

OSPAR REGIONAL ACTION PLAN ON MARINE LITTER

ACTION BRIEFING NOTE: ACTIONS 32/33/38

Progress by OSPAR to understand and address the prevention of and sanctions on illegal waste disposal from ships at sea

Regional Action Plan for Marine Litter (RAP ML)

OSPAR's marine litter objective is "to substantially reduce marine litter in the OSPAR Maritime Area to levels where properties and quantities do not cause harm to the marine environment". OSPAR 2014 agreed a Regional Action Plan for Marine Litter for 2014-2021; this will be reviewed at the end of this period until spring 2021 after which OSPAR will work on the development of a new or updated RAP.

The RAP ML (2014-2021) defines four key areas (themes) of actions to be implemented:

- A. Reduction of litter from sea-based sources
- B. Reduction from land-based sources
- C. Removal of existing litter
- D. Education and outreach

The full Regional Action Plan and its outputs can be accessed via <https://www.ospar.org/work-areas/eiha/marine-litter/regional-action-plan>

This Action Briefing Note focuses on Actions 32, 33 and 38, addressing the illegal discharge of ship generated waste. It sets out the issue, its relevance for OSPAR and the North-East Atlantic Ocean, the work that has been completed by regional action under OSPAR and finally highlights possible next steps which could be taken forward to the next OSPAR Regional Action Plan for Marine Litter.

The Actions

The RAP ML included three actions addressing different aspects of the illegal discharge of onboard generated waste. Since these actions are closely interlinked it was decided that they should be treated together:

Action 32 was to *"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 sought to *"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 focused on the task to *"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."*

These actions contribute to Theme A of the RAP ML: Actions to combat sea-based source under the sub-theme enforcement of international legislation/regulations regarding all sectors and were led by Germany, with assistance from Seas at Risk, the North Sea Network of Prosecutors, the OSPAR and HELCOM Secretariats. The RAP ML for the Baltic Sea included comparable actions and so, with Germany as action lead in both Regions, there was cooperation in the delivery of related outputs.

Geographic scope: North-East Atlantic and Baltic Sea

The issue

Targeting shipping as a contributing source for marine litter in the OSPAR maritime area.

Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) aims to prevent the pollution by garbage from ships and was last amended in 2011 and entered into force in 2013. According to the revised MARPOL Annex V regulations, it is generally prohibited to discharge at sea all kinds of garbage generated during the normal operation of the ship, with some exemptions related food waste and cargo residues. However, the discharge of plastics into the sea was prohibited even before this revision.

Annex V also establishes regulations regarding garbage management and treatment on board, known as a garbage management plan and keeping a garbage record book to document what happened to the garbage generated aboard. Garbage management plans are obligatory for ships exceeding 100 GT and/or certified to carry more than 15 passengers, while a Garbage Record Book is mandatory for ships exceeding 400 GT and/or certified to carry more than 15 passengers.

OSPAR Contracting Parties are also Contracting Parties to MARPOL, and all have ratified MARPOL Annex V. Thus, a unified basis regarding the prevention of pollution by garbage from ships already exists. Pursuant to MARPOL Article 4, Contracting Parties are required to impose sanctions for violations also on ships not flying their own flag. However, findings indicate that illegal discharge of onboard generated waste remains an issue.

These RAP ML actions focus on understanding the process and practices for detecting and sanctioning breaches in MARPOL Annex V regulations, across different countries in the OSPAR and HELCOM maritime areas, including inspection and control regimes and the management and exchange of data/information on (potential) offenders as well as the penalties and fines issued by OSPAR and HELCOM.

Why is understanding and addressing regulation of litter from shipping an issue for OSPAR

Shipping as a source of marine litter

There are a wide range of items on board ships that may enter the marine environment through a range of pathways, including accidental and illegal discharges. However the regulations set within the revised MARPOL Annex V clearly state that *"The disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products which may contain toxic or heavy metal residues, is prohibited."* Therefore understanding how MARPOL Annex V is being implemented is important in order to reduce this source of marine litter.

Significance of sea-based sources of litter from shipping

In the OSPAR region, about 40 % of the litter items found on beaches stem from sea-based sources. About 3-5% of the litter is found to stem from shipping-related activities and about 11-37% of fishing-related activities.

Impact on the marine environment

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.

What has been done by OSPAR to address the issue?

In 2016, as a first step to address these three associated actions, Germany commissioned a study to explore the regime of control and inspections of MARPOL Annex V infringements in the respective countries and propose recommendations for improvement. Information was collected by means of a questionnaire to Contracting Parties and accompanied by reviewing the existing legal framework as well as the relevant literature. A similar action was also included in the HELCOM RAP ML, also under the lead of Germany and so the work was prepared for both regions, resulting in the production of a background document:

Output 1: *A background document 'Analysis of penalties and fines issued by OSPAR and HELCOM CPs for waste disposal offences at sea'¹ was concluded in 2017 and submitted to both OSPAR and HELCOM.*

Building on this analysis, a seminar was held in Berlin November 29-30, 2018 with a focus on the North Sea and Baltic Sea riparian states. The purpose of the seminar was to review the outcomes of the study (output 1) and examine the proposed recommendations. The report of this seminar resulted in a second, technical output.

