

NZ Professional Skipper Magazine – Article

Liability for Biosecurity Breaches

**by
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Introduction of exotic organisms into the New Zealand marine environment can cause enormous harm both to the environment and the economic interests that depend on it. The editor has asked me to review the legal implications arising from an unwanted introduction of an organism into the local marine environment and in particular whether those responsible can be held legally accountable.

In the marine context the main risks of introduction of unwanted pests is through vessels that have arrived from overseas carrying these species on their hull or in their ballast water. Various government agencies are active in attempting to reduce the risk of the introduction of maritime pests and in particular the Ministry of Fisheries is active in this area. If you are interested in details of the pests which have arrived, those which could arrive and any measures that have been taken to prevent their arrival then you should visit the Ministries website at www.fish.govt.nz.

In the legal field the most relevant statute is the Biosecurity Act. Legal provisions have been put in place under this Act requiring relevant vessels to discharge their ballast at sea. However, I understand there are ongoing practical difficulties with discharging at sea and at best what you can aim for is a dilution of ballast water and thereby dilution of the risk that unwanted organisms will arrive. The Ministry is currently looking at implementing regulations also under the Biosecurity Act relating to hull cleaning.

So what legal ramifications could there be for someone who deliberately or negligently introduces a new marine pest. The answer naturally depends on the exact circumstances of the introduction. In most cases it will be impossible to pinpoint who actually introduced the pest, given that the pest may not become so established as to be noticed until long after the offending vessel has left. However, if it can be proved who introduced a pest then they could, as they say, be in a “world of hurt” legally. They could well be in breach of the offence provisions of the Biosecurity Act exposing them to a term of imprisonment or substantial fines. They could also be in breach of various sections of the Resource Management Act, including s.15, which covers the discharge of contaminants into the environment. In addition to the

problems they would have with various government agencies pursuant to these Acts (and various other acts and regulations), they could also be exposed to civil proceedings. For example, if the pest affected aquaculture, fishing or port operations then those who suffer loss could sue the introducer in negligence. The potential losses could of course be enormous, not only in clean up costs but also in lost or disrupted production. I note that in the area of genetic engineering of organisms there is speculation that businesses that operate in this area could be uninsurable because the potential losses caused by an accidental loss are so enormous. Similar losses could accrue if a non-genetically engineered but exotic pest is introduced into the sea.

In summary, the legal exposure for introducing unwanted pests are extensive and something you want to avoid at all costs. Given the potential impact of these pests this is as it should be.

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