

# Report of the OSPAR/ HELCOM seminar on prevention and sanctions on illegal waste disposal from ships at sea, Berlin, November 29 and 30, 2018

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**Disclaimer: The outcome of the workshop represents a technical product from RAP ML Action 32/33 and 38 and does not represent the views or position of the OSPAR Commission or its Contracting Parties**

## Background

1. 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 harm to the coastal and marine environment. Both Action Plans follow a similar structure in that four pillars are outlined which serve 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.

2. 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 Regional Action Plan for Marine Litter*

- **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 Regional Action Plan for Marine Litter*

- **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*

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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>.

<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/>.

- **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.

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

4. In order to prepare this study, a questionnaire was distributed to Contracting Parties (CP) of both HELCOM and OSPAR in 2016 to collect knowledge regarding the regime of control and inspections of MARPOL Annex V infringements in the respective countries. This was accompanied by reviewing the existing legal framework as well as the relevant literature.

5. The study was delivered to the last 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.

6. A summary of the study was provided to the seminar stakeholders and is provided as Appendix 1 to this report.

## Seminar arrangements

6. The seminar was held on two half days on the 28-29 November 2016. The geographic focus was on the North Sea and Baltic Sea riparian states.

- On the first day, different stakeholders provided an overview on the topic from different angles.
- On the second day, working groups discussed possible recommendations.

7. The report of discussions is presented below.

## Day 1: Introduction to the issue

After an introduction from Uli Claussen (German Environment Agency) and Ewald Brandt (NSN and ENPRO), **Stefanie Werner** (German Environment Agency) gave an overview on the issue of marine litter, highlighting the significance of sea-based sources especially for the North-East Atlantic and the Baltic Sea. Especially shipping- and fishing-related items contribute in significant quantities. In the OSPAR region, about 3-5% of the litter found stems from shipping-related activities and about 11-37% of fishing-related activities.

**Aleke Stöfen O'Brien** (World Maritime University) continued the session by introducing the contents of the study "*Analysis of penalties and fines issued by OSPAR and HELCOM CPS for waste disposal offences at sea*" to the participants, which was commissioned as part of the implementation of the action as contained in the

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

OSPAR Action Plan on Marine Litter (Action xy). She explained the nature of the document within the OSPAR-context and the recommended actions in the study. Aleke also explained the specific challenges related to detecting and sanctioning illegal waste disposal at sea, which is impacted by the complex enforcement jurisdiction as established by the law of the sea. One example are the different actors that may act: the flag state should be considered as the main actor in ensuring enforcement of existing law, however it faces the continuous struggle between ensuring economic viability and environmental protection. Therefore, the regime of port states control plays an important role. Aleke proposed, the results of the current seminar could be included in recommendations from OSPAR and HELCOM on how illegal disposal of waste at sea should be addressed.

In his role representing the North Sea Network of Prosecutors (NSN)<sup>10</sup> and the Network of Prosecutors on Environmental Crime in the Baltic Sea Region (ENPRO)<sup>11</sup>, **Ewald Brandt** explained the history and work of the two networks. The main aim of the NSN is to foster international cooperation among the riparian states in the field of oil pollution. Main achievements include an internal database established on pollution offenses<sup>12</sup>, as well as the North Sea Manual on Maritime Oil Pollution Offences<sup>13</sup>.

ENPRO has similar objectives as the NSN. The focus of the initiative lies on promoting prosecution and to establish routines, facilitating better cooperation. Sharing experiences and best practices is also a major goal of the group. In the end, detecting and identifying existing and new types of offenses are major goals.

For both networks, Ewald explained that the databases currently do not contain a lot of MARPOL Annex V cases (NSN 13, of 151, ENPRO, which also has an internal database on pollution offences cases, none at all). Countries should therefore be encouraged to report these cases. It is, however, likely that marine littering at sea occurs, meaning that high dark figures can be assumed. Ewald recommended in his presentation to focus on the run-up to the crime by issuing administrative offenses, as these might be less challenging to argument from a legal perspective and therefore may turn out to be more effective. Also, the handbook on oil pollution and the manual on environmental crime of NSN and ENPRO respectively should be updated in order to also cover MARPOL Annex V offenses. In addition to the update in writing, Ewald also suggested that prosecution services of the riparian states need to discuss closer cooperation at their annual meetings. One topic for discussion could be a harmonization of the level of fines. EMSA could organize dedicated workshops on MARPOL Annex V. The two networks could cooperate with HELCOM & OSPAR on information exchange on Annex V cases.

For fishing gear-related offenses, Ewald stated that there are so far no cases in Hamburg. Due to the high number of fishing gear-related litter findings, a discussion with the fishing industry will have to follow. The marking of fishing gear would be one option to identify the respective net producers and users.

Lastly, Ewald also mentioned the role of Protection & Indemnity clubs (P&I Clubs), which often pay high fines so that ships can continue their journeys before the end of the investigation in case of offenses. As detentions

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<sup>10</sup> <https://www.ospar.org/work-areas/cross-cutting-issues/north-sea-network>.

<sup>11</sup> <http://www.cbss.org/safe-secure-region/enpro/>.

<sup>12</sup> [https://www.ospar.org/site/assets/files/1237/nsn\\_2016\\_update.pdf](https://www.ospar.org/site/assets/files/1237/nsn_2016_update.pdf).

<sup>13</sup> <https://www.ospar.org/work-areas/cross-cutting-issues/north-sea-network>.

can cause severe delays, they want to be avoided by the ship owners and therefore have an important role alongside fines. It could be assumed that P&I clubs would be interested to reduce these efforts to save time and money.

In the discussion it was stated that the Netherlands fine lost/found fishing gear directly (no court cases). Lost nets can be tracked back. Ron from the ... informed that a FAO workshop on net marking took place in 2016<sup>14</sup>. Furthermore it was stated that cooperation with P&I clubs could influence compliance and legal behavior. Rating agencies could collect information on companies or ships not compliant with MARPOL Annex V which could result in lower rating for them. This might improve their behavior.

**Kjetil Sorensen** from the Norwegian Maritime Authority explained that about 9% of the beach litter in Norway stems from ships. The target is to decrease the amount of litter from shipping by 40% by 2030. He illustrated his talk with two videos from cases recently detected in Norway during a 30 days activity, internationally coordinated by Interpol:

First the example of a British trawler caught red-handed by the coast guard during a routine flight. The case was filmed by a plane and showed a crew member throwing cardboard boxes into the sea. When controlling the ship, it was further detected that the garbage logbook showed significant flaws which had so far slipped through the system. The ship was detained and a fine of 50.000€ was issued.

