

Circular From GARD

Date: 12 November 2019

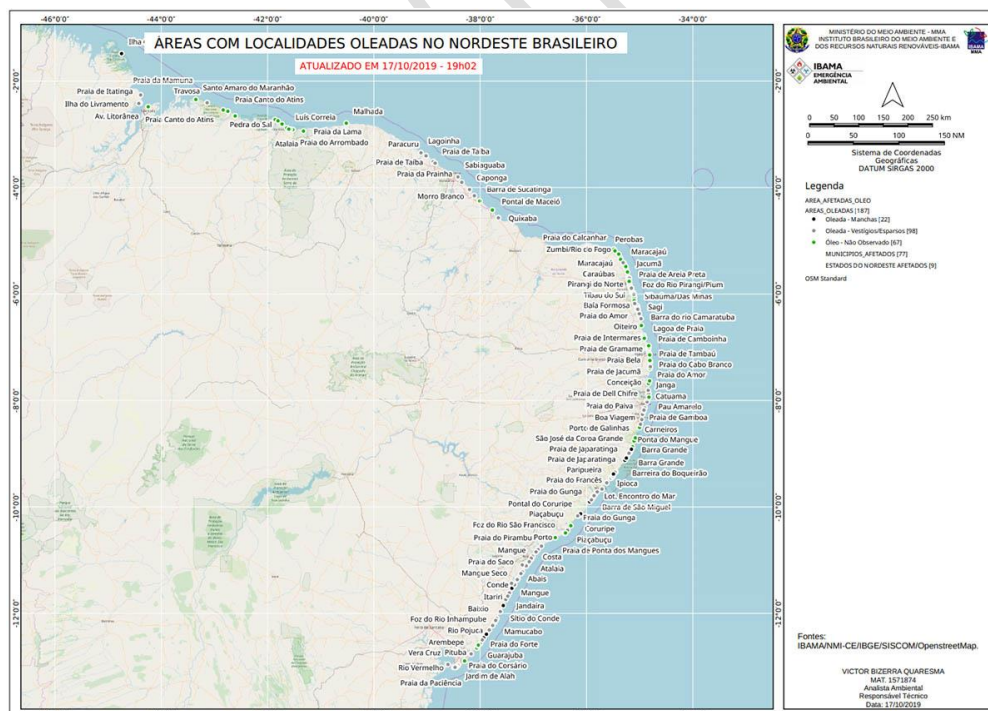
Mystery Oil Spill Pollutes Brazil's North-eastern Coast

Vessels should exercise caution when operating in oil affected areas and thereby reduce the likelihood of having to clean their hulls in the future. Masters are encouraged to also report all sightings of oil sheens to the Brazilian authorities.

Since early September, the shorelines of Brazil's North-Eastern region have been polluted by an oily substance in the form of lumps of tar. On 10 October 2019, our local correspondent Representações Proinde Ltda. reported that more than 130 tonnes of oil waste had been collected on the many affected beaches and at the time of writing, Brazil's environmental agency IBAMA reports of at least 120 locations in 77 municipalities in the nine north-eastern states that are affected by the oil spill.

Affected areas

IBAMA regularly updates maps of beaches and fauna affected by the oil spill and these can be downloaded from: <http://ibama.gov.br/notas/2047-manchas-de-oleo-no-litoral-do-nordeste>. The map below shows the locations and areas affected as at 17 October 2019.



Ongoing investigations

While the source of the oil spill is still unknown, Brazil's environmental agency IBAMA states that the substance is 'crude oil' of a type that is not produced in Brazil. Hence, one hypothesis is that the oil spilled from a vessel passing near the Brazilian coast. The Brazilian Navy will reportedly approach approximately 140 tanker vessels identified to have sailed along Brazil's coast during the past months and require them to provide evidence of no involvement.

Members and clients are advised to contact Gard and/or our correspondent should their vessel be requested by the Brazilian authorities to provide such evidence.

Reporting an oil sheen

With the source of the spill still unknown, it is also more difficult for the authorities to get a full overview of its extent. Sightings of oil sheens should therefore be reported to the Brazilian authorities as this will assist them in updating maps of the spill, conduct environmental impact assessments and direct response actions to prioritized areas.

