

Study on the Problems and Improvement Countermeasures of the Fishing Right System of Marine Fisheries in China

Ren Wengang

*College of Marine Law and Humanities, Dalian Ocean University, Dalian, China
1248336647@qq.com*

Keywords: Fishery right, fishing right, fishing right system, development status, perfect countermeasures

Abstract: China is recognized as a large agricultural country in the world. However, fishery is an important part of agriculture, so the fishery fishing right system plays an important role in ensuring the positive development of fishery in our country. This study will start with three parts: the present situation of the development of the marine fishery fishing right system in our country, the problems existing in the marine fishery fishing right system in our country and how to perfect the fishing right system in our country. The first part explains the present situation of the development of marine fishery fishing rights in our country through problems in view of the current development situation of marine fishery fishing rights in our country; the third part puts forward some perfect suggestions for the problems of marine fishery fishing rights in our country. This paper will conduct full research from various aspects, the purpose is to improve the construction of China's marine fishery fishing right system, to make the development of China's marine fishery fishing right more perfect. We need to fully protect the rights and interests of fishermen, and to protect China's fishery resources to achieve the healthy and sustainable development of China's marine fishery industry and make our country a big marine fishery country.

1. Introduction

Marine fishery fishing is related to the balance of marine natural ecosystem and national food security. At present, China's marine fishing industry is developing rapidly and has a broad market prospect, but there are still some problems to be solved. ^[1]

This paper analyzes the present situation of the development of marine fishery fishing and related laws in China, aiming at a series of problems, such as the defects of fishing license system, the inoperability of quota fishing system, the lack of scientific nature of "across-the-board" summer fishing moratorium system, and so on. Some suggestions for development are put forward. ^[2]

2. The present situation of the Development of the fishing right system of Marine Fisheries in China

China is a large marine country, and the development history of marine fishery can be described

as having a long history. In order to meet the needs of their own production and life, fishermen in coastal areas get their catch through fishing, which shows that marine fishing right is an important part of the development of fishery economy in our country. However, there are still some shortcomings in the marine fishing right system that matches the fishery development of our country, so we must immediately establish and improve the corresponding system as a guarantee to ensure that the rights and interests of fishery right holders will not be harmed and the fishery economic order of our country will not be harmed.^[3]

2.1. Fishing quota system

The fishing quota system generally refers to a system in which fishermen fish within the scope of the applied quota by applying to the fishery administrative organ for fishing quota. The reason why the fishing quota system exists is that its purpose is to enable China's precious fishery resources to be utilized continuously and advantageously, so as to achieve a balanced development between marine fishing capacity and total fishery resources. It can be said that the most important cornerstone of the construction of marine fishery fishing rights system in China is the implementation of fishing restrictions, once marine fishery resources are in a state of depletion. It can effectively protect China's marine fishery resources. Conniving at overfishing will greatly affect the development of the marine fishing industry, so limiting fishing is more about protecting limited fishery resources. This system is also an important one of the internationally recognized fishery management system.^[4]

As for how to implement the fishing restriction order, after the fishery department under the Chinese government investigates and evaluates the fishery resources, the total amount of fishing restriction order in different waters and other sea areas under jurisdiction shall be submitted to the department of the State Council for approval and issued step by step, so as to provide a basis for the scientific implementation of fishing restriction order. After consultation and determination by the provincial government, the total fishing quota for rivers and lakes shall be issued step by step.^[5]

The coastline of our country is narrow and long, and there are four sea areas connected with the mainland, namely, the Bohai Sea and the Yellow Sea, the East China Sea and the South China Sea. The level of urban economic development in coastal areas is different, which also leads to differences in the composition of labor in the fishing industry. Therefore, the contribution of the fishing industry to the economy is also different in different regions. As far as Zhoushan area of Zhejiang Province is concerned, Zhoushan fishing ground has formed Zhoushan fishing ground because of its unique natural advantages, and fishery economy plays an inestimable important role in the economy of this region. The situation of fishery resources in other sea areas is also different. how to implement the fishing restriction system and whether the basis for formulating the system is scientific and accurate has also become an important issue in front of the fishery administrative departments. After all, it is necessary to establish reasonable standards and control fishing. If the specific problems cannot be analyzed concretely, it is disadvantageous to the sustainable development of marine fishery. Of course, the Fisheries Law also clearly stipulates the supervision of the quota system and the penalties for violating the system. The construction of the fishing right system of marine fishery in China can be better improved only under the condition of fair and just distribution of total fishing quantity and strict supervision and inspection.

