

The Administrative Attributes of Coast Guard Agencies in the Context of “*The Coast Guard Law (Draft)*”

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Abstract: Since the 18th CPC National Congress, China has established a unified coast guard agency and carried out a series of reforms, which have naturally raised various questions. The most important of these questions is whether or not the army should become an administrative subject. This question has also drawn sensationalized reactions from some countries with ulterior motives. This paper attempts to respond to this issue at the theoretical and practical levels, as well as from domestic and foreign perspectives, in the context of “*The Coast Guard Law (Draft)*”.

Key words: coast guard agency reform administrative attributes

I. Introduction

Many people have been discussing whether, from a legal point of view, administrative attributes have been assigned to the China Coast Guard since it was transferred to the armed police authorities, which is directly affiliated with the Central Military Commission and separate from the State Council.

Whether a coast guard agency is part of a military system, such as the U.S. Coast Guard, which is among its five largest armed forces, or part of an administrative system, such as the Korea Marine Police Agency or the Japan Coast Guard, their administrative attributes are clearly established and confirmed by legislation and procedural regulations.

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Why is it necessary to determine the administrative attributes of coast guard agencies? There are several considerations:

First, to help establish the extent of the agency's power, and to clarify its law enforcement procedures. In the existing legislation of administrative law, there is a lot of common, general content that can be applied to maritime police agencies. Such an application would both reduce the cost of legislation and make it easier for the general public to be familiar with maritime police agencies and their policies, thus increasing the likelihood of compliance.

Second, to more effectively supervise power. If the administrative attributes of a maritime police agency cannot be determined, then the content in the administrative law theory that relates to power supervision cannot be applied.

Third, to help provide remedies to the interested parties more efficiently. The parties can mainly seek rights relief through administrative reconsideration and administrative litigation.

Fourth, to better promote information disclosure. It will be more convenient for the public to abide by and use laws, which will encourage various social bodies to supervise maritime police agencies.

II. The Historical Evolution of China's Coast Guard Agencies

Maritime police agencies are established by sovereign countries in order to safeguard their maritime rights and interests, which they do by serving as law enforcement agencies in various ways: by maintaining maritime public order; by preventing, punishing, and cracking down on maritime crimes and military threats; by protecting the marine ecological environment; by ensuring the development and utilization of marine resources; by conducting maritime security protection; by declaring sovereignty; and by engaging in international cooperation¹.

Prior to 2013, there was not a unified coastguard agency in China, and related functions were performed by about five different agencies: China Maritime Supervision, established in 1982; China Fisheries Administration, established in 1998; China Maritime Affairs, China Customs Anti-Smuggling Police, and the Public Security Coast Guard, established in 1998. These five agencies jointly exercise the functions and powers of marine police agencies. In academic circles, this stage is often referred to as "the five dragons governing the sea". In circumstances when caseloads are high and agencies can make use of their primary specialties, the division of jurisdiction is obviously effective; however, when there are fewer cases and specialties are integrated, the division of jurisdiction becomes costlier and less effective.

Therefore, since the 18th National Congress of the Communist Party of China created the strategy of "marine power", China has carried out significant reform to its maritime law enforcement system.

First, on March 14, 2013, at the first meeting of the 12th National People's Congress, the plan for the structural reform and functional transformation of the State Council was deliberated and adopted to reconstitute the State Oceanic Administration. According to the plan, "the State Oceanic Administration will be re-established and administered by the Ministry of Land and Resources by integrating the teams and responsibilities of the current SOA with those of the China Maritime Surveillance, the Border and Coast Police of the

¹ Wang Bingjun, Analysis on the Ways to Improve the Law Enforcement System of China Coast Guard [D]. People's Public Security University of China, 2019.

Ministry of Public Security, the Bureau of Fisheries of the Ministry of Agriculture, as well as the Maritime Anti-smuggling Police of the General Administration of Customs. Its main duties are to draw up marine development plans, enforce laws to safeguard maritime rights, supervise and manage the use of sea areas, and protect the marine environment. The SOA carries out maritime rights protection and law enforcement in the name of the China Coast Guard, and it receives operational guidance from the Ministry of Public Security.” For the first time since its founding, the People's Republic of China set up a unified coast guard organization, which laid the foundation for the subsequent reform.

Second, in accordance with the Plan for Deepening the Reform of Party and State Institutions, which was released in March 2018, all the coast guard teams and related functions under the leadership and management of the State Oceanic Administration (China Coast Guard) shall be assigned to the People's Armed Police.

