

Marine environment as a subject matter of criminal offence

Oleksandr Shamsutdinov*

PhD in Law, Senior Researcher
Interagency Research Center for Combating Organised Crime
at the National Security and Defence Council of Ukraine
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-9325-9227>

Abstract. The relevance of the topic was determined by the need to increase the effectiveness of the criminal law protection of the marine environment from pollution. The purpose of the study was to develop a scientifically substantiated approach to interpreting the content of the subject matter of the criminal offence as a constructive element of the corpus delicti provided for in Art. 243 of the Criminal Code of Ukraine. Achieving this goal was made possible through the use of a complex of scientific cognition methods: hermeneutic, formal logical, systemic and structural, comparative legal, etc. It was established that the first form of the criminal offence under Part 1 of Art. 243 of the Criminal Code of Ukraine was constructed as a single delict with derivative consequences, characterised by several direct objects and subjects matter of the offence. It was substantiated that marine pollution is a conventional crime; therefore, the provisions of relevant international legal agreements to which Ukraine is a party, rather than national legislation, should take precedence in interpreting its constructive elements. The position that the subject matter of marine pollution (Art. 243 of the Criminal Code of Ukraine) is the marine environment was supported, and its components were identified as marine waters, the seabed, subsoil, and the coast. It was proposed that the sea coast be understood as lands that are washed (periodically covered or flooded) by coastal sea waters. The conclusion was drawn that the living resources of the sea (marine organisms) are not part of the marine environment, but they should also be recognised as a subject matter of the investigated crime

Keywords: criminal law norm; subject matter of the offence; conventional crime; UNCLOS; sea waters; hydrobionts; sea coast

Introduction

The problems of preserving the natural environment and regenerating natural resources remain among the most serious challenges for humanity, upon which its survival depends. However, as anthropogenic pressure on the planet intensifies, the level of environmental pollution is rising; specifically, the state of the marine environment is critically deteriorating. The Marine Environmental Strategy of Ukraine (2021) identifies river runoff, the discharge of return waters and wastewater from stationary coastal sources, diffuse pollution, and pollution originating from sea vessels as the primary sources of pollution in the Azov and Black Seas. For the fourth consecutive year, the activities of the Russian occupation forces have also constituted such a source, specifically through the aggressor's destruction of port infrastructure, the blowing up of dams, the shelling of oil depots, sewage treatment plants and pumping stations, the manoeuvring of naval vessels, missile launches from submarines, discharges of spent rocket fuel, and chemical pollution of the marine environment caused by sunken ships, downed munitions, etc. These aforementioned threats require Ukraine to implement effective legal mechanisms to

counter acts resulting in marine pollution, particularly by establishing criminal liability for the violation of relevant rules, regulations, standards, and other requirements regarding ecological (biological) safety.

One of the key features influencing the correct legal qualification of the offence and the imposition of a fair and proportionate punishment on the perpetrator is the subject matter of the criminal offence. Both law enforcement practice and doctrinal approaches to interpreting this specific objective feature of the elements of the crime of marine pollution (Art. 243 of the Criminal Code of Ukraine, 2001) indicate that this issue remains debatable; no unified opinion regarding the understanding of the content of the subject matter of this criminal offence has been developed.

Ukrainian researchers have dedicated their academic works to the comprehensive study of the criminal law protection of the sea and other water bodies from pollution. For instance, I. Berdnik (2020), examining marine pollution among other "environmental crimes" encroaching on water resources, noted that the subject matter in the composition of this crime was a mandatory "component" of its object.

Suggested Citation — **Article's History:** Received: 08.08.2025 Revised: 21.11.2025 Accepted: 29.12.2025 Published: 02.01.2026

Shamsutdinov, O. (2025). Marine environment as a subject matter of criminal offence. *Social & Legal Studios*, 8(4), 29-37. doi: 10.32518/sals4.2025.29.

*Corresponding author



In characterising the subject matter of marine pollution (Art. 243 of the Criminal Code of Ukraine, 2001), the researcher referred to relevant international regulations in this sphere and suggested replacing the term “sea” used by the Ukrainian legislator with the phrase “marine environment”. However, her conclusions regarding the content of the subject matter of this crime were somewhat contradictory. O. Sudets (2021), within the scope of researching the criminal law principles of liability for violations of water legislation, mentioned the mandatory objective features of the criminal offence provided for in Art. 243 of the Criminal Code of Ukraine (2001), yet did not dwell on their characteristics in detail. V. Matviichuk and V. Oliinyk (2022) dedicated a comprehensive monographic study to highlighting the theoretical and practical problems of the criminal law protection of the sea from pollution and littering. However, the scholars concentrated on interpreting the content of such concepts as “internal marine and territorial waters of Ukraine”, “waters of the exclusive (marine) economic zone of Ukraine”, and “the high seas”, whilst the provisions of relevant international legal agreements to which Ukraine is a party remained outside their academic attention. I. Khar (2022) examined the problems of the criminal law protection of water bodies from pollution, littering, and depletion (Art. 242 of the Criminal Code of Ukraine, 2001); thus, the focus of her scientific interest lay in the plane of a different criminal offence. Therefore, the researcher’s reference to the content of the subject matter of marine pollution was rather superficial and lacked proper argumentation.

