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# Legal Remedies for Marine Ecological Damage in China: As Illustrated by the Tasman Sea Oil Spills Case

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*This paper analyzes legal remedies for marine ecological damage as provided in Article 90, Section 2 of the Marine Environment Protection Law of the People's Republic of China. In doing so, the paper examines the Tasman Sea Oil Spills Case, the first civil case in China to claim marine ecological damage involving foreign interests. The paper finds that many issues arise in practice due to the simplicity of the relevant legal provisions. The existing international treaties on marine oil pollution damage caused by ships do not cover marine ecological damage. However, domestic courts of some countries have relevant judicial practice on the matter. Hence, it is urgent to establish a set of new rules on marine ecological damage compensation in China and to specify the claimants, the scope for compensation and the measure of indemnity with the aim of providing an effective legal remedy for marine ecological damage.*

## Keywords

Tasman Sea Case, Marine Ecological Damage, Legal Remedy, Tianjin Maritime Court

## I. Introduction

China's rapid economic development is the key to increasing number of activities to production output including marine transportation, oil exploration and exploitation, and marine fishery production. This has resulted in an increased risk of significant

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accidental oil spills from ships. Additionally, with the rapidly growing consumption of oil, China has evolved into one of the largest importers of petroleum in recent years. In 2007, China imported nearly 200 million tons of petroleum.<sup>1</sup> This enormous scale of petroleum import takes place mainly through ships entering through China such that the probability of oil spills occurring in China's sea areas has and will continue to significantly increase.<sup>2</sup> According to annual bulletins published by the Ministry of Environmental Protection on the environmental quality of China's offshore areas, there were 124 pollution accidents caused by ships along China's seaboard in 2006 and 107 similar accidents in 2007. The total volume of oil leakage in 2006 was 1,216 tons including 5 accidents involving oil and chemical pollution with oil leakage volumes of more than 50 tons. In 2007, the total volume of oil leakage was nearly 900 tons, with 38 oil spills of more than 0.1 tons each and 5 oil spills with a volume of oil leakage of more than 50 tons.<sup>3</sup> These frequent oil spills make the already worrying state of the ecological environment in China's seas even worse.

## II. Definition of Marine Ecological Damage

Scholars have not yet succeeded in reaching a consensus on a uniform definition of the term "ecological damage." Nonetheless, there are a number of scholars attempting to give the term an academic definition. For example, Dr. Lahnstein Christian has argued that "ecological damage is material damage to nature, specifically to earth, water, air, climate, landscape, flora and the fauna living in them, and to the interaction between them. It is also conspicuous man-made damage to the ecosystem and its component parts."<sup>4</sup>

According to academic jargon used by legislators and scholars, both in China and elsewhere, "ecological damage," "pure ecological damage," "damage to the environment *per se*," "environmental damage," "pure environmental damage," "impairment of the environment" and "natural resource damage" are often used without significant

<sup>1</sup> Available at [http://www.china.com.cn/economic/txt/2008-03/03/content\\_11402622\\_2.htm](http://www.china.com.cn/economic/txt/2008-03/03/content_11402622_2.htm) (last visited on Aug. 15, 2009).

<sup>2</sup> ZHU Zhenyu & ZHANG Hongyu, *Preventive Measures for the Oil Spill Accident of Ships*, 22 PETROCHEMICAL SAFETY TECHNOLOGY (2006).

<sup>3</sup> MINISTRY OF ENVIRONMENTAL PROTECTION(P.R.CHINA), BULLETIN ON THE ENVIRONMENTAL QUALITY OF CHINA'S OFFSHORE AREAS IN 2006; BULLETIN ON THE ENVIRONMENTAL QUALITY OF CHINA'S OFFSHORE AREAS IN 2007, available at <http://www.mep.gov.cn/tech/hjjc/jcxx/jagb/> (last visited on July 10, 2009).

<sup>4</sup> Lahnstein Christian, *A Market-Based Analysis of Financial Insurance Issues of Environmental Liability Taking*