
**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/INF.5
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**Agenda Item 4: Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision,
as adjusted, in the Mediterranean region**

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

For environmental and cost-saving reasons, this document will not be printed and is made available in electronic format only. Delegates are encouraged to consult the document in its electronic format and limit printing.

Note by the Secretariat

This document presents the draft Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision, as adjusted, in the Mediterranean region.

Background

1 The Secretariat, in consultation with the Working Group within MENELAS, prepared the draft Guidelines to ensure the uniform and effective implementation of the consolidated draft Decision, as adjusted, in the Mediterranean region, hereinafter referred to as “the draft Guidelines”.

2 The draft Guidelines were circulated to the Working Group within MENELAS for consideration, review and feedback. Comments received from the Contracting Parties are 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 in track changes in the draft Guidelines.

3 The draft Guidelines, with revisions in track changes, are presented in the **Appendix** to the present document.

Action requested by the Meeting

4 **The Meeting is invited to take note** of the information provided in the present document.

Appendix

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



Mediterranean
Action Plan
Barcelona
Convention



INTERNATIONAL
MARITIME
ORGANIZATION

MEDITERRANEAN ACTION PLAN (MAP)

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

**[GUIDELINES] TO ENSURE THE UNIFORM AND EFFECTIVE
IMPLEMENTATION OF THE CONSOLIDATED DRAFT
DECISION, AS ADJUSTED, IN THE MEDITERRANEAN
REGION**

Prepared by Prof. Dr. Norman Martinez

This activity is financed by the Mediterranean Trust Fund (MTF) and is implemented by the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), of the Mediterranean Action Plan (MAP) of the United Nations Environment Programme (UNEP) as well as the International Maritime Organization (IMO).

The views expressed in this document are those of the Consultant and are not attributed in any way to the United Nations (UN), UNEP/MAP, IMO or REMPEC.

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PART A — PRELIMINARY

1. Purpose and status

1.1 These [[Guidelines]] are intended to assist the Contracting Parties in giving effect to [[Decision]] [XX] and to the Criteria set out in its Annex. They address two distinct implementation tasks:

Legal implementation – the legislative, regulatory and procedural steps a Contracting Party may take so that the Criteria can be consistently applied by its competent authorities (Part B);

Technical implementation – the detection, investigation, quantification, and calculation methods by which the Criteria are applied to an individual case (Part C).

1.2 The [Guidelines] are recommendatory. Where these [Guidelines] and a Contracting Party's constitutional or procedural law diverge, national law prevails. The word “should” is used throughout in the recommendatory sense.¹ Where the [Guidelines] restate an obligation arising under MARPOL, UNCLOS or another instrument binding on the Contracting Party concerned, the mandatory character of that obligation is unaffected and the mandatory language is retained.

2. Scope

2.1 The [Decision] applies to offences against the Annexes to MARPOL which, under national law, are subject to a pecuniary penalty imposed by way of an administrative procedure or, where the national legal system so provides, by a competent court in accordance with paragraph 5.3 administrative fines (Criteria, paragraph I.2). It does not govern criminal penalties, civil liability, or compensation for pollution damage, which remain subject to national law and to the applicable liability conventions.

2.2 The Criteria establish minimum levels. Nothing prevents a Contracting Party from imposing a higher fine, or from maintaining a higher statutory minimum, and the [Decision] should be implemented as a floor rather than a ceiling or a tariff.

3. Terms

For the purposes of these [Guidelines]:

“Barcelona Convention” means the Convention for the Protection of the Mediterranean Sea against Pollution, 1976 as amended;

Commented [MA-A11]: Contracting Parties may wish to consider these changes in paragraph I.1

In paragraph I.1 c to change the term Discharges to Jettisoning

In paragraph I.1 e to change the term oil to garbage

In paragraph I.1 f to change the terms water pollution to discharge of exhaust gas cleaning system effluent and residues

¹ The Guidance Document “Preparation of National Action Plans for the Implementation of the Mediterranean Strategy for the Prevention of, Preparedness and Response to Marine Pollution from Ships (2022-2031) employs the same recommendatory language.

“Company”² has the meaning assigned to it in paragraph 1.1.2 of the ISM Code, namely the owner or any other organisation or person, such as the manager or bareboat charterer, who has assumed responsibility for operation of the ship;

“Competent Authority” means the authority designated by a Contracting Party under Section 5 to determine and impose administrative fines;

“Contracting Party” means a Contracting Party to the Barcelona Convention;

“Criteria” means the criteria set out in the Annex to the [Decision];

“[Decision]” means [Decision] [XX] on 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;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention, as may be amended from time to time;

“MARPOL” means the International Convention for the Prevention of Pollution from Ships;

“REMPEC” means the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea;

“Unit of account” means the unit referred to in Section 7;

“UNCLOS” means the United Nations Convention on the Law of the Sea.

4. Relationship to other instruments

Contracting Parties should read the [Decision] together with:

Instrument	Relevance
MARPOL Articles 4 and 6	Duty to establish sanctions “adequate in severity to discourage violations”; inspection and detection cooperation
UNCLOS Part XII, Arts 217–233	Enforcement competence and the safeguards thereto
Barcelona Convention, Art. 6	Basis for regional action on ship-source pollution
Prevention and Emergency Protocol to the Barcelona Convention, Arts 4(2)	Flag/port/coastal State duties;
HELCOM Recommendation 19/14	The direct regional precedent for a harmonised system of fines; source of the structure and much of the language of the Criteria
Directive 2005/35/EC, as amended by Directive (EU) 2024/3101	Binding on Contracting Parties that are EU Member States; transposition due 6 July 2027
Directive (EU) 2024/1203	EU criminal-law layer for ship-source pollution
Paris MoU / Mediterranean MoU on Port State Control	Operational channel for detection and detention
Guidance Document on The Consistent Implementation of the 0.10% Sulphur Limit under MARPOL Annex VI in the Mediterranean Sea Emission Control Area	Regional guidance directly applicable to Section 17.4 and 17.5

Commented [MA-A12]: Paragraph I.6 of the Criteria defines “unit of account” as “the monetary unit of measurement used under the Barcelona Convention”. The Barcelona Convention does not establish a unit of account for penalty purposes. Therefore, the definition currently in paragraph I.6 of the Criteria requires completion before the [Decision] is operable.

² This is the recommended anchor for the “legal person (shipowner/operator of a ship)” referred to in paragraph I.3 of the Criteria.

Instrument	Relevance
for Sulphur Oxides and Particulate Matter (MED SOx ECA)	
IMO/ILO Guidelines on fair treatment of seafarers detained in connection with Treatment of masters and crew during alleged crimes - Resolution LEG.7(112), investigation; relevant to Section 11.3 adopted 28 March 2025	

PART B — LEGAL GUIDELINES

5. Institutional designation

5.1 Each Contracting Party should designate the authority or authorities competent to:

- (a) detect and investigate MARPOL offences in respect of ships flying its flag, in respect of offences occurring in areas under its national jurisdiction, and in respect of offences over which it may exercise jurisdiction in accordance with Section 6;
- (b) determine and impose administrative fines;
- (c) hear objections and administer appeals;
- (d) collect fines and enforce collection; and
- (e) act as national point of contact for REMPEC and for other Contracting Parties in cross-border cases.

5.2 Where these functions are split across ministries (transport/maritime, environment, and interior/coast guard), a written inter-agency protocol should record which body is responsible for each of the competences listed in paragraph 5.1.³

5.3 Where the national legal system does not provide for administrative penalties, the [Decision] may be applied in such a manner that the penalties, including the fines referred thereto, are initiated by the Competent Authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by competent authorities. In any event, the penalties imposed in accordance with this paragraph shall be effective, proportionate and dissuasive and applied in accordance with the provisions of the [Decision].⁴

6. Jurisdictional basis

6.1 Contracting Parties should ensure that their legislation expressly grants the power to impose fines in each capacity in which they may act:

- (a) Flag State – over ships entitled to fly their flag, wherever the offence occurred (MARPOL Art. 4(1); UNCLOS Art. 217);
- (b) Port State – over foreign ships voluntarily in port: in respect of discharges occurring within the Party's own internal waters, territorial sea or exclusive economic zone; in respect of discharges occurring outside those zones, in accordance with Article 218(1) of UNCLOS, subject to Article 218(2) of UNCLOS, where the discharge occurred within the internal waters, territorial sea or exclusive economic zone of another State; and in respect of documentary offences, including those relating to record books and certificates, detected during an inspection;⁵ and

³ Fragmented competence is the most common practical cause of MARPOL cases collapsing.

⁴ This mirrors the approach permitted under Article 8(3) of Directive 2005/35/EC as amended by Directive (EU) 2024/3101.

⁵ MARPOL (Arts. 5 and 6) provides that a ship may, in any port or offshore terminal of a Port State which is party to the Convention, be subject to inspection by Port State control officers for the purpose of verifying whether the ship has discharged any harmful substances in violation of the provisions of the regulations. However, the officers appointed or authorised by that Port State are bound by special rules on inspection of ships. A Port State may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation

Commented [MA-A13]: Paragraph I.8 of the Criteria refers to "the established Exclusive Economic Zones of the Contracting Parties". Not all Mediterranean coastal States have proclaimed an EEZ; several have declared ecological protection zones, fisheries protection zones or comparable regimes. Implementing legislation should refer to the maritime zones the Party has actually established in accordance with international law. (perhaps the Decision text should be amended).

(c) Coastal State – over foreign ships in the territorial sea and in maritime zones established in accordance with international law, applying the graduated powers in UNCLOS Article 220(2) to (6) according to the zone and the strength of the evidence.

6.2 Considering that the [Decision] addresses administrative fines, the implementing law should be drafted so that no custodial or non-monetary sanction is triggered automatically. Legislation which converts an unpaid administrative fine into imprisonment, or which imposes ancillary sanctions on foreign seafarers, should be reviewed.⁶

6.3 Where a coastal or port State institutes proceedings for a violation by a foreign vessel beyond its territorial sea, those proceedings are suspended if the flag State institutes its own proceedings within six months, unless the case relates to major damage to the coastal State, or the flag State has repeatedly disregarded its obligations.⁷ National procedure should therefore include: a formal notification to the flag State at the outset a decision record on whether an exception applies; a mechanism for reviewing the continuation of the suspension in accordance with Article 228 and applicable national law; and a mechanism to set aside a fine already imposed, and repay any sum collected, where the flag State proceedings are brought to a conclusion.

6.4 The flag State and other concerned States shall be promptly notified of any measures taken against foreign vessels. Prompt notification shall also be transmitted to the diplomatic agents or consular officers.⁸

7. Unit of account

7.1 The unit of account for the fines imposed should be the Special Drawing Right (SDR) of the International Monetary Fund (IMF).⁹

is received from any Party together with sufficient evidence that the ship has discharged harmful substances into the sea. The report of the investigation is then passed on to the requesting Party and the Flag State for appropriate action. A Port State may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party together with sufficient evidence that the ship has discharged harmful substances into the sea. The report of the investigation is then passed on to the requesting Party and the Flag State for appropriate action. With respect to the ship of non-Parties, a Port State shall apply the MARPOL requirements as may be necessary to ensure that no more favourable treatment is given to such ships.

⁶ Art. 230 UNCLOS is the anchor for this [Decision] and should be reflected expressly in national law. Monetary penalties only may be imposed in respect of violations of national laws and international rules for the prevention of pollution committed by foreign vessels beyond the territorial sea; and in the territorial sea, monetary penalties only, save for a wilful and serious act of pollution.

⁷ Art. 228 of UNCLOS.

⁸ Art. 231 of UNCLOS.

