STUDY ON LEGAL ISSUES OF MARINE RANCHING IN CHINA

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Abstract - Along with the implementation of the marine powerful country strategy of China, many marine ranches are building, but the study of marine ranching mainly focuses on technical and agricultural aspects, there are few concern on the policy and legal aspects. This article investigated the five national marine ranching demonstration area of Weihai City, Shandong province of China, analyzed the problems found in the process ,and summarized the legal gaps in the management and construction of marine ranching ,then provide the legal advice and support at the end.

Key words - Marine ranching, platform management, ship safety, legal issues

I. INTRODUCTION

The ocean occupies 71% of the earth's surface area, and the abundant resources in the ocean make it the area looted by many countries. The United Nations Convention on the Law of the Sea(UNCLOS), promulgated in 1982, defines the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.. However, with the over-exploitation of land resources, many countries have turned to the sea. Over-exploitation of the ocean has resulted in environmental damage and scarcity of resources.And the ecological environment has gradually attracted human attention, thus promoting the development of marine ranching. Marine ranching is an artificial fishing ground for the purpose of restoring marine ecological environment and conserving marine resources.

This concept originated in Japan and Korea. In the 1960s, China first put forward the strategic idea of sea farming and ranching. This concept has been developing rapidly in recent years. Many provinces and cities of China have accelerated the modernization and scientific research of marine ranching. In 2013, The China State Council's Several Opinions on Promoting the Sustainable and Healthy Development of Marine Fisheries clearly called for developing marine ranching and strengthening the release of artificial reefs. In 2017, the Ministry of Agriculture of China issued Construction Plan of National Marine Ranching Demonstration Area (2017-2025 years) , which defined the basic conditions and application procedures for the construction of national marine ranching.
It was proposed that by 2025, 178 national marine ranches with strong regional representation, outstanding ecological function, typical demonstration and radiation-driven role should be established in China, which aim to promote the scientific and standardized construction and management of national marine ranches.

II. THE CONCEPT AND CONNOTATION OF MARINE RANCHING

In China, the theory of marine ranching can be traced back to 1960s. In 1965, Zeng Chengkui, an academician of the Chinese Academy of Sciences, put forward the idea of “farming the sea and herding fish”[1]. Marine ranching refers to a new fishery production mode, which is based on the principle of marine ecosystem, structures or repairs the places needed for marine growth, bait or shelter, improves the marine ecological environment and realizes the sustainable utilization of fishery resources by putting artificial reefs and multiplying and releasing (stocking) in a specific sea area.
According to the functions of marine ranching, it can be divided into four main modes[2]:

2.1 Value-added Marine Ranching

Marine ranching with the aim of increasing fishery resources and producing seafood. The marine ranching products mainly include fish, shell, shellfish, seaweed, sea cucumber, swimming crab, and other species.

2.2 Protected Marine Ranching

The main purpose of marine ranching is to protect and repair the ecological environment, conserve fishery resources or rare and endangered species. Ecological remediation of marine ranching is the currently encouraging development direction of marine ranching. In the northern part of China, offshore small and medium-sized ecological remediation of marine ranching is the main method, while in the southern part, open seas large and medium-sized ecological restoration of marine ranching is more.

2.3 Leisure and Sightseeing Marine Ranching

With recreational sea fishing as the core, the operational party of marine ranching is paying attention to the linking of the whole industry chain and the whole service chain, and creating a "sea golf" with distinctive features including eating, living, traveling, touring, shopping and entertainment.

2.4 Comprehensive Marine Ranching

Most of the ranches under construction in China are comprehensive marine ranches, which generally take into account one or more functions. The most common is the development of recreational fishing function in Value-added Marine Ranching, the development of leisure and sightseeing functions and value-added functions of fish in Protected Marine Ranching. Concepts and connotations of marine ranching which recently the researchers focus on are mostly interpreted from the perspective of marine ecology. There are few discussions on policy and law. The author holds that the legal connotation of marine ranching is a new fishery mode with the function of improving and repairing the marine environment. Its construction and operation involve many disciplines such as law, aquaculture, environmental science and marine engineering. This article investigated the five national marine ranching demonstration area of Weihai City, Shandong province of China, analyzed the problems found in the process ,and summarized the legal gaps and regulatory gaps .

