

LEGAL PROTECTION OF THE MARINE ENVIRONMENT IN THE REPUBLIC OF BULGARIA: CURRENT PROBLEMS¹

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ABSTRACT: This scientific study is dedicated to the legal protection of the marine environment in the Republic of Bulgaria. Its actuality is related to increasing degradation of this integral natural resource on a national, regional and global level. The attention is paid to legal measures for the protection of the marine environment according to special and general Bulgarian environmental legislation as well as to liability for its infringement. Finally some general conclusions and recommendations are given from the examined regulation.

KEY WORDS: Marine Environment, Legal Protection, Republic of Bulgaria.

РЕЗЮМЕ: Това научно изследване е посветено на правната защита на морската среда на Република България. Неговата актуалност е свързана с нарастващата деградация на този интегрален природен ресурс на национално, регионално и глобално равнище. Вниманието е насочено към правните мерки за опазване на морската среда съгласно специалното и общото българско екологично законодателство, както и към юридическата отговорност за неговото нарушаване. Накрая са направени някои по-общи изводи и препоръки, свързани с разгледаната правна уредба.

КЛЮЧОВИ ДУМИ: морска среда, правна защита, Република България.

1. Introduction

The marine environment plays important role for the development of the national economy, tourism, shipping, fishing and sea-bed mining. That is why its protection is one of the basic environmental problems of our nowadays. Among the major sources of pollution of the marine environment could be shown vessel-based pollution (mainly oil spills from ships), land-based pollution (i.e. direct discharges into the sea or carried into it by rivers), air-born (atmospheric) pollution, pollution arising from exploration or exploitation of the seabed and dumping of waste at sea. The United Nations Environment Programme (UNEP) emphasizes that the state of the marine environment in coastal areas and closed and semi-enclosed seas in past two decades has deteriorated, in spite of the local efforts for its improvement³. It also shows as a serious environmental problem over-exploitation of living marine resources⁴. That is why the protection of the marine environment is one of the topical and important environmental problems of the contemporary mankind⁵.

¹ This study is related to the implementation of the Project „Environmental Protection of Areas Surrounding Ports using Innovative Learning Tools for Legislation - ECOPORTIL” with code BMP1/2.3/2622/2017 under the Program on Transnational Cooperation “Balkans-Mediterranean 2014-2020” of the European Union.

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³ See *Saving Our Planet. Challenges and Hopes*, Nairobi: UNEP, 1992, p. 25.

⁴ *Ibidem*, p. 29.

⁵ On the general ecological problems of the protection of the marine environment, see for example Божанов, С., *Международноправни мерки за предотвратяване замърсяването на морската среда с нефт от кораби*, София: Българска асоциация по морско право, 1989, с. 3–9; Божанов, С., *Международноправни актове в областта на околната среда*, Русе: Русенски университет

The state of the marine environment of the Republic of Bulgaria is also important environmental problem because of the geographic character of the Black Sea as a semi-closed sea. Under data for 2015 from the Executive Environment Agency (EEA) to the Minister of Environment and Waters (MEW), the state of the internal (coastal) sea waters is not satisfactory in some parts of the Varna gulf by exceeding of limit values for nitrate's and nitrite's nitrogen and phosphate's phosphorus, as well as some parts of the Burgas gulf by exceeding limit values for BOD₅, i.e. pollution of waters with organic substances⁶.

From the ecological point of view, it should be emphasized that the marine environment is a complex (integrative) subject of protection because it consist, as a system, of several components, such as sea waters, sea flora and fauna, sea bed and ores and minerals under sea bed. Besides, it should be taking into account its link with the coastal zone and especially with the coastal beach strip as one of the parts of the coastal zone⁷.

From legal point of view, there are 2 directions for the marine environment to be a subject of legal regulation. First of them is related to norms the law of the sea (international and national), which regulate the use of marine environment in a legal form of "marine areas", i.e. territorial sea, internal sea waters, exclusive economic zone and continental shelf. This aspect will not be examined in this study. The second of the is related to norms of environmental law sea (national and international), which regulate the protection and use of the marine environment as a natural resource with complex character, as it is above mentioned. The norms of the environmental law on protection of the marine environment, in my view, regulate two kinds of public relations – subject of legal regulation: a) protection of the marine environment from pollution (i.e. qualitative part of this problem); b) rational (i.e. sustainable) use of the natural resources, which are components of the marine environment (i.e. quantitative part of this problem). In this study the attention will be given mainly to the first, above mentioned, qualitative part of the problem of protection of the marine environment⁸.

