

# TURKISH WATERS MARINE POLLUTION: STRICT REGULATION AND EXTRAORDINARY FINES

Maritime Mutual Risk Bulletin No. 69

May 01, 2023



## INTRODUCTION

Virtually all maritime nation states have a MARPOL encouraged and nationally legislated entitlement to impose fines on ships, their masters and their owners if they cause marine pollution in a state's internal and/or territorial waters. In some states, the fines levied are extraordinarily high. Turkiye is one of them and its pollution fines have, over the years, increased substantially. This Risk Bulletin highlights the Turkish waters marine pollution risks to Members and the special loss prevention steps required to minimise extraordinary loss exposure and disruptive delays.

## BACKGROUND

The decades long and disturbingly high levels of land based and marine environmental pollution in Turkiye and surrounding Black Sea nations are well documented (see the [MedFAR Research Paper of Feb. 2022](#)). This situation may well have motivated the creation of the [Turkish Environmental Law No. 2872 of 1983](#) (as amended to 2023). This law and subsidiary regulation cover all aspects of pollution control, both ashore and in Turkish waters, inclusive of agriculture, industry and shipping activities.

Article 20 of Law No. 2872 concerns shipping and the protection of the marine environment. It is supplemented and amended by [Regulation 1987.11.3](#) which details the procedures for the 'Establishment of Guilt' and the amount of 'Fines to be Levied' against ships and other marine vessels'. As described below, the 'Fines' are currently updated and published annually, in January of each year.

Additionally, [Circular 2009/13](#) provides clarification as to the complex interrelationships between the Turkish Port Authorities, Coast Guard, Dept. of Environmental Protection and the Metropolitan Municipalities and their powers of marine pollution regulation enforcement.

## THE MARINE POLLUTION OFFENCE

Law No. 2872, as supplemented and amended by Reg. 1987.11.3, Art. 5, Pollution Ban, provides that:

*"It is unlawful to dump ballast and bilge water or wastes and effluent of any kind either directly or indirectly into the seas, inland seas, straits, gulfs, harbours, natural or manmade lakes, rivers or canals, or shores within Turkish territorial waters or Turkiye's free and restricted economic zones."*

NOTE 1: Reg.1987.11.3, Art. 4, Definitions, describes the terms 'ballast and bilge water or wastes and effluent of any kind'. They include petroleum products or mixtures of any kind, toxic wastes, sewage, grey water, and garbage.

NOTE 2: Reg.1987.11.3, Art.11, Life Saving, provides a pollution defence. This could apply if a ship master knowingly caused pollution for the purpose of saving life e.g., a tanker master discharges part of a petroleum cargo to prevent his vessel from sinking and his crew from drowning when no other choice was available.

## ESTABLISHMENT OF GUILT

Law No. 2872, as supplemented and amended by Reg. 1987.11.3, Section 5, Establishment of Guilt, sets out the investigative, evidence collection and reporting requirements for the Turkish marine pollution 'Monitoring and Control Team' (MCT).

Article 21 provides three scenarios, 'A' if the vessel is still in the pollution area, 'B' if the vessel is still in Turkish territorial or free or restricted zones and 'C' if the vessel has left Turkish waters. The MCT investigation processes and associated actions for all three scenarios are much the same. They include:

- Obtaining photos and videos of the polluted area and pollutant.
- Collecting pollutant samples in sealed 'special containers'.
- Sending the samples to the nearest 'authorised standard laboratory' for urgent analysis.
- Completion of a standard report form.
- Immediately notifying the nearest official authorised to impose penalties.

NOTE 3: No instructions are provided which require the sampling to be conducted in the presence of a vessel representative. Nor is there any stated requirement for a set of sealed samples to be provided by the MCT to a vessel representative or for the samples to be analysed in the presence of a vessel representative.

Article 22, Official Report of Incident, provides that the above noted MCT report should contain the ship name, date, location, cause and intensity of the pollution and the parties responsible.

Article 24, Sufficiency of Official Report, provides that:

*"Although the collection of samples and the taking of photographs, films or videos is required, an official report shall be sufficient for establishing guilt in incidents of pollution."*

NOTE 4: Article 24 could be interpreted as permitting a vessel to be found guilty based on the MCT official report content alone and without presentation of any of the MCT photo and sample evidence required by Article 21.