Criminal law and criminological problems of marine environment pollution have also been investigated by many researchers. For example, A. García Ruiz *et al.* (2020), within the scope of researching “blue crime” – crimes causing harm to the marine environment – classified the disposal of toxic waste and the illegal discharge of oil and garbage from vessels as among the most harmful categories of environmental crimes possessing a transnational character. In this context, the researchers identified marine living resources, marine life, marine waters (national and international), and coastal and marine ecosystems as the objects of criminal impact. M. Lynch and M. Long (2022), in their review of the development paths of “green” criminology, pointed to the fact that this branch of criminological research differs from conventional criminology, which is centred on humans, by studying the environmental harm caused by humans to ecosystems and various biological species that fall victim to human development. Although the researchers did not interpret the objective features of crimes against the environment in this work, their assertion that harm to aquatic ecosystems from pollution consists not only in the deterioration of their normal functioning and the provision of relevant ecological services but also in the negative impact on species for which specific waters serve as a habitat is valuable. Z. Aliozi (2025), investigating “blue crimes”, i.e., criminal acts causing harm to oceans and marine life, raised the problem of criminalisation at international and national levels of criminal behaviour leading to the destruction of the marine environment (including overfishing, marine pollution, habitat destruction, and illegal waste dumping). The researcher included both marine life, including endangered species, and marine ecosystems, and the oceanic, marine, and coastal environment, in the subject matter of such criminal encroachments.

The purpose of this study was to develop a scientifically grounded approach to interpreting the content of the subject matter as a mandatory feature of the elements of the crime of marine pollution, as provided for in Art. 243 of the Criminal Code of Ukraine (2001).

Materials and methods

Conceptually, the research was based on the theory of criminal law of Ukraine; however, separate relevant provisions of environmental law, maritime law, and criminology were also applied. In the course of the research, a complex of methods of scientific cognition was used. Thus, the hermeneutic method was employed for the theoretical comprehension of the content of concepts used by the legislator to characterise the constructive features of the elements of marine pollution, and for the interpretation of relevant definitions from the perspective of criminal law science. The dogmatic (formal logical) method was applied in distinguishing the place of commission of the unlawful encroachment on the marine environment from the subject matter of this crime. The systemic and structural method was used during the study of the components of the marine environment as elements of a single whole, and in determining the place of the subject matter of encroachment within the structure of the object of the elements of the criminal offence. The comparative legal method proved useful in analysing the provisions of Ukrainian, foreign, and international legislation regarding marine pollution, and in the process of juxtaposing positions existing in criminal law doctrine regarding the subject matter of this criminal offence. The study also reflected methods of analysis and synthesis, induction and deduction, and the logical and semantic method in defining concepts and terms, and formulating conclusions.

The research process followed a certain staging: after substantiating the relevance of the subject of scientific inquiry for contemporary theory and practice of criminal law qualification, and stating the complex structure of the elements of the crime under study in general and its subject matter in particular, the results of research by legal scholars on this issue were analysed. Next, the relevant provisions of national and international legislation, to which the disposition of the criminal law provision under study refers, were examined. Subsequently, scientific and encyclopaedic literature, including national, subnational, and international legal acts allowing for the determination of the content of definitions directly related to the subject of this research, were processed.

Specifically, the following acts of Ukrainian legislation were used: the Criminal Code of Ukraine (2001), the Land Code of Ukraine (2001), the Water Code of Ukraine (1995), the Laws of Ukraine “On the Exclusive (Marine) Economic Zone of Ukraine” (1995), “On Environmental Protection” (1991), the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Rules for the Protection of Internal Marine Waters and the Territorial Sea from Pollution and Littering” (1996), and the Order of the Cabinet of Ministers of Ukraine “On Approval of the Marine Environmental Strategy of Ukraine” (2021), international legal acts: Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), International Convention for the Prevention of Pollution from Ships (1973), United Nations Convention on the Law of the Sea (1982), Convention on the Protection of the Black Sea Against Pollution (1992), and

Agenda 21 (1992). To substantiate the relevance of the chosen subject of research, statistical data from the Office of the Prosecutor General on registered criminal offences and the results of their pre-trial investigation, the Unified State Register of Court Decisions, and the EMBLAS report “National Pilot Monitoring Studies and Joint Open Sea Surveys in Georgia, Russian Federation and Ukraine” (2018) were utilised.

Results and discussion

Studies show that the main pollutants of the marine environment are oil products, organochlorine hydrocarbons, pesticides, perfluorinated substances, dioxins, and heavy metals. All these compounds accumulate in food chains, with humans being the final link. Furthermore, the level of pollution of seawater with pathogenic and conditionally pathogenic microflora is constantly increasing, which harms human health, leading, in particular, to an increase in morbidity among the population in coastal recreational areas (EMBLAS, 2018; Prekrasna *et al.*, 2022).

Such a state of the marine environment requires the implementation of systemic measures to minimise existing ecological and biological threats, restore marine bioresources, and prevent pollution of the marine environment. One of the ways to ensure the protection of the marine environment from negative anthropogenic impact is the introduction of effective legal mechanisms to counteract acts resulting in marine pollution. One of the avenues for ensuring the

protection of the marine environment against negative anthropogenic impact is the criminalisation of acts that cause harm to it or pose a real threat of inflicting such harm.