"Ангел Кънчев", 2004, с. 193-194; Божанов, С., *Правна защита на българските морски пространства от замърсяване*, София: Деметра, 2009, с. 19–21, 60–65, 173-190; Борисов, О., *Международноправен режим на Черно море*, Варна: ВСУ „Черноризец Храбър“, 2014, с. 21–26, 37–38, 90-92; *Световният екологичен проблем*, София: Партиздат, 1984, с. 20–25; Стайнов, П., *Защита на природата (правни изследвания)*, София: БАН, 1970, с. 277-310; Стоянов, С., Н. Козарев, Н. Илиева, *Замърсяване на водите и мениджмънт на отпадъците в пристанищни райони, в Екологичен мениджмънт на пристанищни райони. Повишаване на квалификацията на пристанищните власти и всички заинтересовани представители на обществото в България*, Б.м.: Фламандско-български проект BUL/017/02, 2004, с. 193–211; Киселев, В., *Международные соглашения по предотвращению загрязнения морской среды с судов*, Москва: Транспорт, 1986, с. 6–13; Kiss, A., D. Shelton, *International environmental law*, Ardsley-on-Hudson (New York): Transnational Publishers, Inc., 1991, pp. 159–162; Kiss, A., D. Shelton, *Manual of European environmental law*, Cambridge: Grotius Publications Limited, 1993, pp. 277–279; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, Nairobi: UNEP, 2005, pp. 70–74; *Saving Our Planet. Challenges and Hopes*, pp. 25–31.

⁶ See Национален доклад за състоянието и опазването на околната среда. [2015 г.], София: Министерство на околната среда и водите – Изпълнителна агенция по околна среда, 2017, с. 93, в *Изпълнителна агенция по околна среда* [онлайн]. [прегледан 23.04.2018]. Достъпно от: <http://eea.government.bg/bg/soer/2015> Също достъпно в pdf и от: <http://eea.government.bg/bg/soer/2015/soer-bg-2015.pdf> The abbreviation "BOP" means biochemical oxygen on demand, and 5 is a number of days for samples.

⁷ See Пенчев, Г., *Правна защита на морската среда на Република България от замърсяване – история и съвременност*, в *100 години от рождението на проф. Михаил Андреев. Сборник статии*, София: УИ „Св. Климент Охридски“, 2011, с. 511 и цитираната там литература.

⁸ About the marine environment as an ecological and legal problem, see for example See Penchev, G., *Legal protection of marine environment from pollution in the Republic of Bulgaria*, in *Mare Nostrum*.

The legal protection of the marine environment in Bulgaria includes legal measures in this field according to the sectorial (“special”) and general environmental legislation, as well as to liability for infringement of the legislation. Besides, Republic of Bulgaria is a regular member of the European Union (EU) since 2007 that is why its legislation in the examined field is influenced from the EU law. Hereinafter, in general, will be examined the legal framework for protection of the marine environment under the existing Bulgarian legislation, in force on August 14, 2018.

2. Normative acts on protection of the marine environment of the Republic of Bulgaria

The special law in the examined field is the Marine Areas, Inland Waterways and Ports Act, 2000 (MAIWPA – State Gazette (SG), No. 12 of 2000, as amended). Subsidiary implementation will find some laws, such as: the Environmental Protection Act, 2002 (EPA - SG, No. 91 of 2002, as amended), Water Act, 1999 (WA - SG, No. 67 of 1999, as amended), Obligations to the International Fund for Compensation for Oil Pollution Damage Act, 2005 (OIFCOPDA - SG, No. 45 of 2005, as amended), Trade Shipping Code, 1970 (TSC - SG, No. 55 and 56 of 1970, as amended), the Black Sea Coast Spatial Development Act, 2007 (BSCSDA - SG, No. 48 of 2007, into force since January 1, 2008, as amended), the Spatial Development Act, 2000 (SG, No. 1 of 2001, as amended), the Public Health Act, 2004 (SG, No. 70 of 2004, as amended) and the Penal Code, 1968 (PC – SG, No. 26 of 1968, as amended), as well as secondary regulations on their implementation.