2.2. Fishing license system

The Fisheries Law promulgated in the 1980s stipulates that the fishing license system for the fishing industry in China is the fishing license system, and stipulates that different modes of operation should be adopted with the consent of the corresponding fishery authorities. Different

operating tools are used to engage in marine fishing activities, which are consistent with the registration of fishing licenses obtained. Those who meet these conditions may approve the issuance of fishing licenses, which are in line with the fishing quota issued by the fishery administrative department of the people's government at a higher level, but such as the subject by which the fishery ship registration certificate can be obtained, it is not clearly stated here that the fishing vessel inspection certificate can be obtained. Whether fishing can be carried out and whether the ultimate embodiment of fishing rights can be realized, the fishing license is the key element.

The subject of marine fishery fishing right in China has not been clearly defined. Generally speaking, those traditional fishermen who can become the subject of marine fishery fishing right refer to those traditional fishermen who live in coastal areas for generations and rely on the sea to eat the sea. In the process of fishery operations, they not only need to apply for permits in advance, but also need to carry permits with them every time they go out to sea in order to be inspected by fishery administrative law enforcement personnel at any time.^[6]

Finally, the provisions of the Fisheries Law state that the 2012 measures for Registration of Fisheries vessels provide that the ownership of fishing vessels may be transferred and registered in accordance with these measures, and that fishing licenses may not be sold, leased or otherwise transferred. This shows that the ownership of fishing vessels can be transferred, and once the ownership of the ship is transferred, the ship registration certificate will also be changed, and the change of the ship registration certificate, it also directly makes a substantial change in one of the conditions for applying for a fishery license, which undoubtedly plays a certain role in rectifying the chaos in order to improve the marine fishery right system.^[7]

3. The main problems of the fishing right system of Marine Fisheries in China

Because of its superior geographical location, China has created some coastal fishing villages and fishermen who make a living by fishing at sea. China's fishery has a long history, but it is basically a mess and a mixture of fish and dragons. After the implementation of reform and opening up in our country, our government has formulated a series of laws and regulations according to the development of fishery in our country, but for the fishing right system in our country, because the boundary between subject and object is unclear, there is a deficiency in the system. The fishing industry is also faced with many problems, and the rights and interests of fishery employees are often harmed. Therefore, the formulation of the fishing right system is the core content of the marine fishing right system in our country. It has become the top priority in the development of marine fishery in China. The following will analyze the solutions and ways to improve China's marine fishing system by enumerating the problems existing in China's marine fishing right system.

3.1. The licensing system of fishery fishing rights in legislation

China has always been a country with developed agriculture in history. Fishery is a part of agriculture, and fishermen often have to make a living by fishing at sea. However, from the perspective of actual legislation, there are relatively clear provisions on the subject of land ownership and farmers' rights and interests, whether it is the Land Management Law or the Rural Land contract Law. However, although the standing Committee of the Ninth National people's Congress in 2000 and the standing Committee of the 10th National people's Congress in 2004 have made two amendments to the Fisheries Law, which is the basic law of fisheries, it has not covered the field of marine fishery fishing rights, and the concept of fishing rights has not been clearly defined. The problem of blurring the subject and object of fishing rights still exists. In addition, there is also a problem in the Fisheries Law promulgated, for example, it also stipulates that our country implements the fishing license system, but in the corresponding punishment measures, it is

only aimed at the illegal acts of the holders who have obtained the Fisheries Law. This can be clearly seen from the illegal acts of articles 30 and 31 of the Fisheries Law and those who have not obtained the Fisheries Law. When they commit illegal acts, the punishment measures they take are generally relatively light, and the amount of punishment is quite different from obtaining a fishing license, which can easily lead to the idea that it is better for many people to be an unlicensed fishery than to apply for a fishing license themselves. However, there are obvious defects in the legal basis of marine fishing rights, which is fundamentally disadvantageous to the construction of marine fishery fishing rights system in our country.^[8]

