



Annual Meeting of the Network of Prosecutors on Environmental Crime  
(ENPRO)

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## **Helcom & OSPAR Regional Action Plan on Marine Litter**

### **Prevention of and Sanctions on Illegal Waste Disposal from Ships at Sea**

Presented by Germany

#### **Helcom & OSPAR Regional Action Plan on Marine Litter**

ENPRO is invited:

to note and consider the recommendations from the seminar on prevention of and sanctions on illegal waste disposal from ships at sea, held in Berlin/Germany 29 - 30 November 2019.

#### **Background**

In 2014 and 2015 respectively, the Regional Seas Conventions OSPAR<sup>1</sup> (Oslo-Paris-Convention on the Protection of the Marine Environment) and HELCOM<sup>2</sup> (Helsinki-Convention on the Protection of the Marine Environment of the Baltic Sea) adopted their Regional Action Plan on Marine Litter (OSPAR RAP ML<sup>3</sup> & HELCOM RAP ML)<sup>4</sup> with the aim of achieving a significant reduction of inputs and existing amounts of marine litter by 2025 in order to reduce/prevent

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<sup>1</sup> <https://www.ospar.org/>.

<sup>2</sup> <http://www.helcom.fi/>.

<sup>3</sup> <https://www.ospar.org/work-areas/eiha/marine-litter/regional-action-plan>.

<sup>4</sup> <http://www.helcom.fi/action-areas/marine-litter-and-noise/marine-litter/marine-litter-action-plan>.

harm to the coastal and marine environment. Both Action Plans follow a similar structure in that four pillars are outlined, serving as a framework to address the following issues:

- A. the reduction of litter from sea-based sources and
- B. the reduction of litter from land-based sources,
- C. the removal of existing litter from the marine environment and
- D. education and outreach on the topic of marine litter.

Within each pillar, several proposals for action to reduce marine litter can be found<sup>5</sup>. Both the OSPAR and HELCOM RAP MLs include actions which address the illegal discharge of onboard generated waste that is regulated by, amongst others, MARPOL Annex V<sup>6</sup> which prohibits discharging most types of onboard generated waste. The relevant actions are:

#### OSPAR

- **Action 32:** "Identify best practice in relation to inspections for MARPOL Annex V ship generated waste, including better management of reporting data, taking into consideration the Paris MoU on port state control."
- **Action 33:** "Seek dialogue with the Paris MoU to take the risk of illegal waste discharges into consideration for the prioritization of port state control inspections."
- **Action 38:** "Analyze penalties and fines issued by Contracting Parties for waste disposal offences at sea to highlight the differences, trends, problem areas and issues to relevant organizations, such as the North Sea Network of Investigators and Prosecutors."

#### HELCOM

- **RS2** Develop best practice in relation to inspections for MARPOL Annex V, including harmonized management of data. Support regional coordination of International Maritime Organization (IMO)<sup>7</sup> regulations in accordance with EU requirements for those HELCOM countries which are EU members. Best practice developed in cooperation with Paris Memorandum of Understanding (MoU)<sup>8</sup> by 2017
- **RS3** Further work on implementation and harmonization of the no-special-fee system in ports of the Baltic Sea countries, addressing: – gaps in existing regulations, – enforcement and practices concerning shipping, – port reception facilities auditing to assess adequacy of garbage collection, – fair waste burden sharing between ports.

#### **Preparation of the study 'Analysis of penalties and fines issued by OSPAR and HELCOM CPs for waste disposal offences at sea'**

As task lead for these actions both within HELCOM and OSPAR, Germany commissioned a study in 2016 to address these actions. The aim was to explore the respective situation and handling in the Contracting Parties and elaborate and propose recommendations for improvement. As a result, the supporting study 'Analysis of penalties and fines issued by OSPAR and HELCOM CPs for waste disposal offences at sea' has been delivered to the last

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<sup>5</sup> This also holds true for MEDPOL, BUCHAREST as well as G7/20.

<sup>6</sup> <http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20%28copies%29/MARPOL.pdf>.

<sup>7</sup> <http://www.imo.org/en/Pages/Default.aspx>.

<sup>8</sup> <https://www.parismou.org/>.

HELCOM RAP ML workshop and to OSPAR EIHA 2017<sup>9</sup>. HELCOM MARITIME 17-2017 took note of the draft report (document 6-3). By way of a follow-up, it was planned to organize a seminar with the participation of interested CP as well as other relevant stakeholders. In three working groups, the following recommendations were discussed.

