

# Getting into a New Maritime Era?-A Commentary on the Restructuring of the State Oceanic Administration in China

Yen-Chiang Chang\*

School of Law, Shandong University, No. 5 Hongjialou, Jinan, Shandong, China

## Abstract

State Oceanic Administration, China has recently experienced an enormous restructuring. The Marine Surveillance, the China Coast Guard, the China Fishery and the Customs Anti-contraband Policemen are now integrated into a unified new State Oceanic Administration, carrying out law enforcement activities under the name of the China Coast Guard, and operating under the guidance of the Ministry of Public Security. This is a big step forward toward a more holistic approach to ocean governance. It is vital step for China to establish a comprehensive marine law enforcement body and to distribute the duties more efficiently and clearly. The new State Oceanic Administration should further strengthen the relationship between the central and local governments and could also comprehensively plan marine affairs so that the various bodies could be clearer regarding their respective functions. It is necessary to pass legislation to clarify the legal status of the new China Coast Guard, specify its maritime criminal law enforcement power in order to exercise criminal investigation, and specific administrative law enforcement powers.

**Keywords:** State oceanic administration; Intergraded ocean governance approach; Organisation restructuring; China

## Background

The law enforcement forces at the sea in China were traditionally organised on a sectoral basis, which had caused outstanding problems concerning repetitive inspections and redundant constructions. The overall effectiveness of law enforcement is not satisfactory and the capacity to safeguard China's legal rights is insufficient. In the past, the functions of each law enforcement body, such as the China Marine Surveillance within the State Oceanic Administration, the Coast Guard within the Ministry of Public Security, China Fishery within the Ministry of Agriculture, and Customs Anti-contraband Policemen within the General Administration of Customs, are single [1].

During the process of law enforcement, if encountered illegal activities not within the scope of their competence, they do not have the authority to deal with these activities, thus affecting the effects of law enforcement [2]. Each body has its own self-built wharves, ships, communication and security systems, which results in redundant constructions and waste of resources [1,3]. Moreover, these bodies repeat certifications and inspections with high costs and low efficiency, increasing the burden of enterprises and the general public [4]. The dispersed law enforcement forces at the sea have been the issues over the years that in turn attract specific attention from the Chinese society [5]. In order to strengthen the protection and rational utilisation of the marine resources, safeguard national maritime rights and interests, it is necessary to integrate the law enforcement forces at the sea.

## Restructuring Plan

According to "The Transformation Plan of the Agencies and Functions of the State Council" examined and adopted by the first meeting of the twelfth session of the National People's Congress in 2013, the State Council will restructure the State Oceanic Administration in order to facilitate the unification of law enforcement at the sea. According to the reform plan, the agencies associated with law enforcement at the sea will be integrated into a unified new State Oceanic Administration, carrying out law enforcement activities under the name of China Coast Guard, and operating under the guidance of the Ministry of Public Security. The agencies include the Marine

Surveillance, the China Coast Guard, the China Fishery and the Customs Anti-contraband Policemen, which were originally dispersed in the State Oceanic Administration, Ministry of Public Security, Ministry of Agriculture and General Administration of Customs respectively [6]. The main responsibilities of the integrated State Oceanic Administration are to draw up plans of marine development, implement law enforcement at the sea, supervise and manage the use of the sea, and protect the marine environment.

To strengthen the overall planning and coordination of the marine affairs, the plan proposes the establishment of high-level deliberation and coordination organisation for strategies formulation and coordination of national marine affairs (Figure 1). The State Oceanic Administration would perform the duty of the newly established National Ocean Council [6]. Although the State Oceanic Administration has not been upgraded to the ministerial level, a number of views hold that its power has been strengthened [7].

## The Legal Basis of the Restructuring

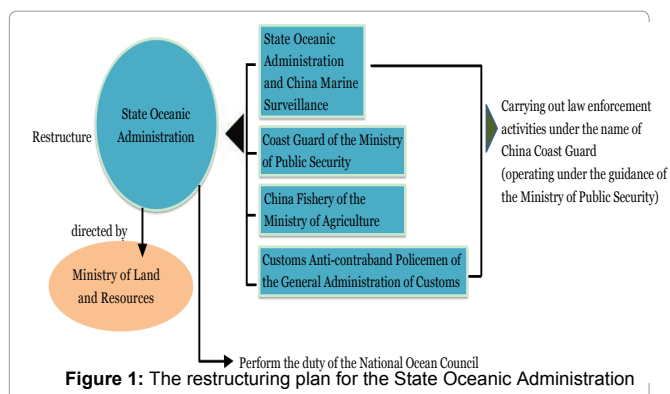
Restructuring of the State Oceanic Administration involves the internal organs of the State Oceanic Administration, General Administration of Customs, Ministry of Public Security, and Ministry of Agriculture. The State Oceanic Administration is under the supervision of the Ministry of Land and Resources. The National Ocean Council is the agency responsible for deliberation and coordination. The General Administration of Customs is the institution directly under the State Council. The Ministry of Public Security and the Ministry of Agriculture are departments of the State Council.

