

## Prosecution Optimization for Illegal Fishing in Lake Baikal Using the Short-Form Criminal Proceedings

E.I. Popova, A.A. Shomoeva and V.M. Radnaev  
University of Technology and Management, Ulan Ude, East Siberia State, Russia

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**Abstract:** The study considers the existing problems, the problems of persons' prosecution for illegal catching (fishing) of aquatic biological resources in Lake Baikal. On the basis of a systematic analysis of this category of the crimes and related to them administrative offenses of persons' prosecution practice for their commission the researchers offer concrete recommendations which realization provides the increasing quality of criminal investigation and efficiency of this category.

**Key words:** Lake Baikal, illegal fishing, investigation, special procedure, criminal

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### INTRODUCTION

Lake Baikal is the world's deepest lake, the largest natural freshwater reservoir. Baikal is home to about 2600 species and subspecies of biological resources, more than half of which are endemics and exist only in this lake. They are about 1000 endemic species, 96 genera, 11 families and subfamilies-endemics. In 27 fish species exist nowhere in the world and they are the Baikal Omul, Golomyanka, Sturgeon, etc.

Official sources with ever increasing frequency mention that the situation with flora and fauna of Baikal becomes more and more difficult. So, in the Baikal region during most part of the summer of 2015 forests burned. At the end of the same year, the mass discarded fish on the coast not far from the Posolsk Village, the reason of fish kill was asphyxia. Environmental specialists ring the alarm on the fact that fish masses in the lake decline considerably. The public representatives pay also their special attention to other problems in the field of the region environment which are caused by people's don't care attitude. The modern global society has long ago realized the need for environmental protection, the need for flora and fauna preservation.

So for example, the 11th principle of the Rio Declaration on Environment and Development notes: "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply". The principle realization should be carried out in different directions including assignment of just punishment for the commission of offenses including environmentally, unfriendly crimes.

In Russia, a number of legislative and regulatory acts aimed at the preservation of fish masses in Lake Baikal exists: the order of the Federal Agency for fishery from 7 April, 2009 No. 283 "On approval the fishing rules for the Baikal fishery basin, the order of the state committee of the Russian Federation for the protection of the environment from 19 December, 1997 No. 569 "On approval of the lists of the items of fauna registered in the Red Book of the Russian Federation, the fishing rules in the Lake Baikal basin and other fishery reservoirs of the Buryat Autonomous Soviet Socialist Republic, the Irkutsk and Chita Region" approved by the order of the USSR Ministry of Fish Industry from 1 December, 1969, the Federal Law from 10 January, 2002 No. 7-FZ "On environmental protection", etc., prohibit catching (fishing) of aquatic biological resources during the spawning season.

Of course, Russian legislation also provides for possible prosecution for the commission of environmental offenses. However, most of responsive measures for the commission of acts connected with illegal fishing in the Lake Baikal are not effective as they do not bring any substantial results including the results of a preventive nature.

Exactly for this reason, the researchers are aimed to designate and get the message to members of the public the problem connected with prosecution of persons who commit pointed above the ecological crimes and also to define the solution to these problems.

### MATERIALS AND METHODS

In our opinion, a complex system approach to the study of specified problematics should be conducted to reach the pointed above goals. For this purpose, we considered it necessary (Popova, 2013).

To study the regulations of Russian legislation providing for responsibility for environmental offenses. And in our opinion, the regulations not only of criminal but also administrative legislation should be analyzed. Such position is determined by the fact that administrative and criminal offenses are often acts neighboring by their legal nature. So, administrative offenses and the crimes have often the same features (the crime committer, the target of crime (fish), the crime instrument and so forth).

To study the regulations of the code of criminal procedure regulating the order of criminal prosecution for the ecological crimes connected with illegal fishing. For this purpose, we have analyzed) the norms of law regulating the features of pre-trial procedure and court proceedings in criminal cases of this category) the norms establishing the procedural law and duties of the persons who are subjected to criminal prosecution) the norms defining powers and authority of the officials who conduct investigation and court proceedings. To study the releases of other researchers who devoted their works to the analyzed problem.

