

海洋法律、社会 与管理

首刊（2009年卷）

徐祥民 主编

中国海洋大学公共管理硕士（MPA）教育中心

主办

中国海洋大学法律硕士（JM）教育中心

OCEAN LAW, SOCIETY AND MANAGEMENT (2009)



海洋出版社

海洋法律、社会与管理

首刊(2009 年卷)

徐祥民 主编

中国海洋大学公共管理硕士(MPA)教育中心

中国海洋大学法律硕士(JM)教育中心

主办

海洋出版社

71010·北京

图书在版编目(CIP)数据

海洋法律、社会与管理. 首刊 2009 年卷/徐祥民主编. —北京:海洋出版社,
2010.5

ISBN 978 - 7 - 5027 - 7728 - 9

I. ①海… II. ①徐… III. ①海洋法 - 研究 ②海洋 - 管理 - 研究
IV. ①D993.5 ②P7

中国版本图书馆 CIP 数据核字(2010)第 090663 号

责任编辑:杨传霞

责任印制:刘志恒

海洋出版社 出版发行

<http://www.oceanpress.com.cn>

北京市海淀区大慧寺路 8 号 邮编:100081

北京海洋印刷厂印刷 新华书店发行所经销

2010 年 5 月第 1 版 2010 年 5 月北京第 1 次印刷

开本:787mm × 1092mm 1/16 印张: 26.75

字数:370 千字 定价:50.00 元

发行部:62147016 邮购部:68038093 总编室:62114335

海洋版图书印、装错误可随时退换

《海洋法律、社会与管理》学术委员会名单

顾问:王曙光

编委会主任:徐祥民

编委会副主任:刘惠荣 王树文 郑敬高 胡家强

编委会委员:(以姓氏拼音为序)

曹文振 陈晓明 崔 凤 胡家强 刘惠荣

任以顺 同春芬 王 琪 王树文 徐祥民

薛桂芳 于阜民 郑敬高

编委会秘书:宋宁而

《海洋法律、社会与管理》编辑部成员

主编:徐祥民

副主编:王 琪 薛桂芳

编辑部主任:梅 宏

编辑部副主任:宋宁而

常务编辑:宋宁而

编辑:(以姓氏拼音为序)

白佳玉 梅 宏 宋宁而 王 琪 徐祥民 薛桂芳

于 铭 允春喜

OCEAN LAW, SOCIETY AND MANAGEMENT
ACADEMIC COMMITTEE

Advisor WANG Shuguang

Director of Editorial Committee XU Xiangmin

Deputy Director of Editorial Committee

LIU Huirong WANG Shuwen ZHENG Jinggao HU Jiaqiang

Editorial Committee(In Alphabetical Order of Surnames)

CAO Wenzhen CHEN Xiaoming CUI Feng HU Jiaqiang

LIU Huirong REN Yishun TONG Chunfen WANG Qi

WANG Shuwen XU Xiangmin XUE Guifang YU Fumin

ZHENG Jinggao

Secretary of Editorial Committee SONG Ning'er

OCEAN LAW, SOCIETY AND MANAGEMENT
DEPARTMENT OF EDITOR

Chief Editor XU Xiangmin

Deputy Chief Editor WANG Qi XUE Guifang

Editorial Director MEI Hong

Vice Editorial Director SONG Ning'er

Executive Editor SONG Ning'er

Editors (In Alphabetical Order of Surnames)

BAI Jiayu MEI Hong SONG Ning'er WANG Qi

XU Xiangmin XUE Guifang YU Ming YUN Chunxi

发刊词

我国实行改革开放的政策以及由此带来的经济腾飞和社会迅速进步都与海洋有着极为密切的联系。从最早的经济特区的确立,到后来的沿海开放城市政策的实施,人们可以感受到海洋带给我们的恩惠。从“珠三角”的繁荣,到“长三角”的发达,人们无法拒绝海洋对经济增长所发挥的作用。今天,不管是天津滨海新区的快速建设,还是辽宁沿海经济带的全线推进,抑或是山东半岛蓝色经济区的蓄势待发,都让人们不得不在发展与海洋之间划上一个深深的连接号。