III. ANOLYSIS OF PROBLEMS

At present, there are five national marine ranching demonstration area in Weihai city, which are respectively Shandong Rongcheng northern sea demonstration area,Shandong Alan Bay demonstration area, Shandong Rongcheng southern sea Homey Aquatic Development Co.,Ltd demonstration area, Shandong Rongcheng Sanggouwan demonstration area, Rongcheng Lidao eastern sea Hongyuan marine ranching.The legal problems found in the investigation are as follows:

3.1 Safety problems in marine ranching

3.1.1 The reefs of marine ranching affect the safety of navigation.

In China, the quantity of reefs put in the marine ranching is large but the scale is small, and there are some unreasonable phenomena in planning.In some places, stones, shabby hulls, concrete components and so on are simply put in, and there is a lack of regular maintenance and supervision .Under the influence of wind, waves or tides, reefs may displace and form submerged reefs.In addition, the release of fishing nets in marine ranching may cause great potential dangers to navigation safety,especially for small boats such as fishing boats, which lack advanced detection tools and professional skills, there may be a great risk of navigation safety in the marine ranching area.

3.1.2 Marine ranching platform itself exists many safety problems.

Along with the development of marine ranching, marine ranching platform are developing rapidly. Platforms are generally used for ecological environment detection, ecological sightseeing, recreational fishing and other functions. At present, various types of platforms,such as self-elevation, semi-submersible, floating and mobile platforms, have been built.On the basis of carrying out the basic function of management and protection of marine ranching , platforms have derived a series of related new functions. At present, it can mainly carry out the work of marine ranching ecological environment monitoring,fishing experience, ecological sightseeing, safety rescue and so on.Marine ranching platform is a new thing, so there is no regulation for the management and control of marine ranching platform in China's laws and regulations, which is a big challenge for regulators.

According to the investigations and enforcement inspections by the regulatory authorities, the Marine ranching platforms mainly have the following security risks: First, some platforms' construction procedures are incomplete and procedures are incomplete, which affect the quality of the platform to a certain extent; Second, some platform operating enterprises use vessels that have not been inspected by the maritime or fishery departments to transport tourists, and there is the phenomenon of overload. Some tourists do not wear life jackets on the platform; Third,some operating enterprises have not made emergency plans or carried out emergency drills, which brings challenges to the safe operation of the platform; Fourth, platform operating enterprises lack of awareness of safety and fire prevention, there are fire hazards.

3.2 Maritime affairs and vessel issues involved in marine ranching operations.

In the operation of marine ranching platform, ships carrying tourists to a platform are usually converted by fishing boats or speedboats, which have two functions. One is to transport tourists to the platform, that is ,such ships belong to the category of passenger ship;The other is to have the function of leisure tourism. Tourists can enjoy the sea scenery while traveling by boat,that is ,it should also belong to the category of recreational fishing ship. That is to say, the ships carrying tourists to a platform combine the functions of passenger ship and recreational fishing ship.

3.2.1 As the function of passenger ship, the supervisory departments of such vessels are the maritime authorities of various cities.

According to investigation, many transport vessels are small vessels with the length less than 5 meters, and many of them are reformed by fishing vessels (some seats are added on board).In fact, these vessels are basically in the state of "out of management", because it is difficult for such vessels to get the registration and legal inspection of maritime department and ship inspection authority in China.

According to Article 56 of Ship Registration Regulation of the People's Republic of China(SRR),

the length of a ship under 5 meters (small speedboat), does not fall within the scope of the ship's length stipulated in SRR. According to The Statutory Inspection Rules for Ships and Offshore Installations of the People's Republic of China——"technical rules for statutory inspection of small inland vessels"(2007),there are no corresponding inspection technical rules for ships under 5 meters (small speedboats). That is to say, ship inspection authorities of China will not issue inspection registration certificates for such ships, and the maritime authorities of China also will not have corresponding supervision and inspection standards.