⁹ The reasons:

(a) it is the unit used in HELCOM Recommendation 19/14, the instrument on which the Criteria are modelled, and using the same unit permits direct comparison between the two regional systems; (b) it is already the unit of account in the maritime liability conventions to which most Contracting Parties are a Party (CLC 1992, Fund, LLMC 1996, Bunkers 2001), so conversion rules, valuation dates and judicial familiarity already exist in national maritime law; (c) it is currency-neutral as between euro-area and non-euro-area Contracting Parties, and insulates the harmonised floor from bilateral exchange-rate drift and from single-currency inflation; (d) it is published daily by the IMF, giving an objective and unimpeachable conversion source.

7.2 Where SDR is adopted as the unit of account, the implementing legislation should specify the conversion date. The recommended rule, consistent with the liability conventions, is the date of the decision imposing the fine, at the rate published by the IMF for that date or the last preceding business day. A Contracting Party may instead adopt the date of the offence, which better reflects the benefit obtained but is harder to fix where the offence is continuing.

8. Nature of the sanction and the criminal interface

8.1 Contracting Parties should map, offence by offence, whether their national law treats a MARPOL breach as administrative, criminal, or both.

8.2 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.

8.3 For Contracting Parties that are EU Member States, the interaction with Directive (EU) 2024/1203¹⁰ must be resolved in the same exercise; the [Decision]'s administrative floor operates without prejudice to that Directive's criminal-law requirements.

8.4 *Ne bis in idem* is not a general rule of international law as between States; the constraint operates through UNCLOS and differs by maritime zone.

(a) Where the discharge occurred beyond the territorial sea and the flag State has instituted proceedings within six months and brought them to a conclusion, the Contracting Party's proceedings are terminated and any security released, in accordance with paragraph 6.3.

(b) In internal waters and the territorial sea, Article 228 does not apply, and the Contracting Party retains full competence. As a matter of proportionality and to avoid duplicative monetary penalties, Contracting Parties may provide a set off against the sum payable. The set-off operates on the amount payable and not on the fine determined, so that the economic-benefit floor under paragraph 20.3 continues to apply to the determination.

(c) Duplication arises only where the second proceedings concern the same material facts, irrespective of legal classification, and the same person. A penalty on the master and a penalty on the Company are penalties on different persons.

(d) Before terminating proceedings or setting off the fine or releasing a security, the Competent Authority of the port State should ascertain that a determination has been made on the basis of the identified facts, that the amount has been determined, and that the amount has been collected by the flag State. Where these requirements are not satisfied, the Authority should record its findings, invoke the applicable exception where the conditions of the applicable exception under Article 228(1) of UNCLOS are satisfied, and notify REMPEC for the purposes of regional reporting and monitoring.

Commented [MA-A14]: This will be completed once section 20 is finalized.

¹⁰ 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 and replacing Directives 2008/99/EC and 2009/123/EC.

(e) Neither the termination rule nor the set-off applies where the case relates to major damage to the Contracting Party.

(f) The assessment, and any set-off, should be recorded in the reasoned decision and transmitted with the case record, so that a discharge dealt with twice is not counted twice under paragraphs 9.4 and 9.5.

8.5 Where the national legal system provides both an administrative and a criminal sanction in respect of the same conduct, the arrangements required by paragraph 8.2 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. Whichever is adopted, the decision should record which route was followed and, where a set-off was applied, the amount and its basis.

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9. Liability rules

9.1 Paragraph I.3 of the Criteria requires Contracting Parties to allow fines on the legal person. Implementing legislation should:

- (a) identify the liable entity by reference to the Company, not merely the registered owner, so that liability follows operational control;
- (b) provide that the liability of the Company does not depend on identifying or convicting an individual;
- (c) address corporate succession, so that liability is not extinguished by transfer of the ship or by restructuring.

9.2 Paragraph I.3 of the Criteria requires the financial capacity of the person liable to be considered. Admissible evidence may be audited accounts, group structure, P&I entry, fleet size. Implementing legislation should make it clear that inability to pay may reduce but does not extinguish a fine, and that the burden of establishing limited capacity lies with the person asserting it.

9.3 Paragraph I.4 of the Criteria (no difference between nationals and foreigners) should be given effect not only in the level of the fine but in the procedure as well: the same evidential standards, the same appeal rights, and the same enforcement measures. Where a bond or financial security is required from a foreign ship because it will shortly leave the jurisdiction, the legislation should frame this as a security-of-collection measure, not as a nationality-based distinction.

9.4 Paragraph I.5 of the Criteria requires a higher fine for repeat offenders. Implementing legislation should define the recidivism unit – the Company, the ship, or both – and the lookback period. The recommended approach is: recidivism attaches to the Company, with the ship's own history as a separate aggravating factor, over a [five]-year lookback, and includes findings by other Contracting Parties where notified through the regional exchange. Findings made by other Contracting Parties or by third States may be relied on only in accordance with paragraph 9.5.

9.5 A finding by another Contracting Party or by a third State may be relied on for the purposes of paragraph 9.4 — whether to trigger a recurrence mechanism adopted under Section 20 or otherwise to increase a fine on account of a previous violation, only where all of the following are verified and recorded:

- (a) the finding is final and no longer subject to ordinary appeal, or the appeal period has expired unused. The lookback runs from the date of finality and not from the date of notification. A finding under appeal may be noted but not counted. A port State detention, an inspection deficiency, a satellite alert, an entry on a watch list and a non-concluded investigation are not findings;
- (b) it was made against the same person, that is the Company as defined in Section 3. Where the earlier finding concerned the same ship under different management, it is ship history and not recidivism of the person before the Competent Authority;
- (c) the conduct is comparable and it would have constituted an offence within the scope of the Criteria had it occurred in the Contracting Party's jurisdiction;
- (d) the standards are comparable, meaning the earlier proceedings afforded, in substance, the safeguards in Section 11. Findings by other Contracting Parties are presumptively comparable; findings from third States require positive verification and are not used where the record does not permit it;
- (e) it falls within the lookback, computed under (a); and
- (f) it has been disclosed to the alleged offender, in translation where necessary, with a real opportunity to contest its existence, finality, attribution or comparability. A foreign finding not disclosed cannot be relied upon.

Each qualifying finding counts once, and findings arising from a single course of conduct count once in aggregate. Where a finding relied upon is subsequently set aside, the Contracting Party should reopen its decision on request and refund the uplift, and notify REMPEC for correction of the regional record.

9.6 (a) Liability is established before the amount of the fine is addressed. The Competent Authority should first determine that the discharge occurred, that it is attributable to the ship and to the person liable, and that no exception provided by the applicable Annex of MARPOL applies. Where an exception applies, no fine should be imposed

(b) Where liability is established, the conduct should then be characterised as deliberate, reckless, negligent, or arising from an accident or emergency that does not meet the conditions of an exception. That characterisation is the culpability finding under Section II and is applied at step E of paragraph 20.2. A discharge which was accidental, and in respect of which the ship acted properly once it occurred, warrants a materially lower fine than a deliberate discharge, and the distinction should be visible in the reasoned decision.

(c) In assessing a claim under (b), the Competent Authority should have regard to whether the incident was reported as required under Article 8 of MARPOL and Protocol I thereto.

10. Continuing offences and limitation

Commented [MA-A15]: Please see the comment in Section 20.

10.1 Paragraph I.7 of the Criteria treats improper keeping of the Oil, Cargo and Garbage Record Books as a continuing offence, commencing when the proper entry is not made. Implementing legislation should state expressly that:

- (a) the limitation period runs from the date the continuing offence ceases, not from the first omitted entry; and
- (b) a single continuing offence is not artificially multiplied into one offence per omitted entry in a way that produces a disproportionate aggregate.

10.2 Limitation periods should be long enough to accommodate satellite-detected cases where the ship is identified only after analysis, and cases requiring flag State correspondence. A period of less than two years from cessation is likely to be too short in practice.

11. Procedural safeguards

11.1 Implementing legislation should guarantee:

- (a) the notice of the alleged offence, the evidence relied upon, and the proposed fine is submitted in writing;
- (b) alleged offenders have the opportunity to make written and, on request, oral representations before the fine is imposed;
- (c) any notification of and any decision imposing a fine is submitted in a language that the master and Company understand, or with a certified translation; in case of oral exchanges interpretation is available;
- (d) the written decision imposing a fine identifies the criteria applied in imposing such fine and their effect on the amount (see Annexes A and C);
- (e) access to counsel, and notification of consular assistance for foreign nationals;
- (f) effective judicial review of both the finding and the quantum, with power to vary either or both;
- (g) clarity on whether any appeal suspends payment; if not, a mechanism for repayment with interest; and
- (h) fines are proportionate.

11.2 (a) The burden of proving the quantified amount and the facts on which that amount is based rests at all times on the Competent Authority and does not shift. The lower-bound principle in Section 16.1 and the estimation methodologies in Table 4 are conservative calculation tools, not legal presumptions. Their use does not relieve the Competent Authority of proving the underlying inputs, including fuel consumed, persons on board, voyage days, hours in the area, or other relevant data, from the ship's records or other reliable evidence.

(b) The Competent Authority shall¹¹ disclose the complete quantification worksheet (see Annex C) to the alleged offender together with the notice under Section 11.1(a), sufficiently in advance of the determination of the fine. The disclosure shall include the calculation method used, the reasons for its selection, all input values and their sources, any estimation methodology and conversion factors applied, the resulting range and lower-bound figure adopted, and, where applicable, the reasons for reconciling different methods under Section 17.6. A calculation that has not been disclosed shall not be relied upon in determining the fine.

¹¹ Section 11.2(b) provides for safeguards that implementing legislation is recommended to make mandatory.

(c) The alleged offender shall have a reasonable opportunity to replace any estimated value with reliable ship-specific evidence, including relevant certificates, manuals, plans, calibration tables, engine records, and other technical documentation. Where such evidence is accepted, it shall prevail over the estimated value regardless of whether it produces a higher or lower result. Where it is rejected, the decision shall give specific reasons.

(d) No adverse inference shall be drawn from the exercise of the right to remain silent, the decision not to make representations, or the non-production of material that the ship is not legally required to maintain. This does not affect findings based on the absence or improper maintenance of records that MARPOL requires to be kept and produced, where such absence constitutes the offence or direct evidence of it.

(e) Where an estimated methodology is applied because the ship's records are missing or unreliable, the decision should state this expressly. The same circumstance shall not also be treated as an aggravating factor when determining the penalty.

11.3 Contracting Parties should be guided by the IMO/ILO [Guidelines] on fair treatment of seafarers¹² when obtaining statements by the master and crew during inspection. The record of any statement should note the time, language and interpretation provided, and whether the person was informed that a fine may follow and that the statement may be used; a statement obtained under compulsion from an individual should not be the sole or decisive basis for a fine on that individual.

12. Security, detention and collection

12.1 Implementing legislation should permit the Competent Authority to require financial security (bond, bank guarantee, P&I club letter of undertaking) as a condition of release where a fine is likely to be imposed, and the ship would otherwise depart. The amount should be calculated from the Criteria, not set arbitrarily.

12.1^{bis} Where the fine cannot yet be determined because the investigation is incomplete, the Competent Authority should set the security quickly and on a stated basis, as follows:

- (a) Estimate the likely fine by using the evidence available at the time;
- (b) Set the amount within [48 hours]. The security is the higher amount of that estimated.
- (c) The security set does not prejudice the final decision. On determination it is reduced or released, and anything held above the fine finally imposed is returned without delay;
- (d) The security may be in the form of bond, bank guarantee, or a letter of undertaking from an insurer;
- (e) Where even a provisional estimate cannot be made within the period established under (b), the ship should be released against an undertaking to respond to the proceedings.

¹² Guidelines on fair treatment of seafarers detained in connection with alleged crimes, ILO: IMO 2025, DOI: <https://doi.org/10.54394/LLEI1217>.

Commented [MA-A16]: The sooner Section 20 is finalized, the sooner this provision becomes applicable.

