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

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

REMPEC/WG.64/3
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Agenda Item 3: Study on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL

Draft Study on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL

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Note by the Secretariat

This document provides information on the draft Study on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL, based on a comparative legal and operational analysis and taking into consideration the specificities of the Contracting Parties to the Barcelona Convention, as prepared by the Secretariat, which is set out in document REMPEC/WG.64/INF.4. It also takes into account the outcomes of the work carried out by the Working Group within MENELAS, as contained in document REMPEC/WG.64/INF.3.

Background

1 The Sixth Meeting of MENELAS (Malta, 4-5 December 2024) examined the consolidated version of the draft Decision¹ and highlighted significant divergences in national enforcement approaches and sanctioning regimes in the Contracting Parties (CPs) potentially undermining consistency, deterrence and legal certainty at regional level, and concluded that further work was required prior to its submission to the CPs to the Barcelona Convention.²

2 Acknowledging that significant divergences exist in national penalty systems and enforcement approaches, the Sixth Meeting recognised the need to undertake further work to assess possible criteria and possible minimum levels of fines for each offence provided for, under the Annexes to MARPOL, as set out in the consolidated draft Decision.

3 This conclusion was endorsed by the Sixteenth Meeting of REMPEC Focal Points (Malta, 13-15 May 2025), which entrusted the Secretariat to carry out a detailed Study on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL, taking into account national specificities and information from the CPs.

4 COP24³ agreed to include the following activity in the Programme of Work and Budget of the Mediterranean Action Plan (MAP) of the United Nations Environment Programme (UNEP) for 2026-2027⁴

1.2.7 b Analysis on the minimum level of penalties including the development of guidelines for the implementation of the Decision on minimum criteria.

5 To this effect, a consultancy was envisaged to support the Secretariat with its efforts towards undertaking a detailed Study on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL (hereinafter referred to as “the draft Study”), to inform further work and possible options for a way forward for consideration by the present Meeting, prior to consideration by the REMPEC Focal Points at their Seventeenth Meeting to be held tentatively in May 2027.

6 Prof. Dr Norman Martinez was appointed as the consultant to conduct the draft Study, on behalf of the Secretariat (REMPEC).

Draft Study: purpose, scope and methodology

7 The purpose of the draft Study is to provide further legal and technical work to assess the current situation in the Mediterranean region concerning penalty systems for MARPOL offences of the Contracting Parties, in terms of criteria and levels of fines that could serve as a comprehensive analytical reference, supporting the CPs to further and appropriately refine the consolidated draft Decision, as adjusted.⁵

8 More specifically, the draft Study does not suggest minimum fines under MARPOL. Rather it assesses options of minimum criteria to consider when defining a fine, with a view to enhancing consistency, certainty, deterrence while respecting national sovereignty, autonomy and specificities of the respective national penalty systems.

¹ [REMPEC/WG.59/2 - Report of the Working Group within MENELAS](#)

² [REMPEC/WG.59/10 - Report of the 6th MENELAS Meeting](#)

³ Twenty-fourth Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Cairo, Egypt, 2-5 December 2025).

⁴ UNEP/MED IG.27/21 - [Decision IG.27/14](#)

⁵ During the Sixth MENELAS Meeting, following a request by a CP to add a new general criteria related to the gross tonnage of the ship, type of the ship and type of pollutant in section II thereof, the Meeting accepted the subsequent adjustment and agreed to take the *consolidated draft Decision, as adjusted*, as a basis for the further work. [REMPEC/WG.59/10](#) para 19, p. 4

9 The draft Study covers offences under the Annexes to MARPOL as reflected in the consolidated draft Decision, as adjusted, and is based principally on responses provided by the Contracting Parties to a questionnaire circulated through MENELAS Designated Representatives⁶. Contributions were received and taken into account from eight Contracting Parties. The analysis of the national penalty systems is therefore based on self-reporting. No independent legal review, translation or verification of the underlying national legislation was undertaken, owing the time and resources available and language constraints.

10 A comparative review of external frameworks, namely the European Union, HELCOM, the Bonn Agreement and OSPAR/Nort Sea Network of Investigators and Prosecutors (NSN), has been also included and based on publicly available legal and institutional instruments.

11 The draft Study is set out in document REMPEC/WG.64/INF.4. Its key elements are summarised in the present working document; however, reference should be made to document REMPEC/WG.64/INF.4 for the full analysis and specific details.

PART A: Inventory and categorization of relevant offences and jurisdictional context

12 For the purpose of supporting and informing further consideration of the consolidated draft Decision, as adjusted, PART A of the draft Study provides a structured inventory of offences under MARPOL Annexes, focusing on those considered in the consolidated draft Decision, as adjusted and addresses also, in details, the degree of culpability of offenders which is considered important to identify the circumstances of the violation and the intentionality or otherwise of a violation.