Secondly, although the property Law of 2007 clearly stipulates that "the right to engage in fishing in waters shall be protected by law", even if the detailed rules for the implementation of the Fisheries Law of the people's Republic of China are subsequently promulgated, only appropriate amendments and adjustments have been made to the fishery in the fourth chapter, but very few of them are really related to the fishing rights of marine fisheries. The property Law has made clear provisions on this, more for fishing licenses, including those that do not meet the conditions for issuing licenses, and do not stipulate the substance of fishing rights, which do not meet the conditions for issuing licenses, and they do not meet the conditions for issuing certificates. The provisions on the fishing rights of marine fisheries are not in-depth, such as the Agriculture Law, the measures of the people's Republic of China on the Registration of Fishery vessels, and so on.

Therefore, without the blessing of a series of laws and regulations, the fishing right will only exist in name only, and more will bring a series of problems, because the subject and object of the fishing right is not clear. Therefore, there are still some defects in the legislation of the marine fishery fishing right system in our country, which gives our country a set of detailed and unified legal system from the national level, from the aspects of the fishing right system, the content of the fishing right and the way to obtain it. It brings a series of difficulties to the construction of marine fishery fishing right system.

3.2. Problems in the transfer of fishing rights and compensation mechanisms

China's Fisheries Law clearly stipulates that fishing licenses must not be bought or sold, leased or transferred in the form of alteration, forgery, alteration, etc., as the carrier for the realization of fishing rights. As a kind of real right, fishery right is the right of fishermen to obtain catch only from this water area, and at the same time, it also has the basic nature of real right, so it belongs to quasi-real right and is the absolute real right owned by the state.

From the perspective of foreign countries with relatively advanced fishery economy, the circulation of fishery fishing rights is mostly allowed, but we must consider whether our country should transfer the marine fishery fishing rights under the condition of allowing the circulation of cultivated land, grassland and woodland. Combined with the specific national conditions of our country, I think it can be used for reference. At the same time, for the problems arising after the transfer, there are no corresponding policies to deal with. After all, after the transfer of fisheries rights, whether fisheries rights can be finally implemented in accordance with the criteria for restricting fisheries rights, and whether the tragedies in the Commons caused by living plant resources endemic to marine water can be avoided; has it caused problems such as increased fishing efforts to a certain extent, as well as fishermen changing jobs and re-employment, and so on.

It is worth mentioning that ownership of fishing vessels is the first condition for China to obtain a fishing license. That is, the fishing license is an application for fishermen who enjoy fishing vessels and meet other conditions, and the fisheries administration department shall, in the light of the actual implementation situation, issue fishing vessels to fishermen who have fishing vessels, meet other conditions and do not have fishing vessels. However, China's "measures for the

Management of Fishery vessels" also provides for the ownership of transferable, rentable and mortgaged fishery ships. At the time of the transfer of the fishing vessel, the fishermen have lost their ownership of the fishing vessel, and on the basis of the fishing vessel, they have to withdraw the fishing license applied for, so the fishing right no longer exists. New fishermen have ownership of fishing vessels, so they can apply for fishing licenses and obtain fishing rights in fishing operations, which is undoubtedly a double pressure on license agencies.

In the case that there is no relevant system construction in our country, we should also establish a corresponding compensation mechanism, because the identity of fishermen is uncertain, causing damage to their rights and interests. Whether by cash or other means of compensation, farmers have certain compensation measures after losing their land. And with the implementation of rural cooperative medical system in recent years, farmers enjoy more and more welfare benefits, such as insurance subsidies. However, there is a great difference between fishermen and farmers, whether it is disputes and shipwrecks in fishery operations, or after being forced to "lose the sea", or the subsidies issued by the state, there is a lack of perfect and perfect compensation mechanism to safeguard their own rights and interests.

