Environmental Law in Cuba

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Chapter 11

Environmental Law

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I. INTRODUCTION

§ 11:1 Overview

Cuba's future prosperity will depend heavily on the natural systems that keep the island's 11 million people fed, sheltered, and buffered from storms. Indeed, the U.S. State Department's ongoing discussions with Cuba stress this very point: two of four agreements reached since the re-opening of diplomatic relations involve resource protection and preparing for the impacts of climate change.¹ Yet the expected influx of U.S. tourists, businesses, and developers—another key to the island's future prosperity—insures a corresponding layer of environmental stress.²

Against this backdrop, Cuba maintains a framework of environmental law that is bolder and more ambitious than what


might be expected. The nation has protected a quarter of its marine habitat from development. The coastline is also vigorously defended, Cuba’s program for environmental assessment of large projects is arguably more demanding than its counterpart in the United States. But, as in the United States, there are still gaps and question marks. In addition, the laws as written do not always unfold in predictable ways. This chapter describes in broad strokes the shape and content of Cuba’s environmental legal regime. It reviews the island’s main challenges, surveys the key environmental laws, examines some areas of special interest (land use, environmental assessment, and energy), and ends with a description of environment enforcement.

II. CUBA’S ENVIRONMENTAL CHALLENGES

§ 11:2 Environmental challenges

Long called the “Jewel of the Caribbean,” Cuba offers a brilliant landscape, with some of the best preserved shorelines and reefs in the region. But look further and you will find great vistas of urban dilapidation, leaking sewer systems, and worn carpets of contaminated marsh. Among Cuba’s environmental problems, soil degradation—caused by poor farming techniques and intensified by drought—tops the list, affecting an estimated 60% of the land surface. Water shortages are also on the rise, a result of overuse, pollution, saline intrusion, and drought. The loss of biodiversity and forest cover have also drawn national and international attention.

And it appears climate change is loading the dice. In recent years, Cuba’s average annual temperatures have risen (0.9°C), as have its average minimum temperatures (1.9°C). Dry periods are

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becoming more frequent. In addition, extreme events like hurricanes and tornadoes have increased. Revised projections by U.N. experts suggest possible sea level rise of 0.80m-1.5m by 2100, a scenario that would leave 3% of the island's land underwater by 2050.4

III. ENVIRONMENTAL LAW

§ 11:3 In general

Cuba's environmental law—neat and compact by U.S. standards—nonetheless dwells in a variety of forms, from constitutional provisions to legislative acts to executive policies.1 Its mandates affect land-use planning, industrial development, electricity distribution, offshore drilling, and more. Regulation in some of these fields might involve the participation of several ministries, officials from state and municipal governments, and residents of affected communities or relevant non-governmental organizations. Of course, Cuba's Communist Party plays a hand too, although the outline of its shadow is not easy to discern. In this discussion, the author will stick to the basics of Cuba's environmental regime, beginning with the government's environmental ministry and then moving onto some broad categories of the law.

§ 11:4 The Ministry of Science, Technology and Environment

Cuba's main environmental agency is the Ministry of Science,

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Technology and Environment, otherwise known as CITMA. CITMA promulgates and enforces protective regulations, coordinates environmental initiatives among sister agencies, and generally works to insure that the nation's environmental goals are considered in actions taken at all levels of governance. In terms of U.S. law, CITMA resembles something of a cross between the U.S. Environmental Protection Agency and the Whitehouse Council on Environmental Quality, but with stronger pull in local affairs.

§ 11:5 The National Environmental Strategy

The National Environmental Strategy sets the goals and principles of Cuba's environmental policy. The Strategy aspires to "sustainable economic and social development" and a "higher protection and rational use of natural resources." Food security and improvements in human environmental health are also top concerns. Because climate change will make these goals even harder to achieve, the Strategy calls for serious efforts to prepare for future climate impacts. The document also weighs in on methods and process, endorsing financial mechanisms to assess and manage ecological resources and insisting that all stakeholders at "central and local levels" participate in the decision-making process.