The second case presented by Kjetil consisted of cardboard boxes found floating in the sea. At the time, 11 vessels were present in the area where the boxes were found. The responsible ship could be identified via tags on four of the boxes, which in the end were valid as evidence. This offense resulted in a fine of 31.000€, the proportionality of which was questioned by the responsible company.

Kjetil explained that the level of fines depends on the seriousness of the crime and the benefits from the illegal dumping of waste at sea. He underlined that the companies should be fined, not the ships, and that the fines should function as a prevention tool against future offenses.

Kjetil furthermore informed about SafeSeaNet, a vessel traffic monitoring and information system <sup>15</sup>.

**Susanne Heitmüller** from the German Maritime and Hydrographic Agency introduced the Maritime Environmental Behaviour Regulation as one of the German implementation instruments of MARPOL Annex V. This regulation sets the requirements for the garbage management books as well as the garbage management plans. In Germany, Susanne explained that the fines are embedded in a general system of administrative offenses and fines. They are listed in a catalogue of all offenses. For example, discharging garbage into the sea is fined with 100-25.000€, deficient garbage record books with 80-1.500€, and deficient garbage management plans between 250-500€. In minor cases, 55€ can be issued.

In Germany, administrative offenses (e.g. for insufficient garbage management plans, deficient record books etc.) apply to individuals. Companies can only be fined if crewmembers can prove that their responsibilities have been fulfilled. Up to 50.000€ can be fined if intent can be proven, up to 25.000€ if this is not the case. In total, the agency is informed about 500-600 infringements per year. In 2017, 2.507 inspections have been

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<sup>14</sup> <http://www.fao.org/news/story/en/item/411349/icode/>; <http://www.fao.org/fishery/nems/40818/en>.

<sup>15</sup> <http://www.emsa.europa.eu/ssn-main.html>.

carried out by the water ways police, resulting in 512 infringements, 37 notifications of administrative offenses, and 45 fines of in sum 16.535€ and 275 warnings of 55€.

**Marc Journal** from EMSA (European Maritime Safety Agency) informed about the on-going work undertaken by the European Commission and EMSA. It was outlined that the Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements only includes MARPOL Annexes I and II and not Annex V in its scope. He also informed that there are plans that criminal offences initially foreseen in the PRF-Directive might be moved to Directive 2005/35/EC, therefore extending the scope to all MARPOL Annexes.

**Torsten Wrobel** from the Hamburg Water Police presented hands-on experiences from his daily work in Hamburg. The mandate includes inspections regarding MARPOL Annex 1,2,4,5 and 6. Torsten stated that regarding Annex V, the sanctioning mechanisms are weaker compared to other Annexes.

According to him, the most important part of the work is to identify the individual responsible for an offense. He explained that the selection of the inspected ship does not have to follow the THETIS<sup>16</sup> risk assessment, but also expert opinions based on information about the ships from different databases. Torsten described the process of inspections, starting with scanning the documents (such as the garbage management book), focusing on their plausibility, followed by an inspection of the equipment on board, such as incinerators, disposers, grinders, compactors (availability thereof, is it in working condition, and certified?). Afterwards, the “human factor” comes into play: interrogation of the crew (such as: are they familiar with the rules of the garbage management book? Does the kitchen personal know what happens to the cooking oil? E.g. if they burn it in the engine this has to be mentioned in the garbage book) as well as an examination of the ship, such as the storing capacity cross-checked with the information provided in the records.

The key instrument Torsten introduced is the discharge order with the aim that no waste leaves Hamburg. If the garbage on board exceeds the capacity, the water way police can contact the ministry of environment in Hamburg, which then orders the discharge. If the documents include wrong or incomplete information, a fine of around 50€ is issued. The information is shared in Aquapol<sup>17</sup>.

When the load is changed, the cargo holes need to be cleaned, requiring an entry in the garbage record book regarding wash water or cargo residues. In case these are lacking, this is an indication of improper waste management. In the port of Hamburg approximately 5 % of the ships are controlled. It is very difficult to detect MARPOL Annex V violations.

**Captain Wolfgang Hintzsche** from the German Shipowners’ Association stated that the vast majority is following the rules and that a lot of improvements have occurred in the past 20-30 years. The garbage record books are a huge step forward. Nevertheless, black sheep still exist due to the persistent economic pressure in the field. Wolfgang claimed that the incentives to comply with existing regulation could be higher and highlighted the importance of detentions and port state controls. He also made a strong case for the no

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<sup>16</sup> A central computer database, <https://www.parismou.org/inspections-risk/library-faq/ship-risk-profile>.

<sup>17</sup> “AQUAPOL was established in 2002 and is fully dedicated to enhancement of safety and security on Europe’s main inland waterways as well as in the maritime domain. AQUAPOL aims at prevention of risks by improvement by enhancement of cross-border law-enforcement cooperation“, <https://www.aquatrack.org/Home/AboutAquapol>.

special fee-system in the new EU Port Reception Facilities regulation. Finally, he informed on the IMO Action Plan on Marine Litter from October 2018<sup>18</sup> which includes training for crews and fishing for litter.

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<sup>18</sup> <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/20-marinelitteractionmecp73.aspx>; <http://sdg.iisd.org/news/imo-adopts-action-plan-on-marine-litter/>.

## Day 2: In depth discussion

On the second day, the [recommendations presented in the issue paper](#) were discussed in depth in the following three small groups:

- A - *Detection of illegal discharges and securing evidence thereof,*
- B - *Control, inspection, data exchange, cooperation and enforcement,* and
- C - *Criminal and administrative offences - Level of fines.*

The aim of the working groups were to achieve reactions to the respective recommendations in the study, to identify and explore possible barriers for their implementation and to propose way forwards, e.g. within regional cooperation. The work was then presented to the plenum. As the last step of the seminar, the group agreed on future activities and concrete next steps.

The report provides some background information as well as an overview of the results from the different working groups.

