
**MEDITERRANEAN ACTION PLAN (MAP)
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE
MEDITERRANEAN SEA (REMPEC)**

Fifth Meeting of the Mediterranean Network of Law
Enforcement Officials relating to MARPOL within the
framework of the Barcelona Convention (MENELAS)

REMPEC/WG.53/3
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Agenda Item 3: Draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention

Draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention

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Note by the Secretariat

This document provides information on the finalisation of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention, as prepared by the Secretariat.

Background

1 Through HELCOM Recommendation 19/14 on a harmonized system of fines in case a ship violates anti-pollution regulations, as detailed in the Annex to document REMPEC/WG.38/INF.4¹, hereinafter referred to as HELCOM Recommendation 19/14, the Baltic Marine Environment Protection Commission (Helsinki Commission or HELCOM), which is the governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992 (Helsinki Convention)², recommends that the Governments of the Contracting Parties to the Helsinki Convention apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL. HELCOM Recommendation 19/14 provides a harmonised level of administrative penalties in a non-criminal context.

2 The Fourth Meeting of the Mediterranean Network of Law Enforcement Officials relating to the International Convention for the Prevention of Pollution from Ships (MARPOL) within the framework of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (“the Barcelona Convention”) (MENELAS), which was convened remotely from 21 to 22 April 2021, agreed to take the elements set out in the Appendix to document REMPEC/WG.48/4 as a basis for the finalisation of a draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention, hereinafter referred to as the draft decision.

3 The said meeting also agreed to include the finalisation of the draft decision in the MENELAS Programme of Activities for the period 2022-2023, amongst others (REMPEC/WG.53/INF.3).

Finalisation of the draft decision

4 When finalising the draft decision, as set out in the **Appendix** to the present document, the Secretariat reviewed further information on how HELCOM Recommendation 19/14 was established, implemented and possible updates considered. It also adjusted the elements referred to in paragraph 2 above to the specific circumstances of the Mediterranean Sea area, by adding relevant preambular paragraphs recalling, *inter alia*:

- .1 the fact that, in Annex I (Prevention of pollution by oil) and Annex V (Prevention of pollution by garbage from ships), MARPOL defines the Mediterranean Sea as a “special area” in which, for technical reasons relating to its oceanographical and ecological condition and to its sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required; and
- .2 the fact that the seventy-nine session of the International Maritime Organization (IMO)’s Marine Environment Protection Committee (MEPC 79) (London, United Kingdom, 12-16 December 2022) adopted amendments to MARPOL Annex VI concerning the designation of the Mediterranean Sea Emission Control Area for Sulphur Oxides and Particular Matter (Med SO_x ECA)³.

¹ Available at: <https://www.rempec.org/en/knowledge-centre/online-catalogue/e-menelas-2015-wg-38-inf-4-helcom-recommendation-19-14.pdf>.

² One (1) Contracting Party to the Barcelona Convention, namely the European Union, is also a Contracting Party to the Helsinki Convention.

³ Such a designation will establish more stringent controls on sulphur emissions in the Mediterranean, as from 1 May 2025.

Next steps

5 Since the minimum fine for each offense provided for under the Annexes to MARPOL was intentionally left empty⁴, as originally set out in the elements referred to in paragraph 2 above, the Secretariat proposes to hold an initial discussion on this, taking into account existing applicable sanctions at national level with regard to illicit ship pollution discharges, with a view to facilitating the further process.

6 Also, since ships operating in the Med SO_x ECA are exempt from the requirements in paragraphs 4 and 6 of regulation 14 of MARPOL Annex VI and from the requirements of paragraph 5 of that regulation insofar as they relate to paragraph 4 of that regulation until 1 May 2025, the Secretariat proposes to discuss whether the draft decision should preferably be adopted, if any, prior or after this date, with a view to ensuring consistent implementation and effective enforcement of the 0.10% sulphur limit under MARPOL Annex VI in the Med SO_x ECA.

7 In this context, and depending on the outcome of the discussions referred to in paragraphs 5 and 6 above, the Secretariat considers that the finalisation of the draft decision may need to be included in the MENELAS Programme of Activities for the period 2024-2025, and that the Fifteenth Meeting of the Focal Points of the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) to be tentatively held in June 2023 should be informed accordingly.

Actions requested by the Meeting

8 **The Meeting is invited to:**

- .1 **take note** of the information provided in the present document; and
- .2 **comment** as deemed appropriate.