\*Corresponding author: Yen-Chiang Chang, School of Law, Shandong University, No. 5 Hongjialou, Jinan, Shandong, China, Tel: +86-1527519763; E-mail: [coastal.tw@yahoo.com.tw](mailto:coastal.tw@yahoo.com.tw)

Received May 20, 2014; Accepted July 07, 2014; Published May 31, 2014

**Citation:** Chang YC (2014) Getting into a New Maritime Era?-A Commentary on the Restructuring of the State Oceanic Administration in China. Oceanography 2: 126. doi:10.4172/2332-2632.1000126

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In accordance with Article 8 of the State Council Organisation Act, “the establishment, cancellation and merger of the departments and committees shall be proposed by the Prime Minister and decided by the National People’s Congress; during the adjournment of the National People’s Congress, this is decided by the Standing Committee of the National People’s Congress.” In accordance with Article 8 of the Regulations of the Establishment and Staffing of the Administrative Agencies of the State Council, “the scheme concerning the establishment, cancellation and merger of the administrative agencies governed by the institutions directly under the State Council, the State Council Offices, and the Ministries under the State Council shall be proposed by the agency and staffing administrative department of the State Council, and decided by the State Council.” Therefore, the State Council shall decide the restructuring of the State Oceanic Administration, as it is a national administrative agency governed by the Ministry of Land and Resources, which is a ministry under the State Council. According to Article 11 of the aforementioned Regulations, the establishment, cancellation and merger of the deliberation and coordination agency of the State Council shall be proposed by the agency and staffing administrative department of the State Council, and decided by the State Council. Therefore, the State Council shall decide the issue concerning the undertaking of the function of deliberation and coordination by the State Oceanic Administration.

The adjustments of other relevant organs involved in the restructuring of the State Oceanic Administration could be decided by the State Council, and do not have to be decided by the National People’s Congress. But this adjustment does not only relate to the restructuring of the State Oceanic Administration, but also involves the cancellation, merger and establishment of other departments of the State Council, thus it could be concluded that the restructuring of the State Oceanic Administration is “incidentally” decided by the National People’s Congress.

## Main Duty of the State Oceanic Administration after the Restructuring

The State Oceanic Administration (hereinafter SOA) establishes three sub-administrations, namely, the North Sea, East Sea and South Sea branches of the China Coast Guard [6]. The aim is to perform the oceanic supervision and administration duties, as well as rights safeguarding and law enforcement activities in the sea areas of their respective jurisdiction. The three sub-administrations establish a total of 11 Coast Guard Commands and their flotillas in the coastal provinces [6].<sup>13</sup>

<sup>13</sup>Including autonomous regions and municipalities directly under the Central Government.

The main duty of SOA including drafting laws and regulations governing internal waters, territorial seas, adjacent areas, exclusive economic zones, continental shelves and other sea areas under the jurisdiction of SOA [6]. The matters in respect of the use of sea areas, marine environment protection, marine scientific research and island protection are all fallen into the jurisdiction of SOA [6]. SOA is also required to work with the relevant departments in working out and implementing plans of marine strategies and policies, marine undertakings development, marine functional zonings, marine environment protection, marine economy development, island protection and uninhabited island development [6]. The above conduct is perceived as promoting unified marine affairs planning and adopting a comprehensive coordinating mechanism [8,9].

In terms of marine law enforcement, SOA is responsible for working out marine law enforcement regulations and procedures, preventing and suppressing marine smuggling, stowaways, drug trafficking and other criminal activities, maintaining the peace and order in marine areas, defending the important marine objectives, and responding to marine emergencies [6]. Attention also being paid to law enforcement and inspections on bottom trawling fishing vessels outside boundaries of banned fishing areas and within fishing grounds [6]. The investigation and settlement of fishery disputes is now under the jurisdiction of SOA.

For the law enforcement and inspection regarding sea area usage, such as island protection, uninhabited island development, marine environment protection, oceanic mineral resources exploration and development, lying of submarine cable pipes, marine surveys and research, and foreign-related marine scientific research are now under the supervision of SOA [6]. It is also responsible for directing and coordinating local marine law enforcement activities such as participating in marine emergency relief, organising or participating in investigation and handling of fishery accidents, investigating marine environment pollution incidents [6].

It is important to note that marine functional zoning plans are now imposed in China. SOA is responsible for working out regulations regarding the use of sea area, and supervising the implementation thereof, undertaking the demarcation of coastline and boundaries of inter-provincial sea area, drafting regulations on the building and use of artificial islands, facilities and constructions on the exclusive economic zone and continental shelf, and supervising the implementation of thereof [6]. Territory has always been the core concern of the Chinese Government, therefore, SOA is responsible for organising the drafting of regulations on island protection and development and use of uninhabited island, and supervising the implementation [6]. The geographic names of sea areas outside the coastal zone, uninhabited islands and underwater terrain as well as the protection and management of territorial sea base points and other islands with special purposes are of central concern of SOA [6].

