
**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.64/4
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**Agenda Item 4: Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision,
as adjusted**

**Draft Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision, as adjusted,
in the Mediterranean region**

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Note by the Secretariat

This document provides information on the Draft Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision on minimum criteria, as adjusted, 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, which is set out in document REMPEC/WG.64/INF.5. 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 Sixteenth Meeting of the REMPEC Focal Points (Malta, 13-15 May 2025), having considered the work undertaken by MENELAS on possible criteria and minimum levels of sanctions applicable to violations of the Annexes to MARPOL, endorsed to undertake further work to assess the current situation in the Mediterranean region with regard to the national penalty systems and the potential development of common 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, as adjusted.

2 Within this framework, and to follow up on the decisions and conclusions of the Sixteenth Meeting of the Focal Points, REMPEC, in its capacity as Secretariat, has commissioned a detailed Study on possible criteria and possible minimum levels of fines for the offences covered by the Annexes to MARPOL, as set out in document REMPEC/WG.64/3, together with the development of associated Guidelines for the effective and uniform implementation of the consolidated draft Decision, as adjusted, in the Mediterranean region (hereinafter referred to as “the draft Guidelines”).

3 The draft Guidelines are so conceived as an implementation instrument accompanying the consolidated draft Decision, as adjusted. They do not establish a separate sanctioning regime, nor do they replace national legislation or the applicable international instruments. They address both the legal measures needed to ensure that the criteria set out in the consolidated draft Decision, as adjusted, are interpreted consistently and made operational at national level and the technical methods by which a competent authority may detect, investigate, quantify and determine an administrative fine in an individual case.

4 The draft guidelines are recommendatory. Where their provisions diverge from a Contracting Party’s constitutional or procedural law, national law would prevail. This would not affect any binding obligations arising under MARPOL, UNCLOS or other applicable instruments.

5 The key elements of the draft Guidelines are summarised in the present working document; however, reference should be made to document REMPEC/WG.64/INF.5 for the full text and specific details.

Purpose and scope of the draft Guidelines

6 The draft Guidelines proceed from the premise that the consolidated draft Decision, as adjusted would apply to MARPOL offences, which, under national law, are subject to administrative fines. Criminal penalties, civil liability and compensation for pollution damage would remain governed by national law and by the relevant liability and compensation conventions. The draft Guidelines therefore treat the common minimum level as a floor, not as a ceiling or a tariff. The CPs would retain their discretion to impose higher fines or retain higher statutory minima.

7 The draft Guidelines place the proposed regional framework of the consolidated draft Decision, as adjusted, within the wider international and regional legal context. They refer to MARPOL; UNCLOS; the Barcelona Convention and its Prevention and Emergency Protocol; and the existing HELCOM Recommendation 19/14 which informed the structure of the criteria.

8 For the CPs which are Member States of the EU, the draft Guidelines recognise the parallel requirements of Directive 2005/35/EC, as amended by Directive (EU) 2024/3101¹, to be transposed by 6 July 2027. The draft Guidelines accordingly encourages a coordinated legislative exercise so that the regional criteria may serve also as a practical calibration methodology within the EU administrative-penalty framework, without duplication or inconsistency.

¹ Directive (EU) 2024/3101 of the European Parliament and of the Council of 27 November 2024 amending Directive 2005/35/EC as regards ship-source pollution and on the introduction of administrative penalties for infringements.

Legal implementation at national level

9 The draft Guidelines recommend, as initial stage, that each CP designate or clearly identify the competent authority or authorities responsible for detection and investigation; determination and imposition of administrative fines, objections and appeals, collection and enforcement, ad contact with REMPEC and other CPs in cross-border cases, and attention is given to jurisdiction. National legislation would need to provide an express basis for action by the flag State, port State and coastal State, in accordance with MARPOL and UNCLOS, and recommend procedures for prompt notification by the coastal State to the flag State, review of the suspension rule under UNCLOS article 228, and where applicable, the setting aside of a fine and repayment of sums collected. It also proposes practical safeguards against duplicate monetary penalties, while preserving the relevant expectations, including major damage to coastal States.