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1 See Ministry of Science, Technology and Environment, Proyecto Estrategia Ambiental Nacional (2011/15) [Environmental Strategy Project (2011/15)] § 1.3 (2011) (hereinafter "Proyecto Estrategia Ambiental Nacional") (describing deforestation and loss of biodiversity) (my translation; original reads, "desarrollo económico y social sostenible" and "niveles superiores en la protección y uso racional de los recursos naturales").

2 See Ministry of Science, Technology and Environment, Proyecto Estrategia Ambiental Nacional (2011/15) [Environmental Strategy Project (2011/15)] § 1.3 (2011) (hereinafter "Proyecto Estrategia Ambiental Nacional") (describing deforestation and loss of biodiversity) (my translation; original reads, "desarrollo económico y social sostenible" and "niveles superiores en la protección y uso racional de los recursos naturales").

3 See Ministry of Science, Technology and Environment, Proyecto Estrategia Ambiental Nacional (2011/15) [Environmental Strategy Project (2011/15)] § 1.3 (2011) (hereinafter "Proyecto Estrategia Ambiental Nacional") (describing deforestation and loss of biodiversity) (my translation; original reads, "desarrollo económico y social sostenible" and "niveles superiores en la protección y uso racional de los recursos naturales").

4 See Ministry of Science, Technology and Environment, Proyecto Estrategia Ambiental Nacional (2011/15) [Environmental Strategy Project (2011/15)] § 1.3 (2011) (hereinafter "Proyecto Estrategia Ambiental Nacional") (describing deforestation and loss of biodiversity) (my translation; original reads, "desarrollo económico y social sostenible" and "niveles superiores en la protección y uso racional de los recursos naturales").
exercise. The Strategy stresses the importance of reliable scientific information and promotes an “ecosystem approach” to land management, which sees watersheds and shorelines as nuanced assemblies of many moving parts.

The most recent version of the Strategy, released in 2011, anticipates a future effort to revise or replace Cuba’s existing environmental act (Law No. 81) in a way that preserves the act’s environmental gains while taking further account of climate impacts and of the need to tie economic transitions (in trade, energy, and food production) to environmental goals.

§ 11:6 The Constitution

Cuba’s constitution—like those of nearly all modern governments—pledges allegiance to a healthy environment. The language, updated in 1992, appears in Article 27:

The State protects the environment and the natural resources of the country. It recognizes their close link with the sustainable economic and social development for making human life more sensible, and for ensuring the survival, welfare, and security of present and future generations. It corresponds to the competent organs to implement this policy.

It is the duty of the citizens to contribute to the protection of the water and the atmosphere, and to the conservation of the soil, flora, fauna, and all the rich potential of nature.

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The aspiration takes shape in a variety of environmental and planning laws, the most important of which is Law No. 81.

§ 11.7 Law No. 81

Known simply as the “Law of the Environment,” Law No. 81 provides the scaffolding to which most environmental rules, initiatives, and processes are attached. In contrast to the bricolage of U.S. environmental law, Law No. 81 is a “framework” law—a creation more common in Latin America and Europe—which strives to make sense of an entire legal discipline. As such, Cuba’s Law of the Environment requires the adoption of necessary acts and regulations, provides for the creation of environmental standards, promotes broad public participation, and establishes mechanisms for environmental licensing, assessment, enforcement. The law’s Article 11 establishes CITMA as the lead environmental agency in the government’s Central Administration and puts it “in charge of proposing environmental policy and guiding its execution through the coordination and control of the nation’s environmental management.”

Law No. 81 sets out other topics as follows.

1. Planning: Articles 19-20 (requiring all development projects to comply with principles of Law No. 81);
2. Management: Articles 21-23 (providing process of environmental management to insure full consideration of sustainable-development goals);
3. Licensing: Articles 24-26 (requiring an environmental license, issued by CITMA, for any activity that could have significant impacts on the environment);
4. Environmental Impact Assessment: Articles 27-33 (requiring environmental impact assessment for some projects and activities);
5. Environmental Information: Articles 34-38 (insuring public


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1 Code Civil [C.Civ] no. 81.
2 Code Civil [C.Civ] no. 81, art. 11 (Note that this is the author’s translation. The original reads: “encargado de proponer la politica ambiental y dirigir su ejecucion sobre la base de la coordinacion y control de la gestion ambiental del pais”).
access to information required for environmental assessment and decision making);