在几乎完全相同的一个历史阶段,我们也注意到另外一种现象,那就是我国环境法的发展首先与海洋结缘。在中国政府刚刚呈现现代环境保护意识之初,《中华人民共和国防止沿海水域污染暂行规定》于1974年通过。1982年,我国第一部正式颁布实施的单行环境法《中华人民共和国海洋环境保护法》替代了该规定。此后国务院陆续颁布《中华人民共和国防止船舶污染海域管理条例》(1983年)、《中华人民共和国海洋石油勘探开发环境保护管理条例》(1983年)、《中华人民共和国海洋倾废管理条例》(1985年)、《中华人民共和国防止拆船污染环境管理条例》(1988年)等,使我国海洋环境保护法率先形成较完整的体系。这是我国立法者和最高行政机关的法律智慧的结晶,值得法律界、环保界骄傲,但是应该看到,在不断完善法制体系的同时,还存在着海洋环境继续遭受污染的现象,令人十分痛心。

经济靠海而兴,环保法为海而立,这两者显然不是巧合,当然也不是某个先知的有意安排,而是体现了某种类似于影随形、响随声的关系。两者的相随相伴符合规律,而两者相携翩翩而至,对于靠海而兴的经济参与者却是喜忧参半。

这“忧”的其实不只是海洋污染,还伴随资源枯竭、生态失衡等严重问题。《关于划定南海区和福建沿海机动渔船底拖网禁渔区线的意见》(1980

年,国务院、中央军委批转国家水产总局)、《设立幼鱼保护区的决定》(1981年,国务院)、《批准设立“东海产卵带鱼保护区”》(1988年,国务院)等作为对随经济的发展而变化了的资源、生态状况的反映,说明海洋环境污染不是靠海而兴的经济的仅有的副产品。

以往的靠海而兴的经济给社会带来了“忧”,而靠海而兴的经济参与者们却没有因这“忧”而停止经济活动,甚至没有丝毫放慢推进经济发展的步伐。不仅如此,靠海而兴的经济给人们、给社会和国家带来的巨大的生产能力进一步提高了海洋对社会经济的吸引力。更远的海上航线,更深的海底勘探开发,更先进的海洋科学技术,更大规模的海洋工程、海岸工程等,这一切都使得海洋比以往任何时候都更富有吸引力。这种吸引力使更多的人口——资本持有者、生产者、贸易者、消费者——趋海移动,由“靠水而居”变为“靠海而居”。这是福音——靠海而兴的经济将更加兴旺,这种经济将得到更加广大的社会支撑;但这同时也是隐忧——需要用《中华人民共和国海洋环境保护法》等解决的难题将会变得更加棘手。

利之所出,人之所聚,害之所发皆会于海,这也是规律,尽管我们不情愿接受“害”,不愿让“害”与“利”和“人”形影相随。今天的海洋是多种关系的连接点,也是多种矛盾的聚焦点。美国前总统乔治·布什说:“海洋是资源的宝库,海洋造就了无数绚丽多彩的自然奇观;海洋是交通运输的要道,海洋为数百万美国人民提供食物;海洋也是人们休闲娱乐的极好场所。”正如这位总统所说,这样的条件赋予海洋广纳人力、物力、财力、智力、军力等的神力。海洋是利所从出之地,海洋和依托于海洋的沿海地区是当今经济活动的主战场。海洋是人之所聚,海洋和沿海地区与繁荣的经济、高新的技术、先进的教育、高效的组织等相依存的人群,对国家乃至整个社会的引领和型塑作用越来越明显。海洋为害之所集中爆发之地,污染物或沿百川流入海洋,或逐气随风沉降于海洋;因海洋资源告匮而使人类最终陷于困境;海洋生态系统遭遇危机的同时宣示陆上生态系统已经紊乱、残破。

面对这样的规律、这样的矛盾焦点,我们应当做些什么,可以做什么?