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12.2 Detention should be subject to the prompt release framework of UNCLOS Article 226: a foreign vessel is not to be delayed longer than is essential for the investigation¹³ and is to be released promptly on reasonable procedure such as bonding, subject to the exceptions in Article 226(1)(c).

12.3 For cross-border recovery, Contracting Parties should identify which existing instruments they can use (bilateral mutual assistance, EU Framework Decision 2005/214/JHA,¹⁴ as amended on mutual recognition of financial penalties between EU Member States) and where the gaps lie. An unenforceable fine against a departed foreign ship is the practical weak point of the entire system, and the regional exchange (see Section 22) is the main mitigation: a Contracting Party that cannot collect, should at least ensure the finding is visible to the port State at the ship's next Mediterranean call.

13. Contracting Parties that are EU Member States

13.1 Contracting Parties which are EU Member States are separately bound by Directive 2005/35/EC as amended by Directive (EU) 2024/3101.¹⁵ The amending Directive entered into force on 5 January 2025 with a transposition deadline of 6 July 2027. It extends the scope of the ship-source pollution regime beyond oil and noxious liquid substances to harmful substances in packaged form, sewage, garbage and Exhaust Gas Cleaning System (EGCS) discharge waters and residues; requires administrative penalties in the form of fines imposed on the company held liable; and lists the circumstances competent authorities must take into account in setting the penalty.

13.2 The scope of the amended Directive and the scope of the Criteria are closely aligned, and the Directive's list of relevant circumstances substantially overlaps with Section II of the Criteria. EU Member State Contracting Parties should therefore transpose both in a single legislative exercise before July 2027, using the [Decision]'s Criteria as the calibration methodology within the Directive's framework. A coordinated legislative exercise may assist in avoiding duplication or inconsistencies between the two frameworks.

¹³ See also Art. 232 of UNCLOS.

¹⁴ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

¹⁵ 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.

PART C — TECHNICAL GUIDELINES

14. Detection

14.1 Contracting Parties should maintain a layered detection capability and record,¹⁶ for each detection, which layer produced it:

Table 1: Detection

Means	Primary use	Evidential weight alone
Satellite Synthetic Aperture Radar (SAR) (e.g. CleanSeaNet service, where available)	Slick detection, tasking authorities with verification	Low – an alert, not proof
Aerial surveillance (visual observation supported by side-looking airborne radar, infrared and ultraviolet line-scan sensors)	Verification, slick characterisation, ship association	High if slick and ship imaged together
Remotely Piloted Aircraft System (RPAS) / drones	Close-range verification, plume and stack observation	Moderate to high
Airborne or shore “sniffers”	Annex VI SOx screening for fuel-sulphur targeting	Screening only – triggers sampling
AIS and satellite-AIS analysis	Ship association, track reconstruction, anomaly detection	Corroborative
Voyage data recorder (VDR), where fitted and data is retained	Position, time, speed, course, depth under keel, main alarms and bridge audio at the time of the operation; corroboration or contradiction of the ship's records	Corroborative; subject to the retention periods
Port State control inspection	Record books, equipment, certificates, sampling	High — the primary route for Annex I record book and Annex VI fuel cases
Third-party reports (crew, NGO, industry)	Intelligence	Requires independent verification

14.2 A satellite alert that is never verified generates no case. Contracting Parties should set an internal verification target and record verification outcomes; EU Member States will in any event be subject to the verification and transparency requirements of the amended Directive.¹⁷

¹⁶ Art. 6(1) of MARPOL requires Parties to the Convention to cooperate in the detection of violations, “using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.”

¹⁷ See Article 10(d).

14.3 Port State control selection should be informed by pollution-specific risk indicators, such as prior MARPOL findings against the Company or ship, unverified satellite alerts correlated to the ship's track, unusual port reception facilities (PRF) delivery patterns relative to fuel consumption, and gaps in AIS coverage on typical discharge routes.

15. Evidence and chain of custody

15.1 The evidential package for a fine should be capable of surviving judicial review in the Contracting Party and scrutiny by the flag State. It should contain, as applicable:

- (a) the standard pollution detection and investigation report (Contracting Parties should use the common regional form);
- (b) surveillance imagery with unaltered metadata — time, position, sensor, altitude, operator;
- (c) samples, with chain-of-custody documentation;
- (d) the ship's documents: Oil/Cargo/Garbage Record Books, tank sounding and ullage records, bunker delivery notes (BDN), PRF receipts, engine and deck logs, sludge and bilge accounting, oily water separator alarm and 15 ppm equipment records, EGCS monitoring data;
- (e) the ISM documentation, including any relevant non-conformity reports;
- (f) master's and crew statements, obtained consistently with Section 11.3;
- (g) VDR data, where the ship is fitted with a VDR, and the data has been retained;
- (h) the calculation worksheet (Annex C).

15.2 The chain of custody should be documented from collection to analysis to storage, with: unique sample identifiers; sealed and tamper-evident containers; signed handover at each transfer; retention of a counterpart sample offered to the ship; and accredited laboratory analysis (ISO/IEC 17025). Where samples are taken for the purpose of comparative oil fingerprinting, they should be collected, handled, packaged and preserved in accordance with EN 15522-1:2023, Oil spill identification – Waterborne petroleum and petroleum products, Part 1: Sampling.

15.3 When sampling, the IMO guidelines (where available)¹⁸ should be followed, including the designated fuel oil sampling point arrangements and the fuel oil verification procedure in Appendix VI to MARPOL Annex VI. Where the analysis of an in-use or on-board sample is disputed, the confirmatory procedure and the 95% confidence framework in that Appendix govern; the fine should be calculated on the verified result, not the screening result.

15.4 Where a slick can be sampled and a source ship is suspected, comparative chemical fingerprinting (EN 15522-2:2023+A1:2025, Oil spill identification – Waterborne petroleum

¹⁸ Important reference documents include: Resolution A. 1206(34) on Procedures for Port State Control, 2025 – particularly Appendixes 3-5; IMO Manual on Oil Pollution, Section VI; Resolution MEPC.340(77) on 2021 Guidelines for exhaust gas cleaning systems; MSC-MEPC.2/Circ.18 on Guidelines for the sampling of fuel oil for determination of compliance with MARPOL Annex VI and SOLAS Chapter II-2; and Resolution MEPC 227(64) on Guidelines on implementation of effluent standards and performance tests for sewage treatment plants, as amended.

and petroleum products, Part 2: Analytical methodology and interpretation of results) provides the strongest link. Where sampling of the slick is not possible, the case should rest on the combination of imagery, track and ship-board records, and the reasoned decision should say so.

15.5 Record-book offences should be established by reconciliation, not by inspection alone. The standard technique should be:

- (a) calculate expected sludge generation from fuel consumption, bunker sulphur and water content, and engine running hours using ship-specific evidence or the estimation methodology in Table 4, engine and deck logbooks, VDR data and CCTV footage, over the period under review;
- (b) compare with sludge recorded as generated, incinerated, transferred and landed;
- (c) compare landings with PRF receipts obtained independently from the ports concerned;
- (d) test tank capacities and soundings against recorded quantities;
- (e) check signatures, dates, sequence, and the master's countersignature of each completed page;
- (f) for garbage, note that MARPOL Annex V requires quantities to be recorded in cubic metres, so any reconciliation and any per-unit fine increment must be volumetric.

An unexplained discrepancy between expected and accounted for sludge is the quantitative core of the case and is what converts a documentary offence into one that can be scaled under the Criteria.

16. General Principles of Quantification and Evidence

16.1 The conservative (lower-bound) estimation principle

Every quantification method (see Section 17) produces a range rather than a single definite value. For the purpose of establishing the minimum fine, the Competent Authority should adopt the lower bound of the best-supported estimate. The full estimation range should nonetheless always be recorded in the case file, and nothing prevents the imposing authority or court from relying on a central estimate when setting a fine above the minimum or when assessing damages in separate cost-recovery proceedings.¹⁹

16.2 Hierarchy of evidence

Where several quantification routes are available, they should be preferred in the following order, and estimates from two independent routes should be reconciled whenever the case is likely to be contested:

¹⁹ The lower-bound principle governs the establishment of the offence and the computation at Steps []. It does not apply to the estimation of economic benefit under paragraph 20.3, which is made on the best available central estimate; the principle exists to protect the alleged offender against overstatement of the offence and has no application to a calculation whose purpose is to strip a gain the offender in fact made. Nor does it apply to the treatment of quantity units under Step [], which is pro rata rather than rounded.

- (a) Direct measurement – Gauged tank soundings before/after, metered transfer quantities, weighed or measured waste volumes, certified fuel analysis.
- (b) Calibrated observation – Aerial or shipboard visual estimation using the Bonn Agreement Oil Appearance Code (BAOAC), supported by georeferenced photography and sensor data.
~~Records-based mass balance – Consumption calculations reconciling fuel consumed, waste generation rates, record-book entries, PRF receipts and bunker delivery notes.~~
- (c) Records-based mass balance – Consumption calculations reconciling fuel consumed, waste generation rates, record-book entries, PRF receipts and bunker delivery notes.
~~Calibrated observation – Aerial or shipboard visual estimation using the Bonn Agreement Oil Appearance Code (BAOAC), supported by georeferenced photography and sensor data.~~
- (d) Remote sensing alone – Satellite SAR detection provides area and position with high confidence but not thickness; it should be treated as a minimum-extent indicator pending verification.
- (e) Modelling – Drift and fate models may support source attribution and back-calculation but should not be the sole basis of a quantity finding. Where the ship is fitted with a VDR and the data has been preserved, the recorded track should be used to test the modelled release position and window. Recorded radar and AIS also show other traffic present at that time, and may exclude the suspect ship as readily as confirm it; an attribution is not established where the recorded data is inconsistent with the model.²⁰

16.3 Standard units and conversions

To make quantities comparable across the region and directly usable in the fine formula, Contracting Parties should record and express quantities in the following standard units. Where national practice uses a different unit, the standard unit should be reported in parallel.

Table 2: Standard units of quantification

Discharge type	Standard unit	Conversion method
Oil and oily mixtures (Annex I)	metric tonnes (t)	Multiply Volume × Density to calculate total metric tonnes. Reference density [0.90] t/m³ where the specific oil is unidentified; sample-determined density where available. Sludge quantified from tank soundings converts at [0.95] t/m³; the [0.90] reference density applies to oil on the sea surface.

²⁰ The order in paragraph 16.2 states a general preference. It is applied according to what the method is being used to prove:

- (a) where a discharge has been observed at sea and quantified under Section 17.1 by an observer trained against the Bonn Agreement photographic atlas, with sensor support where carried, that quantification measures the event itself and should be preferred for that discharge, the ship’s records serving to corroborate or contradict it;
- (b) where the offence consists in a quantity unaccounted for over a period, and no discharge has been observed, the records-based mass balance under Section 17.3 is the only available method and the hierarchy does not arise; and
- (c) where both are available for the same discharge, both should be computed and reconciled under Section 17.6, and the decision should state which was adopted and why.

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Discharge type	Standard unit	Conversion method
Noxious liquid substances (Annex II)	metric tonnes (t), by category X/Y/Z	Convert the volume to metric tonnes using the specific cargo density retrieved from the shipping document or P&A Manual.
Harmful substances in packaged form (Annex III)	metric tonnes (t) of contents	Extract the mass of contents from the dangerous goods manifest/declaration mass. Record the total weight in metric tonnes
Sewage (Annex IV)	cubic metres (m ³)	Take physical tank soundings to determine liquid volume and cross-reference volumes against ship-specific evidence or the estimation methodology in Table 4. Record final quantification in cubic metres.
Garbage (Annex V)	cubic metres (m ³), by garbage category	Sort the garbage into its respective garbage categories and measure the volume of each category. Record the amounts in cubic metres as per the Garbage Record Book (GRB) standard.
Air emissions (Annex VI)	tonnes of excess SO ₂ (or SO ₂ -equivalent); hours of non-compliant operation	Apply the excess SO ₂ formula at Section 17.5 to calculate total tonnes of excess SO ₂ (or equivalent). Log the exact total hours of non-compliant operation.
EGCS residue/washwater (Annex VI)	cubic metres (m ³); hours of non-compliant operation	Actual EGCS discharge-water flow should be established from the ship's approved EGCS documentation and monitoring records. Where those data are unavailable, any estimated flow rate used for estimation should be expressly identified as an evidential assumption and supported by an appropriate technical source. The 45 t/MWh value used in the IMO EGCS Guidelines is a normalisation reference and should not, without further justification, be treated as the actual flow rate of every system.