The liability of legal persons for pollution of the marine environment is established in Art. 26 of the Law of Ukraine No. 162/95-BP (1995). Natural persons bear criminal liability for committing relevant socially dangerous acts under Art. 243 of the Criminal Code of Ukraine (2001). However, an analysis of law enforcement practice shows that despite the prevalence of such offences, combined with their significant latency, the effectiveness of this criminal law norm is low. Specifically, according to official statistics, from 2013 to 2024, 50 criminal offences were registered under the elements of marine pollution – Art. 243 of the Criminal Code of Ukraine (2001) (2013 – 5, 2014 – 1, 2015 – 8, 2016 – 5, 2017 – 6, 2018 – 6, 2019 – 1, 2020 – 4, 2021 – 6, 2022 – 1, 2023 – 1, 2024 – 6). Moreover, not a single criminal proceeding with this qualification was sent to court with an indictment (Fig. 1). This telling statistic is confirmed by data from the Unified State Register of Court Decisions, which contains no court verdicts finding persons guilty of committing criminal offences under Art. 243 of the Criminal Code of Ukraine (2001). The only court decision in the register related to the issue under investigation is a court order scheduling a case for trial (Decision of Chornomorskyi District Court of the Autonomous Republic of Crimea in the case No. 123/2258/2012, 2012).

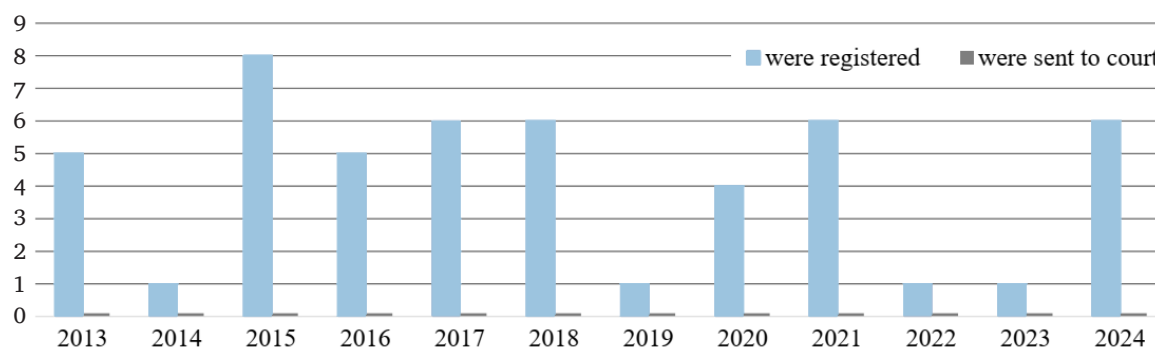


Figure 1. Practice of criminal proceeding under Art. 243 of the Criminal Code of Ukraine

Source: developed by the author based on the Prosecutor General's Office (2024)

One of the reasons for the insufficient effectiveness of criminal law norms prohibiting the most dangerous encroachments on the marine environment, according to A. Myroniuk (2019), is the mismatch between the punishment and the severity of the crime, particularly the low fines. V. Matvii-chuk and V. Oliinyk (2022) called such norms “overly complicated both for understanding their mandatory elements and for their application in practice”. V. Barvenko (2019) pointed to shortcomings in the actions of law enforcement agencies at the initial stage of investigating marine pollution, which often lead to the closure of criminal proceedings and the application of administrative law norms.

Under such condition, it can be argued that the low effectiveness of the criminal law norm provided for in Art. 243 of the Criminal Code of Ukraine is caused by all the aforementioned factors in combination: the specific manner in which the legislator has formulated its disposition and sanction, errors made by law enforcement practitioners when legally qualifying marine pollution, and the insufficient

scholarly elaboration of this issue within criminal law doctrine. Thus, research into the problem of ensuring the protection of the sea against pollution through criminal law measures is topical and meets the needs of contemporary law enforcement practice.

Part 1 of Article 243 of the Criminal Code of Ukraine (2001) defines criminal liability for acts involving marine pollution and establishes a system of sanctions that includes three alternative principal penalties – namely a monetary penalty, restriction of freedom, or custodial sentence –including an optional supplementary sanction in the form of a prohibition on holding certain offices or carrying out specific activities. These measures apply to any natural person who polluted the sea (Ukraine's internal sea waters, territorial sea, or exclusive (marine) economic zone) with materials or substances harmful to human life or health, or with waste as a result of a violation of special rules, provided that such conduct endangers individuals, marine living resources, or interferes with the lawful use of the sea. The

specified sanctions are also applied for the unlawful discharge or dumping of said materials, substances, or waste within the internal maritime or territorial waters of Ukraine or on the high seas.

Thus, from the objective side, the investigated crime can be committed in two alternative forms: 1) violation of special rules, resulting in the pollution of the sea with harmful materials, substances, or waste, thereby creating a danger to human life or health or to the living resources of the sea, or the possibility of hindering lawful uses of the sea; 2) illegal dumping or burial of such materials, substances, or waste in the sea.

It is obvious that the first form of this crime is formulated by the legislator as a single delict, complicated in its content, specifically of the type of criminal offences with derivative (remote) consequences. Their specific feature is that the intermediate and derivative consequences occur sequentially, one after another, as a result of a person committing a single socially dangerous act (Shamsutdinov, 2025). Specifically, the violation of special rules (the act) leads to the pollution of the sea (the intermediate consequence), which, in turn, creates a real danger to human life, health, and the living resources of the sea (the derivative consequence). This construction of the *corpus delicti* of the investigated criminal offence demonstrates the mandatory presence of additional direct objects, and accordingly, subjects matter and victims, who are harmed or threatened with harm by such encroachments.