千百年来,“管理”一词与海洋是无缘的。海洋以其无穷的能力迎接人们偶尔的造访,容忍人们些许的鲁莽。人们既因海洋的深邃而恐惧,也因

海洋的宽广而有恃无恐。但今天,我们不得不让浩瀚的、无际的海洋接受我们的管理。海洋管理,一门新的学问,一门由“人海矛盾”孕育出的学问,一门被迫接受的学问。我们应当做好这门学问。

千百年来,海洋法基本上是用来处理国家间关系的法。今天,因为海洋对于沿海的和非沿海的国家都变得比以往更加重要,所以,海洋法将承担更大的调整国家间关系的任务。同时,因为人们在对海洋的利用中已经构成了复杂的社会关系,而“人海矛盾”又使人与自然的关系成为法律不得不关心的对象,海洋法,或者海洋法律不能不成为国内法律体系中的重要领域。我们需要认真研究海洋法。

千百年来,对于社会的观察和研究或专注于市民社会,或选择乡村社会;社会保障、家庭制度、社会心理等等,不管是概念、制度,还是原则、理论,与海洋均无需有太多关涉。今天,社会已经走向海洋,就像政治走向海洋、经济走向海洋、法制走向海洋等一样。海洋在经历了开发,在承受了污染和破坏之后,不只是它的区位和容量,其结构、整体性、流动性等特性也深深地影响了由“靠海而居”的人们组成的社会。人海关系已如何,人海关系会如何,人海关系当如何,这些都需要我们认真思考。我们应当做好海洋社会学这门学问。

为了经济和社会的繁荣,我们应当研究社会、社会经济与海洋之间的关系,研究如何让社会和社会经济顺应海洋自然本性的要求。为了解忧,即消解经济、社会发展与海洋之间的矛盾,我们应当研究海洋管理、海洋社会和海洋法律。不仅我们这些并不专注于自然的海洋及其所容、所产方面的研究的人们,人文社会科学或者哲学社会科学研究者也当然可以通过研究寻求实现人与海洋,准确些说是社会与海洋、社会经济行为与海洋之间的和谐。

《海洋法律、社会与管理》正是基于这种朴素的想法而创设,并竭诚循守这一朴素的想法,为这一朴素想法所追求的目标而奋斗。

徐祥民

2009年12月2日

Opening Remarks

The reform and opening – up policy has led to a great progress in economic development and social improvement, and all of these achievements are closely related to the ocean. Looking back into the establishment of the initial Special Economic Zones and the implementation of policy to open up certain coastal cities, we can actually feel the benefit provided by the ocean. As a matter of fact, nobody can deny the power of the ocean on economic growth, when seeing the prosperity of the “Pearl River Delta” and the flourish of the “Yangtze River Delta”. Today, when we mention the rapid development of Tianjin Binhai New Area, or the full swing of Liaoning coastal economic belt, or the gaining momentum of the Blue Shandong Peninsula Economic Zone, we can easily discover a close relationship between development and the ocean.

In almost exactly the same historical stage, we could notice another phenomenon as well that the development of our Environmental Law started from protecting the ocean. Provisional Rules of the P. R. C on Preventing Coastal Water Pollution was passed in 1974, at the time that the Chinese government just realized the importance of environmental protection. The first separate environmental law issued in China was Marine Environment Protection Law of the P. R. C, which was promulgated in 1982. Henceforth, a series of regulations were promulgated by the State Council, such as Regulations of the P. R. C on the Prevention of Vessel – Induced Sea Pollution (1983), Regulations of the P. R. C on the Administration of Environmental Protection in the Exploration and Development of Offshore Petroleum (1983), Regulations of the P. R. C on Control over Dumping of Wastes in the Ocean (1985), and Regulations of the

P. R. C on Prevention of Environment Pollution by Ship Scraping (1988) , forming a quite complete system of Chinese marine environment protection law at a rather early stage. It is the wisdom of legislators and the highest administration , as well as a great achievement of law society and environment protection society. However , the bloom of legislation also implies the seriousness of marine environmental pollution , which of course is not encouraging at all.

Economy developed along the ocean , while environmental protection law was enacted for protecting the ocean. Obviously , the relationship between the two objects is not a coincidence , nor an intentional arrangement made by a seer. On the contrary , the company of economy development and environmental law comply with basic logic , bringing a mixed feeling of pleasure and sorrow to those participated in the economy development along the ocean.

Actually , ocean pollution is not the only problem worrying us. Some other serious problems such as resource depletion and ecological imbalance are also bothering us together with ocean pollution , making us feel extremely fidgety. As responses to the change of resources and ecology with economy development , a serious of regulations were promulgated before or after the issuance of Marine Environment Protection Law , such as Opinions on the Delineation of Closed Fishing Area for Bottom Trawling Boat in South China Sea and the Coastal Water of Fujian Province(1980 , Circular of the State Council and the Central Military Commission on the Approval and Transmission of State Aquatic Product General Bureau) , Decision on the Establishment of Protected Areas for Fish Fry(1981 , the State Council) , Decision on the Approval for the Establishment of Protected Areas for Spawning Hairtail in East China Sea (1988 , the State Council) , which means marine environmental pollution is not the only by - product of economy development along the ocean.