16.4 The minimum case file

For every case in which a fine is imposed, the file should contain at minimum:

- (a) the detection record (alert, sighting or inspection report, with position and time);
- (b) the quantification worksheet showing method, inputs, range and adopted lower bound;
- (c) the damage assessment recorded against the indicators in Section 18.2, with supporting imagery or survey data;

- (d) the area designations applicable to the position (see Section 19.2), with the source consulted;
- (e) sampling and analysis records where taken;
- (f) the record-book extracts and receipts relied on;
- (g) the fine calculation sheet; and
- (h) the disposition.

Annex A provides a combined checklist.

17. Measuring the Quantity of the Discharge

This Section sets out the technical methods for establishing how much pollutant was discharged. The applicable methods differ by Annex; Section 21 indicates, offence by offence, which methods apply.

17.1 Visual and aerial estimation – The BAOAC

For oil on the sea surface, the internationally accepted method of estimating volume from appearance is the BAOAC, used operationally by North Sea and Baltic surveillance flights for decades, which may be directly transferable to Mediterranean aerial and RPAS observation. The code relates the visual appearance of floating oil to a layer-thickness interval; multiplying the area covered by each appearance class by its thickness bounds, yields a minimum and maximum volume.

The code is validated for near-vertical observation from altitude by observers trained against the Bonn Agreement photographic atlas. Observation from a ship's bridge is oblique, at low grazing angles, and subject to glint, sea state and a limited horizon; it does not reproduce the conditions in which the appearance-to-thickness relationship holds. Shipboard appearance estimation may accordingly be used as corroboration but should not be the basis of a quantity finding, consistent with the position of calibrated observation in the hierarchy at Section 16.2.

Table 3: Bonn Agreement Oil Appearance Code

Code	Description - Appearance	Layer Thickness Interval (µm)	Litres per km2
1	Sheen (silvery/grey)	0.04 to 0.30	40 – 300
2	Rainbow	0.30 to 5.0	300 – 5000
3	Metallic	5.0 to 50	5000 – 50,000
4	Discontinuous True Oil Colour	50 to 200	50,000 – 200,000
5	Continuous True Oil Colour	More than 200	More than 200,000

The following method should be employed:

- (i) From georeferenced imagery or trained-observer estimation, determine the total slick area and the percentage of that area covered by each appearance code;

- (ii) compute the volume for each code as area × thickness, using the lower thickness bound for the minimum estimate;
 - (iii) sum across codes;
 - (iv) convert to tonnes using the measured or reference density (Table 2).
- The minimum estimate is the figure carried into the fine calculation.

Observers should be trained against the Bonn Agreement photographic atlas; where infrared/ultraviolet (IR/UV) line-scan sensors are carried, UV imagery bounds the total extent and IR the thicker (Code 3+) portion, and sensor-derived areas take precedence over unaided visual estimates.

Worked micro-example. A slick of 0.8 km² shows 70% sheen/rainbow (Codes 1–2) and 30% metallic (Code 3). Minimum volume (the minimum for the combined code 1–2 band is computed at the code 1 floor of 40 L/km², which is the lower bound for that band) = (0.56 km² × 40 L) + (0.24 km² × 5,000 L) = 1,222 L = 1.2 m³ = 1.1 t at density 0.90. Maximum = (0.56 × 5,000) + (0.24 × 50,000) = 14,800 L = 13.3 t. The fine floor is computed on 1.1 t; the range 1.1–13.3 t is recorded.

17.2 Satellite detection and verification

Synthetic aperture radar (SAR) satellite services – EMSA’s CleanSeaNet, and equivalent national or commercial services – detect probable oil slicks day and night and in all weather, and provide the slick’s position, outline, area and time, frequently together with a candidate source ship through correlation with AIS or LRIT tracks. Aerial surveillance, by contrast, is constrained by darkness and by weather, and the two layers are treated separately in Table 1. Where aerial verification is undertaken, it should be reported in the format at Annex B.

SAR cannot measure thickness: a satellite detection alone therefore establishes the area and position of a discharge and supports source identification, but the volume should be derived either from follow-up aerial observation under section 17.1 or, failing that, by applying the BAOAC code 1 minimum (40 L/km²) to the detected area as an absolute lower bound. EU Member State Contracting Parties should take account of the requirement under Directive (EU) 2024/3101 to analyse all high-confidence CleanSeaNet alerts by 6 July 2030 and to strive to verify at least 25% of those alerts through appropriate follow-up action. Contracting Parties which are not EU Member States are encouraged to set an equivalent internal verification target and to record verification outcomes, since the recurrence provisions and the regional database both depend on comparable detection across the basin.

17.3 Records-based mass balance (“consumption calculations”)

The [Decision] expressly bases the record-book offences on “quantity of sludge (or cargo, or garbage) not accounted for, based on consumption calculations”. The same technique quantifies discharges that were not observed at sea: an unexplained discrepancy may provide evidence of an unaccounted quantity and, together with the other evidence in the case, may support a finding concerning an unlawful discharge.

The general form should be:

Unaccounted quantity = Expected generation – (retained on board + landed to reception facilities per receipts + lawfully processed on board per records)

Expected generation should be computed from the ship's own operational records (fuel consumed, persons on board, voyage duration, cargo carried) using the ship-specific rates where documented (e.g. in the IOPP Certificate supplement, P&A Manual, Garbage Management Plan (GMP), Sewage Treatment Plant (STP) Certificate) and, failing those, the appropriate methodology in Table 4 should apply.

Table 4 establishes the methodology for estimating quantities where direct measurement is unavailable. These [Guidelines] do not prescribe fixed generation rates unless required by MARPOL or another applicable international instrument. Estimation should always be based on the best available ship-specific evidence. Where such evidence is unavailable or unreliable, the Competent Authority may apply conservative estimation methods or other technically justified assumptions, provided that:

- (a) the methodology and assumptions are identified in the case file;
- (b) they are disclosed to the alleged offender in accordance with Section 11.2;
- (c) they remain rebuttable by reliable ship-specific evidence; and
- (d) they are periodically reviewed under Section 22.2 in light of developments in technology, operational practice and international standards.

An estimation method is conservative for the purposes of these [Guidelines] where, in accordance with Section 16.1, it adopts the lower bound of the best-supported estimation range, so that the estimated unaccounted quantity does not exceed the quantity supported by the available evidence. Where an assumption would tend to increase the estimated unaccounted quantity beyond that lower bound, it is not conservative, and Section 16.1 applies accordingly.

Table 4: Methodology for mass-balance calculations²¹

Waste stream	Method of estimation	Conversion to the standard unit (Table 2)	Records to reconcile against
Annex I: engine-room sludge ²²	Estimate from fuel consumed using ship-	Convert volume to tonnes using measured	ORB Part I (Code C), bunker delivery notes,

²¹ Where the ship documents a stream-specific rate (IOPP Certificate Supplement, P&A Manual, GMP, STP Certificate, EGCS Technical Manual), that rate governs in place of the methodology suggested in this table, whether higher or lower; where the documented rate produces a higher figure than the estimate, that figure is an admission and is treated under 17.6. Where two conversion routes are available for the same quantity, the reconciliation rule in 17.6 applies. All conversion factors, like the rates themselves, are recorded on the quantification worksheet with the range, and are subject to the disclosure and rebuttal provisions at 11.2.

²² The K1 coefficients used in the sludge tank capacity formula in the Unified Interpretations to Regulation 12.3.1 of MARPOL Annex I are sometimes relied upon as proxies for sludge generation. The Unified Interpretation makes clear, however, that K1 is a design factor for determining the minimum sludge tank capacity and should not be construed as determining the quantity of oil residue that the machinery installation will actually produce. Actual sludge generation depends on operational factors, including fuel quality, purifier operating and flushing practices, and the quantity of drains and leakages collected in the machinery spaces. A sludge-generation rate derived solely from K1 should therefore not be treated as established. The same principle applies to any proposed generation rate or estimation factor for another waste stream. A value derived from equipment capacity, a design

Waste stream	Method of estimation	Conversion to the standard unit (Table 2)	Records to reconcile against
	specific evidence. Where reliable records are unavailable, the Competent Authority may apply a conservative estimation method or other technically justified method. Ship-specific evidence prevails where available.	sludge density or another technically justified conversion factor.	engine logs, reception facility receipts, incinerator log, sludge tank soundings.
Annex I: oily bilge water	Estimate from tank soundings, operational records and bilge handling records. Where necessary, a conservative estimation method may be used.	Record bilge water in m ³ . Where oil content is relevant, determine the oil fraction from analysis or other reliable evidence.	ORB Part I (Code D), OWS records, 15 ppm alarm/interlock records, bilge tank soundings, reception facility receipts.
Annex II: cargo residues	Determine the quantity from the stripping quantity specified in the ship's approved P&A Manual together with cargo records and stripping operations.	Convert volume to tonnes using the cargo density from the shipping documents or P&A Manual. Any hazard factor prescribed by Section III.2 of the Criteria is applied separately in Step [] once the sequence is adopted.	CRB, P&A Manual, prewash records, surveyor's certificates, cargo documents, reception facility receipts.
Annex III: packaged harmful substances	Determine quantity from the dangerous goods documentation and cargo records.	Net contents mass expressed in tonnes.	Dangerous goods manifest, declaration, stowage plan, tally records, container records.
Annex IV: sewage	Estimate from persons on board, voyage	Convert estimated volume to m ³ .	STP records, holding tank soundings,

standard or a regulatory limit is not, without more, evidence of the quantity actually generated. Where such a value forms part of an estimation methodology, the reasons for its use shall be stated in the case file and disclosed in accordance with paragraph 11.2(b).

Waste stream	Method of estimation	Conversion to the standard unit (Table 2)	Records to reconcile against
	duration, treatment records and holding tank data. Where ship-specific evidence is unavailable, a conservative estimation method may be applied.	Reconcile against treatment, lawful discharge and reception facility records.	certificates, crew and passenger lists, voyage records, reception facility receipts.
Annex V: garbage	Estimate from persons on board, voyage duration, garbage category and operational records. Where necessary, conservative estimation methods may be used.	Convert weight or volume to the standard unit using technically justified conversion factors appropriate to the garbage category.	GRB, GMP, reception facility receipts, incinerator log, crew and passenger lists, voyage records.
Annex V: incinerator ash	Determine quantity from incinerator records or measured quantities retained on board or delivered ashore. Where estimation is unavoidable, any conversion factor used shall be identified and justified in the case file.	Convert measured mass or volume using documented technical data where required.	Incinerator log, GRB, reception facility receipts, incinerator approval documentation.
Annex VI: fuel consumed during the period of non-compliance	Determine fuel consumption from engine logs, fuel change-over records and bunker records. Where these are unavailable, estimate using accepted engineering methods based on engine operating data and other objective evidence. Any	Convert estimated fuel consumption into the quantity required for the applicable Annex VI calculation. Record separately the documented duration of non-compliant operation where relevant.	Fuel samples and analysis, bunker delivery notes, engine logs, fuel change-over records, AIS data, engine technical data, FONAR and VDR data, where applicable.