6. Environmental Inspections: Articles 39-45 (providing for inspections to ensure compliance with environmental law);

7. Environmental Education: Articles 46-56 (charging CITMA and other agencies at all levels of governance with developing initiatives for environmental education);

8. Scientific Research and Technology: Articles 57-60 (charging CITMA, in coordination with other agencies, with promoting scientific research and technological innovation);

9. Economic Regulation: Articles 61-64 (promoting economic regulation, including taxes, tariffs, and differential pricing, as instruments of environmental management);

10. National Environmental Fund: Articles 65-66 (creating a dedicated fund to finance projects aimed at, in whole or in part, environmental protection or "rational" use of resources, in whole or in part);

11. Administrative Sanctions: Articles 67-69 (creating system of administrative sanctions in environmental matters, including sanctions for violations of complementary laws)

12. Civil Liability: Articles 70-74 (requiring those who harm the environment to cease such conduct and repair the damage, and creating rights of action for public and private entities to recover damages);

13. Criminal Liability: Article 75 (holding that socially dangerous acts or omissions threatening environmental protection be punished under the existing criminal code, that is, Law No. 62).

The provisions for licensing and environmental impact assessments are of particular importance and is discussed at § 11:15.

§ 11:8 Related laws

In addition to Law No. 81, several other laws affect environmental protection in important ways. These include Law No. 76 (on mining), Law No. 77 (foreign investment), Law No. 85 (forestry), Decree-Law No. 164 (fishing), Decree-Law No. 200

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1Code Civil [C.Civ] no. 76.
2Code Civil [C.Civ] no. 77.
3Code Civil [C.Civ] no. 85.
4Code Civil [C.Civ] no. 164.
(environmental violations),\textsuperscript{6} Decree-Law No. 201 (National System of Protected Areas),\textsuperscript{6} and Decree-Law No. 212 (coastal zone management).\textsuperscript{7}

§ 11:9 Climate change law and policy

Cuba ratified the U.N. Framework Convention on Climate Change (UNFCCC) in 1994 and is a member of the Kyoto Protocol (non-Annex I country). In preparation of the 2015 U.N. Climate Summit in Paris, Cuba submitted its carbon-reduction goals (known as “Intended National Contribution Goals”) to the UNFCCC in November of that year.\textsuperscript{1} Cuba’s environmental minister signed the Paris Agreement of the UNFCCC at a spring ceremony in which more than 170 other nations also joined. The Paris Agreement, which requires each party to pursue (but not necessarily achieve) its stated reduction goals, will take effect in 2020. In Cuba, activities related to the Paris Agreement and the UNFCCC in general are coordinated by the National Climate Change Group, an office within CITMA.

In addressing climate change, Cuba relies mainly on integrating policy into existing legal structures. Its strategy emphasizes both “mitigation” (reducing greenhouse-gas emissions) and “adaptation” (preparing for climate-change impacts that cannot be avoided). Cuba’s National Environmental Strategy (discussed in § 8.5) describes the government’s most recent thinking on mitigation and adaptation efforts. Cuba is an eager adopter of renewable energy technologies, as discussed later in this chapter (§ 8.17). Cuba’s forest preservation strategy also serves mitigation efforts by sequestering atmospheric carbon. The government’s National System of Protected Areas (§ 8.14) shields many of the nation’s existing forests from development. Cuba has also supports reforestation under its Forestry Act.

While Cuba lacks a comprehensive strategy for climate-change adaptation, the government has a long history of preparing for the kinds of climate impacts most associated with global warming. Perhaps its most impressive work involves preparation

\textsuperscript{6}Code Civil [C.Civ] no. 200.
\textsuperscript{6}Code Civil [C.Civ] no. 201.
\textsuperscript{6}Code Civil [C.Civ] no. 212.

[Section 11:9]

for natural disasters. In 1997, the government released its first framework for educating the public about natural disasters and the need to prepare for future climate impacts. In 2010, a new version of this policy was issued. The document, called the National Strategy on Adaptation Education 2010-2015, highlights climate change as the nation’s top concern on the subject of disaster risk.

