



Criminal liability for spills

International Maritime Law Seminar

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Agenda

- **New law increases criminal liability for damage to hydro-biological resources**

I. New law increases criminal liability for damage to hydro-biological resources



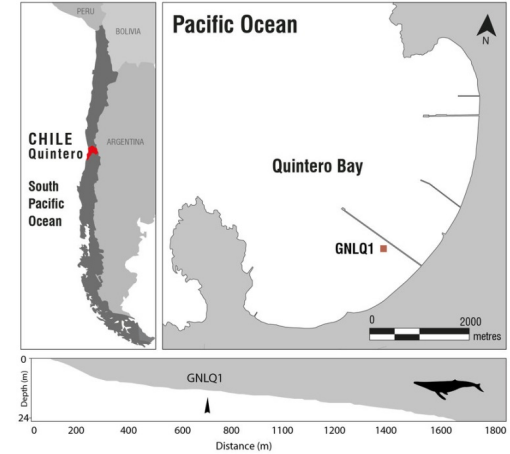
Background

Prior to the enforcement of Law 21,132, Article 136 of the Fishing Law stated that:

Anyone who brings or who orders placing chemical, biological or physical polluting agents in the sea, rivers, lakes or any other body of water that caused damage to hydro-biological resources without being previously neutralised to avoid such damage, shall be penalised with sanctions from 50 up to 3,000 UTM (approx. USD 3,650 up to 219,000). In case of a malicious act, the penalty shall be minor imprisonment in its minimum degree.

The provision expressly referred to malicious acts but contained no reference to negligence.

Case law



In the context of a pollution case in Quintero Bay, criminal proceedings were commenced against the pilot of a tanker vessel that was performing oil discharge operations and the master of the tug assisting the vessel for alleged liability under Article 136 of the Fishing Law. The criminal prosecutor and claimants referenced Article 136 and the first-instance court held that the provision covered negligence, as the introduction of polluting agents, such as oil, could be the result of an accident.

Case law (cont)



However, the Valparaíso Court of Appeal reversed that decision and held that, under the Constitution, no law establishes penalties if the conduct is not expressly described therein. According to the court, Article 136 contained no reference to negligence, reckless imprudence or any other form of fault. The Valparaíso Court of Appeal further stated that the matter under investigation was the alleged negligence attributed to people who were subject to criminal charges. As Article 136 did not cover negligence, the court concluded that such actions could not be criminally punished under the article.

New criminal offences

Article 136 was amended to penalise not only malicious acts, but also negligence.





New criminal offences (cont)

The new wording of Article 136 of the Fishing Law reads as follows (first and second paragraphs):

Anyone who without authority or in contravention of its conditions or in breach of the applicable rules, brings or orders placing chemical, biological or physical polluting agents in the sea, rivers, lakes or any other body of water that caused damage to hydro-biological resources shall be punished with minor imprisonment from medium to maximum degree and sanctions from 100 up to 10,000 Chilean UTM (approx. USD 7,300 up to 730,000).

***In case that the above conducts are committed with recklessness or mere negligence**, the penalty shall be minor imprisonment in its minimum degree and sanctions from 50 up to 5,000 Chilean UTM (approx. USD 3,650 up to 365,000) without prejudice to the administrative penalties.*



Corporate criminal liability

The Chilean Corporate Criminal Liability Law (Law 20,393) regulates the criminal liability of companies and other legal persons. Generally, it punishes terrorism financing, bribery, money laundering and disloyal administration (also known as base crimes). The companies are penalised if the offences are committed by their employees or representatives to the benefit or in furtherance of the direct interest of the relevant company, provided that the commission of the crime is the consequence of the company's breach of its direction and oversight duties.

Law 21,132 extended criminal liability for the abovementioned offences under the Fishing Law to legal entities. Accordingly, the list of base crimes under Law 20,393 now comprises those relating to water spills and damage to marine biological resources.

Corporate criminal liability (cont)



Under Law 20,393, to be exempted from corporate criminal liability, companies must adopt a base crime prevention model comprising:

- the appointment of a crime prevention officer;
- the sufficient means and attributes for the performance of their duties;
- the establishment of a crime prevention system; and
- the oversight and certification of the crime prevention model.



Comment

- Law 21,132 has introduced important changes which must be followed carefully. In the case of spills that cause damage to hydro-biological resources, shipowners operating in Chile are now subject to greater contingency – not only in terms of administrative penalties, but also in connection with criminal liability.
- Due to the penalisation of recklessness and mere negligence and the inclusion of the water spill offence on the list of offences that trigger corporate criminal liability, an increase of criminal proceedings against shipowners and/or masters and crew is likely.
- Shipowners should review their internal protocols and crime prevention models without prejudice to the fact that how Chilean courts may consider such crime prevention models for exempting corporate criminal liability has yet to be tested



Many Thanks!
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