PART B: Comparative review of national penalty systems

13 A comparative analysis of the submitted responses to the questionnaires reveals significant differences between the existing penalty regimes within the responding CPs relating to MARPOL offences. Some jurisdictions rely primarily on administrative fines, while others provide a combination of criminal sanctions (e.g. imprisonment), administrative penalties, vessel detention and environmental remedying obligations.

14 While most countries provide significant statutory penalties for MARPOL violations, evidence of actual enforcement remains limited. In particular, the findings of the analysis reveal that some CPs predominantly use administrative enforcements, relying primarily on monetary penalties imposed by maritime or administrative authorities, other CPs rely on mixed criminal-administrative enforcement, which combine administrative sanctions with criminal liability, vessel detention and other coercive measures.

15 Based on the above findings, an overall assessment of the degree of convergence/divergence among national penalty systems and enforcement suggests moderate convergence at the prescriptive level but strong divergence at the enforcement level. In respect of areas of convergence, all CPs treat illegal discharges and other MARPOL violations as punishable offences. Financial penalties as a tool for primary sanction is the dominant enforcement mechanism in every CPs system examined. Several CPs use supplement fines with the application of other operational restrictions including vessel detention, suspension of certificates, prohibition from sailing and refusal of port clearance. In respect of areas of divergence, the most striking discrepancy is the penalty severity (in terms of amount of monetary fine) and the use of different methods for calculating fines including fixed penalties, SDR-based schedules, vessel-tonnage formulae, volume and surface-area criteria and case by case assessment. Consequently, depending on the CP, similar pollution incidents may produce very different financial consequences.

16 In respect of enforcement gaps and practical constraints, the legal framework appears robust on paper, but several enforcement gaps and practical constraints emerge from the CPs responses, e.g.

⁶ Details on the consultation process conducted through the questionnaire are contained in the *Final Report of the Work of the Working Group within MENELAS*, set out in document REMPEC/WG.64/INF.3

difficulty of detecting violations at sea, particularly sewage discharges; complex, fragmented or incomplete regulatory frameworks; significant differences in sanction levels; lack of penalty calculations as CPs use different methodologies for assessing penalties; challenges in enforcing compliance against foreign vessels. The practical constraint here is that these measures require coordination among port authorities, maritime administrations, and courts, particularly when dealing with foreign flagged ships that may leave jurisdiction quickly.

17 The submissions of CPs to the questionnaire thus suggest that the principal challenge is not the absence of penalties, rather the main weaknesses are related to enforcement. Strengthening surveillance technologies, harmonising enforcement approaches, improving inspector capacity and accelerating implementation of supporting regulation would likely have a greater impact than simply increasing penalties.

18 An assessment of the alignment of the penalties in national systems with the principles of proportionality, effectiveness, dissuasiveness, polluter pays principle has also been undertaken within the draft Study. Since MARPOL does not elaborate on the principals to be availed of for the purposes of setting adequate penalties, by way of example, these have been drawn from the EU environmental law.⁷ The penalty systems of the responding CP generally exhibit a moderate to strong alignment with the principles of proportionality, effectiveness and dissuasiveness.

PART C: Criteria for determining penalties

19 The draft Study assess nine criteria generally applied by the CPs when determining the nature, type and quantum of penalties imposed for violations of MARPOL and its annexes, with particular focus on illegal discharges of pollutants from ships: 1) Quantity or estimated quantity of pollutants discharged, 2) Type and harmfulness of the substance/pollutant, 3) Sensitivity of the affected areas (special areas under MARPOL, ECAs, MPAs etc), 4) Ship characteristics (type, gross tonnage, operational profile), 5) Degree of culpability or fault of the responsible subject (intent, negligence, recklessness), 6) Recurrence of offence, 7) Damage caused by an illegal discharge to the environment or human health, 8) Level of cooperation with authorities or obstruction attitudes during inspection/investigation, 9) Economic benefit generated or expected to be generated from the violation.

20 For each criterion, it was assessed whether it is explicitly used, applied on a discretionary basis or absent among the CPs.

PART D: External regional frameworks and transferable elements

21 The draft Study examines how four regional or sub-regional frameworks, i.e. EU Ship-Source Pollution Directive Regime, the Helsinki Commission (HELCOM), the Bonn Agreement and the OSPAR Convention together with its subsidiary North Sea Network of Investigators and Prosecutors (NSN) approach the enforcement and penalisation of ship source discharges, with a view to identifying elements that are legally robust, operationally feasible and potentially transferable to a Mediterranean context centred on the Barcelona Convention.