Waste stream	Method of estimation	Conversion to the standard unit (Table 2)	Records to reconcile against
	assumptions shall be conservative and identified in the case file.		
Annex VI: EGCS discharge water	Determine the quantity from the ship's approved EGCS documentation, monitoring records and operational data. Where estimation is necessary, the methodology and assumptions shall be identified and justified in the case file.	Convert measured or estimated quantities to m ³ where appropriate. Record separately the duration of operation without an effective approved compliance method.	EGCS monitoring logs, ETM, OMM, residue-disposal receipts, operational records, fuel records.

Note: The methods in this Table give an estimated quantity, not a measured one. Use the lowest figure the evidence supports, in accordance with Section 16.1. Record on the worksheet the full range, every figure used and where it came from, and who checked the arithmetic.

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For continuing documentary offences, the same computation also establishes the duration criterion: the period during which entries are missing or wrong runs from the first missing/incorrect entry to the inspection date, and the offence begins when no proper entry is made ([Decision], Part I(7)).

17.3bis Limits of the calculation from records²³

The record-based mass balance set out in paragraph 17.3 above, works out a quantity rather than measuring it. It has four limits, which should be kept in mind whenever it is used.

(a) If the discharge was seen and measured at sea, that measurement is preferred (see paragraph 16.2.)

(b) The method requires the expected generation to be established from evidence. Since these Guidelines set no standard rates, if expected generation cannot be established, the calculation cannot be done.

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²³ False entries in the ship's records do not weaken this method. The calculation finds the quantity the records fail to account for, so entries that overstate what was landed ashore, or that are missing, make the unaccounted quantity larger, not smaller. False or missing entries are what the calculation is designed to reveal, and they also count against the ship under the culpability criterion in Section II.

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(c) The method requires the ship's records to be available and usable. If they are missing or unusable, the calculation cannot be completed. Their absence may itself be the offence, but it does not give a quantity.

(d) The method involves several calculations in sequence, and a mistake at any point carries through. Therefore, show every figure and its source on the worksheet; have the arithmetic checked by someone other than the person who did it, and record that check; and disclose the whole calculation to the person concerned under paragraph 11.2(b) before the fine is set.

17.4 Sampling and laboratory analysis

Oil identity between slick and suspect ship should be established by comparative fingerprinting under the EN 15522-2:2023+A1:2025 methodology (GC-FID/GC-MS low resolution analyses), performed by an accredited laboratory; a positive match transforms a quantity estimate into an attributed quantity.²⁴

For Annex II substances, water-column and residue samples identify the substance and hence its X/Y/Z category, which drives the hazard multiplier.

For sewage, indicator measurements (faecal coliforms, visible solids, discolouration) support the [Decision]'s visibility criterion but are corroborative rather than quantitative.

For Annex VI, fuel samples drawn under the MARPOL Annex VI Appendix VI verification procedure (MARPOL delivered sample or in-use sample from the fuel system) establish the sulphur content that feeds the excess-emission computation; the time between berthing and sample collection should be recorded, as existing Contracting Parties practice already requires.

17.5 Quantifying Annex VI emission offences

Sulphur: For the purposes of these [Guidelines], the quantity associated with a fuel-sulphur violation may be expressed as the estimated excess SO₂ attributable to fuel consumed during the period of non-compliance. Duration is the documented period of non-compliant operation. Where compliance is based directly on fuel sulphur content, excess SO₂ may be estimated as:

$$\text{Excess SO}_2 \text{ (kg)} = 20 \times (S_a - S_l) \times F$$

where S_a is the sulphur content found in the verified sample (% m/m), S_l is the limit that applied to the ship at the time and place (0.10% m/m in the Mediterranean Sea Emission Control Area from 1 May 2025), and F is the tonnes of that fuel burned while the limit applied. The factor

²⁴ A sample from the slick shows what substance was discharged, but on its own it does not show which ship discharged it. A single sample from the slick may, nevertheless, be sufficient where the link to the ship is established by other evidence. This will be so in particular where the discharge was observed, with the ship and the slick recorded together in the same imagery, or where the discharge is admitted. In such a case the sample shows the substance, and the observation shows the source. The decision should state which evidence establishes the link.

Commented [MA-A17]: The [Decision] does not refer to multipliers, this needs to be considered.

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~~20 converts sulphur to sulphur dioxide: one tonne of fuel at 1% sulphur contains 10 kg of sulphur, which produces about 20 kg of sulphur dioxide when burned. where S_v is the verified sulphur content of the fuel (% m/m), S_l is the applicable sulphur limit in the same units, and T is the tonnes of that fuel consumed while subject to the limit, established from the ship's operational and bunker records and, where appropriate, AIS-derived time in the relevant area. The factor 20 reflects the approximate conversion of fuel sulphur to SO_2 : one tonne of fuel containing 1% sulphur contains 10 kg of sulphur, corresponding to approximately 20 kg of SO_2 on complete oxidation. The calculation assumes complete conversion of fuel sulphur to SO_2 and should be identified as an estimation method adopted for the purposes of these [Guidelines].~~ Where a ship uses an approved equivalent under MARPOL Annex VI Regulation 4, compliance and any resulting excess emissions should instead be assessed by reference to the requirements applicable to that equivalent.

For other Annex VI offences, the appropriate measure should reflect the nature of the applicable requirement. For NO_x offences, relevant factors may include the duration of non-compliant engine operation and the applicable NO_x Tier, established from the EIAPP Certificate, NO_x Technical File, engine records and other compliance data. For ODS offences, the quantity should, where ascertainable, be expressed as the type and mass of ozone-depleting substance unlawfully emitted, supported by the ODS Record Book and relevant equipment and refrigerant records. For VOC offences, the assessment should reflect the particular requirement breached, including failure to use a required vapour emission control system or failure to implement an approved VOC Management Plan, rather than applying a general duration-based calculation.

For shipboard incineration offences, the relevant factors may include the duration of the unlawful incineration and the type and estimated quantity of material incinerated, established from the incinerator log, GRB and other relevant records. For EGCS offences, the quantity of non-compliant discharge water should, where relevant, be established from the ship's EGCS monitoring and operational records. Where EGCS residues have been unlawfully discharged, their quantity should be established from the best available records or measurements, taking into account that such residues are required to be delivered to adequate reception facilities and must not be discharged into the sea.

17.6 Reconciling estimates and stating the final figure

Where two or more methods yield estimates, the quantification worksheet should state each method's result and range, explain which is best supported under the hierarchy (see Section 16.2), and adopt as the operative figure the lower bound of the best-supported method – unless a lower-ranked method yields a higher lower bound that is itself uncontested (e.g. the ship's own records admit more than the aerial estimate shows), in which case the verified ship-specific figure governs. The worksheet, not the press summary, is the legally operative statement of quantity.

18. Assessing the Damage Caused

18.1 What counts as damage

The [Decision]’s General Criterion 3 requires consideration of “the damage caused by an illegal discharge to the environment or human health, including, where relevant, its impact on fishing, tourism and coastal communities”, with migratory patterns in the affected area also considered. Damage is thus wider than ecological harm alone: it includes deterioration in water quality; harm to habitats and species (with priority Mediterranean habitats, such as *Posidonia oceanica* meadows, coralligenous assemblages, marine turtle nesting beaches, monk seal habitat, and migratory corridors weighted most heavily); contamination of shorelines; interference with fishing and aquaculture (closures, gear contamination, market losses); interference with tourism and amenity (beach closures, especially in season); and risks to human health (contaminated bathing waters, seafood, air quality in ports for Annex VI).

Consistent with the region’s existing practice, damage operates in this framework as an aggravator, never as a precondition: the discharge itself is unlawful regardless of demonstrated impact.

These [Guidelines] do not classify damage on a graduated scale. No sufficiently established basis exists for converting environmental harm into a fixed numerical factor, and a scale adopted without one would be the weakest point of any Decision built on it. Damage is instead assessed on the recorded indicators at Section 18.2 and applied as a reasoned adjustment within the band to be provided in Section 20, the Competent Authority stating which indicators were established, on what evidence, and how each bore on the amount. Where an indicator is not established it is recorded as neutral, and not as mitigating.

18.2 Quantified damage indicators

The following measurable indicators should be recorded wherever available, both to support the assessment and any subsequent cost-recovery claim: kilometres of shoreline affected, split into sensitive and non-sensitive stretches (using national Environmental Sensitivity Index (ESI) shoreline maps where available); surface area of sea and of habitat affected (km²/ha); days of fishery, aquaculture or bathing closure; number and species of wildlife casualties; water-quality measurements against baseline; whether the impact occurred within or outside the tourist season; and clean-up effort expended (personnel-days, vessels, materials). For Annex VI offences, the relevant indicators are the excess emission mass, the duration of exposure, and the proximity of the emission to ports and population centres. The indicators are recorded whether or not they affect the amount in the individual case. Their systematic collection across the region is what would allow the Contracting Parties, in due course, to adopt a graduated scale on an evidenced basis under Section 22.2. Until then the assessment is qualitative and reasoned.

18.3 Relationship to cost recovery

The assessment of damage for fine-aggravation purposes under these [Guidelines] is kept administratively separate from the recovery of response, clean-up and reinstatement costs from the polluter, which proceeds under civil liability regimes and claims-management practice.

19. The Mediterranean baseline and sensitive areas

19.1 The entire Mediterranean Sea is a MARPOL Special Area under Annexes I and V and an Emission Control Area for sulphur oxides and particulate matter under Annex VI. Discharge and emission standards within it are accordingly stricter than in ordinary sea areas. Because that status applies region-wide, a Special-Area multiplier would attach to every Annex I and V discharge in the region and would merely re-scale every fine uniformly. It is therefore treated as embedded in the base fine rather than applied as a separate multiplier.

Commented [MA-A18]: This is important to be taken into consideration for the [Decision].

19.2 These [Guidelines] do not establish tiers of sensitivity within the Mediterranean, for the reason given in Section 18.1. The sensitivity of the affected area is instead established by reference to designations already made in law or by competent international bodies and is recorded as evidence bearing on the damage assessment under Section 18. The relevant designations include Specially Protected Areas of Mediterranean Importance under the SPA/BD Protocol;²⁵ nationally designated marine protected areas and, for EU Member States, Natura 2000 marine sites;²⁶ the Pelagos Sanctuary for Mediterranean Marine Mammals;²⁷ any Particularly Sensitive Sea Area (PSSA) designated by IMO;²⁸ Ecologically or Biologically Significant Marine Areas identified under the Convention on Biological Diversity;²⁹ and stretches identified as of high sensitivity in national Environmental Sensitivity Index mapping.

19.3 Recording the designation is not the same as finding damage. A discharge within a designated area is evidence that the receptor was sensitive; whether harm in fact occurred is determined on the indicators stipulated in Section 18.2. Conversely, a discharge outside any designated area which demonstrably harms a protected feature is assessed on that harm. The designation and its source are recorded in the case file in either event.

19.4 The [Decision]'s own criteria addressing location – distance from nearest land for Annexes IV and V, and vulnerability of habitat and protected species to lost fishing gear for Annex V – are applied as offence-specific criteria and not through this Section.

20. From Measurement to Fine: The Calculation Sequence

20.1 The sequence

This Section is reserved.

Commented [MA-A19]: The calculation sequence integrating the quantification outputs of Sections 17 to 19 with an SDR base-plus-multiplier framework shall be settled once the Contracting Parties have determined the minimum fine amounts in Section III of the Annex to the [Decision]. References elsewhere in these Guidelines to a numbered Step are to the steps of that sequence and appear as Step [] pending its adoption.

20.2 Interim application

~~Until the sequence is adopted, the Competent Authority determining a fine should address, and record in the worksheet at Annex C with the effect of each on the amount imposed: (a) the~~

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²⁵ See SPA/BD Protocol webpage at <https://spa-rac.org/en/the-center/spa-bd-protocol/>.