10 To promote comparable fines over time, the draft Guidelines propose the Special Drawing Right (SDR) as the unit of account. They recommend that national legislation specify a clear conversion date, normally the date of the decision imposing the fine, at the International Monetary Fund rate of the date of the preceding business day. The use of SDR is intended to provide a neutral regional reference and is consistent with established maritime liability conventions.

11 The draft Guidelines further invite CPs to map, offence by offence, whether their national systems provide for administrative, criminal or both types of proceedings. Where the national legal system provides both an administrative and a criminal sanction in respect of the same conduct, the arrangements required by paragraph 8.2² of the draft Guidelines should ensure that only one pecuniary sanction is ultimately borne in respect of the same facts and the same person, whether by barring the second set of proceedings, by suspending one set of proceedings while the other is determined, or by setting the sum imposed in one against the sum imposed in the other. The choice among those techniques is for national law.

12 The proposed approach seeks to ensure that an administrative route may remain available where the criminal standard of proofs is not met, so that an evidentially weaker case is not simply abandoned.

Liability, procedural guarantees and enforceability

13 The draft Guidelines recommend that liability of a legal person should be linked to the Company within the meaning of the International Safety Management Code, rather than only to the registered owner, so that responsibility follows operational control. The draft Guidelines also addresses corporate succession, the consideration of financial capacity and the principle that nationals and foreign persons should be treated equally in both the level of the fine and the applicable procedure.

14 Recidivism is treated as a material aggravating factor, subject to clear safeguards. Repeat offences should lead to a higher fine, but only where this is fair and clearly established. The proposed approach is to consider the record of the Company responsible for operating the ship, rather than the ship alone. A decision taken in another country could be taken into account only if it is final, concerns the same Company and a comparable offence and this would require the sharing of information on final cases between Contracting Parties.

15 Procedural safeguards are a central element of the draft Guidelines. Before a fine is imposed, the alleged offender should receive written notice, the evidence relied upon and the proposed fine;

² Paragraph 8.2 of the draft Guidelines states as follows:

Where both tracks exist, legislation and prosecution guidance should specify:

(a) which authority decides the track, and against what criteria (typically: culpability, gravity of harm, recidivism);

(b) how the *ne bis in idem* rule is respected – whether the administrative fine bars subsequent prosecution, whether proceedings run in parallel with set-off, or whether one track is stayed;

(c) that the administrative route remains available where the criminal standard of proof cannot be met, so that an evidentially weaker case is not simply abandoned.

should have an opportunity to make representations; and should be able to access legal and, where necessary, consular assistance. The draft Guidelines also refers to the IMO/ILO Guidelines on fair treatment of seafarers detained in connection with alleged crimes.

16 Importantly, the burden of proving the quantified amount and the underlying facts would remain with the competent authority. The calculation worksheet, methodology, inputs, assumptions, conversion factors, range and lower-bound figure would need to be disclosed in full. These provisions are intended to ensure that technical estimation is transparent and can withstand judicial scrutiny.

17 The draft Guidelines recommend the availability of financial security, such as a bond, bank guarantee or P&I club letter of undertaking, where a fine is likely and the ship would otherwise depart. It recalls the UNCLOS (art. 226) prompt release framework and encourages identification of available cross border recovery mechanism. The regional exchange of concluded findings is presented as an important practical mitigation where a fine cannot be collected before a foreign ship leaves the jurisdiction.

Technical guidelines: Detection, evidence and quantification

18 The technical part of the draft Guidelines proposes a layered approach to detection, combining satellite services, aerial surveillance, remotely piloted aircraft systems, sniffers, AIS and satellite AIS analysis, voyage data recorder information, port State control inspections and third-party reports. A robust evidential package is proposed, including the regional pollution detection and investigation report, georeferenced imagery and metadata, samples with documented chain-of-custody record books, equipment data, bunker delivery notes, port reception facility receipts, logs relevant ISM documentation, statements obtained under fair-treatment safeguards, and the calculation worksheet.