Almost all researchers agree with the statement that the *corpus delicti* of marine pollution (Criminal Code of Ukraine, 2001) is characterised by several additional direct objects. For example, O. Dudorov and R. Movchan (2024) defined the main direct object of the crime under Art. 243 of the Criminal Code of Ukraine as the order of use and protection of the sea and the ecological safety of the marine environment, with additional objects being the life and health of a person, property, etc. V. Matviichuk and V. Oliinyk (2022) proposed the following formulation for the main and additional direct objects of this crime: 1) the main direct object of this crime is the social relations that ensure conditions for the proper protection, rational use, reproduction, and improvement of marine waters in a state favourable for the life activities of present and future generations; 2) the additional direct object of this crime is the social relations that ensure conditions for the protection of human life and health, marine bioresources, marine recreational resources, and other lawful uses of the sea. However, the existing positions in criminal law doctrine regarding the definition of the subject matter of the investigated *corpus delicti* indicate the need for a more in-depth study of this issue.

Thus, V. Matviichuk and V. Oliinyk (2022) argued that the subjects matter of a criminal offence provided for in Part 1 of Art. 243 of the Criminal Code of Ukraine (2001) are: 1) the waters of the internal sea of Ukraine; 2) the waters of the territorial sea of Ukraine; 3) the waters of the exclusive (marine) economic zone of Ukraine; 4) the waters of the high seas. These scholars proposed to unite these subjects under the generic concept of “sea waters (marine waters)”. When considering the issue of distinguishing the violation of water protection rules (Art. 242) from related delicts, I. Khar (2022), O. Dudorov and Ye. Pysmensky (2024) also named the waters of the internal sea, the high seas, the territorial sea waters of Ukraine, and the waters of the exclusive (marine) economic zone of Ukraine as the subject matter of marine pollution (Art. 243). I. Kopotun (2025) defined the

subject matter of the elements of the criminal offence under study in a similar manner.

This approach compelled the author to make certain reservations. Firstly, by speaking of several subjects of this criminal offence, the mentioned scholars are, in fact, pointing to several types of marine areas with different regimes of national jurisdiction. The indication in the disposition of the investigated norm of causing significant harm to the object of criminal law protection “within” specific marine waters denotes not the subject matter, but the “crime scene”. Other scholars have reached the same conclusion. For instance, T. Rodionova (2018), in her comprehensive study of the crime scene by criminal law of Ukraine, stated that Art. 243 of the Criminal Code of Ukraine (2001) contains a direct indication of the place of the crime as a constitutive element of its *corpus delicti*. A. Prytula (2010), researching the problem of the state’s criminal law jurisdiction in the exclusive (marine) economic zone, noted that the legislator in Part 1 of Art. 243 of the Code has formulated a disposition that established the crime scene as a systemic feature of the criminalisation of the act. I. Berdnik (2020) also recognised the place of the crime (the boundaries of certain marine waters) as a mandatory element of the *corpus delicti* of the criminal offence provided for in Art. 243 of the Criminal Code of Ukraine (2001).

Secondly, defining the subject matter of the investigated crime as marine waters indicates that the proponents of this approach were primarily guided by acts of national environmental legislation, such as the Water Code of Ukraine (1995), the Law of Ukraine No. 1264-XII (1991), the Rules for the Protection of Internal Sea Waters and the Territorial Sea of Ukraine from Pollution and Contamination (Resolution of Cabinet of Ministers of Ukraine No. 269, 1996), etc. For example, the Water Code operates with terms such as “water pollution” (Art. 1) and “protection of waters from pollution” (Chapter 20); the Law on Environmental Protection lists waters among other objects of legal environmental protection (Art. 5); the Rules for the Protection of Internal Sea Waters and the Territorial Sea of Ukraine from Pollution and Contamination use the terms “internal sea waters of Ukraine”, “coastal sea waters” (to define the territorial sea of Ukraine), and “water pollution”. The Water Code of Ukraine (1995) understands “water pollution” as the introduction of pollutants into water bodies, i.e., substances brought into a water body as a result of human economic activity (Art. 1). The Code includes the sea as a natural element of the environment where relevant waters are concentrated among water bodies.

At the same time, the sea is not just a water body. The legal regime of seas and oceans is a global issue, driven by the need for international transport, the use of sea and ocean resources by various states for economic, recreational, and other peaceful purposes, joint scientific research, and environmental protection measures. Therefore, a comprehensive regulation of these needs requires international cooperation, particularly within the framework of international legal acts. In this context, the issue of criminal law protection of the sea at the national level cannot be considered in isolation from the international legal obligations that Ukraine has undertaken in the field of protecting and preserving the marine environment. Thus, at the Third UN Conference in 1982 in Montego Bay (Jamaica), the United Nations Convention on the Law of the Sea – UNCLOS (1982) was opened for signature, which laid the foundations for the international

legal regime of marine spaces. Ukraine ratified UNCLOS, which entered into force in 1994, by the Law of Ukraine No. 728-XIV (1999), meaning the norms of this international legal act are binding for Ukrainian jurisdiction (Tuliakov & Stepanenko, 2025). Moreover, Art. 112 of the Water Code of Ukraine (1995) establishes the primacy of international legal norms over national ones in this area.