Although the economy development along the ocean has brought us many serious problems , the participants in the economy development never stop their

economic activities, or even slow down their speed of economy development. Moreover, the great production capacity offered by the economy development has made the ocean more and more attractive. The farther route, the deeper ocean bottom exploration, the more advanced marine science and technology, the larger-scale ocean engineering and coastal engineering etc. have made the ocean more attractive than any time before, pushing people like capital holders, producers, traders, consumers to move towards ocean instead of river and lake. It is a piece of good news— the economy will be much more prosperous and get more social support. Meanwhile, it is also a secret worry— problems need to be solved by Marine Environment Protection Law and other related laws will become more difficult.

Benefit can be got from the ocean, and people gather towards the ocean, while problems also occur from the ocean. It is a rule, although we don't want to accept the reality that both benefits and problems go along with us human beings. Nowadays, the ocean is a collection of various relations as well as focus of many conflicts. Former U. S. President George Bush has mentioned that the ocean is a treasury of resources which has created numerous gorgeous natural wonders, and it is a main artery of traffic and transportation providing food for millions of American people, and meanwhile, it is also an excellent site of recreation. It is the characteristics pointed out by the president that give the ocean supernal powers to attract manpower, material resources, financial capability, intelligence as well as military power. Benefit can be got from the ocean, for the ocean and coastal area has become the main battlefield of economic activities nowadays. People gather towards the ocean, for the prosperous economy, advanced technology, excellent education and efficient organizations in the area are casting more and more influences in leading and forming the country and the society. Problems occur from the ocean intensively, for pollutant is running into the ocean along rivers or dropping into the ocean from sky, for resources are

drying up because of the exhaustion of the ocean, for marine ecosystem crisis is declaring that the terrestrial ecosystem has already been disordered.

What should we do, and what can we do, when facing these rules and focus of conflicts?

For thousands of years, the word “management” had been unrelated to the ocean. The ocean welcomed our occasional visits and tolerated our recklessness with its endless power. We feared the ocean for its mystery, while also felt more and more relieved for its tolerance. However, today we should put the vast and endless ocean under our management. Marine management is a new learning generated from the conflicts between human being and ocean; and it is also a new learning forced to be accepted. We have no other means but to engage in this new learning.

For thousands of years, law of the sea had been used to deal with the relations between countries. As the ocean is becoming much more important to coastal countries as well as other countries nowadays than ever before, law of the sea should take a bigger role in the adjustment of relations between countries. Meanwhile, as the utilization of ocean has formed complex social relations and the conflicts between human being and ocean have had the human – nature relations become the objects concerned by the law, law of the sea or marine laws should become an important field within domestic legal system. We have the necessity to work hard to study the law of the sea.

For thousands of years, observation and research carried out for the society had focused on either civil society or rural society. When we talk about social security, family system, social psychology, it seems to have little to do with the ocean, no matter on the level of concept and system or principle and theory. However, today society has already been closely related to the ocean, just as politics, economy and legal system did before. After being exploited, polluted and destroyed, the ocean has already deeply influenced the society formed by

people living along the sea not only by its location and capacity, but also by its structure, integrity, liquidity and some other features. How have human – sea relations been? How would human – sea relations be? How should human – sea relations be? All these questions deserve our serious considerations. We ought to engage in the learning of marine sociology.

For the prosperity of economy and society, we should study on the relationship between society, social economy and the ocean to find out the way to make the society and the social economy comply with the nature of the ocean. In order to resolve the conflicts between economy, social development and the ocean, we should study marine management science, marine sociology and marine laws. We, social scientists in the field of humanities and social science as well as in the field of philosophy and social science, not focusing on the study of the ocean itself and its products, can pursue the way to realize a harmonious relationship between human being and ocean through our study. The harmonious relationship, to be exactly, is the harmony between society and ocean as well as the harmony between social economic behavior and ocean.

This publication, “Ocean Law, Society and Management”, is created based on this belief and will follow the belief sincerely and fight for it continuously.