### Working group A “Detection of illegal discharges and securing evidence thereof”

Sanctioning illegal discharges of garbage requires the detection of such discharges, which poses some difficulties as the discharge of litter does not necessarily amount to clear evidence due to the prevailing conditions in the marine environment. In contrast to oil and other liquid substances, garbage covers a much smaller area than floating liquid substances, and is as such much more difficult (or even impossible) to detect by aerial surveillance, for example.

Hence, without first-hand evidence of the discharge through witnesses, it is also difficult to assign a certain piece/amount of waste to a specific ship, rendering a criminal prosecution impossible in most cases. Additionally, a ship owner has - in the unlikely case that his/her illegal behavior has been detected - the possibility to declare a discharge to have happened accidentally. In such cases, investigations will not be completely stopped, but chances are high that sanctions will be lighter.

#### *Outcome of the working group*

The possible recommendations derived from the issue paper are and discussed by the working groups are presented in the below tables, alongside proposals for measures/initiatives agreed by the working groups, including addressees.

Recommendation	Proposed measures / initiatives	Addressees
<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	~ Fishing gear has to be marked ~ Airborne surveillance (practiced in NL) ~ 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.	<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	MARPOL Annex V should be added to the existing guidance: ~ Include the options to impose fines/fee into guidance ~ 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	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> </ul>

<p>on Maritime Oil Pollution Offences", could be expanded to include Annex V offences (EMSA 2012)</p>	<p>~ Inform next port if risk of violation exists / was detected                  ~ Close cooperation between police and PLC control and other responsible bodies</p>	
<p>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"</p>	<p>~ 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.                  ~ Sometimes, ship owners try to declare pollution as accidental discharge. This could lower the fine/fee but not be used to eliminate/avoid sanctions.                  ~ 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.</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> </ul>
<p>4. Offering incentives to "whistleblowers" (e.g. amount of the award to be a part of the fine issued in the end)</p>	<p>~ Whistle blowing is a useful tool                  Incentive important as motivation / possible compensation for potentially losing the job as consequence of whistle blowing                  ~ Education is the basis for people's understanding of the problems related to marine litter and what to "blow"                  ~ 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).</p>	<p>Regulatory / administrative level</p>
<p>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.</p>	<p>~ 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</p>	<p>Regulatory / administrative level</p>
<p>6. Better monitoring/detection of illegal discharges (e.g. using drones also for detection of discharges of garbage)</p>	<p>~ 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)</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>
<p>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</p>	<p>~ 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.</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> </ul>

3. 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
9. Training of crews	Next generation of seafarers should be well informed about marine litter. Address: <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>

### Working group B: “Control, inspection, data exchange, cooperation and enforcement”

As the immediate and direct detection of illegal discharges of garbage is rare, the detection of other offences relating to MARPOL Annex V is important. Such minor administrative offences might hint at not treating onboard garbage properly, and can be detected by inspections/controls. It should be recalled for better understanding that:

- The Port State Control (PSC)<sup>19</sup> inspections have the major objective of securing a naval vessel’s safety, which covers a wide range of topics; PSC officers are encouraged to make all possible efforts to avoid unduly detaining or delaying a ship. "Sanctioning" is not the focus of PSC officers.
- Port reception facilities inspections (which happen to a significant degree under the PSC umbrella) have the main objective of guaranteeing compliance with the Port Reception Facilities Directive (PRF-Directive, 2000/59/EC)<sup>20</sup>.
- Inspections/controls by other authorities (e.g. police/judiciary or port authorities) are regulated by national law and may require substantial reason or even warrants for thoroughly searching a vessel. To superficial inspections, however, such authorities are usually entitled.

Not all ships calling at port can be inspected. Hence, a system of choosing which vessels to inspect is in place in the Paris MoU ("risk-based")<sup>21</sup>. The selection of ships to be investigated is organized via the central computer database THETIS, which is consulted by PSC authorities. In parallel, the PRF-Directive requires vessels to report the volumes of waste they intend to deliver, the maximum dedicated storage available, the amount of waste that will be retained on board, the port where remaining waste will be delivered, and the estimated amount of waste to be generated between the two scheduled ports in a document called the "advance waste notification form". Advance waste notification forms are (since June 2015) reported electronically via the National Single Window and distributed to the authorities entitled to receive them. The content of advance waste notification forms is not necessarily accessible, however.

<sup>19</sup> <http://www.imo.org/en/ourwork/msas/pages/portstatecontrol.aspx>.

<sup>20</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0059:EN:HTML>.

<sup>21</sup> The "New Inspection Regime" (NIR): each ship in the information system (Thetis) will be attributed a ship risk profile (SRP), in accordance with Annex 7 of the Paris MoU. This SRP will determine the ships priority for inspection, the interval between its inspections and the scope of the inspection. Ships are assigned high, standard or low risk. This is based on generic and historic parameters. Table 1 of annex 7 of the Memorandum shows the criteria within each parameter for each ship risk profile. A ship’s risk profile is recalculated daily taking into account changes in the more dynamic parameters such as age, the 36 month history and company performance. Recalculation also occurs after every inspection and when the applicable performance tables are changed, see fn. 5.

In EU Member States, the non-compliance with the advance reporting requirements under the PRF-Directive is listed as a possible reason for vessel inspection under the Directive on port State control (PSC-Directive, 2009/16/EC)<sup>22</sup>. The PSC-Directive (Art. 25) also obliges the Member States to ensure that port authorities and other bodies provide such information, i.e. on non-compliance with the advance notification requirements.

In this complex process of advance notifications, determination of risk-factors and inspections of vessels due to various overlapping frameworks, several weaknesses have been identified (European Maritime Safety Agency (EMSA)<sup>23</sup> 2012<sup>24</sup>, Panteia/PWC 2015<sup>25</sup>, see issue paper):

It seems that the advance waste notifications do not play such an important role in providing hints to possible illegal discharges of garbage and in determining which ships to inspect as they could. Reasons are presented in the issue paper. This fact might be due to the following reasons (EMSA 2012; EMSA 2012a<sup>26</sup>; Panteia/PWC 2015; BSH 2016):

An overview on the recommendations can be seen in the issue paper at [Appendix 1](#)

#### Outcome of the working group

With a view to the complex and numerous recommendations proposed to be discussed within this working group, the group decided to focus on three key recommendations. This was decided through a voting system in which each participant had three votes to decide on their priority issues. The following three key recommendations have been selected.