19 For record-book offences, the draft Guidelines emphasize reconciliation rather than inspection of the book in isolation. The expected quantity generated should be compared with quantities retained on board, lawfully processed and delivered to reception facilities, drawing on ship-specific records wherever available. Any estimate used because records are missing or unreliable would have to be identified, technically justified, disclosed and open to rebuttal. The draft Guidelines include a common minimum case file and a case checklist to facilitate consistent investigation and decision-making record.

20 Section 16, *General Principles of Quantification and Evidence* and Section 17 *Measuring the Quantity of the Discharge*, are significant parts of the document, as they specifically address concepts supporting the measurement of quantities of waste discharged from polluting ships, by providing standard units and conversions, methods for measuring the quantity of a discharge, and methodologies for mass-balance calculations, with a view to assist in the determination of sanctions that are commensurate with the extent of the violation.

Damage, sensitive areas and calculation of the fines

21 Environmental damage and risk to human health are treated as aggravating considerations, not as preconditions for establishing an unlawful discharge. The draft proposes recording measurable indicators, where available, such as affected shoreline and habitat, closures of fisheries, aquaculture or bathing areas, wildlife casualties, water-quality measurements, the tourist season and clean-up effort.

22 The entire Mediterranean Sea is a MARPOL Special Area under Annexes I and V and a Sulphur Oxides and Particulate Matter Emission-Control Area under Annex VI. Accordingly, the draft Guidelines treat this status as embedded in the base fine rather than as a separate multiplier which would apply uniformly across the region. It does not create regional tiers of sensitivity.

23 Section 20 of the draft Guidelines is deliberately reserved for the calculation sequence to be adopted with the consolidated draft Decision, as adjusted and proposes also a specific interim guidance on economic benefit.

Offence-specific application, regional sharing and review

24 The final part of the draft Guidelines translates the general methodology, as presented in sections 17-20, into an offence-by-offence application table covering the fourteen offences identified in the consolidated draft Decision, as adjusted, across MARPOL Annexes I to VI. For each offence, it identifies what is to be quantified, the applicable technical methods and the key evidence.

25 The draft Guidelines propose that every concluded case be recorded nationally and shared through a regional database, subject to restricted access for enforcement authorities. This information would support the use of recurrence provisions and permit a more reliable assessment of regional implementation.

26 The draft Guidelines propose that Contracting Parties periodically review the mechanism based on regional experience and data. The review would assess whether the SDR fine levels and per-unit rates remain appropriate, whether the estimation methods need updating, and whether reference costs for calculating economic benefit should be revised. It would also consider whether the regional system remains consistent with developments in EU law, with a view to ensure alignment. Finally, the Contracting Parties would decide how often this review should take place.

27 The draft Guidelines were 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 and have been addressed through revisions reflected in track changes in document REMPEC/WG.64/INF.5.

Next Steps

28 The Secretariat proposes the following actions:

- .1 consider and comment, as appropriate, on the content and recommendations of the draft Guidelines, to be read in conjunction with the detailed draft Study and the consolidated draft Decision, as adjusted, with a view to provide a practical and legally sound tool for the uniform and effective implementation of the consolidated draft Decision, as adjusted, in the Mediterranean region, once adopted;
- .2 consider, comment and provide guidance, as appropriate, on the elements of the draft Guidelines still requiring finalisation. While certain aspects of the draft Guidelines requiring finalisation will depend on decisions taken by the Contracting Parties in relation to the consolidated draft Decision, as adjusted, the Secretariat proposes, for consideration of the Meeting, the following three priority matters:
 - .1 the further consideration of Section 20 of the draft Guidelines;
 - .2 the applicable look-back period for recurrence;
 - .3 the periodicity and arrangements for the standing review.

Actions requested by the Meeting

29 **The Meeting is invited to:**

- .1 **take note** the information provided in the present document;
- .2 **discuss and consider** the next steps, as referred in paragraph 28 above; and
- .3 **comment** as deemed appropriate.