To study statistics on a number of committed environmental offences; a number of the persons who are subjected to criminal and administrative responsibility for their crimes including a number of the persons who are discharged prosecution to these types of responsibility. The source of information was statistics published on the official internet websites of the RF Ministry of Home Affairs and the Russian Federation Judicial Division of the Supreme Court, its territorial administrations from 2002-2015.

To hold an interview with practitioners. So, according to the special program 34 workers of fishery protection, 17 junior detectives investigating the ecological crimes were interviewed. Also, we have conducted a survey with 46 citizens who live in districts and are as near shore to Baikal.

## RESULTS

**The analysis of administrative and criminal legislation on criminal prosecution for ecological crimes:** Russian legislators have always paid their special attention to responsibility for illegal fishing. Therefore, the introduction of the relevant categories of offences into the Russian Federation Criminal Code (RF CC) and the Russian Federation Code of Administrative Offences (RF CoAO) became natural. During, the reform of criminal and administrative legislation the previous gaps in formulation of the proscriptions which have placed punishable offences on the same footing as administrative ones were rectified.

The Russian Federation Criminal Code of the fixed more accurately the features of a criminal trespass and the Russian Federation code of administrative offences contains the formal elements of a violation of the fishing rules and the rules of catching of aquatic biological resources. Nevertheless, despite that fact there are in practice difficulties at differentiation of punishable and administrative offences subject to Article 256 of the RF CC and Part 2 of Article 8.37 and 8.17 of the RF CoAO.

Part 1 of Article 256 of the Russian Federation Criminal Code provides for responsibility for illegal catching of aquatic biological resources if this act is committed:

- With the infliction of large damage
- With the use of a self-propelled transport craft, explosives, chemicals, electric current or any other methods of mass extermination of said aquatic biological resources or plants
- In their spawning places or migration routes
- In the territory of a preserve, game reserve or in a zone of ecological distress or ecological emergency

Thus, Part 1 of Article 256 of the RF CC contains the regulations with materially and formally defined crime with a feature of an objective side (the locale of crime).

Part 2 of Article 256 of the RF CC provides responsibility for illegal hunting of fur-seals, sea beavers or other sea mammals on the high seas in restricted areas. This norm contains formally defined crime with a feature of the target of crime (fur-seals, sea beavers or other sea mammals) and a feature of an objective side that is the locale of crime (on the high seas or in restricted areas).

As specific qualifying features, the Part 3 of the Article 256 of the RF CC designates acts stipulated in the first or second parts of this Article and committed by a person through his official position or by a group of persons in a preliminary conspiracy or by an organized group.

The RF CoAO provides for responsibility for crime against aquatic biological resources in two Articles 8.17 and 8.37 of the RF CoAO taking into account the locale of crime and the type of aquatic biological resources.

Part 2 of Article 8.17 of the RF CoAO provides for responsibility for biological resources violating the norms of catching (fishing) of aquatic biological resources and other norms of a license for water use or of a permit (license) to catch aquatic biological (living) resources of the internal sea waters or of the territorial sea or of the continental shelf and (or) the exclusion economic

exclusion zone of the Russian Federation. We should pay attention to two types of violated norms: the norms of catching (fishing) aquatic biological resources and the norms of a license for different types of fishing.

We should pay attention here to definitions of different types of fishing which the legislator gives. As item 10 of Article 1 of the Federal Law "On fisheries and conservation of aquatic biological resources" claims that industrial fishing constitutes the entrepreneurial activity on the search and catching (fishing) of aquatic biological resources, acceptance, processing, overloading, transportation, storage and unloading of the catch of aquatic biological resources, fish and other goods production from these aquatic biological resources on vessels of the fishing fleet. Item 10.1 of the same Article determines coastal fishing as the entrepreneurial activity on the search and catching (fishing) of aquatic biological resources, acceptance, processing, overloading, transportation, storage and unloading of the catch of aquatic biological resources to the points of delivery in the territories of these subjects including the seaports of the Russian Federation determined by state authorities of coastal subjects of the Russian Federation. The Federal Law "On fisheries and conservation of aquatic biological resources" determines catching as with drawing biological aquatic resources from their habitat.