## TARIFF/FINES TO BE LEVIED, FROM 1 JAN 2023 TO 31 DEC 2023

As advised by the [Ersoybilgehan Turkish maritime lawyer's website](#), the Tariff/Fines to be Levied for 2023 have increased by an average of about 123% from 2022. This is described as 'merely an annual inflation adjustment'. The 2023 Tariff is as below:

### 1. PETROL AND PETROLEUM PRODUCTS DISCHARGED BY A TANKER:

Up to 1,000 (inclusive) gross tons (GT)	TRY 2,009.85 per GT (up from TRY 901.56 per GT)
Between 1,000 and 5,000 (inclusive) GT	An additional TRY 502.48 per GT (up from TRY 225.40 per GT)
Over 5,000 GT	An additional TRY 50.23 TRY per GT (up from TRY 22.53 per GT)

### 2. DIRTY BALLAST DISCHARGED BY A TANKER:

Up to 1,000 (inclusive) GT	TRY 366.18 per GT (up from TRY 164.26 per GT)
Between 1,000 and 5,000 (inclusive) GT	An additional TRY 73.05 per GT (up from TRY 32.77 per GT)
Over 5,000 GT	An additional TRY 11.59 per GT (up from TRY 5.20 per GT)

### 3. PETROLEUM PRODUCTS AND DIRTY BALLAST DISCHARGED BY A VESSEL OR ANY OTHER MARINE VEHICLE:

Up to 1,000 (inclusive) GT	TRY 1004.92 per GT (up from TRY 450.78 per GT)
Between 1,000 and 5,000 (inclusive) GT	An additional TRY 200.99 per GT (up from TRY 90.16 per GT)
Over 5,000 GT	An additional TRY 50.23 per GT (up from TRY 22.53 per GT)

### 4. GARBAGE AND SEWAGE\* DISCHARGED BY A VESSEL OR ANY OTHER MARINE VEHICLE:

Up to 1,000 (inclusive) GT	TRY 502.48 per GT (up from TRY 225.40 per GT)
Between 1,000 and 5,000 (inclusive) GT	An additional TRY 100.50 per GT (up from TRY 45.08 per GT)
Over 5,000 GT	An additional TRY 50.23 per GT (up from TRY 22.53 per GT)

\*NOTE 5: As advised by Istanbul P&I Correspondents, VITSAN, 'sewage' now specifically includes 'domestic wastewater, water with detergent, foam, exhaust scrubber system wash water, similar wash water and solid wastes etc.'

## CIRCUMSTANTIAL FACTORS INCREASING THE BASIC TARIFF/FINES

Regrettably, there are several factors (labelled for reader convenience as A through D) which will or can significantly increase the Basic Fines noted above.

Factor A. The registered owner of a vessel is normally a limited liability company. By reference to Law No. 2872 (as amended), this will be considered as ownership by an 'institution, organisation or business'. As such, the Fine levied will be three times the applicable Basic Fine noted above.

Factor B. If the vessel is found to have discharged 'hazardous substances', the Fine will be ten times the Basic Fine stated at Items 1. and 4. above.

Factor C: If the offending and fined vessel repeats the offence within three years, the Fine will be doubled.

Factor D: If the pollution occurs in a Special Protected Area (SPA), (advised by P&I Correspondents VITSAN as being the Marmara Sea, inclusive of the Istanbul Strait, Canakkale Strait and Izmit Bay) the Fine will be doubled.

NOTE 6: As an example of the total amount of a Fine which could be levied against a GT 10,000 cargo vessel for discharging dirty ballast, lawyers Ersoybilgehan advise this could exceed TRY 6 Billion which equates to about USD 330,000.

## FINE DEFENCES

Factors A through D all increase the Fine significantly. There are only two defences permitted which could reduce the Fine levied.

1. As noted above, it would be necessary to prove that the pollution was deliberate and was for the primary purpose of saving life.
2. It would be necessary to prove that all the pollution was cleaned up by the vessel alone and without any Port Authority assistance.

## PAYMENT OF POLLUTION FINES OR PROVISION OF SECURITY

To avoid detention, any vessel which is considered by the Turkish authorities to be guilty of causing marine pollution will be required to pay the levied Fine immediately or within 30 days. If this is done, then the Fine will be reduced by 25%.

It is reported that a formal objection to a Fine can be filed with the Turkish Administrative Court within 30 days of its notification. It should be noted that an objection does not suspend the obligation to first pay the Fine immediately or within 30 days.

Alternatively, it is technically possible to provide security by way of a Club Letter of Undertaking in an approved form. This can prove to be difficult as it is reported that no uniform and acceptable wording has yet been agreed with all the Turkish authorities involved in the pollution control and enforcement process.