Recommendation	Proposed measures / initiatives	Addresses
<b>Working group “Detection of illegal discharges and securing evidence thereof”</b>		
1. Options to impose fines or fees could be built into guidance to support the work undertaken by inspection authorities	<ul style="list-style-type: none"> <li>~ Fishing gear has to be marked</li> <li>~ Airborne surveillance (practiced in NL)</li> <li>~ Before inspection, the ship crew is asked whether the garbage record book is correct. If the answer is yes, but the book is incorrect, then an intention can be judged.</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
2. Existing guidance documents on investigations, such as the "Investigative Manual for illegal oil discharges from vessels" or the NSN's "North Sea Manual on Maritime Oil Pollution Offences", could be expanded to include Annex V offences (EMSA 2012)	<p>MARPOL Annex V should be added to the existing guidance:</p> <ul style="list-style-type: none"> <li>~ Include the options to impose fines/fee into guidance</li> <li>~ Points to proof during an inspection and possible shift to an investigation (prepare check list/decision tree for inspectors/investigators) – could be elaborated in a workshop</li> <li>~ Inform next port if risk of violation exists / was detected</li> <li>~ Close cooperation between police and PLC control and other responsible bodies</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> </ul>
3. Declaring pollution offenses as "absolute and strict liability offences", in which there is no need to prove intention; evidence that the offence has been committed is sufficient (EMSA 2012); this would eliminate the possibility to avoid/lower sanctions by declaring "accidental discharges"	<ul style="list-style-type: none"> <li>~ Basic question is <i>Did it happen?</i> – Therefore, it is an absolute offence. A positive consequence for the investigators/prosecutors would be that authorities do not have to prove the intention.</li> <li>~ Sometimes, ship owners try to declare pollution as accidental discharge. This could lower the fine/fee but not be used to eliminate/avoid sanctions.</li> <li>~ Differences between countries are to be expected. There is no European regulation in place. To introduce this approach, countries have to figure out whom to address in their country.</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> </ul>
4. Offering incentives to "whistleblowers" (e.g. amount of the award to be a part of the fine issued in the end)	<ul style="list-style-type: none"> <li>~ Whistle blowing is a useful tool</li> <li>~ Incentive important as motivation / possible compensation for potentially losing the job as consequence of whistle blowing</li> <li>~ Education is the basis for people's understanding of the problems related to marine litter and what to "blow"</li> </ul>	Regulatory / administrative level

<sup>9</sup> <https://www.ospar.org/work-areas/eiha/other/eiha-strategy>.

Recommendation	Proposed measures / initiatives	Addresses
	~ Referring to the US example where up to 50 % of the cases are a result of whistle blowing. Suggestion: reward for whistle blowing could be part of the fine (e.g. a certain percentage).	
5. Considering voluntary agreements with shipping companies, incorporating effective measures (such as installing cameras at the stern of vessels to monitor discarded garbage and other discharges). Companies agreeing on such measures could be granted certain privileges, as in other Green Certificate systems.	~ One option could be that voluntary action by ship owners (e.g. installation of cameras) is rewarded (e.g. in a Green certificate System) ~ Such voluntary agreements could also positively influence the ranking of the ship by rating companies ~ Beside this, it could also influence the ranking according to Port State Control	Regulatory / administrative level
6. Better monitoring/detection of illegal discharges (e.g. using drones also for detection of discharges of garbage)	~ Important message to ship owners/crews: surveillance is in place (risk of detection if violating MARPOL could act as deterrent). ~ Use existing airborne surveillance to detect illegal waste disposal ~ Beside airplanes, drones could play a role in detection. EMSA drones could contribute to this activity ~ One prerequisite for all activities is training of crews e.g. on what to capture if they detect an illegal waste disposal. ~ Another prerequisite is to have manuals on how to act – transmission from existing airborne surveillance manuals (e.g. Bonn Agreement)	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
7. Introducing procedures such as to file a "pollution prevention report" in case of suspicion / suspicious garbage, which will be sent to the next port of call of that ship with the request to check whether the cargo residues/garbage are still on-board	~ Better information exchange between responsible authorities (e.g. via SafeSeaNet) – how can next harbor be informed? ~ It was clear that information needs to be shared, but there was no idea how this could best be achieved. However, it was opted against the introduction of a new system.	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> </ul>
8. Cooperation with PARIS MOU	Explore possibilities of regular launches of a „concentrated inspection campaign“ on MARPOL Annex V (recently 10/2018 for Annex VI)	Regulatory / administrative level