²⁶ See for interactive map <https://natura2000.eea.europa.eu/>.

²⁷ See Pelagos Sanctuary webpage <https://pelagos-sanctuary.org/>.

²⁸ See PSSA interactive website at <https://imohq.exposure.co/protecting-vulnerable-seas-from-shipping-and-marine-pollution>. In 2023, the North-Western Mediterranean Sea, France, Italy, Monaco and Spain was designated as a PSSA.

²⁹ See the interactive map at <https://www.cbd.int/ebsa/repository>.

~~quantity or duration established under Section 17, at the lower bound in accordance with Section 16.1; (b) the damage indicators established under Section 18.2 and the area designations applicable under Section 19.2; (c) each General Criterion of Section II of the Criteria—the degree of culpability or fault, including the [Decision]’s express indication that discharge at night may point to intent; any previous violation, applied in accordance with paragraphs 9.4 and 9.5; the damage assessed under Section 18; the level of cooperation with the authorities, obstruction being aggravating and genuine assistance mitigating; any economic benefit generated or expected, under paragraph 20.3; and the gross tonnage, ship type and pollutant type; (d) the offence specific criteria prescribed by Section III for the offence concerned, as identified in the Section 21 tables; and (e) the financial capacity of the person liable, under paragraph 9.2. Recording each criterion and its effect satisfies paragraph 11.1(d) and preserves comparability across Contracting Parties pending adoption of the sequence. Until the calculation sequence is adopted, the Competent Authority should consider applying the following eight steps in the order provided. Under each step it should record three things: what it found, what evidence that finding rests on, and what effect the finding had on the amount.~~

Step A: Has an offence been committed?

~~Establish that the discharge occurred, that it is attributable to the ship and to the person concerned, and that no exception under the applicable Annex to MARPOL applies. If no offence has been committed, no fine is imposed, and the remaining steps do not arise.~~

Step B: How much, or for how long?

~~Establish the quantity discharged, or the duration of the offence, under Section 17. Where the method produces a range, take the lower end of that range (Section 16.1). Express the result in the standard unit for that Annex (Table 2).~~

Step C: What harm, and where?

~~Record the damage indicators established under Section 18.2, and any area designation applicable to the position under Section 19.2.~~

Step D: What does the [Decision] require for this particular offence?

~~Apply the criteria that Section III of the Criteria prescribes for the offence concerned. The Section 21 tables list them offence by offence.~~

Step E: What does the [Decision] require in every case?

~~Apply each General Criterion in Section II of the Criteria.~~

Step F: Can the person pay?

~~Consider the financial capacity of the person liable, under paragraph 9.2. Inability to pay may reduce a fine but does not remove it.~~

Step G: Is the amount high enough?

~~Check the amount against two minimum levels. It should not fall below the minimum prescribed by Section III of the Criteria, once those amounts are adopted. It should not fall below the economic benefit estimated at Step E, in accordance with paragraph 20.3.~~

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Step H: Is the amount fair overall?

Consider the total against the gravity of what the ship did. If it is disproportionate, adjust it and state why. An adjustment under this step may not bring the amount below either minimum identified at Step G.

20.3 Economic benefit (interim)

MARPOL Article 4(4) requires penalties to be adequate in severity to discourage violations. That requirement applies irrespective of the state of the [Decision]'s figures, and pending adoption of the calculation sequence the Competent Authority should give effect to it as follows:

- (a) in every case in which a fine is to be determined, the Competent Authority should estimate the economic benefit generated, or expected to be generated, from the offence;
- (b) the estimate should comprise: (i) costs avoided, being expenditure that lawful compliance required and that was never incurred, including reception facility charges, any deviation, waiting and handling costs and, for Annex VI offences, the price differential between compliant and non-compliant fuel, taken at their full amount; (ii) costs deferred, being expenditure postponed rather than escaped, taken at the time value of the deferral only; and (iii) any revenue or other commercial advantage obtained, where evidenced;
- (c) the estimate should be made on the best available central estimate of quantity and cost, the lower-bound principle in Section 16.1 not applying to it,³⁰ and should be drawn from the regional reference-cost series maintained under Section 22.2 where available and otherwise from the evidence in the case;
- (d) a component that cannot be estimated on evidence should be recorded as not established and omitted; benefit is not estimated by conjecture;
- (e) the estimate, each component and its basis should be recorded in the economic benefit record in the worksheet at Annex C, and are disclosed and open to displacement on the same terms as any other element of the quantification, in accordance with paragraph 11.2; and
- (f) where the benefit is established on evidence, the fine imposed should not be less than the estimated benefit; a fine below that amount should be imposed only for reasons stated in the decision, and the corresponding confirmation in Part 6 of Annex C completed accordingly.

³⁰ A fine at or below the benefit obtained leaves the offender at break-even when detected and in profit when not detected, and does not meet the standard of adequacy in MARPOL Article 4(4). See also the footnote to Section 16.1.

21. Offence-by-Offence Application (Annexes I–VI)

This Section applies Sections 17–20 to each of the fourteen offences of the [Decision]’s Annex Part III, in the order and numbering of the offence-by-offence inventory. For each offence it identifies what is to be quantified, by which methods, and with what evidence. The [Decision]’s offence-specific criteria are shown for cross-reference.

21.1 Annex I — oil

Table 5: Annex I offences

Offence ([Decision] ref.)	Quantify	Methods (S)	Key evidence
1. Illegal discharge of oil (Reg. 15/34). Criteria: quantity of oil discharged; environmental damage.	Tonnes of oil (lower bound); damage indicators (S18.2); applicable area designation (S19.2)	BAOAC aerial/visual (S17.1); satellite + verification (S17.2); mass balance where discharge inferred from records (S17.3); fingerprinting to attribute (S17.4)	Georeferenced imagery; slick and on-board samples with chain of custody; AIS track; ORB extracts; Oily Water Separator (OWS)/interlock data; bunker notes; engine deck logbooks, VDR data, where applicable and retained
2. No ORB kept (Reg. 17/36). Criteria: period without ORB; sludge unaccounted, by consumption calculation.	Weeks without ORB; tonnes of sludge unaccounted	Mass balance (S17.3): fuel consumed × sludge rate – landed – incinerated	Bunker Delivery Note (BDN); engine logs; reception receipts; incinerator log; inspection report
3. ORB kept but entries missing/wrong/unsigned. Criteria: tonnes for which entries missing/wrong (per-tonne escalation); duration.	Tonnes affected; weeks of improper keeping (from first missing/wrong entry)	Mass balance (17.3); entry-by-entry reconciliation	ORB itself; receipts; sounding logs; photographs of tanks/pipework (incl. any bypass – aggravator under para. 20.2(c))

21.2 Annex II — noxious liquid substances

Table 6: Annex II offences

Offence	Quantify ³¹	Methods (S)	Key evidence
4. Illegal discharge of NLS (Reg. 13). Criteria: quantity (per-tonne escalation); category X/Y/Z; environmental damage.	Tonnes by substance and category; damage indicators (S18.2); applicable area designation (S19.2)	Cargo records and stripping/prewash mass balance (S17.3); sampling to identify substance/category (17.4); aerial observation where visible	CRB; P&A Manual; shipping documents; surveyor's certificates; samples; reception receipts; VDR data, where applicable and retained – recorded speed and position over the period of the operation, recorded ECDIS image, and depth under keel taken with the draught from the loading condition
5. No CRB kept (Reg. 15). Criteria: period without CRB; cargo unaccounted by consumption calculation.	Weeks without CRB; tonnes of cargo/residue unaccounted	Mass balance from cargo documents (S17.3)	Charter/cargo documents; terminal records; reception receipts
6. CRB kept but entries missing/wrong/unsigned. Criteria: duration; quantity and category (X/Y/Z) affected.	Weeks; tonnes by category	Entry-by-entry reconciliation (S17.3)	CRB; prewash records; port State control reports

Commented [MA-A110]: Contracting Parties may wish to consider changing in Criterion III.2.b.i 'based on consumption calculated' to 'based on cargo documentation, tanks sounding and prewash recordings'. If so, these should amend the key evidence and method.

Note: The conditions in Regulation 13 of MARPOL Annex II are cumulative, and the failure of any one of them establishes the offence irrespective of the quantity discharged. Quantity is relevant to the amount of the fine and not to liability. The Competent Authority should identify in the decision which condition was not satisfied and on what evidence. Where the offence consists in the failure to carry out a required prewash for a Category X substance rather than in a discharge exceeding permitted conditions, the residue quantity is relevant only to the amount.

21.3 Annex III — harmful substances in packaged form

Table 7: Annex III offence

Offence	Quantify	Methods (S)	Key evidence
7. Illegal jettisoning of packaged harmful substances	Tonnes of contents jettisoned (from goods declaration)	Manifest/dangerous-goods declaration	Dangerous-goods manifest; stowage

³¹ Conditions of lawfulness under Reg. 13, which are cumulative: ship proceeding en route at ≥ 7 kn (≥ 4 kn if not self-propelled); discharge ≥ 12 nm from nearest land; depth of water ≥ 25 m; and, where applicable to the category and the ship's date of construction as set out in the P&A Manual, discharge below the waterline through the underwater outlet at not more than its design rate. For Category X, whether the required prewash was carried out and the residues discharged to a reception facility.

Offence	Quantify	Methods (S)	Key evidence
(Reg. 8). Criteria: quantity of harmful substances in the packages; lack of proper stowage/packaging/labelling.	manifest mass); damage indicators (S18.2); applicable area designation (S19.2); stowage/labelling deficiency (aggravator)	reconciliation against cargo remaining on board; recovery and identification of packages where found (S17.4)	plan; container/tally records; photographs of recovered packages; witness statements

21.4 Annex IV — sewage

Table 8: Annex IV offence

Offence	Quantify ³²	Methods (S)	Key evidence
8. Illegal discharge of sewage (Reg. 11). Criteria: quantity; duration; distance from nearest land; instantaneous vs moderate rate; ship speed; visibility of effluent/solids/discoloration; lack of approved STP.	m ³ discharged (tank soundings / person-day rates per Table 4); duration and rate; position/distance from land; speed (≥4 kn en route requirement); damage indicators (S18.2); applicable area designation (S19.2)	Holding-tank mass balance (S17.3); STP log and certificate check; observation/sampling of effluent visibility (S17.4); AIS for speed/track; VDR data where applicable and retained	Tank soundings; STP certificate and log; AIS data; VDR data, where applicable and retained – recorded speed over the period of discharge, position, whether the ship was stopped at anchor or alongside, and bridge-routed holding tank level alarms; photographs of visible plume; witness reports; port discharge receipts

21.5 Annex V — garbage

Table 9: Annex V offences

Offence	Quantify	Methods (S)	Key evidence
9. Illegal discharge of garbage (Reg. 3/6). Criteria: quantity (per-unit escalation); type (plastics, wood, food waste, etc.); distance from nearest land; lack of comminuter/grinder	m ³ by GRB category (plastics separately); position; damage indicators (S18.2), including any fishing-gear or	GRB mass balance (S17.3); recovery and categorisation of debris; matching debris to ship (markings, cargo type, fingerprint	GRB; GMP; reception receipts; photographs of recovered items; AIS track vs available PRFs; VDR data,

Commented [MA-AI11]: Contracting Parties may wish to replace tonne with cubic meters in Criterion III.5.a.

³² **Compliance route relied on should be first established first.** Where Reg. 11.1.1 (holding tank, comminuted and disinfected or untreated): ship proceeding en route at ≥4 kn; ≥3 nm from nearest land where comminuted and disinfected by an approved system, otherwise ≥12 nm; discharge not instantaneous but at a moderate rate (see MEPC 157(55) on Recommendation on Standards for the Rate of Discharge of Untreated Sewage from Ships). Where Reg. 11.1.2 (approved treatment plant): plant type-approved and meeting the applicable operational requirements, and effluent producing no visible floating solids and no discolouration.