3. Legal measures for protection of the marine environment of the Republic of Bulgaria

3.1. Legal measures under the MAIWPA, 2000

Hereinafter below will be enumerated some more important legal measures under this act.

- Granting of permit by the Council of Ministers (CM) for entrance of foreign military or non-military atomic ships into internal sea waters or to ports of the Republic of Bulgaria if there are not special rules under international agreement with participation of the country of flag (art. 10 and 11 in relation to art. 8).

For the implementation of this legal measure it is necessary to be taken into account the definition of the legal term “ship” according to par. 2, point 30 (new, SG, No. 24 of 2004, prev. 28 – SG, No. 11 of 2005, as amended – SG, No. 54 of 2007, and as amended – SG, No. 98 of 2008) where it is stated that: "Ship" is every self-propelled or not self-propelled sailing facility of any type, including hydrofoils, vessels on air cushion, submarines, floating crafts and staying or floating platforms, designated for sea and/or river navigation, regardless the flag, under which it floats, and which is used for carrying out one or several of the following activities: transport of cargo, transport of passengers and luggage; towing of floating crafts; provision of sea services and other subsidiary operations; fishing; exploitation of other sea wealth, as well as other activities”.

- Competence for the Executive Agency “Marine Administration” (EAMA) to the Minister of Transport, Informational Technologies and Communications

Księga jubileuszowa prof. dr. hab. Leonarda Lukaszuka, Gdansk: Fundacja Promocji Przemysłu Okretowego i Gospodarki Morskiej, 2015, pp. 348–349 and quoted their literature.

(MTITC) to carry out checks to the documents for security of the ships and “other checks related to the protection of the environment” (art. 10 and 11).

- Obligation for ships passing territorial sea and internal waters or staying in the ports of the Republic of Bulgaria to observe the environmental rules (art. 23, par. 1).
- Prohibition for foreign ships to do industrial fishing in the exclusive economic zone of the Republic of Bulgaria with exception of cases under international agreement with the country of flag (art. 49, par. 1).
- Special rules related to the maritime spatial planning (art. 51a – 51g).
- Granting of permits by the CM for scientific research in the continental shelf and exclusive economic zone of the Republic of Bulgaria (art. 52).
- General prohibition for pollution of the marine environment over limit values (art. 53)⁹.

For the implementation of this legal measure it is necessary to be taken into account the definition of the legal term “pollution of the marine or the river environment” according to par. 2, point 11 (prev. point 9 – SG, No. 11 of 2005, suppl. – SG, No. 28 of 2018) of the AP of the act where it is stated that: "Pollution of the marine or the river environment" means direct or indirect bringing by man substances or energies in the marine environment, including the mouths of the rivers, which causes or can cause damage to the live marine or river resources, danger for human health, impair the lawful use of the sea, including degrading the quality of the sea water and of the conditions for tourism and recreation, according to the standards and norms for admissible pollution in effect. Pollution occurs also in cases of deliberate or accidental introduction by humans into the marine or river environment of alien or new to this environment of organisms, which cause or may cause the adverse effects referred to in sentence one”.

- Granting of permits by MEW in coordination with MTITC for discharge of earth’s mass and sea-bed sludge into marine areas of the Republic of Bulgaria (art. 62).
- Special requirements on the treatment of wastes in ports including these ones which are result of shipping activities, use of internal sea waters, building of protective equipment, hydro-meteorological information and protection against disasters (articles 103, 103c, 103d, 109, 109a, 110, 115m and 117c).

They are connected with some obligations for the owners of ports and State Company “Port Infrastructure” in this field. Besides, these requirements are regulated in the scope of the special rules on the activities in the ports (art. 92 – 117d).

