

**REVIEW**

**Study on Legal Issues of Ocean Fishing in China**

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**ABSTRACT**

“The 21st century is the century of the ocean.” In recent years, China has paid more and more attention to the promotion and development of the marine industry, especially the ocean fishery has brought immeasurable economic benefits to China. The development of the marine field is becoming more and more important in the national political, economic and cultural development. All coastal countries have included marine development in their national development strategies and continuously improved their marine legislation under the provisions of the United Nations Convention on the law of the sea. China’s pelagic fishing began in 1985, but because China’s pelagic fishing started too late, after the entry into force of the United Nations Convention on the law of the sea at the end of 1994, nearly 36% of the richest high seas on earth became the exclusive economic zone of coastal countries, and the development space of China’s pelagic fishing has become very limited. After just more than 30 years of development. However, before that, China’s pelagic fishing was still subject to the dual norms of international conventions and domestic laws, and China had not yet formulated a special law on pelagic fishing, and there were still many deficiencies in the legal system norms of pelagic fishing. Therefore, the biggest problem facing China’s pelagic fishery is how to better develop the marine industry under the system of laws and regulations, drive the coordinated economic development, provide legal guidance and help for pelagic fishermen, and provide solid technical support for building a marine power with Chinese characteristics.

**1. Overview and Development Status of Pelagic Fisheries in China**

**1.1 Basic Content of China Yue Ocean Fishery**

Firstly, according to Article 2 of the regulations on

the administration of Pelagic Fisheries (Order No. 27 of the Ministry of agriculture of the People’s Republic of China), Pelagic Fisheries refers to the fishing activities of citizens, legal persons and other organizations of the People’s Republic of China on the high seas and sea areas under the jurisdiction of other countries, such as marine

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fishing and supporting processing, supply and product transportation, but does not include fishing in the Yellow Sea Fishing activities in the East and South China seas. Secondly, Huang Xichang (2003), a Chinese fishing scientist, defined pelagic fishing as fishing activities in the deep sea and high sea with an isobath of more than 200 meters. Some scholars also believe that pelagic fishery refers to fishery production and management activities in China's territorial waters and waters outside the 200 nautical mile exclusive economic zone. Its essence refers to fishing and other fishery activities that are far away from their own fishing ports and fishery bases and are engaged in sea areas not managed by their own countries<sup>[1]</sup>.

## 1.2 Development Status of Pelagic Fisheries

Firstly, according to China's definition of pelagic fishery, it can be divided into Oceanic Fishery and transoceanic fishery<sup>[2]</sup>. Oceanic Fishery refers to the fishery activities in the high seas, while transoceanic fishery refers to the fishery activities in the 12-200 nautical mile exclusive economic zone of other countries. Oceanic Fisheries mainly focus on the production of tuna, squid and bamboo pod fish. In 2008, there were 20 new oceanic production fishing vessels in China, with a total number of more than 680 vessels put into operation. In terms of the number, output and efficiency of fishing vessels, it has been close to or more than half of the total amount of Pelagic Fisheries. At present, there are more than 650 fishing vessels in transoceanic Pelagic Fisheries, which are distributed in the waters of West Africa, West Asia, Southeast Asia and other countries. They cooperate in fishing, mainly bottom trawling, mainly catching hard fish, octopus, cuttlefish and other soft fish<sup>[3]</sup>. There are differences between transoceanic and oceanic Pelagic Fisheries in many aspects. The production mode of oceanic fisheries is mainly Purse Seine and large trawl, and the production area is mainly concentrated in the high seas, which is under the jurisdiction of international regional organizations. Trawling is the main production mode of transoceanic fisheries. The production area is mainly concentrated within 12-200 nautical miles of the exclusive economic zone of other countries, which is under the jurisdiction of the countries and relevant institutions to which the exclusive economic zone belongs.

Secondly, according to the mode of fishery production and operation, it can be mainly summarized into Pelagic Fisheries such as bottom trawl, squid fishing, longline fishing and large purse seine<sup>[4]</sup>, among which trawl and purse seine are the main operation modes of oceanic fisheries, and the main economic types of fishing are tuna, cephalopods, bonito, etc.

In short, after the promulgation of the United Nations Convention on the law of the sea, countries all over the world began to pay attention to the maintenance of marine rights and interests, and took Pelagic Fisheries as a strategic industry for development, so as to compete for the proportion of marine resources, expand international development space, participate in international affairs management, stabilize the international order, drive economic development, and establish a three-dimensional marine development model<sup>[5]</sup>.