Recommendation	Proposed measures / initiatives	Addressees
<b>Working group "Control, inspection, data exchange, cooperation and enforcement"</b>		
0. Access to information	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: ~ All services have adequate access to necessary information by all actors involved ~ Streamline use of data base to reduce the complexity of accessing and retrieving information	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>
1. Training in the field	Need for training in the field (on vessels) to understand practical challenges of detecting violations of MARPOL Annex V obligations. ➤ Harmonization of training <ul style="list-style-type: none"> <li>• Role of EMSA</li> </ul>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>

<sup>22</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0057:0100:EN:PDF>.

<sup>23</sup> <http://www.emsa.europa.eu/>.

<sup>24</sup> <http://www.emsa.europa.eu/news-a-press-centre/external-news/2-news/1879-addressing-illegal-discharges-in-the-marine-environment.html>.

<sup>25</sup> <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2015-ex-post-evaluation-of-dir-2000-59-ec.pdf>.

<sup>26</sup> [www.emsa.europa.eu/about/download/1972/1607/23.html](http://www.emsa.europa.eu/about/download/1972/1607/23.html).

	<ul style="list-style-type: none"> <li>• Level playing field</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>	
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             <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> </ul> </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>	Regulatory / administrative level

**Working group C: “Criminal and administrative offences - Level of fines”**

To be effective in not only penalizing, but also preventing illegal behavior, fines should have the following qualities/characteristics: they should have a deterrent effect, and should outweigh any possible economic benefit of violating regulations; repeat offenders should get a higher fine and fines imposed on a legal person should be substantially higher than for natural persons (HELCOM 2015a<sup>27</sup>, OSPAR 2009<sup>28</sup>).

The fines imposed in OSPAR and HELCOM CPs for illegal discharges of garbage and for administrative offences are generally rather low, as the responses to the questionnaires demonstrate. Using the HELCOM 19/14 recommendation for a harmonized system of fines in case a ship violates anti-pollution regulations<sup>29</sup>, it can be seen that in many cases, the level of fines stays well below the recommendation.

The outcome of the working group is presented in the following table:

Recommendation	Proposed measures / initiatives	Addressees
<b>Working group “Criminal and administrative offences - Level of fines”</b>		

<sup>27</sup> <http://www.helcom.fi/Lists/Publications/HELCOM%20Activities%20report%202015.pdf>.

<sup>28</sup> [https://qsr2010.ospar.org/media/assessments/p00386\\_Marine\\_Litter\\_in\\_the\\_North-East\\_Atlantic\\_with\\_addendum.pdf](https://qsr2010.ospar.org/media/assessments/p00386_Marine_Litter_in_the_North-East_Atlantic_with_addendum.pdf).

<sup>29</sup> <http://www.helcom.fi/Recommendations/Rec%2019-14.pdf>.

<p>3. 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</p>	<p>~ Higher fines should apply for repeat offenders                  ~ Higher fines for legal than for natural persons                  ~ In general, preferred to fine legal instead of natural persons                  ~ Higher fines should apply for companies economically well off                  ~ 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                  ~ Confiscations should be considered as part of fines                  ~ There should be no differentiation between foreign and own flags /nationalities                  ~ If entries in garbage record books are repeatedly wrong, levels should be higher.                  ~ Captain could not be allowed to work for some time.</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>
<p>4. Beside harmonization efforts, implement adequate (higher) level of fines, especially in areas where compliance is notoriously low (e.g. advance waste notifications)</p>	<p>This recommendation was supported by the working group.</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>
<p>5. Directive 2009/123/EC- expand application from MARPOL Annex I and II to all Annexes</p>	<p>There was agreement that it should be expanded to all MARPOL Annexes.</p>	<p>Regulatory / administrative level</p>
<p>6. Cooperate with P &amp; I clubs in influencing compliance and incentivize correct behaviour</p>	<p>Cooperate with P &amp; 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 covered by insurance. Also, P &amp; I clubs should not cover intentional crimes.</p>	<p>Local administration</p>
<p>7. Additional issues</p>	<p>~ Focus on administrative offenses as compared to criminal offenses, as crimes are more difficult to detect.                  ~ Use national prosecution authorities meetings to foster closer cooperation (focus on Annex V) and international cooperation.                  ~ 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.</p>	<ul style="list-style-type: none"> <li>● NSN</li> <li>● ENPRO</li> <li>● EMSA</li> </ul>

## Conclusion and follow-up

The different recommendations of the working groups were reported back to plenary. The plenary then discussed follow-up recommendations and actions.

### 1. Data policy / access to data/training

- The representative of the Dutch Waterways Police outlined that they already use a pollution report and informed that he could share these manuals for control.
- There are also additional Interpol investigator manuals which could be of help, subject to permission of Interpol.
- The representative of the German Waterways Police offered to share a decision tree and inspection flow chart for MARPOL Annex V inspections
- The participants agreed that education on surveillance and control is useful and necessary.

2. The role of EMSA

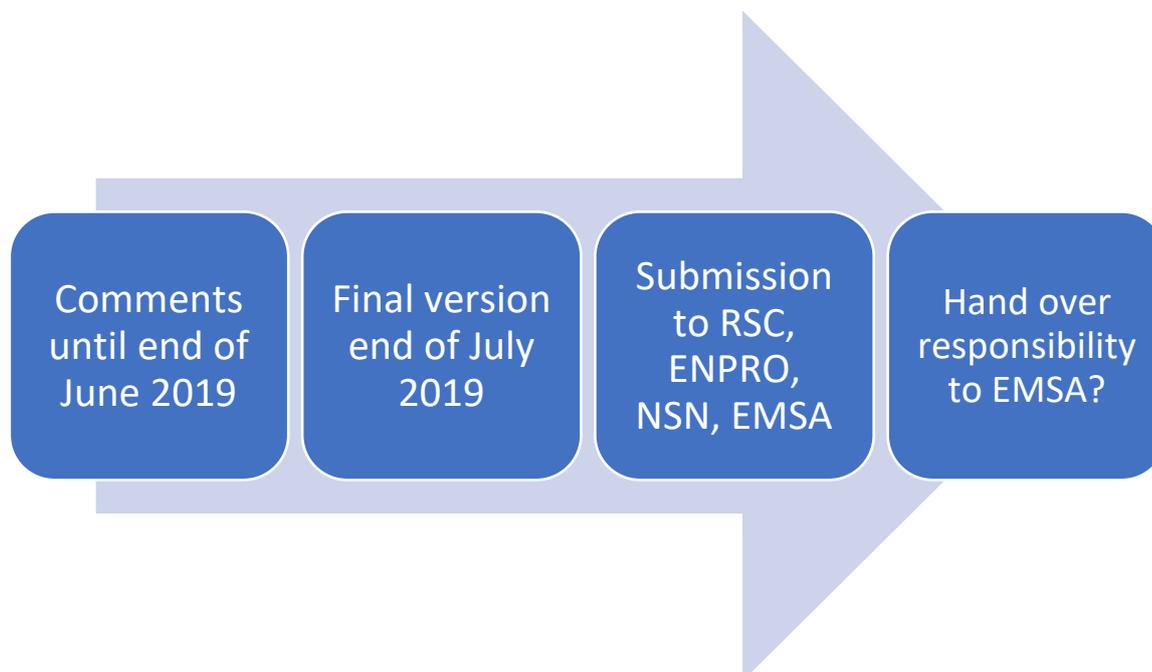
- The participants agreed that the EMSA courses and workshop are available, helpful and adequate.
- There is the general option that EMSA pays for participation under certain rules.
- Additional training needs should be explored and EMSA should be approached and asked whether they can offer support in this respect (especially prevention & enforcement of Annex V for all aspects).
- The participants welcomed the suggestion to request EMSA to develop and implement a training course specifically targeting capacity-building with regard to the implementation and enforcement of MARPOL Annex V.