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Offence	Quantify	Methods (S)	Key evidence
treatment; feasibility of using a port reception facility without significant deviation; degree of harmfulness (e.g. carcinogenic cleaning agents; habitat/species vulnerability to lost fishing gear); lack of garbage management plan.	habitat interaction; reception-facility feasibility (route analysis); applicable area designation (S19.2)	items); route/deviation analysis from AIS	where applicable and retained
10. No Garbage Record Book kept (Reg. 10(3)). Criteria: period without GRB; quantity and type unaccounted by consumption calculation.	Weeks without GRB; m ³ unaccounted by category	Mass balance from persons on board × voyage days (Table 4)	Crew/passenger lists; voyage records; reception receipts; incinerator log
11. GRB kept but entries missing/wrong/unsigned. Criteria: quantity and type affected (per-unit escalation); duration.	m ³ affected by category; weeks	Entry-by-entry reconciliation	GRB; receipts; incinerator log

21.6 Annex VI — air pollution, incineration, EGCS

Table 10: Annex VI offences

Offence	Quantify	Methods (S)	Key evidence
12. Illegal emissions of ODS, NO _x , SO _x /PM, VOC (Reg. 12–15). Criteria: duration of emission; type of substances.	Excess SO ₂ tonnes and/or hours of non-compliant operation (S17.5); substance type; period in the Med SO _x ECA	Fuel sampling under Appendix VI procedure (S17.4); bunker documentation; AIS time-in-area; remote/sniffer measurements as screening; EIAPP/engine records for NO _x ; equipment records for ODS	MARPOL fuel samples and analysis (with berthing-to-sampling time recorded; BDNs; engine and fuel changeover logs; AIS data; Fuel Oil Non-Availability Report (FONAR) if filed; VDR data, where applicable and retained
13. Illegal shipboard incineration (Reg. 16). Criteria: duration; type of substances incinerated.	Hours of unlawful incineration; substance types/mass	Incinerator log reconciliation; GRB cross-check; position data for port/harbour/estuary prohibition	Incinerator type-approval and log; GRB; AIS position during operation; witness/port reports
14. Illegal discharge of EGCS residue (Reg. 4/14). Criterion: lack of operation of an	Hours of operation without operable compliance method; m ³ of non-	EGCS operation and monitoring data (pH, Polycyclic Aromatic Hydrocarbons	EGCS monitoring logs and alarms; EGCS Technical Manual (ETM)/

Commented [MA-AI12]: In Criterion III.6.a, Contracting Parties need to change 'particular matter' to 'particulate matter (PM)'. Also, the abbreviation in Criterion III.6.c should read 'EGCS' and not 'ECGS'.

Commented [MA-AI13R12]:

Offence	Quantify	Methods (S)	Key evidence
equivalent compliance method (EGCS).	compliant washwater/residue (S17.5); fuel sulphur actually used	(PAH), turbidity records); residue-disposal receipts; fuel sampling (S17.4)	Onboard Monitoring Manual (OMM); residue receipts; fuel samples; port entry records

Malfunction defences: for Annex VI offences, a properly filed FONAR or documented EGCS malfunction with prompt notification and rectification bears on culpability as a Section II criterion addressed under paragraph 20.2, not on the quantification itself; the quantities should be computed identically, and the mitigation applied transparently in the culpability record.

22. Recording, Regional Sharing and Standing Review

22.1 The regional case-data standard

Every concluded case should be entered in the national record and the regional MENELAS database with at least the following fields, which correspond one-to-one to the minimum case file, namely case ~~ID-reference~~ and Contracting Party; ship identity (IMO number; ~~and flag-type, GT~~); ~~Company, as defined in Section 3~~; offence ~~(s) by [Decision]~~ number ~~under Part III of the Annex to the Decision (1–14)~~, and ~~the MARPOL Annex and regulation concerned~~; ~~date of the offence or, for a continuing offence, the date on which it ceased~~; ~~maritime zone in which the offence occurred~~; ~~date, position~~; ~~detection route, selected from: satellite; aerial surveillance; RPAS; sniffer; AIS analysis; port State control inspection; third-party report; other detection route~~; ~~quantity or duration established, with the unit used~~; ~~quantification method(s), adopted lower bound quantity and range; damage indicators established, and the adjustment made on them; culpability findings; cooperation/obstruction findings; economic-benefit estimate and whether any economic benefit floor overrode the calculated figure; fine calculated, fine imposed, in units of account; fine imposed, whether the decision is final and, if so, the date on which it became final; if an appeal is pending, that fact; and the penalty finally awarded after any appeal, and whether it was collected; whether an appeal is pending or has been determined and with what outcome; whether flag State proceedings were instituted, concluded or discontinued; whether any set off under paragraph 8.4 was applied; the penalty finally awarded after any appeal; other sanctions (detention, etc.); and cross-references to any cost-recovery claim.~~

~~The penalty finally awarded, not the fine imposed only, should be recorded.~~ Access should be restricted to enforcement authorities subject to paragraph 22.3; a [five]-year look-back supports the recurrence provisions region-wide.

22.2 Standing review mechanism

The Contracting Parties should review, at intervals not exceeding [] ordinary Meetings of the Contracting Parties: the SDR base figures and per-unit rates (against inflation, SDR valuation and observed deterrence); the estimation methodology of Table 4 (against fleet and technology change, e.g. new fuels and treatment systems); the reference-cost series for

economic-benefit estimation established under this paragraph; the area designation in accordance with S19.2; and whether the accumulated indicator data now supports adoption of a graduated damage scale. The review should draw on the regional database, as its evidence base. Alignment should also be monitored with the EU regime as amended (applicable to EU Contracting Parties from 6 July 2027), so that regional and EU implementation reinforce rather than diverge from one another.

22.3 Data protection

The regional database contains data (only the fields listed in paragraph 22.1 are transmitted) relating to ships, companies and, where the owner or operator is a natural person, to individuals. Contracting Parties should ensure that entry, transmission, storage, and consultation comply with the data protection law applicable to them. For Contracting Parties that are EU Member States, this includes Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and national implementing legislation, under which findings of an offence and of a penalty imposed attract additional requirements.

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Annex A — Case Checklist (all offences)

A single-page checklist for the investigating authority; items marked * apply as relevant to the offence type.

Stage	Checklist items
Detection & position	Alert/sighting/inspection record; date-time (UTC); position and source (satellite, aerial, AIS, radar, witness); applicable area designations and source consulted
Evidence securing	Georeferenced imagery; samples — sea surface*, on board*, fuel* - sealed, labelled, chain-of-custody log opened; record books copied/secured (ORB/CRB/GRB*); VDR data where applicable and retained; receipts, BDNs, logs copied; AIS/VMS track exported; witness statements; photographs of equipment (OWS, STP, incinerator, EGCS, any bypass) *
Quantification	Method(s) selected per Section 16.2 hierarchy; worksheet completed with inputs, range, lower bound; second method reconciled where contested; units per Table 2
Damage	Indicators recorded in Section 18.2, with evidence for each; expert review where significant harm is alleged; referral to valuation or cost recovery where clean-up or reinstatement is in prospect*
Criteria & calculation	[Decision] General Criteria addressed (culpability, recurrence check incl. regional database, cooperation, economic benefit, GT/type); offence-specific criteria addressed (Section 21 table row); criteria-and-effects record per paragraph 20.2 completed; economic benefit addressed per paragraph 20.3
Disclosure	Quantification worksheet disclosed in full under 11.2(b), with date; estimation methods and assumptions identified as such; period allowed for rebuttal; ship-specific evidence received and addressed
Disposition & recording	Fine imposed and legal basis; other sanctions; appeal outcome when known; database entry per Section 22.1; feedback to detection service *

Commented [MA-A114]: Contracting Parties may wish to add as criteria: measures taken by the company or other legal or natural person liable in order to prevent the discharge or mitigate its impact.

Annex B – Aerial Verification Report Format

The standard reporting format adopted by the Contracting Parties may be found [here](#).

ANNEX C: Recommended — ~~F~~fine calculation worksheet to be completed in accordance with respective national legal requirements.

One worksheet is completed for each offence. Where more than one offence arises from a single incident, complete a worksheet for each, then complete Part 9 once for the incident.

This worksheet forms part of the reasoned decision required by paragraph 11.1(d). Every entry marked reasons must be completed in narrative form; a tick or a figure alone does not satisfy that paragraph. Every figure entered here is disclosable under paragraph 11.2(b), and the worksheet is served with the decision.

Case reference: _____ Date opened: _____ Date of decision: _____

Competent Authority: _____ Investigating officer: _____

Deciding officer: _____ File location of evidence: _____

PART 1 — SHIP, COMPANY AND PRIOR FINDINGS

1.1 Ship

Field	Entry
Name	
IMO number (welded plate verified? Y/N)	
Flag; date of current registration	
Ship type	
Gross tonnage	
Year of build	
Classification society; date of current class	
P&I cover (IG member? Y/N)	

1.2 Company and interests

Field	Entry
Company (ISM), per Section 3	
Registered owner	
Manager / bareboat charterer	
Master (name, nationality, licence)	

Field	Entry
Person against whom the fine is proposed	

1.3 Prior findings — complete one column per finding relied on. A finding may be counted for recurrence purposes only where every column is satisfied; see paragraph 9.5.

Test (para. 9.5)	Finding 1	Finding 2	Finding 3
Date of finding			
State and authority			
Offence found			
(a) Final? Date of finality			
(b) Same Company (Section 3)?			
(c) Comparable offence?			
(d) Comparable standards (Section 11)?			
(e) Within the lookback, computed from finality?			
(f) Disclosed to the person; date; language			
Contested? Outcome of the challenge			
Counted for recurrence?			

Prior findings not counted, and why: _____

Ship history (same ship, different management) — recorded but not counted as recurrence:

PART 2 — OFFENCE AND JURISDICTION

2.1 Offence

Field	Entry
Offence number (Section 21) and description	
MARPOL Annex and regulation	

Field	Entry
[Decision], Section III reference	
Date(s) of offence; for a continuing offence, commencement and cessation	
Continuing offence? (para. 10.1)	
Limitation position; date of expiry	

2.2 Jurisdiction

Field	Entry
Maritime zone of the offence	
Capacity in which the Party acts (flag / port / coastal)	
UNCLOS basis relied on (Art. 217 / 218(1) / 220(2)–(6))	
Where Art. 218(1) relied on: restriction in Art. 218(2) considered — reasons	

2.3 Flag State and duplication (paragraphs 6.3 and 8.4)

Field	Entry
Flag State notified — date, addressee, method	
Art. 231 notifications made (other concerned States; consular)	
Six-month diary date under Art. 228	
Flag State proceedings instituted? (date)	
Flag State proceedings concluded? (date, outcome, amount, collected?)	
Exception relied on (major damage / repeated disregard) — reasons	
Verification by Competent Authority (para. 8.4(d)) — reasons	
Consequence: terminate / suspend / set off / proceed — reasons	
Set-off applied: amount and conversion	

PART 3 — DETECTION, EVIDENCE AND PROCEDURE

3.1 Detection

Field	Entry
Detection layer(s) (Table 1)	
Satellite alert reference, date, time	
Aerial or RPAS verification undertaken?	
If not verified: consequence for quantity noted (para. 17.2)	
Ship association method (AIS / LRIT / visual / sampling)	

3.2 Evidence inventory — attach index

Item	Held?	Chain of custody reference
Investigation report (Annex B format)		
Imagery with unaltered metadata		
Samples (slick / in-use / on-board / MARPOL sample)		
Laboratory analysis (accredited body, method)		
Record book(s) — ORB / CRB / GRB		
Bunker delivery notes; PRF receipts		
Equipment records (OWS, 15 ppm alarm, STP, incinerator, EGCS)		
VDR data (date of operation; retention period; date and time preservation requested; extraction method and hash; annual performance test certificate)		
ISM documentation, non-conformity reports		

Item	Held?	Chain of custody reference
Quantification worksheet (Part 5)		

3.3 Procedural safeguards (paragraph 11.1)

Safeguard	Date / entry
Written notice of alleged offence served	
Language of notice; translation provided	
Quantification worksheet disclosed in full (11.2(b))	
Period allowed for representations and rebuttal	
Representations received (date); oral hearing held?	
Legal representation; consular notification	
Appeal rights notified — forum, time limit, suspensive effect	

PART 4 — DEFENCES AND CLAIMED EXCEPTIONS

Liability is resolved before quantum. Complete this Part before Part 5. Where no exception is invoked, record “none invoked” and proceed.