- Implementation of compulsory administrative measures, and especially in the examined field: a) prohibition by the EAMA to the MTITC for leaving of ships a Bulgarian ports if they are in badly technical condition (art. 57); and b) pursuit and arrest of ships in the Bulgarian internal sea waters or territorial sea which contaminate the marine environment over limit values or break the regime of the continental shelf and exclusive economic zone by the officers of the Ministry of Interior, Ministry of Defence and MTITC (art. 124, par. 1).

3.2. *Legal measures under some other laws*

Hereinafter below, some legal measures will be shown under some laws which have subsidiary implementation in this field.

⁹ This prohibition is related to all kinds of harmful substances and all sources of pollution. – see Penchev, G., *Op. cit.*, p. 352.

3.2.1. Legal measures under WA, 1999

This act takes implementation for protection of the Bulgarian sea waters from land-based sources. Some legal measures in this field will be enumerated hereinafter below.

- Permitting regime for discharge of pollutants into surface and underground waters (art. 52 - 87).

Permits are granted by the MEW.

- Adopting of limit values for the quality of waters (art. 118, par. 4, art. 120, 122 and 135).
- Prohibition for functioning of enterprises without purifying equipment (art. 127, par. 2).
- Monitoring on the state of the waters, including sea waters (art. 169 - 175).

The competent authority in this field is MoEW. Under data of the MEW from 1996 the quality of the Bulgarian coastal sea waters is monitored by 26 measuring stations¹⁰, but under data of the CM their number is 24¹¹.

3.2.2. Legal measures under BSCSDA, 2007

- Special rules related to zones for territorial structural protection (art. 9 – 17a).
- Special rules on the spatial development of the Bulgarian Black Sea coastal zone (art. 18 - 22).

3.2.3. Legal measures under TSC, 1970

There should mentioned only one legal measure in examined field, namely special rules on the responsibility of the ship owner of oil tanker for damage caused by pollution with oil or oil products (art. 346a – 346d). They are related to: a) obligation of the ship owner of oil tanker to be responsible for damage caused by pollution with oil or oil products and cases of his exoneration from responsibility (art. 346a); b) scope of the compensation (art. 346b); c) limited responsibility of this ship owner (art. 346c); and d) financial securities and issuing of certificates (art. 346d).

3.2.4. Legal measures under OIFCOPDA, 2005

- Obligation of receivers of oil over 150 000 tons per year to do payments in the International Fund for Compensation for Oil Pollution Damage on behalf of the Republic of Bulgaria (art. 3, par. 1).
- Obligation of receivers of oil in the territory of the Republic of Bulgaria to present declaration on received quantity under taxation oil in State Agency “State Reserve and War-time Stock” (SASRWTS) to the CM (art. 5, par. 1).
- Obligation of the SASRWTS to collect and generalize the information on the oil supplies in the territory of the Republic of Bulgaria (art. 8).

3.2.5. Legal measures under EPA, 2002

- General rules on the protection of the water from pollution (art. 35, 37 and 38).

They include more general obligations of natural and legal persons to prevent water pollution over limit values.

- Granting of complex permits for the construction and operation of new and the operation of existing installations and facilities for the categories of industrial activities under Annex 4 to the Act (art. 117 - 129).

¹⁰ See *Състояние на околната среда в Република България. Годишен бюлетин. 1996*, София: НЦОСУР-МОСВ, 1997, с. 18–19.

¹¹ See *Годишник за състоянието на околната среда през 2001 година*, София: Министерски съвет, 2003, с. 23.

The permits are granted from the EEA to the MEW (art. 120, par. 1), but the control on its implementation is carried out by the respective RIEW to the MEW (art. 120, par. 5).

- Environmental assessment (art. 81 - 91).
- Environmental impact assessment (art. 81 – 83 and art. 92 - 102).
- Right to information of the environment (art. 17 - 31).
- Monitoring of the environment (art. 143 - 147).

It is carried out through the National Environmental Monitoring System, managed by the MEW, with exception for its environmental noise monitoring component, which is managed by the Minister of Health.

4. Liability for infringement of the legislation on protection of the marine environment

Hereinafter below will be shown in brief the separate kinds of liability in this field.