IV. TOPICS OF INTEREST

§ 11:10 Land use

Cuba’s land-use policies form some of the countries strongest environmental protections. This section examines the islands laws related to planning and zoning, coastal management, watershed management, and protected areas.

§ 11:11 Land use—Planning and zoning

Cuba maintains a national system of planning and zoning that reserves important opportunities for regional and local guidance. The process allows the central government to protect environmentally sensitive areas from development and to steer commercial and industrial activities into particular parts of the country. Planning and zoning is meant to work in tandem with the protocols of national environmental review. But because the programs are led by different ministries, with somewhat different goals, harmonizing the two remains a work in progress. In addition, the early role played by municipalities in setting zoning policy—a process called “microlocalization”—further complicates environmental review since locals have their say before CITMA

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can weigh in. As Cuba’s economic dealings with the United States increases, the built-in tension between land development and environmental protection will probably increase.

The national land-management program is led by the Ministries of Economy and Planning (MEP) through its Institute of Physical Planning. In turn, the Institute works with the Provincial Directorates of Physical Planning and organs of the Local People’s Power to implement policy. Decree No. 21 lays out the method and structure of Cuba’s planning process. Under Article 17 of Decree No. 21, siting decisions for investment projects occur at two levels. At the “macro” level, a broad territory is chosen for consideration with reference to legally binding regional plans. At the “micro” level, local planning officials consult local land-use plans to determine exactly where a facility should go. Throughout, decision makers remain mindful of Cuba’s Territorial Land Use Schemes (Esquemas de Ordenamiento Territorial). These documents, which represent the work of national, provincial, and municipal planners, set priorities for regional development consistent with relevant economic goals. Law No. 81 (in Articles 19-20) holds that all land-use planning must respect national environmental goals and directs MEP, CITMA, and other relevant agencies to coordinate to honor that commitment. Of course, the siting of any facility must also comply with other land-use laws, the most important of which are discussed below.

§ 11:12 Land use—Coastal zone management

Cuba’s law of coastal development, which borrows from coastal zone management laws in the United States, is set forth in is Decree—Law No. 212. The law seeks to soften or avoid the degradation to land and water that coastal development often brings. Decree—Law No. 212 establishes two zones in which development is either limited or barred: the “coastal zone” and the adjoining “zone of protection.” Coastal zones must be open, public, and free

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3Code Civil [C.Civ] no. 21.
6[Section 14:12]
7Code Civil [C.Civ] no. 212.
of charge. The zone’s outer seaward boundary is defined as the edge of the “insular platform of the territory,” usually about 100 to 200 meters underwater. The zone’s outer landward boundary depends on the coastline’s configuration, geology, vegetation, and other characteristics. For instance, the landward boundary of a zone containing “low terrace” coastline will extend 20 meters inland, measured from the shore’s natural ridge (if one exists) or line of vegetation (if not). The landward boundary of a zone containing sandy beach would instead be set 40 meters inland from the outer seaward boundary (that is, 40 meters from the edge of the territory’s insular platform). Most permanent structures, except for water-dependent features like piers, ports, or marinas, are prohibited. While the law allows for some exceptions in the public interest, certain things are already vetoed, including hotel expansion, home building, waste disposal, sand extraction, horse-back riding, and motor-vehicle use.

Beyond the coastal zone, inland property is further protected by an adjacent buffer area called the zone of protection. This zone extends another 20 to 40 meters (depending, again, on geographic features) from the inland boundary of the coastal zone. As in the coastal zone, hotels, homes, and other large structures are off-limits. But in exceptional cases, occasional temporary uses (like farming or the storage of fishing nets) might sneak in. In addition, Decree Law No. 212 provides special protections for Cuba’s small islands and keys. Cuba’s coastal-zone management law is ambitious and robust. In theory, the regime will go a long way to-

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5Código Civil [C.Civ] no. 212.

6Código Civil [C.Civ] no. 212.
ward protecting the nation’s fragile beaches, mangroves, and water bodies. But as experience in other countries show (including in the United States), the key to success lies with officials’ willingness (or ability) to avoid special pleading by developers and enforce the law as intended.