Third, on June 22, 2018, the Decision of the Standing Committee of the National People's Congress on the Exercise of the Power of Maritime Rights Protection and Law Enforcement by The China Sea Police was adopted at the third session of the Standing Committee of the 13th National People's Congress and would take effect from 1 July 2018. According to the decision, the marine police force was, as a whole, placed under the leadership and command of the People's Armed Police and formed into China Coast Guard, which shall uniformly perform the duties of law enforcement for the protection of maritime rights. China Coast Guard shall “exercise such powers as are prescribed by law for the enforcement of the Public Security Bureau” and “exercise such powers as are prescribed by law for the enforcement of the relevant executive branch”. China Coast Guard would “exercise the corresponding law enforcement powers of the public security organs as prescribed by law” and “exercise the corresponding law enforcement powers of relevant administrative organs as prescribed by law”. At the same time, “when conditions are ripe, the parties concerned shall promptly put forward proposals to enact or amend relevant laws and submit them for deliberation in accordance with legal procedures”. In order to facilitate the coast guard organizations in exercising relevant functions, the Criminal Procedure Law has also been amended to clearly stipulate the qualifications of coast guard organizations to handle criminal cases.

III. The Clarity of the Administrative Attributes in *The Coast Guard Law (Draft)*

In theory, organizations capable of exercising administrative functions and powers are collectively referred to as administrative subjects in China and in civil law countries¹. That is, an administrative subject refers to an organization that has administrative power according to law, that can independently conduct administrative management in its own name, and that bears legal responsibility for the effect of the act of exercising its power. To be specific, in China, administrative subject mainly refers to administrative organs and organizations authorized by laws and regulations. Administrative organs are established in accordance with *the Organic Law*, and organizations authorized by laws and regulations are established or granted corresponding powers by administrative authorization. For example, bar associations at all levels of local law firms are established and managed in accordance with *the Lawyers Law*.

Specifically, administrative authorization is a legal act that explicitly grants part or all of the administrative powers to an organization through statutory means, by laws or

1 Hu Jianmiao, (2002). *The Essentials of Administrative Law* [M]. Hangzhou: Zhejiang Gongshang University Press, 42.

regulations.¹ After being authorized, the authorized shall, in its own name, exercise administrative functions and powers, carry out administrative management, and bear the corresponding legal responsibilities independently.² The subject of authorization is divided into authorization by the NPC and its Standing Committee, as well as authorization by other organs, among which the former is considered the fundamental distributor of administrative power, while the authorization of other organs is considered secondary distribution.³

First, can China Coast Guard be authorized through laws and regulations to be included in the armed police force? The answer is that it can. For authorized organizations, although they have not been regarded by mainstream theorists as a special organization of military force, it is common practice for all countries to count them among the world's military forces. This can also be proved by the looking at the theory and practice of public property police in civil law countries, such as France, Germany, and Japan, as well as by the administrative law enforcement practice of the United States Coast Guard as a military force, and also by the administrative law enforcement practice of many other countries that use their navy directly.

The Coast Guard Law (Draft) (hereinafter the Draft) was reviewed at the 22nd Session of the Standing Committee of the 13th National People's Congress (NPC). On November 4, 2020, the Draft was published on the NPC website to solicit public comments. In the Draft, Article 2 declared the military and administrative attributes of China's marine police agencies.⁴ This article will become a formal law in the future. From the perspective of lawmaking, and through legal authorization, this article can be considered an authorization to determine the administrative attributes of China's coast guard agencies.

Second, the Draft is clearer than the 2018 Decision of the Standing Committee of the National People's Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Powers by the China Coast Guard (hereinafter 2018 Decision), which makes the boundaries for the administrative authority of China's coast guard agency. In other words, it further strengthens their administrative attributes. The 2018 Decision only grants powers in a few matters.⁵ In addition to the generalized powers in Article 5, which are mentioned above, Article 11 of the Draft also provides specific boundaries for power, such as the provision that an empowered agency be: "(I) responsible for carrying out cruising and vigilance in waters under Chinese jurisdiction, guarding key islands and reefs, administering maritime delimitation lines, and preventing, stopping, and eliminating acts that endanger national sovereignty, security, and maritime rights and interests. (II)

1 Luo Haocai, (1996). *Administrative Law* [M]. Beijing: Peking University Press, 76.

2 Hu Jianmiao, (2003). *Administrative Law* [M]. Shanghai: Fudan University Press, 78-79.

3 Zhu xuelei, (2015). The Identity Dilemma of "Organization Authorized by Laws and Regulations" and Its Solution—from the Perspective of Administrative Litigation. [J] *Jiangnan Academic*, 34(06):5-11.

4 Article 2 of the Coast Guard Law of the People's Republic of China (Draft, 2020 version) provides that "coastal police agencies are important maritime armed forces and national administrative law enforcement forces."

5 Article 1 of Decision of the Standing Committee of the National People's Congress on the Exercising of the Marine Right Safeguarding and Law Enforcement Functions and Powers by the China Coast Guard provides that "China Coast Guard performs maritime rights enforcement duties, including enforcement tasks in combating maritime illegal and criminal activities, maintaining maritime security, marine resource development and utilization, marine ecological environment protection, marine fishery management, maritime anti-smuggling, etc., as well as coordinates with and guides local maritime law enforcement."