Recommendation	Proposed measures / initiatives	Addresses
9. Training of crews	<p>Next generation of seafarers should be well informed about marine litter. Address:</p> <ul style="list-style-type: none"> <li>• Marine universities</li> <li>• Schools for seamen for existing and new crew generation about MARPOL V</li> <li>• Address also police, port control, fisheries inspectors and surveillance crew</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
<b>Working group “Control, inspection, data exchange, cooperation and enforcement”</b>		
10. Access to information	<p>For stakeholders to effectively play their role in detecting infringements, sufficient information must be available, hindered by limited access to central data bases by some services (example: water way police needs to call port State control to retrieve certain amount of information) and the use of different data bases. Recommendations for improvement:</p> <ul style="list-style-type: none"> <li>~ All services have adequate access to necessary information by all actors involved</li> <li>~ Streamline use of data base to reduce the complexity of accessing and retrieving information</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
11. Training in the field	<p>Need for training in the field (on vessels) to understand practical challenges of detecting violations of MARPOL Annex V obligations.</p> <ul style="list-style-type: none"> <li>➤ Harmonization of training <ul style="list-style-type: none"> <li>• Role of EMSA</li> <li>• Level playing field</li> </ul> </li> <li>➤ Inspectors should be trained</li> <li>➤ Topics to be covered <ul style="list-style-type: none"> <li>• Study exchange of inspectors on good practices</li> <li>• Interpretation of MARPOL Annex V</li> <li>• Strengthen cooperation among actors</li> <li>• Thematic focus (example): storage capacity?</li> </ul> </li> <li>➤ Elements of training <ul style="list-style-type: none"> <li>• Disseminate, increase knowledge, use existing resources</li> <li>• EMSA could develop specific MARPOL Annex V inspection guidance and conduct a training on this</li> <li>• Development of a training manual specific to this issue</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
12. Recommendations regarding cargo residues	<p>Paraffin in wash waters is an issue in port reception facilities infrastructure. Recommendations for improvement:</p> <ul style="list-style-type: none"> <li>➤ Classification of harmful cargo <ul style="list-style-type: none"> <li>• Threshold values applied by shippers</li> <li>• IMSB Code</li> </ul> </li> <li>➤ Change wording in MARPOL Annex V</li> </ul>	Regulatory / administrative level

Recommendation	Proposed measures / initiatives	Addresses
	<ul style="list-style-type: none"> <li>• MARPOL Annex V Regulation 6.1.2</li> <li>• Simplified overview is misleading</li> <li>• Change to „Not allowed unless...“</li> <li>• Elements need to be listed, conditions below</li> <li>➤ Education &amp; Awareness <ul style="list-style-type: none"> <li>• Role of inspection on cargo residues</li> <li>• Key element in maritime inspection schools</li> </ul> </li> <li>• No reliance on GISIS, need to update GISIS</li> <li>• Guidelines for inspecting recreational ships and recreational fishing vessels</li> </ul>	
<b>Working group “Criminal and administrative offences - Level of fines”</b>		
13. To issue recommendations on a harmonized system of fines: higher fines for repeat offenders, higher fines for legal than for natural persons, no difference in fine level between foreign and own flags/nationalities	<ul style="list-style-type: none"> <li>~ Higher fines should apply for repeat offenders</li> <li>~ Higher fines for legal than for natural persons</li> <li>~ In general, preferred to fine legal instead of natural persons</li> <li>~ Higher fines should apply for companies economically well off</li> <li>~ Not only fines are relevant factors, but also confiscation, possibly a combination of the two. As a rule of thumb, the sanction should meet the economic benefit gained from committing the act</li> <li>~ Confiscations should be considered as part of fines</li> <li>~ There should be no differentiation between foreign and own flags /nationalities</li> <li>~ If entries in garbage record books are repeatedly wrong, levels should be higher.</li> <li>~ Captain could not be allowed to work for some time.</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
14. Beside harmonization efforts, implement adequate (higher) level of fines, especially in areas where compliance is notoriously low (e.g. advance waste notifications)	This recommendation was supported by the working group.	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>
15. Directive 2009/123/EC-expand application from MARPOL Annex I and II to all Annexes	There was agreement that it should be expanded to all MARPOL Annexes.	Regulatory / administrative level
16. Cooperate with P & I clubs in influencing compliance and incentivize correct behaviour	Cooperate with P & I clubs, as they play important role. They could not only pay the fines, but also support protecting the environment. In general, behavior damaging the environment should not be	Local administration

Recommendation	Proposed measures / initiatives	Addresses
	covered by insurance. Also, P & I clubs should not cover intentional crimes.	
17. Additional issues	<ul style="list-style-type: none"> <li>~ Focus on administrative offenses as compared to criminal offenses, as crimes are more difficult to detect.</li> <li>~ Use national prosecution authorities meetings to foster closer cooperation (focus on Annex V) and international cooperation.</li> <li>~ Apparently, a lot of fishing gear is found – therefore, an additional focus on fishing vessels and the responsible authorities might be useful. MARPOL inspections are very useful, not only port state controls, as they focus on all Annexes.</li> </ul>	<ul style="list-style-type: none"> <li>• NSN</li> <li>• ENPRO</li> <li>• EMSA</li> </ul>