§ 11:13 Land use—Watershed management

Decree-Law No. 280 establishes the National Watershed Council as the top coordinating body of watershed management. The Council oversees activities in nine watersheds of interest, with an eye toward optimizing resources and promoting sustainable use.

Watersheds of Interest

[Section 11:13]


§ 11:14 Land use—Protected areas

Law No. 81 (in Articles 89-90) establishes the basis for Cuba’s environmental preservation regime, called the National System of Protected Areas (SNAP). As a complement, Decree-Law No. 201 introduces the legal process for designating and managing protected areas. It hands the leadership reins to CITMA. Designation as a protected area is reserved for places of special ecological, social, historical, and cultural importance. Such areas are managed to preserve biological diversity and related natural, historical, and cultural values. Protected areas may encompass land or water and frequently include both.

Protected areas follow an elaborate taxonomy. For starters, there are Protected Areas of National Significance, Protected Areas of Local Significance, and Special Regions of Sustainable Development. Within each of the first two categories there are eight sub-categories, defined by the level of required management intensity and the level of allowed activity. Moving from most protected to least protected, the designations are: a. Natural Reserve; b. National Park; c. Ecological Reserve; d. Outstanding Natural Element; e. Floral Management Reserve; f. Fauna Refuge; g. Protected Natural Landscape; and h. Protected Area of Managed Resources.

Natural Reserves and National Parks allow for very little human activity. The remaining areas permit some low-intensity educational, recreational, and tourist activities. But any use must be compatible with relevant ecological and environmental objectives. The least-restrictive sub-category, “Protected Area of Managed Resources,” allows for economic development through the extraction of natural resources.

The designation “Special Region of Sustainable Development” is meant for populated areas with important natural features. In such areas, economic activity is permitted to support local economies. All protected areas are supposed to be surrounded by buffer zones to shield them from spill-over activities occurring outside their boundaries.

CITMA manages the SNAP program through its Center for

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2Code Civil [C.Civ] no. 201.
National Protected Areas (CNAP), which is charged with developing master plans, coordinating management efforts, and regulating permissible activities. In relevant cases, the Ministries of Fisheries, Interior, and Agriculture may also participate in management efforts.\(^3\)

*National Protected Areas*\(^4\)

\[\begin{array}{|c|c|c|c|c|}
\hline
\text{Categoría de Manejo} & \text{UEN} & \text{APSN} & \text{APSL} & \text{Total} \\
\hline
\text{Reserva Natural (RN)} & I & 4 & 3 & 4 \\
\text{Parque Nacional (PN)} & II & 14 & 3 & 14 \\
\text{Reserva Ecológica (RE)} & III & 13 & 13 & 12 \\
\text{Elemento Natural Destacable (END)} & IV & 22 & 22 & 34 \\
\text{Reserva Florestal Venejada (RFV)} & V & 7 & 34 & 41 \\
\text{Refugio de Fauna (RF)} & V & 1 & 34 & 45 \\
\text{Paraje Natural Protegido (PNP)} & V & 2 & 22 & 22 \\
\hline
\text{Área Protegida de Recursos} & VI & 13 & 13 & 13 \\
\text{Venejados (APRVM)} & V & 7 & 134 & 241 \\
\hline
\end{array}\]


§ 11:15 Environmental impact assessments and licensing

Building projects and other land-use activities require an environmental license issued by CITMA’s Center for Inspection and Environmental Control (CICA). The process, authorized by Law No. 81 and implemented under Resolution No. 132/2009,1 resembles the system of environmental assessment pioneered in the United States (by way of the National Environmental Policy Act of 1970) and now used all over the world. But the Cuban version is stronger. In the United States, assessment requirements unleash a flurry of investigations, consultations, and reports, but mandate no particular outcome. In Cuba, the assessment process not only requires decision makers to take a hard look at environmental impacts, but it means to steer them toward a correct substantive answer.2

The process begins with an application to CICA for an environmental license.3 CICA then determines whether the proposed project requires a formal Environmental Impact Assessment (EIA). This threshold determination will depend on a variety of factors, including the project’s potential risks to public health and the environment, its proximity to protected areas, and the level of public concern.4 Law No. 81 and Resolution No. 132/2009 already require EIAs for certain categories of activities. Construction is a big one, a category that includes (but is not limited to) work related to sewage treatment and storage, mining, transportation infrastructure, and facilities used for tourism. Activities located near fragile ecosystems or that may disrupt the public’s access to natural resources are also destined for an EIA.