Part XII of UNCLOS (1982) is entirely dedicated to the protection and preservation of the marine environment. It contains the norm provided for in Art. 192, which obliges states to protect and preserve the marine environment. Subsequent norms clarify that to do so, states must take all measures consistent with the Convention that are necessary to prevent, reduce, and control pollution of the marine environment (Art. 194). One such measure, as stated in Art. 207 of UNCLOS (1982), is the adoption by states of national laws and regulations that consider international norms, standards, and recommended practices and procedures in this field. Similar provisions are also contained in other international agreements to which Ukraine is a party: the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), the International Convention for the Prevention of Pollution from Ships (1973), as amended by the Protocols of 1978 and 1997, and the Convention on the Protection of the Black Sea Against Pollution (1992).

Under these conditions, T. Korotkyi (2011) rightly noted that “the existence of relevant obligations for Ukraine allows classifying the *corpus delicti* provided for in Art. 243 of the Criminal Code of Ukraine as a conventional crime”. I. Berdnik (2017) agreed with this conclusion in her research on the problems of applying international legal acts in the qualification of the criminal offence of “marine pollution”.

It is worth noting that UNCLOS (1982) and the Convention on the Protection of the Black Sea Against Pollution (1992) prohibit the pollution not of marine waters, but of the “marine environment”. In particular, these Conventions define “pollution of the marine environment” as “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities”. In other words, international legal prohibitions on marine pollution are primarily aimed at ensuring the protection of the life of marine organisms (hydrobionts), public health, and the preservation of marine resources for their effective and safe use by humans. The quality of marine waters as such is important, but, it seems, not the exclusive issue of international legal regulation.

Therefore, the definition of the subject matter of such a conventional crime as marine pollution (Art. 243 of the Criminal Code of Ukraine, 2001) does not consist of marine waters, but of the “marine environment”. Proponents of this position include T. Korotkyi (2011), O. Melnik (2012), O. Sudets (2021), and some other scholars. However, these researchers invest different meanings into this concept. For example, I. Berdnik (2017) suggested that the concept of “marine environment” is much broader than the concept of “sea”, yet she understood it only as internal sea waters, territorial waters of Ukraine, and the waters of the exclusive (marine) economic zone of Ukraine (Berdnik, 2020), i.e.,

effectively only marine waters. O. Sudets (2021) called the marine environment, including the seabed and the coast, the subject matter of the criminal offence under Art. 243 of the Criminal Code of Ukraine (2001). O. Melnik (2012) emphasised that, unlike water pollution – Art. 242 of the Criminal Code of Ukraine (2001) – the subject matter of the marine pollution offence is the marine environment, and the inseparably linked living resources of the sea.

Criminologists A. García Ruiz, N. South, and A. Brisman pointed out that “blue crime” exerts a devastating impact on marine living resources, marine life, marine waters, and coastal and marine ecosystems (García Ruiz *et al.*, 2020). Representatives of “green” criminology M. Lynch and M. Long (2022) argued that the victims of aquatic ecosystem pollution are primarily nonhuman animal species. “Blue crime” researcher Z. Aliozi (2025) classified both marine life, including iconic species such as dolphins and whales, and marine ecosystems, the oceanic, marine, and coastal environments, as the subject matter of marine environmental pollution.

O. Tolkachenko (2015a), based on the provisions of environmental law, defined the marine environment as a natural complex within which several types of living and non-living natural resources function. She classified objects of the animal and plant world of the marine ecosystem as living resources, and mineral resources as non-living resources. Considering different types of marine pollution, the researcher effectively included the seabed, marine and surface waters, biodiversity (marine species/organisms), and the coastal zone as components of the marine environment (Tolkachenko, 2015b).

Although UNCLOS (1982) and the other mentioned international legal acts do not contain a definition of the term “marine environment”, an analysis of their content indicates that this concept covers marine waters, the coast, the seabed, its subsoil, and natural marine resources (both living and non-living). The Declaration “Agenda 21”, adopted at the UN Conference on Environment and Development (1992), states that the marine environment includes “the oceans and all seas and adjacent coastal areas” (para. 17.1).

Evidently, both international legal and doctrinal approaches to understanding the marine environment differ significantly, which negatively affects the effectiveness of the practical application of the investigated criminal law norm. It seems that to determine the content of the legal category “marine environment”, it is necessary first to turn to the semantics of the generic concept “environment”. Specifically, a Ukrainian explanatory dictionary defines “environment” as the totality of natural conditions in which the life activity of any organism takes place (Busel, 2005). Regarding the marine environment, it refers to the natural conditions for the life of marine organisms – animals, plants, microorganisms – whose life is impossible without being in seawater.

Whereas this study considers the marine environment as the subject matter of a criminal offence, specifically illegal pollution, the content of this concept should be defined considering the possibility of such anthropogenic impact. It should be recognised that the term “pollution” can be applied to the abiotic components of the environment, but not to the biota. Living organisms, on the other hand, can be infected, poisoned, or destroyed (killed). At the same time, it is entirely possible to pollute marine waters, the seabed, the coast, etc., with harmful substances.

In this context, it is advisable to pay attention to the coast (coastal strip, coastal zone), which some scholars indicate as one of the components of the subject matter of the investigated criminal offence. For example, V. Pluhaty and O. Kryshevych (2018) called it a “zone of treatment and recreation” and interpret it as territories of the sea coast that perform one of these functions and are suitable for it based on the totality of existing conditions. The current legislation of Ukraine has the concept of a coastal protective strip, which (in the context of the sea) is understood as a land plot along the sea, around sea bays and estuaries, with a width of at least 2 km from the water’s edge, where a strict regime of economic activity is established to prevent the pollution and contamination of such water bodies – Art. 60 of the Land Code of Ukraine (2001); Art. 88 of the Water Code of Ukraine (1995). Obviously, such large land areas cannot be classified as part of the marine environment.