Responsible for the safety and security of important maritime targets and major events, taking necessary measures to protect key islands and the safety of artificial islands, installations and structures in the exclusive economic zone and continental shelf...” and so on.

Third, the Draft makes a series of special provisions on administrative enforcement procedures, and a bottom-up design – namely the application of general administrative law – when there is no provision. ¹This provision also aligns with the definition of the administrative attributes of the marine police agencies.

Fourth, the Draft provides that when an administrative relative is not satisfied with the penalty imposed by the marine police agency, he or she can file a review and a lawsuit². Since the 2018 reform, due to a lack of research by some people, they have not understood whether they could seek redress when dealing with China Coast Guard, nor did they know how to proceed in doing so, but the clear provisions in the draft law eliminate these doubts.

In conclusion, the Draft makes clear provisions for the administrative attributes of China’s Coast Guard agencies, but it should be well understood that the current law has not yet been formally materialized and can only be further confirmed once it has been formally adopted and an official text has been issued.

IV. Unclarified Points in *The Coast Guard Law (Draft)*

There are some new provisions in *the Coast Guard Law (Draft)*. However, those provisions need to be clarified and require further discussion as to how they should be applied.

Firstly, in general, Article 17³, Article 18⁴, and Article 19⁵ – on the application of the law enforcement power – are fine, but they are limited to foreign organizations and

1 Article 33 of Coast Guard Law of the People’s Republic of China (Draft, 2020 version) provides that “the procedures for maritime police agencies to carry out maritime administrative law enforcement, if not stipulated in this law, are applicable to the relevant laws such as the Law of the People’s Republic of China on Administrative Penalty, the Administrative Compulsion Law of the People’s Republic of China, and the Public Security Administration Punishments Law of the People’s Republic of China.”

2 Article 72 of Coast Guard Law of the People’s Republic of China (Draft, 2020 version) provides that “individuals and organizations that are dissatisfied with the administrative actions taken by the maritime police agency have the right to apply for administrative reconsideration to the higher-level maritime police agency in accordance with the provisions of the Administrative Reconsideration Law of the People’s Republic of China.

3 Article 17 of Coast Guard Law of the People’s Republic of China (Draft, 2020 version) provides that foreign organizations and individuals who, without the approval of the competent authorities of China, construct buildings and structures and install various kinds of fixed or floating devices in the sea areas and islands and reefs under China’s jurisdiction shall be ordered by the coast guard to stop their illegal acts or make rectification within a time limit. If the coast guard refuses to stop the illegal act or make rectification within a time limit, the coast guard may, when necessary, forcibly remove it according to law.

4 Article 18 of Coast Guard Law of the People’s Republic of China (Draft, 2020 version) provides that if foreign military vessels and foreign government vessels used for non-commercial purposes violate Chinese laws and regulations in waters under China’s jurisdiction, the coast Guard shall have the right to take necessary vigilance and control measures to stop them and order them to leave the relevant waters immediately. For those who refuse to leave and cause serious harm or threat, the coast guard shall have the right to take measures such as forced eviction or forced towing.

5 Article 19 of Coast Guard Law of the People’s Republic of China (Draft, 2020 version) provides that the national sovereignty, sovereign rights and jurisdiction in the sea is the violation by foreign organizations or individuals or face the danger of violation of pressing, coastguard agency shall have the right, in accordance with this law and other relevant laws and regulations, and to take all necessary measures, including weapons, to stop the infringement and eliminate the danger on the spot.

individuals, which raises the question of whether the above-mentioned provisions can be applied when the administrative counterparts are Chinese organizations and individuals. On one hand, it can be suggested that, since it applies to all foreign subjects, it is also applicable to domestic subjects; on the other hand, it can also be argued that it is a special provision for foreign subjects and should not apply to domestic subjects. In any case, this issue should be taken into account in further consideration of the Draft and in future law enforcement practice.

Secondly, Article 25¹ stipulates that China Coast Guard shall exercise its authority in the contiguous zone, but can it also exercise its authority in the exclusive economic zone (EEZ), or on the continental shelf? Can the corresponding authority be exercised on the high seas – in the deep seabed mining areas under our jurisdiction? There are currently no regulations. This also needs further clarification.

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¹ Article 25 of Coast Guard Law of the People's Republic of China (Draft, 2020 version) provides that in order to prevent and punish acts violating the relevant laws and regulations concerning safety, customs, finance, sanitation or entry and exit administration in China's land territory, internal water or territorial sea, the coast guard organs have the right to exercise control over the contiguous zone and take administrative coercive measures or other measures prescribed by laws and regulations in accordance with law.