Except those rules of industrial and coastal fishing referred to in Part 2 of Article 8.17 and 8.37 of the RF CoAO Russian legislation regulates the order and the regulations to realization of such types of fishing as fishing for research and cultural-educational purposes, fish rearing for sale, reproduction and acclimatization of aquatic biological resources, amateur and sports fishing, fishing for ensuring traditional ways of life and implementation of the traditional economic activity of Indigenous peoples of the North, Siberia and the Far East of the Russian Federation.

Comparison of the presented legitimate definitions leads to a conclusion that power of an administrative and legal ban is much wider than a criminal and legal ban. The crime provided for in Article 256 of the RF CC is committed only by the act for catching, i.e., only at with drawing biological aquatic resources from their habitat.

**The analysis of data of official statistics and data of an interview:** Before presenting data of official statistics it should be noted that these data are given only with regard to the whole Chapter 26 of the RF CC providing responsibility for all ecological crimes which besides illegal catching (fishing) of aquatic biological resources

also include other acts which the Criminal Law of our country defines as criminal (pollution of the marine environment, illegal hunting, illegal cutting of forest ranges, etc.).

So, statistical the Republic of Buryatia data subject to Article 256 of the RF CC received by the request to the Ministry of Internal Affairs of the Information Centre indicate the following: in 2010, there were 308 crimes registered, the quantity of previously investigated crimes in the covered period was 262, thus only 179 criminal cases were sent to the court (CSF District, 2010); in 2011, the quantity of registered crimes was 163, the quantity of previously investigated crimes was 130, 105 criminal cases were sent to the court (CSF District, 2011); in 2012, there were 175 crimes registered, the quantity of previously investigated crimes was 156, 135 criminal cases are sent to the court (CSF District, 2012); in 2013, there were 148 crimes registered, the quantity of previously investigated crimes in the covered period was 127 among which only 115 criminal cases are sent to the court, (CSF District, 2013).

On the basis of information received by the way of the direct appeal to Angara-Baikal Unit of the Russian Fishery, we have received the following data. So, in 2013 subject to Article 8.37 and a number of neighboring administrative offenses, there were 5020 process-verbal on administrative offenses executed, 7960.7 penalties imposed, in 2014, there were 4385 process-verbals on administrative offenses executed, 8574.2 penalties imposed. For 10 month of 2015, there were 4138 process-verbals on administrative offenses executed, 7649,8 penalties imposed.

Thus, in the sphere of imposition of administrative sanctions statistics in general shows good state of affairs in the sense that on the basis of the study of these data we cannot say that the large number of the persons who committed administrative offenses in the considered sphere was succeeded to outlive the crime. But, the fact that, the small number of the crimes falling within the features of Article 256 of the RF CC is registered, investigated and heard by the court is very alarming. As our anonymous interview with workers of fishery protection has showed that actually there is the huge number of acts falling within the features of Article 256 of the RF CC and first of all, its Part 1 committed and it is illegal catching (fishing) of aquatic biological resources with the use of a self-propelled transport craft.

Moreover, workers of fishery protection have pointed to the fact that in many cases administrative proceedings is instituted possessing discernible indications which point commission of the penal act or rule-breakers are not prosecuted at all. As the

respondents say, such state of affairs is explained by a variety of reasons among which are: concessions to the poachers in connection with the fact of personal acquaintance with them or their relatives, friends. Criminal proceedings is not instituted in case with already existing instituted criminal cases which quantity is enough for implementation of the plan for this covered period. The lack of judicial prospect on the criminal case, corruption, etc.