Directive of the European Parliament and of the Council No. 2000/60/EC (2000), which sets out a comprehensive framework for European Union water policy, defines “coastal water” as “surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters”. Another Directive of the European Parliament and of the Council No. 2008/56/EC (2008), which establishes a framework for Community action in the field of marine environmental policy, proposes understanding coastal marine waters as defined in the aforementioned Directive No. 2000/60/EC (2000), and the seabed and subsoil, since specific aspects of the environmental status of the marine environment are not yet regulated in EU legislation. Such definitions are fully applicable to the interpretation of the marine environment, yet they do not provide an answer as to what constitutes the sea coast.

In the national legislation of foreign jurisdictions, approaches to understanding coastal areas vary. For instance, the Law of France No. 86-2 (1986) refers to the coastline as a geographical entity requiring a special policy of development, protection, and improvement. A more detailed definition of the coastline is contained in the report by M. Piquard (1973), prepared for the Interministerial Commission on Regional Planning and Development. It defines the coastline as the contact zone between land and sea. This zone includes both the public maritime space (everything covered or previously covered by the calm sea during the highest possible March tides) and the hinterland and foreland, extending several kilometres inland.

In turn, the US Coastal Zone Management Act (1972) contains the following definition of a coastal zone: “coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other”. The concept of “coastal zone” also includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. Thus, in the context of the criminal law prohibition of marine pollution, the “sea coast” as a component of the marine environment can be defined as lands washed (periodically covered or flooded) by coastal marine waters.

In summary, the marine environment, as the subject matter of the criminal offence provided for in Art. 243 of the Criminal Code of Ukraine (2001), includes the waters,

seabed, its subsoil, and the sea coast (including estuaries). Furthermore, the living resources of the sea, which are inextricably linked to the marine environment and for which a real danger of disease or death is created as a result of its pollution, should also be classified as the subject matter of the criminal offence under study. Specifically, this refers to objects of the animal and plant world of the marine ecosystem.

Ultimately, it should be added that awareness of the complexity of the subject matter of marine pollution and a clear understanding of all its components will facilitate effective law enforcement. In the future, when the domestic legislator implements the remarks of scholars that criminal law sanctions in the sphere of environmental protection should be not only punitive but also restorative – that is, provide for real measures aimed at restoring the ecosystem damaged as a result of the committed criminal offence (Mostepaniuk *et al.*, 2025) – the correct interpretation of the content of the indicated constitutive feature will acquire a fundamentally new meaning.

Conclusions

The study was dedicated to analysing views on the subject matter of the elements of the crime “Marine Pollution” – Art. 243 of the Criminal Code of Ukraine – developed by Ukrainian criminal law doctrine, the positions of foreign criminologists regarding the subject matter of encroachment in the commission of “blue crimes”, and the provisions of Ukrainian, foreign, and international legislation in the sphere of marine environment protection containing definitions of relevant terms. Consequently, the author succeeded in achieving the set goal – to develop a scientifically grounded approach to interpreting the content of the subject matter as a mandatory objective feature of the elements of marine pollution.

The results of the research have shown that Ukrainian legal scholars have not paid due attention to relevant international legal agreements to which Ukraine is a party, despite the fact that marine pollution is a convention crime. It was revealed that existing approaches to interpreting the subject matter of the elements of the crime provided for in Art. 243 of the Criminal Code of Ukraine allow for the conflation of such an objective feature with another – the place of commission of the criminal offence. An analysis of domestic environmental protection legislation has demonstrated that in cases of marine pollution, the attention of the Ukrainian law enforcement practitioner is focused primarily on the deterioration of the qualitative characteristics of waters, whereas international legal acts emphasise the threats that marine pollution poses to living resources and life in the sea, and to the quality of services related to the marine environment.

Research into the provisions of foreign and international legislation in the sphere of marine environment protection, and the conclusions of representatives of “green” criminology, has allowed the current study to assert that marine pollution is a criminal offence with a complex subject matter (poly-subjective); specifically, the subject matter of encroachment includes the marine environment (abiotic component) and the living resources of the sea (biotic component). Based on the analysis of the aforementioned normative and doctrinal provisions, it was summarised that marine waters, the seabed, its subsoil, and the coast should be classified as the marine environment, whilst objects of the animal and plant world of the marine ecosystem should be classified as the living resources of the sea. The

generalisation of legal approaches to interpreting the sea coast allowed for the proposal of a proprietary definition of this term from the perspective of criminal law science.

Generalising the obtained results, it can be noted that the conducted research enabled a comprehensive understanding of the content of the subject matter of the criminal offence under study, aimed at improving law enforcement practice in the criminal law qualification of acts consisting of polluting the sea with harmful substances, materials, or waste. A promising area for further research in the sphere of the criminal law protection of the marine environment is seen in the analysis of prospective Ukrainian legislation

on criminal liability for encroachments on the environment, particularly regarding the safety and cleanliness of relevant water bodies.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of interest

None.