## 2. On the Legal Regulation and Existing Legal Problems of Ocean Fishing in China

### 2.1 The Development of My Country's Ocean Fishing Law

At the beginning of the founding of the People's Republic of China, China had insufficient understanding of the huge benefits that marine resources and its industrial chain could bring to the society. The development of pelagic fishery started late and missed some development opportunities. However, after more than ten years of continuous struggle and efforts, China's fishery management has made considerable development and great progress. Breakthroughs have also been made in the construction of fishery legal system and the team of fishery administration institutions. In 1986, China promulgated the fundamental law of fisheries, the Fisheries Law of the People's Republic of China, which was revised four times in 2000, 2004, 2009 and 2013, established the basic system of fishing industry, clarified the fishing quota system, and made punishment provisions for relevant illegal acts. The detailed rules for the implementation of the Fisheries Law of the People's Republic of China (hereinafter referred to as the "detailed rules") promulgated in 1987 have made more detailed provisions on the relevant systems and penalties in the Fisheries Law, and defined the approval unit and fishing scope in the fishing license system for ocean fishing. The Ministry of agriculture and all provinces have also successively formulated some laws and regulations supporting the fishery law and detailed rules, so that China's aquatic production has ended the history of being unable to rely on and basically brought into the track of legal system<sup>[17]</sup>. The regulations of the People's Republic of China on fishery ship inspection (hereinafter referred to as the regulations on ship inspection) promulgated in 2003 stipulates the conditions for the initial, operation and temporary inspection of ships, and defines the conditions and legal responsibilities for supervision and management, so as to ensure the safe navigation of ships and the

protection of the environment. Many mainland scholars and experts have conducted in-depth research on fishery law from different angles and ways. For example, Mr. Liu Zheng's "How to establish and improve China's fishery legal system" and "Research on China's fishery economy" put forward scientific analysis and reasonable suggestions on China's fishery development from the perspective of improving China's fishery laws and regulations and fishery economy. The impact of the United Nations Convention on the sea on high seas fisheries studied by Mr. Huang shuolin analyzes the challenges of the Convention to China's fishery rights and interests, traditional fisheries and Pelagic Fisheries, and puts forward that China should amend the fisheries law as soon as possible in order to adapt to the fisheries management system in the 200 nautical mile exclusive economic zone <sup>[6]</sup>.

## **2.2 Legal Problems Faced by ocean fishing in China**

### 1) A single legal regulation of ocean fishing

China's marine fishery has formed a development situation dominated by the fishery law of the People's Republic of China and oriented by the detailed rules for implementation. Although it has been revised and improved for many times, the specific implementation methods of ocean fishing, the provisions of the supervision and management system and the protection of fishermen's rights and interests are still vague, and there are still deficiencies. As the basic law of fisheries, the current effective version of the fisheries law has been amended four times. Among them, the regulation on fishing is basically aimed at fishing activities in the waters under China's jurisdiction. From the perspective of the regulation on ocean fishing alone, the fisheries law does not cover much, but only refers to the fishing license system. Compared with the Fisheries Law, the implementation rules have added some provisions on fishing rights and detailed provisions on fishing licenses, but there are still no more provisions on ocean fishing. It can be seen that China's pelagic fishing is also facing problems such as lack of legislation, no exact protection of some rights and interests, unclear law enforcement direction of supervision and management personnel <sup>[7]</sup>.

### 2) Some domestic regulations conflict with international regulations

China's fishery is gradually forming a legal operation mode based on the fishery law. Firstly, although the fishery law has relevant provisions on pelagic fishery, the provisions pay too much attention to entities, lack of performance in procedural legislation, and lack of operability in practical operation. The fisheries law was revised twice in 2004, but the implementation rules were not issued.