If these problems are not solved well, it is not conducive to the sustained and healthy development of the marine fishing industry, nor to the stability of the fishery society, but also to the perfection and perfection of the marine fishery right system.^[9]

4. Countermeasures and suggestions on perfecting the fishing right system of Marine Fisheries in China

A good system, in order to let it take root and sprout, to protect the legitimate interests of the right holders, and to ensure the sustainable development of related industries, it still needs to be continuously improved. By summarizing the problems in the previous chapter and referring to some documents, this paper puts forward the following countermeasures and suggestions in order to improve the fishing right system of marine fishery in our country.

4.1. Improve the legal system of fishing rights

Due to the imperfection of relevant laws and regulations, in recent years, China's fishery overfishing, serious water pollution and various disputes between fishing vessels have occurred from time to time, resulting in mixed development of the fishery industry. In view of this situation which is disadvantageous to the development of fishery in our country, it is necessary to implement some specific measures to ensure the healthy and sound development of fishery in our country.

First of all, China has established the basic Law of Fisheries economy, which is a basic law of fisheries with Chinese characteristics. Although China has promulgated the Fisheries Law and the property Law, there are many problems, such as the contents of the norms are too general and not detailed and comprehensive, which requires the establishment of a targeted law and regulation. This has played an important role in the development of fishery in our country.

Secondly, the construction of supporting laws and regulations related to fishing rights also need to be improved. The problems mentioned above, such as overfishing and water pollution, need to be paid great attention to. Therefore, China should also establish relevant laws and regulations related to fishery fishing rights, such as protecting fishery resources and protecting fishery water environment, which are inextricably linked, mutually supported and complementary to each other.

Finally, in the relevant legislation, we can also learn from the international popular individual transfer quota system and other successful experience, such as foreign countries with relatively perfect legal system of marine fishery fishing rights, combined with the national conditions of our country to formulate a legal system in line with our national conditions. It is also necessary to

strengthen publicity and education on the legal system of fishermen and improve their concept of the legal system so as to improve the quality of fishermen and ensure that the laws and policies formulated by the state can be effectively implemented. As participants in the fishery economy, fishermen play a vital role in the construction of fishing rights system. Only when its rights and interests are clearly and specifically written into the laws and regulations, the improvement of the fishing right system can really promote the healthy and sustainable development of the fishery economy.^[10]

4.2. Strengthen the construction of the transfer mechanism of fishing rights

China's Fisheries Law stipulates that the rental, transfer or various forms of trading of fishing licenses are prohibited. However, the marine fishery fishing transfer mechanism must be carried out fairly and impartially in the construction of certain supporting laws, even if there is a contradiction between the two to a certain extent, the circulation of ship ownership certificates should be allowed. In particular, the basic situation of the transferred sea areas should also be made public for the purpose of implementing the principle of public participation. In the process of concrete practice, democratic supervision must be carried out, and only in this way can we ensure the reasonable circulation of fishery rights in accordance with the rules and regulations, so as to realize the fairness in the process of implementing fishery rights in entity.

At the same time, we can also make reference to the experience of developed countries and combine the basic national conditions of our country to formulate a set of circulation mechanism of marine fishery fishing rights which is suitable for the basic national conditions of our country, so as to promote the circulation of grassland, woodland and cultivated land in our country.

With regard to the establishment of a mechanism for the transfer of fishing rights in marine fisheries, the author believes that fishing vessels can also be used as an important prerequisite for obtaining fishing permits through study and research. It can also be used as an important prerequisite. That is, the transfer of a fishing license is allowed, but it must be transferred to a person who also has a fishing license while owning a fishing vessel that can carry out fishing operations. And at the time of transfer, it also includes changes in the ownership of fishing vessels, as well as changes in other related rights and responsibilities, which are transferred together by all fishing vessels owned by the original holders. This can prevent fishing vessels from not transferring, but merely transferring fishing licenses, leading to management confusion. It can also avoid the negative economic benefits caused by the loss of use value of fishing vessels, which will cause fishermen to suffer losses again after the fishing license is transferred.