## ADDITIONAL HARBOUR MASTER FINES

In addition to the Fines referred to above, a Harbour Master may also impose a fine of up to about 5 Million TRY (about USD 250,000) on vessels in Turkish waters where pollution has been caused by shipboard fires, explosions, collisions or similar incidents and the assistance of the Port Authorities has been required. For vessels under 150 GT, there are fixed fines. For vessels over 150 GT, the fine amount imposed is entirely at the discretion of the Harbour Master.

## CRIMINAL CHARGES

As noted above, MCT investigators are obligated to report immediately any marine pollution incident to the Turkish public prosecutor. The public prosecutor may then commence a criminal investigation, followed by criminal proceedings brought against the master of the vessel and potential imprisonment and/or penal fines.

## SPECIAL POLLUTION PREVENTION MEASURES IN TURKISH WATERS

Members are first referred to [MM Risk Bulletin No. 34, Bunker Oil Spill Prevention and Control: Regulation and Best Practice](#). The MARPOL and SOLAS/ISM Code or Non-Convention Vessel (NCVS) equivalent regulations and the best industry practice guidelines referred to must be always adhered to.

NOTE 7: This includes checking the validity of IOPP Certificates on board tankers and SOPEP certificates or their NCVS equivalents on board all vessels and the completion of all associated equipment checks and bunkering and other pollution control drills prior to entry into Turkish waters.

Additionally, MM's Turkish waters' pollution prevention recommendations are that:

1. Prior to entry into Turkish waters Masters should convene a shipboard management meeting to ensure that all on board are fully aware of the strict Turkish law pollution regulations that apply, the wide range of specified pollutants and the very high fines that apply for non-compliance.
2. Masters, Chief Officers and Chief Engineers should confer to assess and identify all possible vessel discharges which might be construed as pollutants under Turkish law inclusive of bunkering spills, shipboard bunker tanks transfer spills, engine room and cargo hold bilge discharges, sewage (black water) and grey water discharges, deck and cargo hold wash water, etc.

NOTE 8: MARPOL Annex IV defines 'grey water' as being from the galley sinks, dishwasher, laundry, bath, shower and wash basins. There is currently no MARPOL prohibition on the discharge of grey water by non-passenger vessels, but grey water discharge by all vessels is specifically prohibited by Turkish marine pollution law.

3. Subject to the above assessment process, appropriate action should include:
  - a. Posting clear warnings and instructions in all appropriate areas of the vessel including bridge, ship's office, engine control room, galley, and officer and crew mess and recreation rooms.
  - b. Locking and sealing (with numbered seals which are recorded and photographed in position):
    - i. The oily water separator overboard discharge valve.
    - ii. The water ballast system overboard discharge valve.
    - iii. All cargo hold, pump room and other space bilge water overboard discharge valves.
    - iv. The sewage/black water treatment and holding tank system overboard discharge valve.
    - v. If fitted, the grey water treatment and holding tank system overboard discharge valve.

NOTE 9: If not fitted (which is likely on non-passenger vessels) and there is no way in which all grey water discharges can be directed to a holding tank



or the grey water drains empty individually or directly overboard, it may be necessary to lock and prevent access to all shipboard laundry rooms, galley sinks, baths, washbasins and showers.

- c. Ensuring that no external deck or other washing down takes place and that all deck scuppers are plugged and secured as a precaution. If it rains while scupper plugs are in place, care should be taken to check for any visible contaminants (e.g., deck machinery hydraulic oil leakages) before removing any plugs to permit drainage overboard.
- d. Ensuring that all deck scupper plugs and an overboard discharge valve seals are checked as intact or otherwise at the end of each deck and engine room watch and the results and time noted in the respective deck and engine logbooks

## CONCLUSION AND TAKEAWAY

The marine pollution prevention and control regulations applicable in Turkish waters are wide ranging and very strict. The penalties are also extraordinarily high and there are very restricted opportunities to successfully defend a guilty finding. In such circumstances, the only certain way for Members to avoid exposure to loss, inclusive of costly vessel delay, is to implement strict pollution loss prevention measures in Turkish waters as recommended above.

Members whose vessels trade in or pass through Turkish waters are requested to ensure that their DPAs, ship managers and masters are all provided with access to this Risk Bulletin, MM's recommendations and the further information links it contains. Members should also ensure that the recommendations made are understood and fully complied with.