3. It was agreed that it would be important to share the outcomes of the seminar with other fora, such as IMO, RSCs (HELCOM, OSPAR, Bucharest Convention) as well as UNEP/MAP.

4. There is a need for information exchange, including aspects for financing of training and increased capacity.

As a first step, a short version of the recommendations discussed during the seminar was presented and discussed at the North Sea Network of Investigators and Prosecutors (NSN) in London at the beginning of May. Please refer to the Annex for an overview. The feedback was mostly positive.

Proposed Way forward:





## Appendix 1: Issue Paper on the Prevention of and sanctions on illegal waste disposal from ships at sea

This document was produced to inform the participants of this seminar on the issue and provide a basis for further discussions. It comprises of two sections:

**Part 1:** overview of the sources and impacts of marine litter

**Part 2:** A summary of the supporting study “*Sanctions, penalties and fines issued by OSPAR and HELCOM Contracting Parties for waste disposal offences at sea*”<sup>30</sup>, including recommendations.

### Part 1: Sources and impacts of marine litter

UNEP defines marine litter as any solid material which has been deliberately discarded or unintentionally lost on beaches, on shores or at sea. The definition covers materials transported into the marine environment from land by rivers, drainage or sewage systems or winds. It includes any persistent, manufactured or processed solid material.

Originating from sources both on land and at sea, marine litter comprises a wide range of materials, including plastic, metal, wood, rubber, glass and paper, however it is dominated by plastic which accounts for up to 90% of the items found on beaches.

Land-based sources relate to activities such as tourism, but also includes waste inputs from urban areas or industrial sites as well as inadequate waste management. Sea-based sources relate to litter that is directly (either accidentally or on purpose) released into the sea by maritime activities e.g. shipping, fishing, tourism, offshore installations or dumping of refuse at sea. The proportion between land- and sea-based Marine Litter differs worldwide, the North and Baltic Seas being no exceptions. In the North Sea, the proportion of sea-based sources is higher than the average distribution. E.g., one third of the Marine Litter found in the German North Sea stems from sea-based sources, especially fishing.<sup>31</sup>

Top marine litter items found in coastal areas around the European Union include cigarette buds, plastic bags, food containers, drink bottles, cotton buds, cutlery, straws and cups and lids<sup>32</sup>. But also ropes from abandoned and lost fishing gear make up an important proportion, especially in the Baltic Sea region, where waste from the shipping industry and abandoned

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<sup>30</sup> Full report here <https://portal.helcom.fi/meetings/MARITIME%2017-2017-409/MeetingDocuments/6-3%20Sanctions%2C%20penalties%20and%20fines%20issued%20by%20OSPAR%20and%20HELCOM%20Contracting%20Parties%20for%20waste%20disposal%20offences%20at%20sea.pdf>

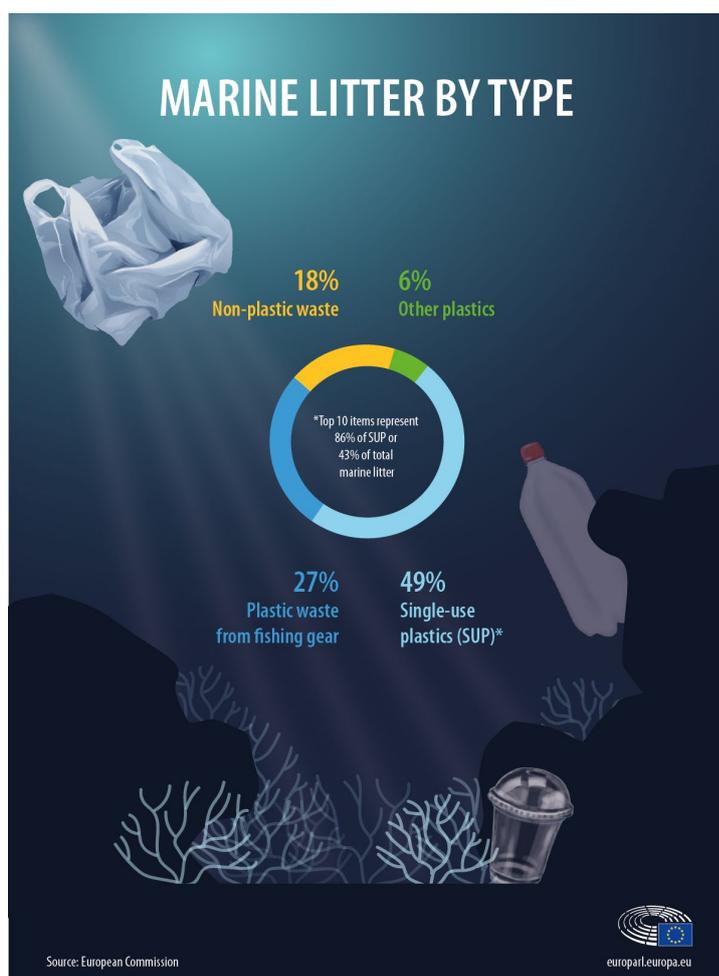
<sup>31</sup> Factsheet Marine Litter, German Environment Agency (2017)  
[https://www.umweltbundesamt.de/sites/default/files/medien/2546/dokumente/uba\\_factsheet\\_meeresmuell.pdf](https://www.umweltbundesamt.de/sites/default/files/medien/2546/dokumente/uba_factsheet_meeresmuell.pdf).

