



Ecological damage and ecological torts

**How does society deal with and remediate
damage to water and aquatic environments?**

Delphine Loupsans

The French biodiversity agency

The French biodiversity agency was launched on 1 January 2017 as a public agency that reports to the Ecology ministry. Its mission, in both continental France and the overseas territories, is to improve knowledge of, to protect, manage and raise awareness of terrestrial, aquatic and marine biodiversity.

Four organisations merged to form the agency, namely the Agency for marine protected areas, the Technical workshop for natural areas, the National agency for water and aquatic environments (Onema) and the French national parks.

This document benefited from the scientific and technical expertise accumulated at the National agency for water and aquatic environments and the knowledge produced by the human and social sciences.

It was drafted in the framework of the “**Ecological damage**” work group that contributes to fulfilling the HSS road map of the agency. The work group is particularly active in striving to achieve effective implementation of water law. The group is managed by the “Stakeholders and territories” policy officer and its members include a wide array of stakeholders (environmental inspectors, managers of the Inspections department, experts from job-sector management entities, law professors, experts from the Ecology ministry, representatives from various public agencies and organisations, etc.). Set up as a group for joint study and the sharing of experience and knowledge in order to enhance the available agency expertise concerning damage to water and aquatic environments and to respond to specific operational needs, the work group addresses issues concerning the description, technicalities and assessment of damage, as well as temporal and territorial factors, all of which are discussed briefly here. This document is the first based on the work done by the group.

This book continues the **Knowledge for action** series that makes new research findings and science-advice work available to professionals in the water and aquatic-environment sector (scientists, engineers, managers, instructors, students, etc.).

It is available on the AFB site (www.onema.fr/node/2835) and at the national portal for “Water technical documents”:





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An effort to address ecological damage, i.e. damage to nature, must cover a wide array of hybrid aspects, at the interface between numerous disciplines that no one person can hope to master simultaneously given that ecological damage raises multiple questions in the scientific, political, legal, social, economic, cultural and technical fields. In addition, it necessarily involves a number of stakeholders, with different rights and responsibilities, different work cultures, traditions and concerns, who though complementary in the grand scheme of things, are fully capable of ignoring each other.

Measures to control delictual and even criminal behaviour, and efforts to remediate the ecological torts caused, are gravely hindered by this complexity. In spite of the proliferation of regulations (and their lackings), penalties are rare and rarely dissuasive, and compensation in kind is generally ineffective. This situation is highly prevalent even though the “polluter pays” principle should contribute to raising awareness of risks before damage is done and to improving the implementation of penalties and remedies where the law foresees them. Environmental inspectors, entrusted with the mission of enforcing regulations, are at best virtually invisible and at worst contested and denied any legitimacy in their work. The end result is that the implementation of water law as a whole is largely negated.

Designed as a multi-disciplinary project spanning many professional sectors, this book addresses these issues via the damage caused to water and aquatic environments. The overall objective is to provide water managers and the public and private stakeholders directly involved in implementing water regulations with the necessary information and analysis methods. It is divided into five chapters, corresponding to the five aspects listed below that cover the main issues involved in dealing with ecological damages.

1. Legal basis and liabilities for damage caused to water and aquatic environments. Issues involved in characterising ecological damage.
2. When the legal, scientific and technical sectors work together. Technical aspects involved in dealing with ecological damage.
3. Assessing damage during a trial. From an assessment of damage to an assessment of remedies.
4. Territorial considerations in the legal situation and how they apply to ecological damage.
5. The time factor in managing ecological damage.

This division does not mean that each of the above aspects is not related to the others, but an in-depth discussion on each facilitates the presentation of the issues and serves to guide the reader in a progressive understanding of the topic as a whole.

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