Therefore, there will be contradictions and lag between the two laws, which will affect the implementation of the domestic fisheries law. In addition, the implementation of the United Nations Convention on the law of the sea has enabled the international fisheries management to form a fisheries management system with the United Nations Convention on the law of the sea as the core, restrict and manage various countries and their relevant sea areas, and gradually form a fishery management system guided by the United Nations Convention on the law of the sea among countries. Comply with the legal provisions on pelagic fishing in the United Nations Convention on the law of the sea. In this way, China's pelagic fishing is subject to the dual norms of domestic laws and international conventions. However, due to the lack of detailed provisions on the fishing standards of pelagic fishing in China's fisheries law, many data are lower than the standards stipulated in international conventions and cannot be normally connected with international law. For example, the United Nations Convention on the law of the sea stipulates that fishery countries should carry out fishery data statistics when fishing in Pelagic Fisheries, and clearly stipulates the specific requirements for fishery data statistics. However, China's law only makes principled provisions on fishery data statistics, and the relevant requirements are not clear, which can not be in line with the international provisions on pelagic fishery data statistics. The provisions on fishery statistics in the fisheries law are only listed in the sentence "large and medium-sized fishing vessels shall fill in fishing logs" in Article 25, and there are no specific requirements. It can be seen that the legal provisions of China's pelagic fishing have not been effectively connected with the international provisions, and even lower than the international standards, which is easy to cause the unclear data of China's pelagic fishing, which is a legal act under the standards of domestic law, but an illegal act in international law, which is not conducive to China's international image.

### 3) Responsibility subject is ambiguous

As ocean fishing is regulated by both domestic and international law and operates at a distant sea, it should not only comply with domestic legal norms, but also comply with international conventions, which makes the responsibility of ocean fishing unclear in law enforcement. China's Fisheries Law stipulates the principle of territorialism. Fishing in other countries' exclusive economic zones and on the high seas should abide by the relevant conventions to which China is a party and the laws and regulations of coastal countries. It also clearly stipulates that China's ocean fishing rights shall be established by the fishery administrative department of the State Council, and viola-

tions of fishing licenses shall be punished by China's fishery administrative department. The United Nations Convention on the Law of the Sea stipulates that organizations or individuals fishing in the exclusive economic zone of other countries shall abide by the legal provisions formulated by the coastal state for their exclusive economic zone, and the coastal state has the right to confiscate their catch, fishing vessels and fishing gear, as well as fine and imprisonment for illegal foreign fishing vessels. Through the comparison of domestic law and international law standards, a new problem arises. That is, whether China has the right to punish such acts, and whether the fishing vessels and personnel who have been punished need to be punished by China's fishery administrative department again. These problems can not be clearly stipulated in the law<sup>[7]</sup>. In addition, China's lack of maritime law enforcement action force makes the law enforcement team have redundant institutions and lack of talents in some matters, resulting in a variety of problems in the punishment of ocean fishing. Although China incorporated the Chinese maritime police into the armed police force in 2018 and was under the unified management of the Central Military Commission, the administrative functions and responsibilities of various departments were still unclear, resulting in low law enforcement efficiency, vague rights and unclear subjects of responsibility.

### **3. Methods to Solve the Legal Problems of Ocean Fishing in China**

At present, China has initially formed a basic fishery management system, but the laws and regulations on ocean fishing are still relatively general and there is no clear implementation standard, resulting in a shortage of legislation, the inability to protect the rights and interests of the state and relevant personnel, the unclear rights and responsibilities of the law enforcement team, ineffective supervision, the inability to establish the subject of responsibility, and contradictions and conflicts between international and domestic laws. Some regulations cannot be connected. Therefore, while establishing and improving the fishery supervision system, China should also pay attention to the formulation and improvement of special laws and regulations such as ocean fishing, regulate ocean fishing with clear legal provisions, and better connect with international law, so as to reduce the occurrence of illegal acts of ocean fishing.

#### **3.1 Formulate Specific Laws and Regulations on Ocean Fishing**

Although China has laws and regulations on fishery

regulation such as the Fisheries Law and the detailed rules for implementation, as well as the regulations on the management of Pelagic Fisheries and many policy documents to promote the development of Pelagic Fisheries, the regulations on the management of Pelagic Fisheries is only a departmental regulation. There is still no more specific legal regime for pelagic fishing. Therefore, China's pelagic fishery is still facing the problem of insufficient legislation. China needs to develop ocean fishing for a long time to make the marine industry go fast and stable<sup>[14]</sup>. First, we need to formulate a more detailed legal system on ocean fishing, make it rise to the height of the law, and have the normative standards and detailed implementation guidelines formulated by the law. Secondly, we should take the fishery law as the criterion and formulate the implementation rules in line with it, so as to effectively avoid the legal conflict caused by the lag between the fishery law and the implementation rules. All provinces and departments should implement the legal provisions according to the specific actual situation and supplement them. Finally, through the formulation of the special law "ocean fishing law", we can clarify China's ocean fishing norms, provide direction for the formulation of ocean fishing policies, establish a detailed legal system on the content and scope of ocean<sup>[12]</sup> fishing rights from the national system level, and improve the legal regulation of ocean fishing rights.