However, the reality in many marine ranching is that, many small boats or yachts whose length are less than 5 meters are transporting tourists to the marine ranching platform during tourism-peak season. A large number of unregistered vessels have poor equipment, some even have unfixed seats, and the number of life jackets and life buoys is far from the standard.

3.2.2 As the function of recreational tourist ship, the supervision department of such ships is the marine and fishery departments of cities in China.

According to Measures for the Administration of Leisure Fishery Vessels in Weihai City ,the length of vessels which engaged in leisure fishing activities is not less than 8 meters.

Therefore, the ship less than 5 meters above is excluded from the scope of the leisure vessel according to this regulation. Ships less than 5 meters do not belong to the category of leisure fishery vessels, and the department of marine and fishery have no regulatory standards for this[3]. Now,the multifunctional platform of marine ranching is a hot topic in tourism in China. But because the marine ranching is in the ocean, the high risk can not be neglected. The safety of tourists should be put in the first place, and the inspection and supervision of the corresponding means of transport should be especially stricter. The reality is that some ships are in the blank of the supervision of the maritime department and the marine fishery department of China, in the state of being unmanned, and there are great potential safety hazards.

3.3 Legal issues concerning the right to use the sea area of marine ranching

Marine ranching can be divided into cultivation, sightseeing tourism , comprehensive type and so on. Because the rise of marine ranching in China is not long, the construction and management requirements of marine ranching requires high standards, so the higher requirements for the contract and use of marine ranching are put forward. According to investigations of marine ranching in Weihai City of China, the right to use and contract in the marine ranching sea area has many problems as follows:

3.3.1 Using sea fee is too high.

The contract procedures for marine ranching are complicated, and the right to use the sea area for specific purposes must be obtained. In practice, the right to use the sea area usually lasts only 10-20 years. However, the construction of marine ranching in the early stage requires a lot of time, manpower, material resources and financial resources. After investment, no immediate benefit can be obtained. According to The Law of the P.R.C.on Administration of the Use of Sea and other laws and regulations, at the end of operation time, the platform should also be demolished to restore to its original state of sea. Therefore, too short use time will dampen the enthusiasm of marine ranching construction to a certain extent. In addition, the high standard of using sea fee is also one of the reasons that hinder the large-scale development of marine ranching.

3.3.2 There are problems of valuing construction and neglecting management in marine ranching and non-standard use of sea after examination and approval.

From the policies and regulations of various regions of China, we can see that the main concern is the early construction of marine ranching. However, the lack of management after the construction completion leads to many problems, such as disordered use of marine ranching, illegal fishing of fisherman, inadequate follow-up monitoring and management supervision, deviations in management objectives, and one-sided pursuit of economic benefits and short-term benefits. To some extent, these problems also restrict the comprehensive benefits of marine ranching.

IV. LEGAL COUNTERMEASURES AND SUGGESTIONS

4.1 Pay attention to the safety of channel and platform in the marine ranching area, and define the subject of safety responsibility.

Firstly, with regard to the safety of navigation in the marine ranching area, it is suggested that from the approval stage to the construction and operation stage, the relevant departments should consider the following aspects: whether there is or will be a "no-navigation zone" in the marine ranching area; whether it is necessary to set special conditions for vessels sailing in the marine ranching area; whether the construction of field related projects will affect the safety of existing navigation routes.

If the above aspects exist, the relevant access conditions and construction requirements should be set by the corresponding management departments. If there is a navigation safety accident in the marine ranching area, the relevant accident subjects and the operators of the marine ranching may become the responsible subjects.

Secondly, regarding the safety of marine ranching platforms, operators in Weihai City must strictly abide by the relevant requirements of the Interim Measures on the Pilot Management of Marine Ranching Platforms in Shandong Province of China. Be sure to implement the safety management of tourists, urge enterprises to strictly establish the registration and departure ledger for tourists, and strengthen the safety monitoring of the whole process of tourists. Warning tourists must board the platform in a regular and legal ship and wear life jackets as required.

