of office, additional or succeeding members shall be appointed or elected for the remainder of the term of office. Deselection shall be permissible.
4. Equal gender representation and balanced representation from Denmark, Germany and the Netherlands shall be striven for in the appointment or election of members to these bodies.
5. Upon completion of their term of office, members shall remain in office and continue to conduct the affairs of the foundation until new members have been appointed.
6. Decisions may be taken by circular letter or in a video conference, provided that no member of the body objects to this process beforehand. Decisions

taken by circular letter must be approved by a majority of voting members. Decisions pursuant to sections 13 and 14 shall remain unaffected by this provision.

## **Section 6 Foundation council**

1. The foundation council shall comprise a total of up to 18 members appointed through nomination by the chair of the Wadden Sea Board:
  - a. The member states of the Trilateral Wadden Sea Cooperation, Denmark, the Netherlands and Germany, shall each nominate two people deemed particularly suited to representing and promoting the objectives of the foundation.
  - b. The nature and environmental associations from the three countries that are represented on the Wadden Sea Board shall each nominate one person from among their number deemed particularly suited to supporting the objectives of the foundation.
  - c. The Wadden Sea Forum (WSF) shall nominate up to three people, particularly from the area of regional industry and local authority level, deemed particularly suited to supporting the goals of the foundation.
  - d. The Wadden Sea Board may appoint up to three public figures or prominent members of society as ambassadors of the foundation for the duration of the ongoing term of office.
  - e. The Wadden Sea Board may appoint up to three people as foundation partners for the duration of the ongoing term of office who are deemed particularly suited to supporting the objectives of the foundation as sponsors.
2. A quorum of the foundation council shall be reached when at least half of the voting members are present. The council shall take its decisions with a simple majority of the members present. Decisions pursuant to sections 13 and 14 shall remain unaffected by this provision. Decisions on the funding guideline, rules of procedure and changes to these shall require a two-thirds majority.
3. Decisions may not be taken against the votes of the appointed members of one member state of the Trilateral Wadden Sea Cooperation.
4. The foundation council shall elect from among its number a chair and two vice chairs for the five-year term of office. The chair of the foundation council shall chair the meeting, if he or she is unable to do so the meeting shall be chaired by the vice chair.
5. The chair shall organise meetings at least once a year and when a meeting is requested by the foundation board or more than one third of voting members of the foundation council. The members of the foundation board shall participate in the meetings as advisers without voting rights.

## **Section 7 Tasks of the foundation council**

1. The foundation council shall take decisions on all matters that are of fundamental relevance to the foundation and its development.
2. The tasks of the foundation council shall be, in particular:

- a. the election of three members of the foundation board from among its number;
  - b. decisions on the funding guideline and rules of procedure;
  - c. setting priorities of activity and funding;
  - d. decisions on the use of revenues and cash flows over €50,000;
  - e. supervision of the appropriate, careful and economical management of the foundation assets and other funds;
  - f. the decision to appoint a professional managing director;
  - g. approval of the budget for the current year;
  - h. appointment of a tax adviser or auditor;
  - i. approval of the annual report on achievement of the foundation object;
  - j. approval of annual financial statements and discharge of the foundation board;
  - k. decisions on amendments to statutes (section 13) and on dissolution (section 14).
3. The foundation council shall support, advise and monitor the foundation board in achieving the objects of the foundation. The chair of the foundation council may request the foundation board at any time to provide information and reports and present records and accounts.
  4. The members of the foundation council shall support the ambassadors of the foundation in their task of publicly promoting the goals of the foundation.

## **Section 8 Foundation board**

1. The foundation board shall comprise three members which shall be elected by the foundation council for a five-year term of office. Re-election shall be permitted.
2. A quorum of the foundation board shall be reached when at least two of its members are present, in which case the principle of unanimity applies.
3. The members of the foundation board shall elect a chair from among their number. The two other members shall be the vice chairs.
4. The chair shall convene meetings of the foundation board as required, but at least twice per year, and he or she shall chair the meetings.

## **Section 9 Tasks of the foundation board**

1. The foundation shall be represented by the foundation board in court and out of court, and the foundation board shall be represented by the chair of the foundation board together with one of the vice chairs of the foundation board. The foundation board shall be a managing board within the meaning of sections 86 and 26 of the German Civil Code (BGB).
2. The foundation board shall be responsible for the day-to-day administration of the foundation. The foundation board shall draw up an annual budget and present it to the foundation council. The annual statement of accounts together with a balance sheet and a report on the achievement of the object of the foundation (annual financial statement) is to be drawn up and submitted to the foundation council within five months for the previous year.
3. The foundation board shall manage the foundation assets and decide on the use of revenues and cash flows of up to €50,000.
4. The foundation board shall ensure that the members of the foundation council receive all documents necessary to perform their tasks in good time.
5. The foundation board shall support the foundation ambassadors and partners appointed by the foundation council in the public performance of their tasks for the foundation.
6. The foundation board shall be authorised, within the means available, to hire professional staff for the performance of the tasks of the foundation or commission and grant third parties the necessary authority to perform these tasks. Section 10(2) shall remain unaffected.

## **Section 10 Management**

1. Management shall be carried out by the Common Wadden Sea Secretariat (CWSS) in Wilhelmshaven. As part of its management duties, the CWSS shall, in agreement with the foundation board, appoint an employee as director. The same shall apply for the appointment of the deputy director.
2. If necessary and provided adequate funding is available, the foundation board may hire a professional director based on a decision by the foundation council.
3. The director shall participate in meetings of the foundation board as an adviser in so far as this is not ruled out by the discussion of matters relating to the director position.
4. The director shall be responsible for the day-to-day administration and shall prepare the decisions of the foundation board. He or she shall decide on the use of funds on a case-by-case basis up to an amount of €20,000. Exceptional cases and cases in which the foundation board has reserved the right to decide must be presented to the foundation board for a decision.
5. The director shall submit a draft of the budget and the audited annual statement to the foundation board in good time.
6. The director shall draw up an annual report on the work of the foundation.

## **Section 11 Liability**

Members of the foundation bodies and management who, out of intent or gross negligence, breach their obligation to ensure proper management and use of foundation assets shall be obligated to compensate the foundation for damages caused.

## **Section 12 Financial year**

The financial year shall correspond to the calendar year.

## **Section 13 Amendments to these statutes**

The foundation council shall adopt any amendments to these statutes with a majority of three quarters of all voting members.

## **Section 14 Suspension of the foundation and devolution of assets**

1. The Wadden Sea Board shall review the effectiveness of the foundation five years after its founding. The results shall serve as the basis for a decision about the continuation of the foundation.
2. The foundation council shall decide on the suspension of the foundation with a majority of three quarters of all voting members.
3. In case of the foundation being dissolved or if the public-benefit purpose ceases to apply, the remaining financial assets after all liabilities have been deducted shall be transferred to non-profit nature conservation foundations in the Wadden Sea countries Denmark, Germany and the Netherlands, divided proportionally.

## **Section 15 Supervisory authority and auditing rights**

1. The foundation shall be subject to state supervision in accordance with the foundation law applicable in Lower Saxony.
2. The competent supervisory authority shall be notified immediately of changes in the composition of the foundation board and foundation council by means of voting records, the declaration of acceptance of office and other documents providing evidence of changes to the foundation board, and the annual financial statement with the report on the achievement of the object of the foundation shall be submitted to the competent supervisory authority.
3. The foundation shall grant the Courts of Auditors of the founders the right to audit.

## **Section 16 Final provision**

These statutes shall enter into force on the day of service of the decision recognising legal capacity.

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