Field	Entry
Exception invoked (Annex and regulation)	
Triggering event established? — reasons	
All reasonable precautions taken after the event? — reasons	
Intent, or recklessness with knowledge? — reasons	
Where applicable: approval by the Administration produced	
Contemporaneous records supporting the claim (list)	
Records the Authority would expect to exist and which do not	
Report under MARPOL Art. 8 / Protocol I — made (date, addressee) or absent	

Field	Entry
Annex VI: Reg. 4 equivalent — approval, ETM, monitoring data for the period	
Annex VI: FONAR filed? Best-efforts evidence; pattern of prior FONARs	
Finding — exception made out (proceedings end) / not made out but partly evidenced (mitigating — record under culpability) / fabricated (aggravating — record under culpability and cooperation)	

PART 5 — QUANTIFICATION

5.1 Method (Sections 16 and 17)

Field	Entry
Method selected (Section 16.2 hierarchy) and reasons	
Standard unit for this offence (Table 2)	
<u>Was the discharge seen and measured under Section 17.1? If a figure from records was also worked out, which one was used and why (paragraph 16.2)</u>	
Where two methods available: reconciliation under 17.6 — reasons	

5.2 Inputs — every input proved independently; see paragraph 11.2(a)

Input	Value	Source	Proved from

5.3 Estimation methods, assumptions and conversion factors applied

Estimation method, assumption or conversion factor	Value used	Source (Table 4 / Table 2)	Ship-specific evidence produced?	Applied? If not, reasons

Estimation method, assumption or conversion factor	Value used	Source (Table 4 / Table 2)	Ship-specific evidence produced?	Applied? If not, reasons

5.4 Result

Field	Entry
Range produced (lower — upper)	
Lower bound adopted for the offence computation (Section 16.1)	
Central estimate for economic benefit (para. 20.3) only	
Difference between the two, explained — reasons	
Duration figure, where the offence escalates on duration	
De minimis threshold; engaged?	
<u>Calculations checked by (name, date)</u>	

PART 6 — ~~CALCULATION-DETERMINING THE FINE~~ (INTERIM FORM)

~~The calculation sequence is reserved with Section 20 and will be issued when the Contracting Parties adopt the minimum amounts. Until then, work through Steps A to H of paragraph 20.2 in order and complete this Part.~~

~~Complete every row. Where a step or criterion has no effect on the amount, record "nil" and give the reason; do not leave a row blank. All amounts are in units of account (SDR). The step-based calculation is reserved with Section 20 and will be issued when the sequence is adopted. Pending adoption, complete the following record, which implements paragraph 20.2. Every row is completed; a criterion with no effect is recorded as "nil — reasons", not left blank. All amounts are in units of account (SDR).~~

Step A: Has an offence been committed?

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<u>Question</u>	<u>Finding and evidence – reasons</u>
<u>Did the discharge, emission or documentary breach occur?</u>	
<u>Is it attributable to this ship?</u>	
<u>Is it attributable to the person against whom the fine is proposed?</u>	
<u>Was any exception under the applicable Annex invoked? (If yes, complete Part 4 before continuing)</u>	
<u>Does an exception apply?</u>	

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<u>Step</u> <u>Criterion</u> <u>(source)</u>	<u>Criterion</u> <u>(source)</u> <u>Finding</u> <u>and evidence</u>	<u>Finding and</u> <u>evidence</u> <u>Effect</u> <u>on amount</u> <u>—</u> <u>reasons</u>	<u>Effect on</u> <u>amount –</u> <u>reasons</u> <u>Running</u> <u>amount (SDR)</u>	<u>Running</u> <u>amount</u> <u>(SDR)</u>
<u>B</u> Quantity or duration Section III minimum for the offence (once adopted)	<u>Section 17; lower bound under Section 16.1; unit under Table 2</u>			
<u>C</u> Damage Quantity or duration established (Section 17; lower bound, Section 16.1)	<u>Indicators established (Section 18.2)</u>			
<u>C</u> Area Damage indicators (Section 18.2)	<u>Designations applicable to the position (Section 19.2)</u>			
<u>D</u> Offence-specific Area designations (Section 19.2)	<u>Section III of the Criteria; Section 21 table row for this offence – list each criterion and its effect</u>			
<u>E</u> Culpability Culpability or fault (Section II; night discharge, bypass piping, record falsification as indicators)	<u>Section II – deliberate, reckless, negligent or accidental; night discharge, bypass piping, falsified</u>			

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<u>Step</u> <u>Criterion</u> (source)	<u>Criterion</u> (source) <u>Finding</u> <u>and evidence</u>	<u>Finding and</u> <u>evidence</u> <u>Effect</u> <u>on amount</u> — <u>reasons</u>	<u>Effect on</u> <u>amount</u> — <u>reasons</u> <u>Runnin</u> <u>g amount (SDR)</u>	<u>Running</u> <u>amount</u> (SDR)
	<u>records as</u> <u>indicators</u>			
<u>E Previous</u> <u>violation</u> <u>Previous</u> <u>violation (paras 9.4</u> <u>9.5; Part 1.3)</u>	<u>Section II;</u> <u>paragraphs 9.4</u> <u>and 9.5; Part 1.3</u> <u>of this worksheet</u>			
<u>E Cooperation or</u> <u>obstruction</u> <u>Cooperation</u> <u>or obstruction (Section</u> <u>II)</u>	<u>Section II –</u> <u>obstruction</u> <u>increases,</u> <u>genuine</u> <u>assistance</u> <u>reduces</u>			
<u>E Economic</u> <u>benefit</u> <u>Economic</u> <u>benefit (para. 20.3;</u> <u>central estimate — see</u> <u>record below)</u>	<u>Section II;</u> <u>paragraph 20.3 –</u> <u>central estimate;</u> <u>complete the</u> <u>record below</u>			
<u>E Gross tonnage, ship</u> <u>type, pollutant</u> <u>type</u> <u>Gross tonnage,</u> <u>ship type, pollutant</u> <u>type (Section II)</u>	<u>Section II</u>			
<u>Offence-specific</u> <u>criteria (Section III;</u> <u>Section 21 table row)</u> <u>E</u> <u>Financial capacity</u>	<u>Paragraph 9.2 –</u> <u>burden on the</u> <u>person asserting</u> <u>it</u>			
<u>Amount before Steps G and H</u> <u>Financial capacity (para. 9.2)</u>				
<u>Measures to prevent or</u> <u>minimise damage</u>				
<u>Fine determined</u>				

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Step E: Economic benefit record (paragraph 20.3) – — computed on the best available central estimate, not the lower bound

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Component	Basis and source	Amount (SDR)	Avoided or deferred?
Reception facility charges avoided			
Deviation, waiting and handling avoided			
Fuel price differential (Annex VI)			
Costs deferred — time value only			
Revenue or commercial advantage obtained			
Components not established and therefore omitted			
Total estimated benefit			
REMPEC reference-cost series used (edition and date)			

Step G: Is the amount high enough? Confirmations — confirm each

<u>Minimum level</u> <u>Confirmation</u>	<u>Confirmed Amount</u> <u>(SDR)</u>	<u>Met?</u>	<u>If not, reasons</u>
<u>Minimum prescribed by Section III of the Criteria, once adopted</u> <u>Fine not below the Section III minimum for the offence, once adopted</u>			
<u>Estimated economic benefit (paragraph 20.3)</u> <u>Fine not below the estimated economic benefit (para. 20.3), or reasons stated</u>			
<u>Amount after Step G</u> <u>One incident, several offences: quantity escalation applied once to the same quantity; obstruction counted once against the aggregate (Part 9)</u>			

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<u>Minimum level Confirmation</u>	<u>Confirmed Amount (SDR)</u>	<u>Met?</u>	<u>If not, reasons</u>
Absence of records relied on for estimation not also counted as aggravating (para. 11.2(e))			

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Step H: Is the amount fair overall?

<u>Question</u>	<u>entry – reasons</u>
Assessment of the total against the gravity of the conduct	
Adjustment applied? Amount and direction	
Confirmation: the adjusted amount is not below either minimum at Step G	
Fine determined (SDR)	

Checks before the decision is issued

<u>Check</u>	<u>Confirmed</u>
Where more than one offence arises from one incident: quantity counted once, and obstruction counted once against the total (Part 9)	
The absence of records relied on at Step B has not also been counted against the ship at Step E (paragraph 11.2(e))	
Each step above records a finding, its evidence and its effect, as required by paragraph 11.1(d)	
The completed worksheet has been disclosed to the person concerned under paragraph 11.2(b)	

PART 7 — DETERMINATION

<u>Field</u>	<u>Entry</u>
Fine determined (SDR)	
Set-off under para. 8.4(b) (SDR)	

Field	Entry
Amount payable (SDR)	
National currency equivalent	
IMF conversion rate and date applied	
Person on whom imposed	
Payment due date; instalments	
Security or bond required; amount; form; date released	
Detention: imposed / released (dates); Art. 226 compliance — reasons	

Decision issued by: _____ Date: _____ Signature: _____

Served on: _____ Date and method: _____ Language: _____

PART 8 — APPEAL AND OUTCOME

Field	Entry
Appeal lodged (date, forum)	
Suspensive effect?	
Outcome; date of finality	
Amount finally awarded	
Amount collected; date	
Where a prior foreign finding relied on under paragraph 9.5 was later set aside: decision reopened? refund made? REMPEC notified?	

PART 9 — AGGREGATION ACROSS OFFENCES

Complete once per incident where more than one worksheet has been prepared (see the confirmations in Part 6).

Offence	Worksheet reference	Fine before aggregation (SDR)

Offence	Worksheet reference	Fine before aggregation (SDR)
Sum before aggregation		

Field	Entry
Graver offence identified for the purposes of the confirmations in Part 6 — reasons	
Quantity escalator applied to that offence only; confirmed	
Where the discharge is established only by inference from the record-book shortfall: one offence charged, not two — reasons	
Obstruction applied once — in which worksheet	
Continuing offence not multiplied per omitted entry (para. 10.1(b))	
Totality assessment — reasons	
Reduction applied to the aggregate	
Aggregate fine determined (SDR)	
Recorded as one prior finding for the purposes of paragraphs 9.4–9.5	

PART 10 — REGIONAL REPORTING

Fields transmitted to REMPEC under paragraph 22.1.

Field	Entry
Case reference and Contracting Party	
Ship identity: IMO number and flag	
Company (Section 3)	
Offence number (1-14); MARPOL Annex and regulation	
Date of offence, or date of cessation for a continuing offence	
Maritime zone	
Fine imposed (SDR)	
Detection route (closed list, para. 22.1(g))	

Field	Entry
Quantity or duration; unit	
Decision final? Date of finality; or appeal pending	
Penalty finally awarded; collected?	
Date transmitted; officer	

All amounts are expressed in units of account (Special Drawing Rights) in accordance with Section 7. Bracketed values in the [Guidelines] remain to be determined by the Contracting Parties.