Output 2: [Report of the OSPAR/ HELCOM seminar on prevention and sanctions on illegal waste disposal from ships at sea](#), Berlin, November 29 and 30, 2018

A summary of the work emerging from this set of activities is now presented in this Action Briefing Note, which constitutes Output 3, highlighting some of the key messages, barriers to progress and identifying any issues for future consideration in order to finalize Actions 32,33 and 38.

The key recommendations emerging from the seminar have been distilled in this summary. The reader is directed to the background document and the seminar report for more details and the discussion leading to these recommendations.

A set of possible recommendations presented in the Background Document were considered by the Berlin seminar, for each of the key aspects of the background document, namely: detection of illegal discharges; controls, inspections and data exchange; cooperation and enforcement and levels of fines applied. The recommendations resulting from the seminar are presented below. It should be noted that the background document was finalized in 2016 and the workshop held in 2018. The text presented therefore reflects the situation at this time, in particular the discussions preceded the amendment to the Port Reception Facilities Directive, adopted in 2019 (2019/833) and replacing 2000/59/EC. Therefore the points below do not necessarily reflect the current situation in 2021.

¹ [Insert link once published](#)

1. Detection of illegal discharges and securing evidence thereof

Sanctioning illegal discharges of garbage requires that such discharges can be detected. This is in itself not easy. 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, for example by aerial surveillance, in turn making it difficult to provide clear evidence.

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 behaviour 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.

The following recommendations were identified and discussed in terms of how these could be considered by the appropriate competent authorities:

- Options to impose fines or fees could be built into guidance to support the work undertaken by inspection authorities
- 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)
- Declaring pollution offenses as "absolute and strict liability offenses", 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"
- Offering incentives to "whistleblowers" (e.g. amount of the award to be a part of the fine issued in the end)
- 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.
- Better monitoring/detection of illegal discharges (e.g. using drones also for detection of discharges of garbage)
- 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
- Cooperation with PARIS MOU (Explore possibilities of regular launches of a „concentrated inspection campaign“ on MARPOL Annex V (recently 10/2018 for Annex VI)
- Training of crews to ensure the next generation of seafarers are well informed on issues of marine litter.

2. Controls, inspection and data exchange

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) 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).
- 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. Such authorities are usually entitled to superficial inspections.

Given the complex and numerous recommendations proposed to be discussed on this issue, a voting system was used to select the following three priority recommendations.

- 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 include that: all services have adequate access to necessary information by all actors involved; and to streamline use of data base to reduce the complexity of accessing and retrieving information
- Need for training in the field (on vessels) to understand practical challenges of detecting violations of MARPOL Annex V obligations.
- Recommendations regarding cargo residues: Paraffin in wash waters is an issue in port reception facilities infrastructure.

3. Criminal and administrative offences - Level of fines

To be effective in not only penalizing, but also preventing illegal behaviour, 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 2015a², OSPAR 2009³).

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 regulations⁴, it can be seen that in many cases, the level of fines stays well below the recommendation. Once again more details regarding the proposed mechanism regarding feasibility and options of how these recommendations could be addressed is provided in the seminar report (output 2).

- 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
- Beside harmonization efforts, implement adequate (higher) level of fines, especially in areas where compliance is notoriously low (e.g. advance waste notifications)
- Directive 2009/123/EC- expand application from MARPOL Annex I and II to all Annexes
- Cooperate with Protection & Indemnity clubs in influencing compliance and incentivize correct behaviour

Additional recommendations identified by the seminar included:

- a focus on administrative offenses as compared to criminal offenses, as crimes are more difficult to detect.

² <http://www.helcom.fi/Lists/Publications/HELCOM%20Activities%20report%202015.pdf>.

³ https://qsr2010.ospar.org/media/assessments/p00386_Marine_Litter_in_the_North-East_Atlantic_with_addendum.pdf.

⁴ <http://www.helcom.fi/Recommendations/Rec%2019-14.pdf>.

- National prosecution authorities meetings can be used to foster closer cooperation (focus on Annex V) and international cooperation.
- An additional focus on fishing vessels and the responsible authorities might be useful due to the amount of fishing gear being found as marine litter;
- MARPOL inspections are very useful, not only port state controls, as they focus on all Annexes.

Impact: Examples of uptake of the Recommendations

The North Sea Network of Investigators considered the Recommendations from the Seminar at their meeting in 2019. As a result, a number of the recommendations from this work have been taken up and will be integrated into a new chapter on MARPOL Annex V offences in the North Sea Manual on Maritime Oil Pollution Offences. This new chapter will be considered for agreement by the NSN in 2021. In addition the European Maritime Safety Agency (EMSA) has offered to provide information to the NSN on relevant training in the field (on vessels) to understand practical challenges of detecting violations of MARPOL Annex V obligations.

Barriers to progress

There are significant gaps on statistical information regarding MARPOL Annex V offences and applied sanctions in OSPAR and HELCOM CPs. Exemptions were Germany and the Netherlands, who provided (relatively) detailed information. Hence, these countries and their approaches to recording statistics on MARPOL Annex V offences could be regarded as "best practice" examples.

Potential options for future work (next steps)

Competences with regard to the issue of illegal discharge of onboard generated waste do not lie within the marine environmental protection sector/ OSPAR and therefore any future work in this area would require the development of collaborative relationships with relevant competent organizations, for example the North Sea Network of Investigators or EMSA. With the work done as described above actions 32, 33 and 38 are regarded to be finalized. Any future work would need to conclude on how to ensure a further, regular and coherent information exchange with regard to shipping related actions of the RAP and with organizations competent in this area of work.