4.1. Administrative liability

It is regulated in art. 118 – 123 of MAIWPA, 2000. These provisions contain a lot of corpus delicti of administrative offences of the requirements of this act, such as: sinking of ship (art. 118), entrance without permit of foreign military or non-military atomic ship into internal sea waters or to ports of the Republic of Bulgaria (art. 119, par. 2), pollution of the marine environment over limit values (art. 119, par. 3), and intentionally pollution of the marine environment over limit values which cause significant damage to the marine environment – a special corpus delicti of administrative offence (art. 119, par. 5).

4.2. Civil Liability

In articles 31, par. 1 and 122, par. 4 and 5 of MAIWPA are regulated 2 kinds of procedures for determination of the scope of the recovery for damages to the marine environment, including these caused by its pollution over limit values. First of them (art. 31, par. 1) is related to general action to the court. Second of them (art. 122, par. 4 and 5) is related to determination of the scope of the recovery under a special speedy administrative procedure where is determined also the scope of the fine as an administrative punishment.

4.3. Penal Liability

It is regulated in PC, 1968. Articles directly referred to the pollution of the marine environment are art. 352a (significant pollution of the Bulgarian sea waters over limit values with petrol products or derivatives or with harmful liquid substances, determined in international agreement with participation of the Republic of Bulgaria) and art. 353a (misrepresentation or announcement of incorrect information on the state of the environment, including the marine environment).

With subsidiary implementation in this field are art. 352 (significant water pollution over limit values) and art. 353, par. 1 – 3 (putting into operation of a plant or thermal power plant before putting into operation its purifying facilities)¹².

¹² For more details on legal framework of the protection of the marine environment in Bulgaria, see Божанов, С., *Законодателна уредба в областта на околната среда*, София: Арго Пъблишинг, 2006, с. 199-205; Божанов, С., *Правна защита на българските морски пространства от замърсяване*, с. 71–78, 134-138; Стоянов, С., Е. Терлемезян, *Българско и международно право за екологичен мениджмънт на пристанищни райони*, в *Екологичен мениджмънт на пристанищни райони. Повишаване на квалификацията на пристанищните власти и всички заинтересовани*

5. Multilateral treaties on protection of the marine environment from pollution with the participation of the Republic of Bulgaria

The Republic of Bulgaria is a contracting party to some multilateral universal (i.e. on a global scale) and regional treaties in the examined field. They will only be enumerated below and most of them are related to the protection of the marine environment from pollution.

5.1. Multilateral universal treaties on protection of the marine environment with the participation of the Republic of Bulgaria

They are:

- United Nations Convention on the Law of the Sea (Montego Bay, 1982)¹³;
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Brussels, 1969)¹⁴;
- Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil (London, 1973)¹⁵;
- Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (Brussels, 1971)¹⁶;
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London, Mexico City, Moscow, [Washington], 1972)¹⁷;
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London, 1996)¹⁸;
- International Convention for the Prevention of Pollution from Ships (London, 1973)¹⁹;
- Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (London, 1978)²⁰;
- International Convention on Oil Pollution Preparedness, Response and Cooperation (London, 1990)²¹;
- Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (London, 1992)²²;
- Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (London, 1992)²³.

5.2. Multilateral regional treaties on protection of the marine environment with the participation of the Republic of Bulgaria

представители на обществото в България, Б. м.: Фламандско-български проект BUL/017/02, 2004, с. 52–56; Пенчев, Г., *Екологично право. Специална част*, София: Фенея, 2012, с. 93–107 и цитираната там литература.

¹³ Into force for Bulgaria since June 14, 1996. This convention has general meaning in the examined field.

¹⁴ Into force for Bulgaria since January 31, 1984.

¹⁵ Into force for Bulgaria since February 19, 2007.

¹⁶ Into force for Bulgaria since March 3, 2005.

¹⁷ Into force for Bulgaria since February 24, 2006.

¹⁸ Into force for Bulgaria since March 24, 2006.

¹⁹ Into force for Bulgaria since March 12, 1985.

²⁰ Into force for Bulgaria since March 12, 1985.

²¹ Into force for Bulgaria since July 5, 2001.

