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**COMMISSION STAFF WORKING DOCUMENT**

**Union submission to the ninth session of the International Maritime Organization's Sub-Committee for Pollution Prevention and Response commenting on the report by the correspondence group on the accidental loss or discharge of fishing gear**

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### **PURPOSE**

This Staff Working Document contains a draft Union submission to the International Maritime Organization's (IMO) ninth Sub-Committee for Pollution Prevention and Response (PPR 9). The IMO has indicatively scheduled PPR 9 in hybrid format from 4 to 8 April 2022.

The draft submission comments on the report of the correspondence group on marine plastic litter and suggests a draft resolution amending MARPOL Annex V to make the marking of fishing gear mandatory. It proposes to create a correspondence working group to develop appropriate draft amendments to the *2017 Guidelines for the implementation of MARPOL Annex V* along with draft amendments to MARPOL Annex V. These would then be reported to PPR 10. The draft submission also stresses the need for an up-to-date and accurate estimate of the proportion of abandoned, lost and otherwise discarded fishing gear within marine litter overall.

### **EU COMPETENCE**

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) makes assessment and monitoring of marine litter and its impacts mandatory for EU MS and also obliges them to take measures to reduce them.

To address plastic litter from single-use plastics and fishing gear containing plastic, accounting for almost 70% of beach litter, the EU adopted Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment. This Directive regulates the use, production, consumption and waste management of single-use plastics and fishing gear containing plastic.

It provides for market restrictions for certain single-use plastic products, consumption reduction targets, obligations for producers, including extended producer responsibility schemes to help cover the costs of waste management and litter clean-up, awareness-raising and data gathering.

As regards waste fishing gear, the Directive requires extended producer responsibility (EPR) schemes to be set up to cover the costs of separate collection, transport and further treatment of waste fishing gear containing plastic, with national collection targets to be set at Member State level, as well as the monitoring and reporting of amounts of waste fishing gear delivered to ports with a view to the establishment of a later EU-wide binding collection target. The Directive also calls for the development of a harmonized standard relating to the circular design of fishing gear to encourage preparing for re-use and facilitate recyclability at end of life.

Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 lays down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy. This regulation includes detailed rules on the marking of fishing gear and related reporting requirements, including retrieval and reporting of lost gear.

In addition, Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, requires Union fishing vessels to have the equipment on board to retrieve lost gear, and the retrieval by the master of the vessel in case where

gear is lost. If the lost gear cannot be retrieved, the Regulation requires the master to inform the authorities of its flag Member State within 24 hours, who will subsequently have to inform the competent authority of the coastal Member State.

The Commission has submitted a proposal for a Regulation, COM(2018)368 of 30 May 2018, amending Council Regulation No 1224/2009 which provides for reporting by the fishing vessel in an electronic logbook and requires Member States to collect and record the information concerning lost gear and provide it to the Commission on request. The proposal also extends the obligation to carry on board necessary equipment for the recovery of lost fishing gear to all fishing vessels, including vessels under 12m.

In light of all of the above, the present draft Union submission falls under EU exclusive competence.<sup>1</sup> This Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the IMO prior to the required deadline of 11 February 2022.<sup>2</sup>

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<sup>1</sup> An EU position under Article 218(9) TFEU is to be established in due time should the IMO Maritime Safety Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

<sup>2</sup> The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement absolutely possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

## MARINE PLASTIC LITTER FROM SHIPS

### Comments on document PPR 8/8, the report by the correspondence group on reporting of the accidental loss or discharge of fishing gear

#### Submitted by the European Commission on behalf of the European Union

#### SUMMARY

Executive summary: This document comments on document PPR/8/8 (France, as coordinator of the Correspondence Group). It proposes to create a correspondence group to develop draft amendments to the *2017 Guidelines for the implementation of MARPOL Annex V* to go along with draft considered amendments to MARPOL Annex V. The group would then report to PPR 10.

Strategic direction, if applicable: 4

Output: 4.3

Action to be taken: Paragraph 15

Related documents: MEPC 73/19, MEPC 74/8/3, MEPC GESAMP, PPR 7/22, PPR 7/17, PPR 8/8

#### Introduction

1 This document is submitted in accordance with paragraph 6.12.5 of the Guidelines on the IMO and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.4/Rev.3). It comments on document PPR 8/8, the report of the Correspondence Group on Marine Plastic Litter from Ships.