If an EIA is required, Law No. 81 (Article 25) requires CICA, in collaboration with other agencies, to conduct an EIA that includes detailed information about potential environmental harms, potential alternatives to the proposal (including a “no- ac-

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tion" alternative), and a review of possible ways to avoid or minimize the harm. Afterwards, CICA will either (a) approve the license outright; (b) approve the license subject to conditions, (c) deny the license outright, or (d) deny the license and suggest the applicant seek a less sensitive location for the project.

The law provides a broad role for public participation. Law No. 81 (Article 4) generally guarantees a public right to participation in environmental decisions and fair access to justice. Both Law No. 81 (Article 25) and Resolution No. 132/2009 (Article 15) include public consultation as an element of a completed EIA. Under CICA's guidelines on public consultation, participating stakeholders should include the project investor; affected communities, social groups, and individuals; and other organizations, government institutions, or non-governmental organizations that have information relevant to the proposal. That is obviously pretty broad. CICA's consultation guidelines have only been active for a few years. As more applications are brought to the CICA, observers will have a chance to see how the process works in real life.

§ 11:16 Energy

Cuba's energy law is a body of law in itself. Sections 11:17 and 11:18 examine two energy issues that are especially important to environmental quality: electricity generation and offshore drilling.

§ 11:17 Energy—Electricity

Cuba's power grid is both dirty and wasteful. Engineered from a patchwork of industrial relics bestowed first by the United States and then the Soviet Union, the system barely chugs along, powered almost entirely (96%) by cheap crude oil shipped from

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[Section 11:16]

Venezuela. Cuban leaders desperately hope to change this. Today the nation appears to be following a credible path to one day light up the island with a more robust and reliable power grid fueled mostly by local sustainable energy. The path has been years in the making. In 1993, Cuba launched the National Energy Sources Development Programme, which brought electricity to scores of communities then off the grid. The effort, which relied heavily on solar installations, has helped insure that up to 96% of residents now have access to electricity. Cuba’s “Energy Revolution” strategy took wing in 2005, aspiring to increase the share of renewable energy in gross energy generation from 4% to 24% by 2030. The government now strongly supports developments in solar power, wind generation, biogas, and hydroelectric power. In addition, Cuba’s recently updated Law on Foreign Investment (Law No. 118) requires increased use of renewable energy. As a side note, in 2016, the U.S. Department of Commerce amended

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5Code Civil [C.Civ] no. 118.
its Export Administration Regulations to promote exports of renewable energy technology from the United States to Cuba.\(^8\)

The government also promotes advances in energy efficiency. Resolution No. 136/2009,\(^7\) for instance, establishes efficiency standards for electrical appliances and equipment. It introduces a process for obtaining required energy labels and lists penalties for importing appliances that are not in compliance. The government also plans to install millions of LED lamps in homes and public spaces and to replace millions of less efficient kitchen appliances.\(^6\)

\section*{11:18 Energy—Offshore oil development}

Experts believe billions of barrels of crude oil lie beneath the ocean floor within Cuba’s territorial waters. In 2005, the U.S. Geological Survey estimated reserves around 4.6 billion barrels.\(^1\) Cuban officials say the number is closer to 20 billion.\(^2\) That may be too high,\(^3\) but either way it seems likely that offshore oil development in Cuba’s North Basin—just 60 miles from the Florida Keys, will at some point kick into gear. In the wake of the Deepwater Horizon disaster, experts are expressing concerns about the environmental risks inherent in an operation that would require drilling one-to-two miles below the sea. According to one commentator, “[it] industry experts doubt that [the Cuban


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government] has a strong understanding of how to prevent an offshore spill or stem a deep-water well blowout.\textsuperscript{4}