⁴ A placeholder was inserted, as follows: **Minimum fine: [XX] SDR.**

Appendix

Draft decision to apply criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention

Decision [XX]

Criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention

The Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols at their [XX] Meeting,

Having regard to the Barcelona Convention, in particular Article 6 thereof, whereby Contracting Parties shall take all measures in conformity with international law to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognised at the international level relating to the control of this type of pollution,

Having also regard to the Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, in particular Article 4 paragraph 2 thereof, whereby the Parties shall take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as flag State, port State and coastal State, and their applicable legislation,

Having further regard to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997 (MARPOL), in particular Annex I thereof on regulations for the prevention of pollution by oil, Annex II thereof on regulations for the control of pollution by noxious liquid substances in bulk, Annex IV thereof on prevention of pollution by sewage from ships, Annex V thereof on the prevention of pollution by garbage from ships, and Annex VI thereof on the prevention of air pollution from ships, as amended, notably regulation 14 thereof on sulphur oxides (SO_x) and particulate matter, as well as Appendix VII thereto on emission control areas (ECAs),

Recalling that the Mediterranean Sea is defined as a “special area” under MARPOL Annex I and MARPOL Annex V,

Recalling also the designation of the Mediterranean Sea Emission Control Area for Sulphur Oxides and Particulate Matter (Med SO_x ECA) under MARPOL Annex VI,

[placeholder for further preambular paragraphs]

1. *Adopt* the criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention, set out in the Annex to this Decision; and
2. *Request* the Contracting Parties to take the necessary measures to apply the criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention.

Criteria for a common minimum level of fines for each offense provided for under the Annexes to MARPOL, within the framework of the Barcelona Convention

I INTRODUCTION

- 1) The following acts are violations of MARPOL:
 - a) Discharges against MARPOL Annex I
 - b) Discharges against MARPOL Annex II
 - c) Discharges against MARPOL Annex IV
 - d) Discharges against MARPOL Annex V
 - e) Air emission or shipboard incineration against MARPOL Annex VI
 - f) Violations of MARPOL regarding the obligations to keep the Oil Record Book, the Cargo Record Book, and the Garbage Record Book properly filled-in
 - g) Violation of MARPOL regarding missing or wrong entries and/or lack of signature in the Oil Record Book, the Cargo Record Book, and the Garbage Record Book.
- 2) Only those offences against the regulations of MARPOL which are subject to administrative fines are addressed in the harmonised system of fines.
- 3) The Contracting Parties should - as far as possible within the framework of their legal systems - aim at adopting legislation which allows fines to be imposed on a legal person (shipowner/operator of a ship). Fines imposed on a legal person should be substantially higher than those imposed on a natural person.
- 4) There should be no difference in the level of fines imposed on nationals of the Contracting Parties and foreigners.
- 5) Repeat offenders should be imposed a higher fine compared to the previous cases.
- 6) "Special drawing right" (SDR) means the unit of account as defined by the International Monetary Fund (IMF).
- 7) Violations of the duty to keep the Oil Record Book, the Cargo Record Book, and the Garbage Record Book properly are regarded as continuing offences. The offence begins when no proper entry is made on the high sea and it ends in the territorial waters of the Contracting Parties (since persons held liable are capable of recording operations subsequently in the Oil Record Book, the Cargo Record Book, and the Garbage Record Book on the basis of notes and documents kept on board).
- 8) Having regard to the established Exclusive Economic Zones of the Contracting Parties and the national jurisdiction related thereto, the criteria are applicable to all ships violating regulations of MARPOL (except for sewage discharge provisions which in relation to foreign ships can be applied only in internal waters and territorial seas of the Contracting Parties).
- 9) A general criterion with respect to the violations listed in paragraph I 1) is whether they were committed intentionally or negligently. A higher fine should be imposed on intentional violations than on negligent violations. If discharge regulations were violated by night, this fact may be interpreted as pointing to an intentional violation.
- 10) With respect to all violations of MARPOL, lower fines than those indicated in Section II may be imposed in individual cases, particularly for less severe violations.