<sup>32</sup> EU Commission Impact Assessment: Reducing Marine Litter: action on single use plastics and fishing gear  
[http://ec.europa.eu/environment/circular-economy/pdf/single-use\\_plastics\\_impact\\_assessment.pdf](http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_impact_assessment.pdf).

fishing gear poses a significant problem after activities related to leisure and tourism, waste water and offshore plants<sup>33</sup>.

In the OSPAR region, about 40 % of the litter items found on beaches stem from sea-based sources, mostly fisheries and shipping. Other relevant sources are activities related to leisure and tourism as well as inputs via rivers, canals, industry and waste water treatment.

All over Europe, current estimates from the European Commission indicate that 27% of the plastic waste found on beaches stems from fishing gear.



Marine litter impacts marine organisms at different levels of biological organization and habitats in a number of ways, namely: through entanglement in, or ingestion of, litter items by individuals, resulting in death and/or severe suffering; through chemical and microbial transfer; as a vector for transport of biota and by altering or modifying assemblages of species. Marine litter is a threat not only to marine species and ecosystems, but also carries a risk to human health and has significant implications to human welfare, impacting negatively vital economic sectors such as tourism, fisheries, aquaculture or energy supply and bringing economic losses to individuals, enterprises and

communities<sup>34</sup>.

<sup>33</sup> EU Commission JRC Technical Reports: Marine Beach Litter in Europe – Top Items (2016)  
[http://mcc.jrc.ec.europa.eu/documents/Marine\\_Litter/MarineLitterTOPitems\\_final\\_24.1.2017.pdf](http://mcc.jrc.ec.europa.eu/documents/Marine_Litter/MarineLitterTOPitems_final_24.1.2017.pdf).

<sup>34</sup> EU Commission JRC Technical Reports: Harm caused by Marine Litter (2016)  
<http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104308/lbna28317enn.pdf>.

## **Part 2: Summary of supporting study “Sanctions, penalties and fines issued by OSPAR and HELCOM Contracting Parties for waste disposal offences at sea”**

### **Introduction and purpose**

In the following, a brief synopsis of the supporting study for the OSPAR and HELCOM actions as listed above “Sanctions, penalties and fines issued by OSPAR and HELCOM Contracting Parties for waste disposal offences at sea<sup>35</sup>” is provided.

The study focuses on the processes and practices related to detecting and sanctioning MARPOL Annex V ship generated waste, including inspection and control regimes and the management and exchange of data/information on (potential) offenders. In addition, it focuses on the analysis of penalties and fines issued by OSPAR and HELCOM. The document starts with

1. the detection of MARPOL ANNEX V illegal discharges and legal international framework; continues with
2. the issue of the organization of controlling and prosecuting authorities in OSPAR and HELCOM Contracting Parties; also considers
3. the sanctions imposed in OSPAR and HELCOM Contracting States; and presents
4. a set of recommendations

Information was gathered by way of literature studies as well as a questionnaire, which has been distributed amongst OSPAR and HELCOM Contracting Parties.

### **1. Detection of illegal discharges and securing evidence thereof**

Sanctioning illegal discharges of garbage requires the detection of such discharges, which poses some difficulties as the discharge of litter does not necessarily amount to clear evidence due to the prevailing conditions in the marine environment. In contrast to oil and other liquid substances, garbage covers a much smaller area than floating liquid substances, and is as such much more difficult (or even impossible) to detect by aerial surveillance, for example.

Hence, without first-hand evidence of the discharge through witnesses, it is also difficult to assign a certain piece/amount of waste to a specific ship, rendering a criminal prosecution impossible in most cases. Additionally, a ship owner has - in the unlikely case that his/her illegal behavior has been detected - the possibility to declare a discharge to have happened accidentally. In such cases, investigations will not be completely stopped, but chances are high that sanctions will be lighter.

### **2. Controls, inspection and data exchange**

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<sup>35</sup> Full study is available [here](#)

As the immediate and direct detection of illegal discharges of garbage is rare, the detection of other offences relating to MARPOL Annex V is important. Such minor administrative offences might hint at not treating onboard garbage properly, and can be detected by inspections/controls. It should be recalled for better understanding that:

- The Port State Control (PSC)<sup>36</sup> inspections have the major objective of securing a naval vessel's safety, which covers a wide range of topics; PSC officers are encouraged to make all possible efforts to avoid unduly detaining or delaying a ship. "Sanctioning" is not the focus of PSC officers.
- Port reception facilities inspections (which happen to a significant degree under the PSC umbrella) have the main objective of guaranteeing compliance with the Port Reception Facilities Directive (PRF-Directive, 2000/59/EC)<sup>37</sup>.
- Inspections/controls by other authorities (e.g. police/judiciary or port authorities) are regulated by national law and may require substantial reason or even warrants for thoroughly searching a vessel. To superficial inspections, however, such authorities are usually entitled.

Not all ships calling at port can be inspected. Hence, a system of choosing which vessels to inspect is in place in the Paris MoU ("risk-based")<sup>38</sup>. The selection of which ships are to be investigated is organized via the central computer database THETIS, which is consulted by PSC authorities. In parallel, the PRF-Directive requires vessels to report the volumes of waste they intend to deliver, the maximum dedicated storage available, the amount of waste that will be retained on board, the port where remaining waste will be delivered, and the estimated amount of waste to be generated between the two scheduled ports in a document called the "advance waste notification form". Advance waste notification forms are (since June 2015) reported electronically via the National Single Window and distributed to the authorities entitled to receive them. The content of advance waste notification forms is not necessarily accessible, however.

In EU Member States, the non-compliance with the advance reporting requirements under the PRF-Directive is listed as a possible reason for vessel inspection under the Directive on port State control (PSC-Directive, 2009/16/EC)<sup>39</sup>. The PSC-Directive (Art. 25) also obliges the

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<sup>36</sup> <http://www.imo.org/en/ourwork/msas/pages/portstatecontrol.aspx>.