References

- [1] Aliozi, Z. (2025). *Exploring ecocide as a blue crime through the lens of climate justice*. In R. Paulose (Ed.), *Blue crimes and international criminal law* (pp.1-38). Wilmington: Vernon Press.
- [2] Barvenko, V. (2019). *The initial stage of the investigation of violations of water protection rules and sea pollution*. (PhD thesis, Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine, Kryvyi Rih, Ukraine).
- [3] Berdnik, I. (2017). Problematic issue of determining the objective features of the crime “marine pollution”. *International Humanitarian University Herald. Jurisprudence*, 30(2), 52-55.
- [4] Berdnik, I. (2020). *Criminal and legal protection of water resources*. (Doctoral thesis, Chernihiv National Technological University, Chernihiv, Ukraine).
- [5] Busel, V. (2005). *Large explanatory dictionary of the modern Ukrainian language*. Kyiv: Perun.
- [6] Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. (1972, December). Retrieved from <https://treaties.un.org/doc/publication/unts/volume%201046/volume-1046-i-15749-english.pdf>.
- [7] Convention on the Protection of the Black Sea Against Pollution. (1992, November). Retrieved from <https://dredging.org/media/ceda/org/documents/guidance/various/bucharestconvention.pdf>.
- [8] Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.
- [9] Decision of Chornomorskyi District Court of the Autonomous Republic of Crimea in the Case No. 123/2258/2012. (2012, November). Retrieved from <https://reyestr.court.gov.ua/Review/27240119>.
- [10] Decree of Cabinet of Ministers of Ukraine No. 1240-p. “On Approval of the Marine Environmental Strategy of Ukraine”. (2021, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1240-2021-%D1%80#Text>.
- [11] Directive of European Parliament and of the Council No. 2000/60/EC “On the Framework for Community Action in the Field of Water Policy”. (2000, October). Retrieved from <https://eur-lex.europa.eu/eli/dir/2000/60/oj>.
- [12] Directive of the European Parliament and of the Council No. 2008/56/EC “On the Framework for Community Action in the Field of Marine Environmental Policy (Marine Strategy Framework Directive). (2008, June). Retrieved from <https://eur-lex.europa.eu/eli/dir/2008/56/oj/eng>.
- [13] Dudorov, O., & Movchan, R. (Eds.). (2024). *Criminal offenses against the environment (basic provisions of criminal law characteristics)*. Kyiv: Norma Prava.
- [14] Dudorov, O., & Pysmensky, Ye. (2024). Violation of water protection rules: Problems of interpretation and improvement of the criminal law. *Ukrainian Polyceistics: Theory, Legislation, Practice*, 2(10), 26-35. doi: 10.32782/2709-9261-2024-2-10-5.
- [15] EMBLAS – Environmental Monitoring in Black Sea. (2018). *National pilot monitoring studies and joint open sea surveys in Georgia, Russian Federation and Ukraine, 2017*. Retrieved from <https://emblasproject.org/wp-content/uploads/2019/07/EMBLAS-II-NPMS JOSS 2017 ScReport FinDraft2.pdf>.
- [16] García Ruiz, A., South, N., & Brisman, A. (2020). Eco-crimes and ecocide at sea: Toward a new blue criminology. *International Journal of Offender Therapy and Comparative Criminology*, 66(4), 407-429. doi: 10.1177/0306624X20967950.
- [17] International Convention for the Prevention of Pollution from Ships. (1973, November). Retrieved from <https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/ConferencesMeetings/Documents/MARPOL%201973%20-%20Final%20Act%20and%20Convention.pdf>.
- [18] Khar, I. (2022). *Theoretical and practical problems of criminal-legal protection of water bodies from pollution, clogging and depletion: A global, social and legal problem of our time*. Kyiv: Lira-K.
- [19] Kopotun, I.M. (Ed.). (2025). *Criminal Code of Ukraine. Scientific and practical commentary*. Kyiv: Educational literature center.
- [20] Korotkyi, T. (2011). *Implantation of the international legal prohibition of marine pollution into the criminal legislation of Ukraine*. *Law and Society*, 5, 133-139.
- [21] Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14#Text>.
- [22] Law of France No. 86-2 “Coastal Law”. (1986, January). Retrieved from <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000317531>.
- [23] Law of Ukraine No. 1264-XII “On Environmental Protection”. (1991, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1264-12#Text>.
- [24] Law of Ukraine No. 162/95-BP “On the Exclusive (Marine) Economic Zone of Ukraine”. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/162/95-%D0%B2%D1%80#Text>.