Also, data on the general damage from the ecological crimes (Part 3 Article 256 of the RF CC) during the period from 2013 to the first 6 month of 2014 placed on the official website of the Kabansky District Court of the Republic of Buryatia, the area which covers the major part of the Lake Baikal coastline from the direction of the Republic of Buryatia indirectly illustrate the facts above (Table 1).

Thus, interviews with locals of the coastal areas of the lake show that overnight successful fishermen can catch about 10 tons of fish (mostly theomul and grayling).

In turn, a survey with junior detectives, who had to be engaged in investigation of the crimes qualified subject to Article 256 of the RF CC has showed that in most cases at the initial stage of investigation the crime suspects deny their participation in commission of the crime and actively oppose to criminal prosecution. Further, however when investigation of the crime is over, the persons who are subjected to criminal prosecution as a rule, declare the request for sentencing without conducting proceedings according to the standard procedure. The fact that, the considerable number of criminal cases on the ecological crimes is basically heard according to special procedure of court judgment if the charge brought to him provided by Chapter 40 of the Russian Federation Code of Criminal Procedure (further special procedure) testifies to it. For example, in 2011, 87,000 cases on the ecological crimes were heard according to special procedure that was 81.1% of the number of heard cases with corresponding judgment on these categories, in 2012, there were 79,000 cases or 79.7% in 2013, there were 78,000 cases or 83.4% (Summary statistical reports on the activities of courts of general jurisdiction for 2011-13).

**Peculiarities of criminal investigation:** And here, the typical situations at the initial stage of criminal

investigation and the ways of counteraction by the offenders at the time of commission of the crime or directly after its commission should be pointed out.

The person (s) is (are) caught during illegal fishing, he/she (they), as a rule, tries (try) to do away with fish by throwing in water or takes (take) no actions. We should note that peculiarities of the fishing process in boats that is traditional for Baikal fishermen assume implementation of fishing by no less than two persons.

The person is attached with fish on the coast and thus declares that fish are not his specifying that he found fish right now, he was going to address to law enforcement officials to declare his finding; some strangers asked him to look after a bag and he does not what this bag has and so forth.

As an interview with the junior detectives has showed, later (in deciding the issue regarding institution of criminal case or at the beginning of criminal investigation) the counteraction to criminal prosecution is carried out by other ways: the default of officials, knowingly giving false evidence, the change of earlier given evidence, having an illegal impact on officials for the purpose of termination of the criminal case (by arrangements, offer of the bribes, an attempt to arrange for a case conclusion through common acquaintances with the junior detective or his headship, etc.).

Other factors which Russian scientists also frequent pointed in the field of criminal law complicate criminal investigation. The complexity of the determination of damage as considerable is more often specified that allows the person being prosecuted. The insufficient level of providing junior detectives with modern methodical recommendations for uncovering and investigation of considered crimes and the counteraction to criminal prosecution are also noted.

Moreover, during investigation of criminal cases of this category some junior detectives still make mistakes of a criminal, criminally-remedial and criminalistic character. We have made such a conclusion on the basis of data obtained during an interview with the junior detectives and an analysis of the precedents. Such mistakes are: incomplete prosecution evidence, wrong qualification of acts, wrong settling service documents, failure to meet procedural periods and so forth.

As a result, pre-trial investigation of these cases in the territory of the Republic, in some cases, does not

Table 1: General damage caused by the ecological crimes subject to the Article 256 Chapter 3 of the RF CC

Subject to Article 256 Part 3 of the CC of the RF	Year 2013, 51000,0 rub.			The first half of 2014, 29000,0 rub.		
	Criminal cases	Fish	Damage	Criminal cases	Fish	Damage
From this amount						
Omul	6	204	51000,0	2	94	23500,0
Pike	0	0	0	1	22	5500,0
Thus there were caught	204 fish			116 fish		

always meet the requirements. This statement can be illustrated on the example of the following data. So, in 2012, the court has essentially heard 132 criminal cases, 18 of them (or 13% of all essentially heard cases) were dismissed on non-exculpatory grounds. Two criminal cases were returned to the prosecutor for removal obstacles of judicial consideration. In 2013, the court has heard essentially 120 criminal cases, 15 of them (or 12.5% of all essentially heard cases) were dismissed on non-exculpatory grounds. Five criminal cases were returned to the prosecutor for removal obstacles of judicial consideration. In 2014, the court has heard essentially 198 criminal cases, 49 of them (or 25% of all essentially heard cases) were dismissed on non-exculpatory grounds. Total 6 criminal cases were returned to the prosecutor for removal obstacles of judicial consideration.