XU Xiangmin

December 2, 2009

目 录

海洋法律

对海洋法制及其特点的理解	徐祥民/3
《联合国海洋法公约》三大海洋法机构及其最新发展	薛桂芳 王大燕/22
海上溢油生态损害防治立法研究	梅 宏/38
国际海运温室气体减排法律政策之前景分析	白佳玉/71
日本《海洋基本法》的制定及地位	宋慧敏/81

海洋权益

从学科建设的视角阐释海防概念	高新生/99
沿海国对领海外国家管辖海域的管辖权	赵振飞/113
中国海权发展:趋势、动因与政策挑战	张 剑/139
论菲律宾“政府主导”和“武装占领”阶段(1970—1975)的南海政策 ——经济利益和能源需求驱使下的菲律宾南海政策	程爱勤/153

海洋管理

海洋环境管理:概念界定与阐释	王 琪/177
----------------------	---------

以生态系统为基础的海岸带综合管理及对我国海岸带管理的启示

..... 管 岑 马英杰/187

海洋区域执法协调机制建构研究 吕建华 苟英英/196

从行政法角度看分局法律地位与海区海洋行政管理 张惠荣/210

海洋产业

中国邮轮经济发展战略探讨 刘洪滨 何新颖/221

海水利用及其产业化的政策与管理研究

..... 王 琪 高忠文 赵长祥 宋宁而/238

加强环境保护:《“区域”内多金属硫化物探矿和勘探规章草案》的突出

特点 张华平/302

海洋社会学

海洋环境变迁与渔民群体分化 崔 凤 杨海燕/323

辽宁沿海经济带发展的环境风险及其治理对策研究

..... 王书明 高 琳/337

海洋移民:海洋社会学的视角 同春芬 杜小丽/349

日本海洋社会研究初探 宋宁而/359

附录 /387

CONTENTS

LAW OF THE SEA

Understanding on Marine Legal System and Its Characteristic	XU Xiangmin/(3)
The Three Institutions of the United Nations Convention on Law of the Sea and Their Latest Development	XUE Guifang WANG Dayan/(22)
On Constructing the Legal System on Prevention of Ecological Damage Caused by Marine Oil Spill	MEI Hong/(38)
Research on Laws and Policies about GHG Emissions by International Shipping	BAI Jiayu/(71)
Japanese Ocean Basic Law's Drafting and Legal Status	SONG Huimin/(81)

MARINE RIGHTS AND INTERESTS

On the Interpretation of Concept of Coastal Defense Based on Disciplinary Construction	GAO Xinsheng/(99)
On the Coastal States' Jurisdiction of the Jurisdictional Sea out the Territorial Sea	ZHAO Zhenfei/(113)
China's Pursuit of Sea Power: Trends, Drivers and Policy Challenges	Zhang Jian/(139)
On the Philippines' South China Sea Policy in the Period of "Government	

dominant” and “Military Capture” (1970—1975)

..... CHENG Aiqin/(153)

OCEAN GOVERNANCE

Marine Environmental Management: Definition and Interpretation

..... WANG Qi/(177)

Ecosystem – approach – based Integrated Coastal Zone Management and Its

Influence on China GUAN Cen MA Yingjie/(187)

Coordination Mechanism Construction of Law Enforcement of Marine Areas

..... LV Jianhua GOU Yingying/(196)

The Legal Status of the Branch of State Oceanic Administration and Marine

Administrative Management of Sea Area from the View of Administrative

Law ZHANG Huirong/(210)

MARINE INDUSTRIES

The Strategic Development of Chinese Cruise Economy

..... LIU Hongbin HE Xinying/(221)

Research on the Policy and Management of Seawater Utilization and Industrialization

..... WANG Qi GAO Zhongwen ZHAO Changxiang SONG Ning'er/(238)

The Strengthening of Environmental Protection: The Salient Feature of “Draft

Regulations on Prospecting and Exploration for Polymetallic Sulphides in the

Area” Zhang Huaping/(302)

MARINE SOCIOLOGY

The Change of Marine Environment and the Differentiation of Fishermen Group

..... CUI Feng YANG Haiyan/(323)

Environmental Risk and Countermeasures Research of Liaoning Coastal Economic Belt

..... WANG Shuming GAO Lin/(337)