2 The correspondence group was instructed by the PPR 7 to consider how to amend MARPOL Annex V and the *2017 Guidelines for the implementation of MARPOL Annex V* (resolution MEPC.295(71)) to facilitate and enhance reporting of the accidental loss or discharge of fishing gear, as currently provided in regulation 10.6 of MARPOL Annex V, and consider the information to be reported to Administrations and IMO, the reporting mechanisms and the modalities.

3 Considering the urgent need to progress this work, the European Union requests that PPR 9 establishes a correspondence group and proposes terms of reference. This is based on the report of the correspondence working group on marine plastic litter (PPR/8/8). Its aim would be to present a report at PPR 10 with a draft resolution amending annex V of MARPOL and the 2017 Guidelines for the implementation of MARPOL Annex V. (resolution MEPC.295(71)).

## Background

4 PPR 7 established a Correspondence Group on Marine Plastic Litter on reporting of the accidental loss or discharge of fishing gears coordinated by France.

5 The terms of reference of the correspondence group set out in PPR 7/17 instructed the working group to: “consider how to amend MARPOL Annex V and the *2017 Guidelines for the implementation of MARPOL Annex V* (resolution MEPC.295(71)) to facilitate and enhance reporting of the accidental loss or discharge of fishing gear, as currently provided in regulation 10.6 of MARPOL Annex V, and consider the information to be reported to Administrations and IMO, the reporting mechanisms and the modalities”.

6 The quality of the various contributions made by the participants enabled the working group to draw up a concrete response to the first terms of reference. This was done by favouring the hypothesis of two MEPC resolutions, the first amending MARPOL Annex V, the other amending the IMO guidelines for its implementation (Resolution MEPC.295(71)). The hypothesis agreed by the participants established a priority relationship between the two resolutions. This was because the work on the resolution amending the guidelines for implementing MARPOL Annex V could not be completed without a consensus being reached on the resolution amending MARPOL Annex V.

7 The report of the correspondence group on marine plastic litter (PPR/8/8) recognises the Group made good progress but states that further work is needed. The Group therefore agreed to recommend establishing a working group at PPR 8 with the draft terms of reference below, subject to additional changes as may be decided by the Sub-Committee:

1. further consider the draft amendments to MARPOL Annex V to provide for the reporting mechanisms, the modalities and the information to be reported to Administrations and IMO to facilitate and enhance reporting of the accidental loss or discharge of fishing gear; and
2. develop appropriate draft amendments to the *2017 Guidelines for the implementation of MARPOL Annex V* (resolution MEPC.295(71)) to support the implementation of the contemplated draft amendments to MARPOL Annex V.

8 It also invited the Sub-Committee to note the above information on the outcome of the Group's work in general, and in particular, to:

1. consider the issues associated with the application of MARPOL Annex V (paragraphs 66 and 67), data confidentiality and the thresholds for reporting (paragraphs 42 to 46) and decide as appropriate;
2. endorse the establishment of a working group and consider the terms of references proposed (paragraph 91); and
3. take action as appropriate.

9 PPR 8 noted the progress made by the Correspondence Group but due to time constraints was unable to consider the Group's report and document PPR 8/8/1 in detail. It recognised that further deliberations would be facilitated by :

- in-person discussions in a working group (see also paragraphs 9.4 and 9.5)
- additional written proposals. These would either contain draft text building on the Correspondence Group's framework for proposed amendments or elaborate items requiring further consideration, such as reporting frequency, data management, information sharing and harmonising reporting formats.
- additional consultations with the fishing industry and FAO.

10 The Sub-Committee forwarded document PPR 8/8 and PPR 8/8/1 to PPR 9 for detailed consideration. It invited interested Member States and international organisations to submit additional proposals or commenting documents building on the work done to PPR 9. The Sub-Committee further noted that potentially relevant documents on marine plastic litter, were due to be considered by MEPC and might be forwarded to PPR 9 if so decided by the Committee. This includes the progress report of the GESAMP Working Group on sea-based sources of marine litter and a submission by FAO on reporting protocols and practices.