With the development of China's economic level, the scientific and technological level of marine fishing operations is also gradually improving, the requirements for fishing vessels are getting higher and higher, and the requirements for operating tools are getting higher and higher, for example, the technical requirements for marine fishing operations are getting higher and higher. The technical requirements for fishing vessels are getting higher and higher. Some fishing vessels should be eliminated because of their low mainframe power, slow speed, high energy consumption and high fuel costs, and the owners of fishing vessels, that is, the holders of fisheries certificates, do not want to change their fishing vessels because they have not reached the prescribed useful life, so they may face the risk of revoking their fishing licenses. The combination of the share system and the fishing license system can enable these fishermen not only to worry about the revocation of their licenses, but also to make a certain profit, and it is also beneficial to the high-tech and high-level development of the national marine fishery.

In the process of the transfer of fishing rights, the transfer of fishing rights should always be carried out under the condition of respecting the individual will of fishermen and perfecting the

principle of fairness. At the same time, every transaction involving elements in the circulation should reflect the principle of equal exchange, make full use of the role of the market mechanism, and emphasize that it should be combined with the previously established fishery association, based on the market price, and make full use of the circulation of fishery rights. As the fishermen's association is still in its infancy in the fishing area and has not really become formal, it is urgent to standardize the articles of association, main responsibilities and members of the association, and adopt an active guidance to standardize the government and fishery administration organizations.

At the same time, the problem of re-employment of fishermen should be solved, which is a problem after the transfer of fishing rights in marine fisheries. This requires that in improving China's marine fishery fishing right system, it is necessary to link up the circulation mechanism and the compensation mechanism to ensure the sustainable development of fishery circulation, which plays an inestimable role in China's marine fishery rights.

5. Conclusion

Since China's reform and opening up, China's marine fishery industry has developed vigorously, Chinese fishermen have been moving forward on the road of getting rich, and the fishery fishing right system has played a vital role. Although the system has explicit provisions, many problems are still exposed in many cases. After all, this system is of great significance to China's marine development and is closely related to the fundamental interests of fishermen. After all, fishing rights are the fundamental guarantee for fishermen's survival and life. Any citizen who comes to the ranks of fishermen at will will inevitably have a negative impact on the improvement of marine fishery fishing rights system and on the long-term sustainable development of marine fisheries.

The above are the several questions I have raised and the perfect countermeasures for the specific problems, mainly aiming at the problems that have always existed in the fishing right of the marine fishery system in our country, which may not be very comprehensive in some places. The countermeasures given need to be further studied. We will continue to conduct in-depth research on the controversial areas, and at the same time, I also hope that the countermeasures I put forward can help improve the fishing right system of marine fisheries in our country, so that the fishery industry of our country can get more sustained and favorable development.

References

- [1] She Yuanan, Wu Hao, Sun Zhaoning, Lin Liansheng. *China's Marine Fisheries: achievements, problems and Development ideas* [J]. *China's Fishery economy*, 2012, 30 (03): 97-102.
- [2] Wang Xiaolei. *Study on the Establishment of fishing right system in China* [D]. Shanghai Ocean University, 2011.
- [3] Xu Lianjun. *Research on the subject of fishery right* [D]. Zhejiang Ocean University, 2013.
- [4] Ren Heping. *Study on Fisheries right and its legal Regulation in China* [D]. Fudan University, 2007.
- [5] Liu Shunbin. *Study on Fisheries right (I)* [J]. *Journal of Ocean University of China*, 2006, (4): 6-9.
- [6] Ren Heping. *Summary and discussion on the basic theory of fishery right in China* [J]. *China's Fisheries economy*, 2008, (14): 150.
- [7] Sun Xianzhong. *Study on Fisheries right in China* [M]. Beijing: law Press, 2006, (8): 96.
- [8] Ma Jierong, Ren Dapeng. *Study on the transfer of Fisheries Rights in China* [J]. *Social Science Forum*, 2008, (11): 58-63.
- [9] Chang Yaqing, Zhan Yun. *The construction of marine fishery legal system needs to be strengthened* [J]. *People's Rule of Law*, 2015, (06): 40-41.
- [10] Xu Jianying. *Law of the sea and fishery rights* [M]. Taipei: Longwen Publishing House, 1993 Suzhou 110-122.