#### **3.2 Improve Domestic Laws and Regulations and Strengthen International Cooperation**

According to the Convention on the Law of the Sea, the scope of pelagic fishing stipulated by China includes fishery production and business activities in the territorial sea of China and the waters outside the 200 nautical mile exclusive economic zone, but does not include fishery activities in the Yellow Sea, the East China Sea and the South China Sea<sup>[15]</sup>. According to the Convention on the Law of the Sea, pelagic fishing is generally defined as far away from its base to engage in marine fishing production in the exclusive economic zone or high seas of other countries, as well as for its production, production Economic activities of postpartum supporting services<sup>[8]</sup>. As pelagic fishery is a development undertaking of international competition and cooperation on a global scale, involving a wide range and wide differences in the distribution of international resources, it is more difficult to develop pelagic fishery, especially to formulate domestic laws and regulations on pelagic fishery to adapt it to international laws and regulations<sup>[16]</sup>. Any effective and post effective laws and regulations will not only make China's developing pelagic fishery face new difficulties and challenges,

but also have a great impact on the world fishery. Since China's fisheries law, implementation rules and other laws and regulations have jurisdiction and jurisdiction conflicts with international regulations in terms of the provisions of fishing standards for Pelagic Fisheries, when perfecting the Fisheries Law and formulating the Pelagic Fisheries Law, we should fully take into account the United Nations Convention on the law of the sea and achieve a clear connection with international regulations. It is particularly important to clarify the main responsibilities such as fishing rights. In the regulations on the management of Pelagic Fisheries just promulgated and implemented in 2020, there are relevant supervision and management measures for pelagic fishery enterprises, ships and crew connected with international regulations. When formulating the special law on Pelagic Fisheries, we should take the new regulations on the management of Pelagic Fisheries as the guide to clarify the rules that Chinese fishermen (crew) should abide by. We will formulate laws and regulations that link up with the provisions of international law to further improve China's legal norms for ocean fishing. At the same time, when combining international laws and regulations with China's laws and regulations, we should pay attention to raising the standards of China's laws and regulations above international standards, and strengthen the extraterritorial scope of effectiveness stipulated in China's fishery laws<sup>[9]</sup>, so as to reduce the extraterritorial illegal acts of China's ocean fishing, create a good international fishery competition environment and establish the international image of China's responsible big country.

### **3.3 Improve the Capacity of Law Enforcement Officers and Clarify Their Responsibilities**

The concepts of the use of fishery rights, fishing rights, Punishment Rights and other rights and interests between international conventions and domestic fishery laws are vague, resulting in the weak understanding of law enforcement personnel on how to enforce the law and whether China's laws should be applied to deal with illegal events. In addition to formulating the special law on ocean fishing, law enforcement personnel should also improve their knowledge reserves and carry out practical training, enhance the ability to respond to international affairs<sup>[13]</sup>. In view of the foreign-related act of pelagic fishery fishing, a special fishery administration team can be established, the subject of law enforcement responsibility can be established according to the level and region, and the illegal acts in pelagic fishery fishing can be dealt with intensively according to the principle of unity of rights and responsibilities. However, due to the serious brain drain in pelagic fishery management, it is more necessary to rely on na-

tional means to strengthen the top-level design of pelagic fishery talents, establish a "order type" training mode of mutual connection and cooperation among relevant national departments, relevant marine (aquatic) colleges and universities in coastal provinces and cities, pelagic fishery enterprises<sup>[10]</sup>, and cultivate pelagic fishery management talents that meet the actual needs of the country<sup>[11]</sup>.

## **4. Conclusions**

China's pelagic fishing plays an important role in the strategy of developing a blue ocean power. Although there are many problems in the application of laws, with the continuous addition of laws and regulations on fishery regulation such as the Fisheries Law and the detailed rules for implementation, and the improvement of the technical level of law enforcement teams and law enforcement personnel. The development potential of China's pelagic fishery is still huge, accounting for a large proportion in the development of blue economy, and gradually moving towards the international stage.

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