At the same time, the crimes falling within the features of Article 256 of the RF CC belong to a category of the obvious crimes when the criminal case is opened against the particular person. Their investigation is conducted in the form of the inquest (according to the standard procedure Chapter 32 of the RF CoCP or using the short form Chapter 32.1 of the RF CoCP). As a rule, on these criminal cases the junior detective is confident of judicial prospect (as 91% of the respondents said), i.e., that there is a great probability of judgment of conviction to the person against whom criminal prosecution was opened or planned.

Also at the very beginning of criminal investigation the junior detective is capable to predict a form of judicial proceedings on these categories of criminal cases, the standard procedure or the special procedure (82% of the junior detectives pointed out that fact). As a rule, many criminal cases on the crimes committed under Article 256 of the RF CC are exactly heard according to special procedure of court judgment if the person is agree with the charge brought against him (Chapter 40 of the RF CoCP). So, in 2012 according to such procedure the courts of the Republic of Buryatia have heard 116 criminal cases or 88.5% of all essentially heard cases, in 2013 there were 106 criminal cases or 88.8% heard, in 2014, there were 172 criminal cases or 86.8% heard.

As there were earlier noted in spite of the fact that all heard crimes are obvious, nevertheless, they are characterized by:

- The counteraction from the persons who are subject to criminal prosecution
- Not always the high quality of criminal investigation

It should be noted that the high-quality of criminal investigation, taking the criminal case to the court and the lawful, reasonable and fair court judgment formulation, in our opinion, possesses the high extent of crime prevention. Indeed, if the person who intends to commit the offense (crime) will be confident of punishment inevitability, he/she can refuse from its commission.

## DISCUSSION

In light of the above, we consider it possible that at the very beginning of criminal investigation, at the stage of legal proceedings initiation of the considered category the junior detective explained to the suspected offender (the accused person) the advantages which are provided to the person who is subjected to criminal prosecution and the norms regulating:

- The short-form inquest
- The special procedure of judicial proceedings provided by Chapter 40 of the RF CoCP. We would like to specify these advantages. The advantages which are directly provided by law

At judgment sentencing of conviction when considering the criminal case subject to Chapter 40 of the RF CoCP the court does not fix to the defendant more than two-thirds of the maximum term for serving punishment or a type of the most severe punishment prescribed for the committed crime (Part 5 Article 62 of the RF CC, Part 7 Article 316 of the RF CoCP). When hearing the case on the results of the short-form inquest the court imposes penalty or punishment which cannot exceed 1/2 of the maximum term or a type of the most severe punishment prescribed for the committed crime (Part 5 Article 62 of the RF CC, Part 6 Article 229.6 of the RF CoCP).

The defender's participation according to special procedure of judicial proceedings is obligatory (Item 7 Part 1 Article 51 of the RF CoCP). Court costs are not subjected to recoveries from the defendant (Part 10 Article 316 of the RF CoCP). A shorter term of criminal prosecution. At the short-form inquest of no >20 days (Article 226.6 of the RF CoCP). The specified circumstance as well as others which we have specified here, certainly, not all suspects (accused persons) estimate as the advantage. However, as a rule for the persons who do not want the fact of their prosecution be widely known, for those who does not want to spend their time for participation in criminal proceedings, it is the advantage. The advantages caused by the features of realization of the Norms of Chapter 40 of the RF CoCP in practice. witnesses are not called to the court session; judicial

proceedings are conducted for a shorter time in comparison with hearing of the criminal case by the court according to the standard procedure; the state accuser stating to the court his offers on the use of criminal law and imposing penalty or punishment, can point the fact that the defendant cooperated with the judicial scrutiny; the prohibition of criminal law to impose deprivation of freedom for commission for the first time of themisdemeanor (Part 1 Article 56 of the RF CC). The crimes qualified subject to Article 256 of the RF CC belong to this category.