## Discussion and proposals

11 The EU considers preventing and reducing plastic litter generated from, and retrieved by, fishing vessels as key to achieve Sustainable Development Goal 14 to prevent and reduce marine pollution by 2025. In the EU, 80 to 85 % of marine litter (beach litter counts), is plastic, with single-use plastic making up 50% and fishing-related items representing 27 % of the total litter items.

12 The Progress report of the GESAMP Working Group on Sea-based Sources of Marine Litter (MEPC 75/INF.23) highlighted the need for an up-to-date and accurate estimate based on available data on the portion of marine litter that is abandoned, lost and otherwise discarded fishing gear.

13 GESAMP considers the estimate that 640,000 tonnes of fishing gear entering the world's oceans each year based on National Academy of Sciences (NAS 1975) studies and FAO/UNEP study (Macfadyen et al. 2009) unreliable. This is based on the dramatic variances in these statistics, and the significant changes that have occurred over the last 50 years in the global scale of commercial fisheries and the materials used in the manufacturing of gear. Lost, abandoned or otherwise discarded fishing gear containing plastic is therefore a particularly serious problem. It poses a severe risk to marine ecosystems, navigation, biodiversity and to human health. It is also harmful for tourism, fisheries and shipping.

14 Furthermore, the report of GESAMP WG 43<sup>3</sup>, considers that "*Mandatory and no-fault gear loss and ALDFG reporting requirements for both vessels that lose gear and for others that observe ALDFG at sea ensure that loss events are recorded and reported, which contributes to knowledge around total gear losses for a given fishery and/or location, and facilitates lost gear recovery, as well as location of gear that may present a navigational hazard (Macfadyen et al. 2009; Richardson et al. 2019a).*"

11 The EU believes that the framework for resolution annexed to document PPR8/8 could be a basis for further discussions in a correspondence group if PPR 9 decides to establish one. The proposed amendments to regulations 7.3, 7.4 and 10.6 and new regulation 10.7 introducing an appendix listing the items to be reported to the IMO by members when fishing gear is lost or discarded meet the objectives of document PPR 7/7 cited as a basis for consideration in the terms of reference adopted at PPR7. In particular, the EU welcomes amendments to regulations 7.1.3 and 10.6, which clarify that all lost or

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<sup>3</sup> <http://www.gesamp.org/publications/sea-based-sources-of-marine-litter>; released October 2021

discharged fishing gear are brought in the scope of Annex V, in line with the UNEP definition of marine litter<sup>4</sup>.

12 The progress of the working group's discussions is set out in document PPR 8/8 and its recommendations. Further progress was delayed by the COVID-19 crisis and its effects on the work in this forum. The EU therefore request that PPR 9 establishes a correspondence group and proposes terms of reference with a view to present a report at PPR 10 with a draft resolution amending annex V of MARPOL and the 2017 Guidelines for the implementation of MARPOL Annex V (resolution MEPC.295(71)).

13 The correspondence group should be instructed by the sub-committee to:

1. further consider the draft amendments to MARPOL Annex V to provide for the reporting mechanisms, the modalities and the information to be reported to Administrations and IMO to facilitate and enhance reporting of the accidental loss or discharge of fishing gear; and
2. develop appropriate draft amendments to the *2017 Guidelines for the implementation of MARPOL Annex V* (resolution MEPC.295(71)) to support the implementation of the contemplated draft amendments to MARPOL Annex V.
3. submit a written report to PPR 10.

14 PPR 9 will be held remotely. Furthermore, there is a need to propose to PPR 10 appropriate draft amendments to MARPOL Annex V and to the *2017 Guidelines for the implementation of MARPOL Annex V* (resolution MEPC.295(71)) to PPR 10 for consideration at MEPC 78. The coordinator of the working group will propose to the correspondence group a draft resolution amending both instruments to enable it to work efficiently as was the case during the intersessional work between PPR 7 and PPR 8.

#### **Action requested of the Sub-Committee**

15 The sub-committee is invited to consider the proposals put forward in this document's paragraphs 12-14 and take action as appropriate.

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<sup>4</sup> "Marine litter is any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment" in : <https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/marine-litter>