22 However, it is recognised that none of the four frameworks examined is a direct analogue for the Mediterranean. According to the assessment of the regional and subregional framework, the EU Directive provides the strongest formal harmonisation model, but its experience shows that statutory penalty floors alone do not necessarily ensure dissuasive and consistent enforcement, whereas the NSN/Bonn model achieves practical convergence without harmonising substantive law. Effective enforcement depends primarily on reliable detection, surveillance and evidence-gathering systems, since these determine whether a suspected MARPOL violation reaches the competent national authority for prosecution.

⁷ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, subsequently replaced by Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law

23 The comparative review suggests that the Mediterranean should not replicate a single external framework, but combine the most transferable elements into a practical regional approach, including:

- strengthen MENELAS through an enforcement-case database and a jointly developed Mediterranean manual on maritime pollution offences, drawing on the Bonn Agreement/NSN model for evidence-sharing and comparative legal guidance;
- extend EMSA/CleanSeaNet-style satellite detection and information-sharing to non-EU Mediterranean coastal States through cooperation among REMPEC, EMSA and the Barcelona Convention Secretariat;
- develop either an EU-style “effective, proportionate and dissuasive” standard or, more realistically in the short term, a non-binding SDR-denominated schedule of recommended fines, supported by objective criteria already used in the region, such as vessel gross tonnage, recidivism and economic benefit;
- ensure that any custodial sanctions are expressly aligned with UNCLOS Article 230, particularly for foreign seafarers and discharges in the territorial sea; and
- establish a separate polluter-pays cost-recovery mechanism for response and clean-up costs, without linking it to the more complex question of harmonising criminal or administrative penalties.

24 Overall, the greatest regional added value lies in operational cooperation on detection, evidence and enforcement practice, while any common approach to penalties should be gradual, criteria-based and legally compatible with the different national systems.

PART E: Options for common minimum criteria and possible minimum levels of fines

25 Based on the response by the CPs and on the analysis contained in the draft Study, the assessment identifies a range of approaches that may be considered to promote greater converge in penalty frameworks for MARPOL violations. They relate to: quantity or estimated quantity of pollutants discharged; type and harmfulness of the pollutant; sensitivity of the affected area, ship characteristics, including type, gross tonnage and operational profile, degree of culpability or fault, including intent, negligence and recklessness, recurrence of the offence, damage caused to the environment or human health, cooperation with authorities or obstruction during inspection and investigation, economic benefit derived from non-compliance.

Main findings and recommendations

26 The comparative analysis reveals a pattern of partial and uneven implementation of the varying criteria across jurisdictions of CPs. The following recommendations are offered for minimum fines for violations of MARPOL provisions to be successfully better aligned:

- .1 Adopt a common base formula incorporating GT, Annex/pollutant type, and discharge quantity as non-waivable minimum determinative factors.
- .2 Introduce a mandatory area sensitivity multiplier for discharges occurring within MARPOL Special Areas, PSSAs, ECAs, and nationally or regionally designated MPAs.
- .3 Require that penalties always exceed the estimated economic benefit of the violation.
- .4 Establish a regional MARPOL violator database accessible to all port State control officers, enabling automatic escalation of fines for repeat offenders within a five-year look-back window.
- .5 Introduce statutory cooperation credits and mandatory obstruction aggravators.

- .6 Standardise all fines in SDR to deter currency fluctuation effects and facilitate regional comparability and mutual recognition of sanctions.

27 The draft Study confirms that a common MARPOL framework has produced convergence in the categories of conduct treated as punishable, but not in the level, calculation or actual enforcement of sanctions. National systems retain diverse administrative, criminal and mixed models, and available evidence is insufficient to measure enforcement outcomes consistently across the Mediterranean. An effective regional approach is likely to be most effective if it combines common criteria for sanctioning with practical measures that improve detection, evidence, information exchange, consistency in treatment of repeat offenders.

28 The draft Study was circulated to the Working Group within MENELAS for consideration, review and feedback. Comments received from the Contracting Parties have been reflected in the report of work carried out by the Working Group, as set out in document REMPEC/WG.64/INF.3

Next Steps

- 29 In this context and on the basis of the draft Study, the Secretariat proposes to
- .1 consider the detailed assessment on possible criteria and possible minimum levels of fines for each offence provided for under the Annexes to MARPOL
 - .2 provide comments and guidance on the proposed options for common minimum criteria and possible minimum levels of fines, as set out in the draft Study
 - .3 provide comments and guidance on the findings and on the recommendations for a successful alignment of minimum fines for violations of MARPOL provisions
 - . 3 request the Secretariat to finalise the draft Study and to continue the related work, taking into account the outcome of the Meeting.

Actions requested by the Meeting

- 30 **The Meeting is invited to:**
- .1 **take note** of the information provided in the present document;
 - .2 **discuss and consider** the next steps, as referred in paragraph 29 above; and
 - .3 **comment** as deemed appropriate.