In case of investigation in the short-form inquest the specified advantages can certainly be explained even before the first interrogation including before initiation of legal proceedings. During the inquest, according to the standard procedure the situation is somewhat different. In this case, the accused person to apply for special procedure of judicial proceedings only after termination of the inquest during acquaintance with case studys. At the same time, on the basis of tactical reasons the specified person can choose tactics of criminal investigation taking into account a possibility of hearing criminal case by the court according to special procedure. Within designated tactics for overcoming the suspected offender's counteraction the junior detective has the right to explain him the advantages which provides to the person who are subjected to criminal prosecution the norms according to special procedure (Chapter 40 of the RF CoCP). We should note that earlier these pointed tactical recommendations were also successfully approved on other categories of criminal cases, plunders and also on criminal cases connected with ammunition trafficking.

However before explaining the pointed advantages, the junior detective must have subjective confidence that the suspected offender (the accused person) is guilty. Such confidence has to be confirmed by good information of evidentiary value and of a focusing character. Besides, the defender and the suspected offender (the accused person) also have to be subjectively convinced that the junior detective has complete justifiable proofs of the person's culpability concerning his commission of crime, in this connection some or all acts of counteraction to criminal prosecution and judicial proceedings are senseless.

Thus, we think that also some essential provisions should be emphasized: The junior detective is obliged to check versions about possible self-incrimination and that he is not involved in the crimes; The suspected offender, the accused person should be in detail given notethe features of the short-form inquest and special procedure of judicial proceedings (Chapter 40 of the RF CoCP) and the consequences of such forms of investigation and judicial proceedings, they must have any possibility of

false pretence, deceit, they must not to entrench on the rights and legitimate interests of this participant of criminal proceedings.

Tactics based on the use of the pointed advantages will promote the increasing quality and efficiency of criminal investigation and subsequent judicial proceedings only subject to conscientious responsible attitude of the junior detective to performance his professional duties. The presence of aspiration to investigate the criminal case with observance of rights and legitimate interests of the suspected offender (the accused person); the lack of negative factors of the junior detective's interest in hearing the case by the court according to special procedure. Such factors are the interest in protection, the violations of the law, incompleteness, partiality of investigation, failure to prove a charge if the accused person agree with it (if that is allowed). These factors are not only immoral but also in certain cases indicate the signs of the white collar crime.

Explaining the pointed above advantages, the junior detectiveshould give the suspected offender (the accused person) note that he will be able to use all these advantages upon condition of the refusal from active counteraction to criminal prosecution. Unconditional or partial refusal from counteraction to criminal prosecution and also the suspected offender's (the accused person's) assisting the agencies in charge of pretrial investigation, with the junior detective's good qualification will allow creating strong prosecution evidence to minimize the mistakes concerning qualification of the act, the mistakes settling service documents, conducting investigative and procedural actions. Such outcomes were achieved by the widespread introduction of the system of recommendations about the use of the Norms on special procedure within pre-trial investigation on various categories of the criminal cases.

Thus, the short-form inquest and investigation taking into account a possibility of hearing the case by the court according to special procedure, in case of their implementation by high-qualified junior detective gives the chance to make full, objective investigation to provide observance of rights and legitimate interests of the participants of criminal proceedings as well as to minimize investigative and subsequent miscarriages of justice.

## **CONCLUSION**

Employee training and education and also creation of the methodical recommendations on uncovering and investigation of the specified crimes subject to specifics of the region should be pointed out as the important directions of the increasing quality of investigation of the crimes connected with illegal fishing in Lake Baikal. This

perspective directions demand researchers' attention and will possibly become the subject of a number of monographs.

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