- [25] Law of Ukraine No. 728-XIV “On the Ratification of the United Nations Convention on the Law of the Sea, 1982, and the Agreement on the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 1982”. (1999, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/728-14#Text>.
- [26] Lynch, M., & Long, M. (2022). Green criminology: Capitalism, green crime and justice, and environmental destruction. *The Annual Review of Criminology*, 5, 255-276. doi: 10.1146/annurev-criminol-030920-114647.
- [27] Matviichuk, V., & Oliinyk, V. (2022). *Theoretical and practical problems of criminal-legal protection of the sea from pollution, clogging as a global, social and legal problem of our time*. Kyiv: Lira-K.
- [28] Melnik, O. (2012). *Prevention of crimes on environment pollution in Ukraine*. (PhD thesis, National Academy of Internal Affairs, Kyiv, Ukraine).
- [29] Mostepaniuk, L., Matiushenko, O., & Symonenko, N. (2025). The environment as an object of criminal law protection: Problems of definition in national and international legislation. *Scientific Journal of the National Academy of Internal Affairs*, 30(3), 33-42. doi: 10.63341/naia-herald/3.2025.33.
- [30] Myroniuk, A. (2019). *International measures of the maritime environment protection: Implementation in the Ukrainian legislation*. *European Political and Law Discourse*, 6(6), 29-35.
- [31] Office of the Prosecutor General. (n.d.). *On registered criminal offenses and the results of their pre-trial investigation*. Retrieved from <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.
- [32] Piquard, M. (1973). *Report “The French coast: Perspectives for development”*. Retrieved from https://www.documentation-administrative.gouv.fr/adm-01860036v1/file/DATAR_AmenagementLittoral_1993.pdf.
- [33] Pluhaty, V.S., & Kryshevych, O.V. (2018). *Crimes against environment*. In O.M. Dzhuzha, A.V. Savchenko & V.V. Cherniei (Eds.), *Scientific and practical commentary on the Criminal Code of Ukraine* (pp. 539-587). Kyiv: Yurinkom Inter.
- [34] Prekrasna, I., Pavlovska, M., Dzhalai, A., Dykyi, E., Alygizakis, N., & Slobodnik, J. (2022, February). Antibiotic resistance in black sea microbial communities. *Frontiers in Environmental Science*, 10. doi: 10.3389/fenvs.2022.823172.
- [35] Prytula, A. (2010). *Exclusive economic (marine) zone criminal legal protection in Ukraine*. (PhD thesis, National University “Odessa Law Academy”, Odessa, Ukraine).
- [36] Report of the UN Conference on Environment and Development. (1992, June). Retrieved from <https://www.un.org/esa/dsd/agenda21/Agenda%2021.pdf>.
- [37] Resolution of Cabinet of Ministers of Ukraine No. 269 “On Approval of the Rules for the Protection of Internal Sea Waters and the Territorial Sea of Ukraine from Pollution and Contamination”. (1996, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/269-96-%D0%BF#Text>.
- [38] Rodionova, T. (2018). *Crime Scene according to Criminal Law of Ukraine*. (PhD thesis, I.I. Mechnikov Odessa National University, Odessa, Ukraine).
- [39] Shamsutdinov, O. (2025). Environmental pollution: Criminal law discourse. *Problems of Legality*, 170, 174-197. doi: 10.21564/2414-990X.170.336363.
- [40] Sudets, O. (2021). *Criminal liability for violation of water legislation*. (PhD thesis, Private institution “Scientific Institute of Public Law”, Kyiv, Ukraine).
- [41] Tolkachenko, O. (2015a). *Concept of the marine resources*. *Constitutional State*, 19, 119-122.
- [42] Tolkachenko, O. (2015b). *Types of marine pollution*. *Law and Society*, 5-2 (3), 147-153.
- [43] Tuliakov, V., & Stepanenko, O. (2025). Jurisdictional tensions: Divergent judicial approaches to conflicts between UNCLOS and national public law policies. *Lex Portus*, 11(2), 7-24. doi: 10.62821/lp11201.
- [44] United Nations Convention on the Law of the Sea. (1982, December). Retrieved from http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
- [45] US Coastal Zone Management Act No. 92-583. (1972, April). Retrieved from <https://www.congress.gov/bill/92nd-congress/senate-bill/3507/text>.
- [46] Water Code of Ukraine. (1995, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80#Text>.

Морське середовище як предмет кримінального правопорушення

Олександр Шамсутдінов

Кандидат юридичних наук, старший дослідник
Міжвідомчий науково-дослідний центр з проблем боротьби
з організованою злочинністю при РНБО України
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-9325-9227>

Анотація. Актуальність теми зумовлена необхідністю підвищення ефективності кримінально-правової охорони морського середовища від забруднення. Мета статті полягає у виробленні науково обґрунтованого підходу до тлумачення змісту предмета злочинного посягання як конструктивної ознаки складу кримінального правопорушення, передбаченого ст. 243 КК України. Досягнення окресленої мети стало можливим завдяки використанню комплексу методів наукового пізнання, зокрема герменевтичного (для тлумачення конструктивних ознак складу забруднення моря), формально-логічного (для відмежування місця вчинення протиправного посягання на морське середовище від предмета цього злочину), системно-структурного (для вивчення складових морського середовища як елементів єдиного цілого, визначення місця предмета посягання у структурі об'єкта складу кримінального правопорушення), порівняльно-правового (для зіставлення положень національного і міжнародного законодавства щодо забруднення моря). Констатовано, що перша форма кримінального правопорушення, передбаченого ч. 1 ст. 243 КК України, сконструйована як одиничний делікт із похідними наслідками, для якого характерним є декілька безпосередніх об'єктів і предметів посягання. Обґрунтовано, що забруднення моря є конвенційним злочином, тому пріоритетними при тлумаченні його конструктивних ознак є положення не національного законодавства, а відповідних міжнародно-правових угод, учасницею яких є Україна. Підтримано позицію, що предметом забруднення моря (ст. 243 КК України) є морське середовище, та визначено такі його складові: морські води, дно, надра, а також узбережжя. Запропоновано під морським узбережжям розуміти землі, що омиваються (періодично покриваються чи затоплюються) прибережними морськими водами. Зроблено висновок, що живі ресурси моря (морські організми) не входять до складу морського середовища, однак їх також слід визнати предметом досліджуваного злочину.

Ключові слова: кримінально-правова норма; предмет посягання; конвенційний злочин; UNCLOS; води моря; гідробіоти; морське узбережжя