Cuba’s dominion over the estimated reserves is clear. All subsoil reserves within it’s waters are property of the state and under the government’s control.\footnote{Jorge R. Piñón & Jonathan Benjamin-Alvaradado, Extracting Cuba’s Oil and Gas: Challenges and Opportunities, in Cuba’s Energy Future: Strategic Approaches to Cooperation 21, 24 (Jonathan Benjamin-Alvaradado ed., 2010).} In order to attract foreign oil companies to explore in Cuban territory, the government offers “production-sharing agreements,” by way of the Unión Cubapetroleo S.A. (Cupet), the state oil company, which is managed by the Ministry of Basic Industry.\footnote{United Nations EnvT Programme, Wider Caribbean Region Multilateral Technical Operating Procedures For Offshore Oil Pollution Response (Miop) (2014), available at http://perma.cc/98ZV-UQ3B.} In 2014, Cuba joined the United States and other neighboring countries in agreeing to the Wider Caribbean Region Multilateral Technical Operating Procedures for Offshore Oil Pollution Response.\footnote{Lee Oppenheimer, The Environmental Threat of Cuba’s Deep Water Exploratory Drilling Under the Embargo, COLUM. J. OF ENVTL. L. FIELD REPORTS (Dec. 21, 2014) available at http://bit.ly/1ThRvYg.} The compact establishes a “responder-to-responder network” to deal with offshore spills; but it is not legally binding and does not create any rights or obligations.\footnote{Melissa Bert, Council on Foreign Relations, Addressing the Risk of a Cuban Oil Spill: Policy Innovation Memorandum 15 (Mar. 2012), available at http://on.cfr.org/1SnA2RL.}

But international cooperation, at least with the United States, is still limited. As of this writing, U.S. trade laws continue to block American companies from providing oil-spill prevention and containment technology to foreign companies operating in Cuban waters.\footnote{33 U.S.C.A. §§ 2701 to 2762 (1990).} To add to the worry, the U.S. Oil Pollution Act of 1990\footnote{Melissa Bert, Council on Foreign Relations, Addressing the Risk of a Cuban Oil Spill: Policy Innovation Memorandum 15 (Mar. 2012), available at http://on.cfr.org/1SnA2RL.} does not protect U.S. parties against damages from oil spills originating outside U.S. territory.
V. ENVIRONMENTAL ENFORCEMENT

§ 11:19 Administrative, civil, and criminal liability

Cuban environmental law recognizes three types of violations: administrative, civil, and criminal.¹ Decree-Law No. 200 generally describes environmental violations rising under administrative law. It also lists a series of activities specifically banned in coastal zones or protected areas, including dumping waste, anchoring boats on coral reefs, constructing unauthorized buildings, or cementing trails.² Administrative sanctions may include, among others, a reprimand (amenestación); an order to cease unlawful activity; forfeiture (comiso o reasignación); suspension or rescission of an environmental license, or temporary or permanent closure of a facility.³ Enforcement of Decree-Law No. 200 relies on the Chief Environmental Inspectorate, whose powers are defined by CITMA, as well inspection offices related to the Ranger Corps, civil defense operations, and customs. In addition, other national ministries bear inspection and enforcement duties related to sectors under their control (for instance, fisheries, forestry, or water resources).

Civil liability for environmental damage is treated under Law No. 59, Cuba’s Civil Code. Under Law No. 59 (Article 70) an individual who harms the environment may be obliged to stop the harmful activity, repair the damage, and/or compensate injured parties (including the government). Environmental damage is defined as “any loss, decline, deterioration or significant impair-

[Section 11:19]


§ 11:19  

Cuba's system of criminal law is governed by Decree-Law No. 62, an act promulgated in 1987 that was later revised several times in the 1990s (through Decree-Laws Nos. 140, 150, and 175; and through Law No. 87). Taken together, the criminal code variously mentions activities harmful to the environment that amount to crimes. Among the most important parts of the code for environmental lawyers is Chapter XVII, which addresses illegal activities (namely, unpermitted fishing and resource extraction) in Cuba's territorial waters and economic zone.

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4Code Civil [C.Civ] no. 59, art. 70 (my translation; original reads, “toda pérdida, disminución, deterioro o menoscabo significativo, inferido al medio ambiente . . . que se produce contraviniendo una norma o disposición jurídica”).