<sup>37</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0059:EN:HTML>.

<sup>38</sup> The "New Inspection Regime" (NIR): each ship in the information system (Thetis) will be attributed a ship risk profile (SRP), in accordance with Annex 7 of the Paris MoU. This SRP will determine the ships priority for inspection, the interval between its inspections and the scope of the inspection. Ships are assigned high, standard or low risk. This is based on generic and historic parameters. Table 1 of annex 7 of the Memorandum shows the criteria within each parameter for each ship risk profile. A ship's risk profile is recalculated daily taking into account changes in the more dynamic parameters such as age, the 36 month history and company performance. Recalculation also occurs after every inspection and when the applicable performance tables are changed, see fn. 5.

<sup>39</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0057:0100:EN:PDF>.

Member States to ensure that port authorities and other bodies provide such information, i.e. on non-compliance with the advance notification requirements.

In this complex process of advance notifications, determination of risk-factors and inspections of vessels due to various overlapping frameworks, several weaknesses can be identified (European Maritime Safety Agency (EMSA)<sup>40</sup> 2012<sup>41</sup>, Panteia/PWC 2015<sup>42</sup>):

- As the main purpose of the PSC controls is to prevent the operation of substandard ships, the inspection report is not always adequate to deliver valid or sufficient evidence for criminal prosecution purposes; consequently, sanctions do not necessarily follow.
- Also, PSC inspectors have limited time to carry out inspections which cover a wide range of aspects. Verifications related to pollution prevention are often limited to a formal examination of the ship's records.
- Less than 40% of the ships notify their waste delivery in advance, as this requirement is hardly enforced and any resulting penalties are perceived as a minor cost. Also, received waste notification forms are rarely appropriately examined, as required in Art. 12(1) (d) of the PRF-Directive.
- Where PRF related inspections are conducted in the framework of PSC, the inspections do not always take a vessel's compliance with waste delivery requirements into account, and ships are generally not selected on the basis of the contents of their notification form (most PSC authorities cannot even access the content of the waste notification forms). When these forms are taken into account, the information on waste delivery is not always useful, as it is based on estimations, and information on delivered waste is not included. It is likely that the estimates in the advance notifications are often incorrect, and without waste delivery receipts, the basis on which a verification of the advance notification could happen is missing (this point is also emphasized by EMSAs Horizontal Assessment Report – Port Reception Facilities 2010<sup>43</sup>). Such waste delivery receipts are not required by the PRF-Directive, but are recommended in a standing, non-mandatory IMO Guidance (IMO MEPC 2008)<sup>44</sup>.
- Also, the incineration of waste onboard creates uncertainty with regard to the interpretation of waste notifications.

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<sup>40</sup> <http://www.emsa.europa.eu/>.

<sup>41</sup> <http://www.emsa.europa.eu/news-a-press-centre/external-news/2-news/1879-addressing-illegal-discharges-in-the-marine-environment.html>.

<sup>42</sup> <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/studies/doc/2015-ex-post-evaluation-of-dir-2000-59-ec.pdf>.

<sup>43</sup> <https://ec.europa.eu/transport/sites/transport/files/modes/maritime/consultations/doc/prf/emsa-report.pdf>.

<sup>44</sup> [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-\(MEPC\)/Pages/MEPC-2008-09.aspx](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-(MEPC)/Pages/MEPC-2008-09.aspx).

It seems that the advance waste notifications do not play such an important role in providing hints to possible illegal discharges of garbage and in determining which ships to inspect as they could. This fact might be due to the following reasons (EMSA 2012; EMSA 2012a<sup>45</sup>; Panteia/PWC 2015; BSH 2016):

- As many port authorities seem to regard vessels as "clients", they do not seem to be overly interested in creating any difficulties for them with regard to their ship's waste delivery. No clear statistics are available on this topic, but it is indicated by EMSA (2012a) that often, the port authority (or the port management company in the case of privately operated ports) does not communicate systemically with the PSC agencies (EMSA concluded in 2012a that *"there is insufficient communication between the responsible port authorities and the inspection authorities regarding the control of ships and their waste delivery...[and that]...in some ports, the port authority only receives the waste notification form for purposes of organizing waste collection. They therefore do not take special interest in control and enforcement and often there are no clear procedures established for forwarding or copying the waste notification form to the relevant inspection authority. In some situations this only happens after the ships have left the port"*)<sup>46</sup>.
- Also, in many ports, a parallel information channel between the shipping agent and the waste operator (at the port) exists, communicating waste-related information directly between them.

#### *Cooperation and enforcement*

Closely related to the interaction between the various authorities performing controls and inspections under different legal frameworks and their exchange of data, are shortcomings with regard to data exchange and cooperation between control and judicial authorities. Concrete information on such shortcomings in OSPAR and HELCOM CPs was not provided via the questionnaire replies, although literature sources suggest that problems may exist (e.g. EMSA 2012a, Panteia/PWC 2015).

An important question was whether the same or different authorities are responsible for PSC, PRF and other controls in OSPAR and HELCOM CPs, with the result that in several CPs (5 out of 11 responses) such inspections are in the hands of one single authority. Unfortunately, the data does not allow any conclusions suggesting that such a form of organization is more effective in detecting/sanctioning violations; on the contrary, in Germany and the Netherlands, where most cases are detected (or at least recorded), such controls are in separate hands.

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<sup>45</sup> [www.emsa.europa.eu/about/download/1972/1607/23.html](http://www.emsa.europa.eu/about/download/1972/1607/23.html).

<sup>46</sup> [www.emsa.europa.eu/about/download/1972/1607/23.html](http://www.emsa.europa.eu/about/download/1972/1607/23.html) (page 13).

However, it seems that in CPs where the Port Authority is (at least partly) responsible for PRF controls, the number of cases detected is significantly higher than in other CPs (this is especially the case for Germany and the Netherlands). This notion is reinforced by EMSA (2012a), concluding that "*...it seems (although not documented) that having the Port Authority in charge of all waste notification and dissemination of information to relevant stakeholders and waste operators ensures that the Port Authority has very good knowledge of the total waste to be delivered in the port...[and that]...most ports confirm that when the monitoring and control by the PSC is reinforced the waste delivery behavior of the ships changes towards a more environmentally friendly and sound behavior.*"<sup>47</sup>

At the same time, it is remarkable that in the CPs where the PSC is solely responsible for garbage-related controls (i.e. where the PSC authority also conducts the PRF controls), the ratio of convictions vs. detected cases is generally very low, or information is lacking (EE, IE: no information; LT: a few cases, no or unclear number of convictions; DK and SE: several cases, no convictions).