4.2 Standardize the access mechanism of marine ranching for transporting tourists.

The problem that ships of less than 5 meters transported tourists is a common phenomenon in marine ranching tourism base of Weihai City. According to Article 3 of the Maritime Law of the People's Republic of China, ships refer to seagoing vessels and other mobile devices at sea, except for military , government affairs and small vessels less than 20 gross tons. It can be seen that the maritime law excludes small vessels with a total tonnage of less than 20 tons from the scope of ships, and the small vessels used to transport tourists in marine ranching are basically outside the scope of the control of maritime law of China. The supervision of such boats is a legal blank in China and needs to be improved.

It is suggested that we should strengthen the supervision of such small vessels in carrying tourists , either prohibit such ships from engaging in business activities, or clarify the relevant registration, inspection procedures and supervision departments. The Regulations on Maritime Safety Management of Weihai (draft) which is formulating may consider including such boats in the management category of recreational fishing vessels, and the marine and fishery departments will fulfill their regulatory responsibilities.

4.3 Pay attention to the supervision after completion and give full play to the linkage mechanism of various functional departments.

On the investigation of marine ranching, we found that the construction of marine ranching in China is still in the initial stage. We put a lot of energy into the pre-construction of marine ranching.

However, after the completion of the project, there is a lack of effective supervision and management, such as not using the sea area as required by approval and the surrounding fishermen fish privately, environmental regulation does not reach the designated position, platforms have hidden danger and so on. Thus, regular supervision mechanism should be established to determine responsibilities to ensure the implementation of the work layer by layer. At present, marine ranching supervised by marine fishery department in China, but the construction and operation of marine ranching is complex, which involves fishery, environmental protection, safety, fire fighting, tourism, public security and other departments. It is suggested that the local government should take the lead in linking the above-mentioned relevant departments to form a joint team to manage the marine ranching.

By the end of the operation and supervision, a coordinated organism will be formed, which will completely eliminate the phenomenon of prevarication of different departments after the occurrence of the problem, and provide guarantee for the development of marine ranching. Considering the particularity of ship management in marine ranching, the author suggests China should form a division management model of fishery administrative authorities as the main body, other administrative departments as the supplement, guilds and social organizations as a third party technical support. This model draws on the practice of the safety management modes of common fishing vessels and small passenger ships in China, and of the management modes of developed countries.

4.4 It is suggested to promulgate a local regulations on the management of marine ranching to establish a legal system to support the development of marine ranches.

In recent years, China government is vigorously promoting "green ocean" and "economic ocean". The prosperity of marine ranching has appeared.

A lot of documents and regulations have been introduced at the national and provincial levels, such as Notice on Issuing the Construction Plan of National Marine Ranching Demonstration Zone (2017-2025) which introduced by Ministry of Agriculture of China ,and Interim Measures on the Pilot Management of Marine Ranch Platforms of Shandong Province. Lianyungang City promulgated the Regulations on Marine Ranching Management in 2017, which is the first single regulation on marine ranching and includes planning and construction, development and operation, ecological protection, supervision and management, and legal responsibility of marine ranching in Lianyungang City. A clear provision has been made in the regulation[4].

In 2017, the Weihai municipal government issued the opinions of Weihai Municipal People's Government on accelerating the construction of marine ranching and promoting the development of leisure fisheries, which proposed speeding up the construction of modern marine ranching and promoting the sustainable and healthy development of leisure fisheries.

However At the national level,there are no special laws and regulations to regulate marine ranching in China at present. Although some areas have issued management regulations, they are at a lower level,

only applicable to the region and lack of universality. Some provinces and cities also have issued corresponding documents, but they are not laws and regulations, only guiding documents, and lack of legal effect. Therefore, it is suggested that China should formulate related related law and regulation on the management of marine ranching right now. This will play a positive role in promoting the local development of marine economy, protecting the ecological environment and managing the oceans.

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