Members and clients should encourage their Masters to report all sightings of oil sheens to the Brazilian authorities. Making entries in the vessels' logbooks and taking photographs of the sheen may also be of assistance should future cleaning of the vessels' hulls be required.

Liability and cover issues

As long as the source of the oil spill has not been identified, a vessel contaminated by oil floating on the water will not be able to claim cleaning costs and delays from a 'responsible party'. At the time of writing, we are not aware of any vessels required to clean their hulls or held liable for any losses as a result of the vessel having entered the affected area.

Although the source and extent of the oil spill is still unclear, we have compiled a list of cover issues that may arise in the aftermath of any large oil spill:

- Does the owner's P&I cover with Gard cover clean-up of oil being released from the vessel's shell plating as a result of the vessel entering the affected area?
Yes. Cover is available for liabilities, costs and expenses (excluding fines) arising from the escape of oil from the vessel or the threat of such escape. Please see Rule 38 of the Rules for ships.
- Does the owner's P&I cover with Gard cover fines for oil being released from the vessel's shell plating as a result of the vessel entering the affected area?
Cover is available only for fines for the accidental escape of oil from the ship under Rule 47, 1, c of the Rules for ships. The reference to 'accidental' escape of oil implies that for cover to be available the escape or discharge must have been caused by an inadvertent act or omission on the part of the Master or the crew. Each such incident will be considered by Gard on its own facts.

- Does the owner's P&I cover with Gard cover the cleaning of the vessel's hull?
The cost of cleaning the vessel's hull is generally not covered as it is not a third party liability. However, if there is an imminent threat of oil pollution from the vessel's shell plating for which the owner may be held liable, cover for such extraordinary costs may be available as a measure to avert or minimize loss under Rule 46 of the Rules for ships. This cost should, however, be recoverable from the responsible party and a claim should be registered with the responsible party.
- Does the Special Charterers Cover with Gard cover the cleaning of the vessel's hull?
To the extent the charterer is held liable for soiling of the vessel's hull by ordering the vessel to an unsafe port, the extraordinary costs related to the cleaning of the vessel as well as any damage to the paint is covered. This requires, however, that the charterer's liability for this is established in accordance with applicable law.
- Does the vessel's H&M insurance cover the cleaning of the vessel's hull?
Under Nordic Marine Insurance Plan conditions, pollution of the vessel is considered as damage to the vessel. Cleaning of the vessel will therefore generally be recoverable on the same basis as other repairs, i.e. subject to the usual deductible under H&M policies. If, however, the vessel is intentionally sent by the assured into an area where it is clear beyond doubt that she will be polluted, this intentional act may prejudice cover. The position under other commonly used Hull Conditions such as the English Institute Time Clauses - Hulls and the German ADS/DTV Hull Clauses is mainly the same.
- If a vessel is in port, the port authorities have stopped her from leaving the port due to the oil spill and the charterers have put the vessel off hire. Can the shipowner claim for the time lost under the Loss of Hire policy?
According to the Nordic Marine Insurance Plan conditions, the Loss of Hire insurance covers loss due to the ship being wholly or partially deprived of income because it is prevented by physical obstruction from leaving port or a similar limited area. If the vessel could have sailed through the area if it were not for the authorities' orders, there is no physical obstruction, and there will be no cover under the Loss of Hire policies. Under the English ABS 1/10/83 Wording for Loss of Charter Hire Insurance, there is no cover for loss due to vessels being prevented from leaving port, whether it is due to a physical obstruction or otherwise.

Members and clients should also note that Brazil is currently not party to the IOPC Fund Convention and there is no other source of compensation for those affected by the pollution as long as the source of the spill and its responsible party is not identified. This so called “mystery spill” would likely have been compensated by the IOPC Fund had Brazil been party to the Convention.

We are grateful to Representações Proinde Ltda. for providing the above information and refer to their [Circular 10-10-2019](#) for additional information and advice.

Source of Information: The Gard P&I Club