It could also not be verified by the responses received that it is "easier" to apply sanctions in cases where the controlling authority also issues fines (EE, NL, probably NO). Outside PSC or PRF controls, "on the spot" controls by maritime police/coast guard seem to be an effective instrument in detecting and penalizing garbage-related offences (DE and NL), although the fines applied are generally very low (in Germany, 35 Euro on average).

It was further not possible to obtain concrete information on how the cooperation between PSC/PRF and judiciary authorities works in detail. The data received suggests that such cooperation is more of a voluntary nature in most CPs, that it takes place in cases of serious offences, and that it can be regarded as a kind of "good practice". This does not, however, suggest that such cooperation cannot be successful or effective.

Last but not least, a major problem with regard to enforcement is the difficulty in obtaining strong evidence to bring ships suspected of illegal discharges to court.

### **3. Level of fines**

To be effective in not only penalizing, but also preventing illegal behavior, fines should have the following qualities/characteristics: they should have a deterrent effect, and should outweigh any possible economic benefit of violating regulations; repeat offenders should get a higher fine and fines imposed on a legal person should be substantially higher than for natural persons (HELCOM 2015a<sup>48</sup>, OSPAR 2009<sup>49</sup>).

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<sup>47</sup> [www.emsa.europa.eu/about/download/1972/1607/23.html](http://www.emsa.europa.eu/about/download/1972/1607/23.html), p.32.

<sup>48</sup> <http://www.helcom.fi/Lists/Publications/HELCOM%20Activities%20report%202015.pdf>.

<sup>49</sup> [https://qsr2010.ospar.org/media/assessments/p00386\\_Marine\\_Litter\\_in\\_the\\_North-East\\_Atlantic\\_with\\_addendum.pdf](https://qsr2010.ospar.org/media/assessments/p00386_Marine_Litter_in_the_North-East_Atlantic_with_addendum.pdf).

The fines imposed in OSPAR and HELCOM CPs for illegal discharges of garbage and for administrative offences are generally rather low, as the responses to the questionnaires demonstrate. Using the HELCOM 19/14 recommendation for a harmonized system of fines in case a ship violates anti-pollution regulations<sup>50</sup>, it can be seen that in many cases, the level of fines stays well below the recommendation.

#### **4. Possible Recommendations**

For each of these aspects the report articulated a set of possible recommendations for further consideration

##### ***Detection of illegal discharges and securing evidence thereof***

- a. Options to impose fines or fees could be built into guidance to support the work undertaken by inspection authorities.
- b. 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).
- c. 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" (e.g. in case ship owners know that their behavior has been detected).
- d. Offering incentives to "whistleblowers" (e.g. amount of the award to be a part of the fine issued in the end).
- e. Considering voluntary agreements with shipping companies, incorporating effective measures (such as having a marine engineer on board, or 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.
- f. Better monitoring/detection of illegal discharges (e.g. using drones also for detection of discharges of garbage).
- g. 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.

##### ***Controls, inspection and data exchange***

- a. In EU member states, support THETIS-PRF and make sure that information regarding advance waste notifications inform the PSC authority (at best automatically), in line with the PSC Directive (the non-compliance with the advance reporting requirements under the PRF Directive is listed as a possible reason for vessel inspection under the PSC Directive). The literature also suggests that when the monitoring and control by the PSC is reinforced, the waste delivery behavior of the ships changes towards a more environmentally friendly and sound behavior (EMSA 2012).

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<sup>50</sup> <http://www.helcom.fi/Recommendations/Rec%2019-14.pdf>.

- b. Establishing systematic communication channels between the inspection and the port authorities, including clear procedures for information flow regarding ship waste delivery, to ensure that the inspection authority is able to inspect ships before departure, if necessary.
- c. Make the issuing of a waste delivery receipt mandatory, as suggested by IMO guidelines (IMO MEPC 2008), to allow for a base upon which to inspect and interpret the waste notifications and garbage record book.
- d. Incineration of waste onboard creates uncertainty with regard to the interpretation of waste notifications. Therefore, it should be regulated in an unambiguous way which allows for more effective control of waste notifications and the garbage record book.
- e. Harmonizing and strengthening the recording of statistical information on MARPOL Annex V offences and applied sanctions in OSPAR and HELCOM CPs, also with a view of fulfilling the obligation of MARPOL Art. 11.

### ***Cooperation and enforcement***

- a. Strengthening the use of "administrative fees" to make it easier to issue fines in cases where evidence is not sufficient to open a criminal case/prosecution.
- b. Strengthening the role and responsibilities of the port authorities in the PRF-related issues, as seems to be the case in some ports in Europe, e.g. guarantee that all waste notifications are sent to port authorities with copies to relevant stakeholders such as waste operator(s), terminal operators and inspection authorities.

### ***Level of fines***

- a. To issue recommendations on a harmonized system of fines similar to HELCOM Recommendation 19/14<sup>51</sup>, including recommendations on the application of these 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, consider violations of the garbage record book as "continuous violations" (imposing higher fines) etc.
- b. Beside harmonization efforts, implement adequate (higher) level of fines, especially in areas where compliance is notoriously low (e.g. advance waste notifications).
- c. The aim of Directive 2009/123/EC is to strengthen the criminal law framework provided under Directive 2005/35/EC on ship source pollution and on the introduction of penalties for infringements by obliging Member States to introduce "effective, proportionate and dissuasive sanctions" for specific criminal offences related to ship-source pollution. The Directive, however, applies only to MARPOL Annexes I and II, and could be expanded to include Annex V offences as well.
- d. A possibility to influence compliance and incentivize correct behavior would be to cooperate with "Protection and Indemnity Clubs", which are mutual insurance associations covering liabilities including the ones arising from pollution (P&I Clubs may cover fines arising from accidental pollution, but will not cover costs arising from deliberate or operational discharges). Linking P&I Club's fees to voluntary initiatives by shipping companies could

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<sup>51</sup> <http://www.helcom.fi/Recommendations/Rec%2019-14.pdf>.

serve as an incentive for compliance with anti-pollution legislation (both MARPOL as well as PRF-related regulations).

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