²² Into force for Bulgaria since November 28, 2004.

²³ Into force for Bulgaria since November 18, 2006.

They are:

- Convention on the Protection of Black Sea against Pollution (Bucharest, 1992)²⁴;
- Protocol for the Protection of Marine Environment of Black Sea from Pollution by Land-based Sources (Bucharest, 1992)²⁵;
- Protocol for Cooperation in Combating of Pollution of the Marine Environment of Black Sea with Oil and Other Harmful Substances by Accidents (Bucharest, 1992)²⁶;
- Protocol for the Protection of the Marine Environment of Black Sea from Pollution by Dumping (Bucharest, 1992)²⁷;
- Protocol to the Convention on the Protection of Black Sea against Pollution on the Protection of Biodiversity and Landscape Diversity of Black Sea (Sofia, 1994)²⁸;
- Agreement for the Privileges and Immunities of the Commission for Protection of Black Sea from Pollution (Istanbul, 2000)²⁹.

In relation to these treaties, it should be pointed out that under art. 5, par. 4 of the Constitution of the Republic of Bulgaria (SG, No. 56 of 1991, as amended), the international agreements which are ratified and entered into force for Bulgaria are part of the domestic legislation with priority to contradicting national regulations³⁰.

6. Conclusions

Finally, some general conclusions and recommendations are given from the examined regulation.

- The special features of the marine environment as a complex (integrative) natural resource requires successful collaboration between scientists and practical experts for the purposes of its examination and protection.

²⁴ Into force for Bulgaria since January 15, 1994. This convention is based mainly on the source-oriented approach and its annex includes 10 kinds of substances and their mixtures, prohibited for discharge at sea.

²⁵ Into force for Bulgaria since January 15, 1994.

²⁶ Into force for Bulgaria since January 15, 1994.

²⁷ Into force for Bulgaria since January 15, 1994.

²⁸ Into force for Bulgaria since June 20, 2011.

²⁹ Into force for Bulgaria since August 15, 2003.

³⁰ On the protection of the marine environment under international environmental law, see for example Анастасов, А., *Международноправен режим на биоразнообразието*, София: БАН-ИДП, 2015, с. 105–107, 158–172; Божанов, С., *Международноправни мерки за предотвратяване замърсяването на морската среда с нефт от кораби*, с. 10–87; Божанов, С., *Международноправни актове в областта на околната среда*, с. 195–208; Божанов, С., *Правна защита на българските морски пространства от замърсяване*, с. 23–39, 50–59, 80–134, 139–173; Борисов, О., *Цит. съч.*, с. 73–78, 92–108; Пенчев, Г., *Правен режим на опазване на Черно море от замърсяване*, в *Юридически сборник*. Бургас, 1996, Т. VI, с. 95–104; Стоянов, С., Е. Терлемезян, *Българско и международно право за екологичен мениджмънт на пристанищни райони*, в *Екологичен мениджмънт на пристанищни райони. Повишаване на квалификацията на пристанищните власти и всички заинтересовани представители на обществото в България*, Б. м.: Фламандско-български проект BUL/017/02, 2004, с. 46–52; Хакапаа, К., *Загрязнение морской среды и международное право*. Москва: Прогресс, 1986, с. 46–364; Киселев, В., *Цит. съч.*, с. 28–119; Сперанская, Л., *Международно-правовая ответственность государств за загрязнение мирового океана: некоторые теоретические аспекты*, Москва: Наука, 1984, с. 53–61, 130–135, 138–143; *Световният екологичен проблем*, с. 258–261, 265–278; Kiss, A., D. Shelton, *International environmental law*, pp. 162–202; Kiss, A., D. Shelton, *Manual of European environmental law*, pp. 279–308; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, pp. 71–76.

- The efficient implementation of the Bulgarian legislation on protection of the marine environment will contribute to the observance of the obligations of the Republic of Bulgaria under international agreements and EU law in this field.
- The observance of the legislation on protection of the marine environment is related to considerable financial resources, that is why, there is a need to be used different possibilities on a national, EU and UN levels for financing of activities which cause impact on the state of this natural resource.

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