II CRITERIA AND MINIMUM LEVEL OF FINES

In those cases where, under national legislation, offences against MARPOL may be subject to administrative fines, the fines to be imposed should be based on the following criteria:

1) *MARPOL Annex I*

- a) Illegal discharge of oil (Regulations 15 and 34)

Criteria:

- Quantity of illegally discharged oil
- Environmental damage caused by the discharge

Minimum fine: [XX] SDR

- b) Violation of the duty to keep the Oil Record Book properly (Regulations 17, paragraphs 4-6, and Regulation 36, paragraphs 5-7)

The minimum fine indicated refers to cases in which a quantity of 1 tonne was not recorded in the Oil Record Book, or entries are missing for a period of one week.

- i) No Oil Record Book kept on board

Criteria:

- Period of time during which no Oil Record Book was kept on board (level of fine should be based on the duration of time in which no Oil Record Book was kept)
- Quantity of sludge not accounted for, based on consumption calculations

Minimum fine: [XX] SDR

- ii) Oil Record Book is kept on board, but entries are missing or wrong, and/or lacking signature

Criteria:

- Quantity of sludge for which entries are missing or wrong (the level of fine should increase at least with each tonne of sludge for which no entries, or wrong entries, were made)
- In case of bilge water, duration of time during which no entries, or wrong entries, were made (amount of fine should be based on the length of the period during which the Oil Record Book was not kept properly).

Minimum fine: [XX] SDR

2) *MARPOL Annex II*

- a) Illegal discharge of noxious liquid substances (Regulation 13)

Criteria:

- Quantity of substance discharged illegally (the level of fine should increase at least with each tonne of illegally discharged substance)
- Category of substance (X, Y or Z)
- Environmental damage caused by the discharge

Minimum fine: [XX] SDR

- b) Violation of the duty to keep the Cargo Record Book properly (Regulation 15)

The minimum fine indicated refers to cases in which a quantity of 1 tonne was not recorded in the Cargo Record Book, or entries are missing for a period of one week.

- i) No Cargo Record Book kept on board
Criteria:
- Period of time during which no Cargo Record Book was kept on board (level of fine should be based on the duration of time in which no Cargo Record Book was kept)
 - Quantity of cargo not accounted for, based on consumption calculations
- Minimum fine: [XX] SDR**

- ii) Cargo Record Book is kept on board, but entries are missing or wrong, and/or lacking signature
Criteria:
- Duration of time during which no entries, or wrong entries, were made (the level of fine should be calculated on the basis of the length of the period in which the Cargo Record Book was not properly kept)
 - Quantity and category of substance (X, Y or Z) for which entries are missing or wrong
- Minimum fine: [XX] SDR**

3) *MARPOL Annex IV*

Illegal discharge of sewage (Regulation 11)

Criteria:

- Quantity of sewage discharged
- Duration of illegal discharge

Minimum fine: [XX] SDR

4) *MARPOL Annex V*

a) Illegal discharge of garbage (Regulation 5)

Criteria:

- Quantity of substance discharged (the level of fine should increase at least with each tonne of illegally discharged substance)
- Type of substance (plastics, wood, food wastes, etc.)

Minimum fine: [XX] SDR

b) Violation of the duty to keep the Garbage Record Book properly (Regulation 9, paragraph 3)

The minimum fine indicated refers to cases in which a quantity of 1 tonne was not recorded in the Garbage Record Book or entries are missing for a period of one week.

i) No Garbage Record Book kept on board

Criteria:

- Period of time during which no Garbage Record Book was kept on board (level of fine should be based on the duration of time in which no Garbage Record Book was kept)
- Quantity of garbage not accounted for, based on consumption calculations

Minimum fine: [XX] SDR

- ii) Garbage Record Book is kept on board, but entries are missing or wrong and/or lack of signature

Criteria:

- Quantity of garbage for which entries are missing or wrong (the level of fine should increase at least with each tonne of garbage for which no entries, or wrong entries, were made)
- Duration of time during which no entries, or wrong entries, were made (the level of fine should be calculated on the basis of the length of the period in which the Garbage Record Book was not properly kept)

Minimum fine: [XX] SDR

5) *MARPOL Annex VI*

- a) Illegal emissions of ozone-depleting substances, nitrogen oxides (NO_x), sulphur oxides (SO_x) and particular matter, and volatile organic compounds (VOCs) (Regulations 12, 13 and 14)

Criteria:

- Duration of emission
- Type of emitted substances

Minimum fine: [XX] SDR

- b) Illegal incineration of ship-generated wastes on board a ship (Regulation 16)

Criteria:

- Duration of incineration
- Type of incinerated substances

Minimum fine: [XX] SDR