In terms of marine environment protection, SOA is working on implementing the regulations and criteria for marine environment protection, as well as the pollutant total discharge volume control system [6]. SOA is also responsible for formulating regulations on the monitoring and evaluation of the marine environment, issuing information about the marine environment and supervising the implementation thereof [6]. While the dispute occurs, SOA is representing the state in claiming the marine ecology damages [6].

SOA shall formulate and supervise the implementation of oceanographic observations, predictions and evaluations, as well as

oceanic disasters precautionary system [6]. SOA shall also working out plan for marine observing network, making forecasts about marine disasters and sea levels, building the marine environment safety protection system, participating in emergency relief for major oceanic disasters. Its ultimate goal is to tackle climate change issues [6].

Marine science and technology development plans are also important to SOA. SOA is responsible for formulating technical norms, measurement and standards, conducting oceanographic surveys, establishing a mechanism for the promotion of innovations in marine science and technology [6]. Taking charge of monitoring, statistically accounting, evaluation and information disclosure of marine economic operations, proposing suggestions on the optimisation of the marine economic and industrial structure are under the jurisdiction of SOA [6].

For international affairs, SOA shall organise international communication and cooperation, participate in negotiations and consultations concerning marine affairs, carrying out UNCLOS, the Antarctic Treaty and other international maritime conventions, treaties and agreements, handle the affairs relating to the polar region, high seas and international sea bed [6]. SOA shall also undertake the specific work of the National Oceanic Commission, as well as matters assigned by the State Council, the National Oceanic Commission and the Ministry of Land and Resources [6].

In sum, it is vital for China to establish a comprehensive marine law enforcement body and to distribute the duties more efficiently and clearly [8]. From the above discussion, it is not difficult to discover that the China Maritime Safety Administration<sup>14</sup> within the Ministry of Transport has been let out from this restructuring process. It is a practice of step-by step reform pattern. The China Maritime Safety Administration is said to have its own unique tradition in law enforcement practice. It is not only responsible for law enforcement at the sea, its jurisdiction also covers the internal waters. It is, therefore, premature at this stage to include the China Maritime Safety Administration into the restructuring process. How does SOA work with other public authorities then? This question will be considered in the following section.

### **Assignment of Duties with other Public Authorities**

SOA conducts marine rights safeguarding and law enforcement activities under the name of China Coast Guard and receives operational guidance from the Ministry of Public Security.

### **Assignment of duties with the ministry of land and resources**

SOA is working very closely with the Ministry of Land and Resources (hereinafter MLR). For example, the regulations concerning ocean governance and law enforcement shall be drafted by SOA, submitted to the ministerial affairs meeting for consideration, and when passed, promulgated by MLR [6]. MLR is responsible for the protection and equitable utilisation of marine resources, strengthening the unified planning of the land and the ocean, and reinforcing the overall controlling effect of the territorial land planning, overall

<sup>14</sup>It is mainly responsible for the supervision of national maritime safety, the prevention of the pollution caused by vessels, the inspection of the facilities on the ships and at sea, the security of navigation and production safety, administrative law enforcement, and other duties and functions arranged by the Ministry of Communications. It is also responsible for implementation of international maritime treaties, exercising the obligation of surveillance and management with respect to flag states and port states, safeguarding of the state sovereignty, and conducting of international exchanges and cooperation with respect to marine affairs.

planning for land use, and the national mineral resources plan [6]. SOA is responsible for law enforcement and inspection in exploration and development of oceanic mineral resources, imposing of administrative penalty on violations of law and regulations, and when necessary, submission of the violation to the issuing authority for rescission of administrative license [6]. While MLR is responsible for the regulations and registration of the new land upon completion of land reclamation projects, SOA is responsible for the administration of sea area use before the completion of such projects [6]. MLR and SOA shall work together to make sure the coherence between the annual plan and projects of land reclamation, and the annual land use plan and projects.

### **Assignment of duties with the ministry of agriculture**

Concerning the assignment of duties with the Ministry of Agriculture (MA), MA is responsible for the formulation of fishery policies, plans and standards, the summer fishing moratorium system and the issuance of fishing bans. SOA is responsible for participation in the formulation of marine fishery policies, plans and standards, law enforcement and inspections on bottom trawling of motor fishing vessels outside boundaries of banned fishing areas and within fishing grounds with specially designated fishery resources, imposing of administrative penalty on violations of law and regulations, and when necessary, submission of the violation to the issuing authority for rescission of administrative license [6].

MA is responsible for the negotiations for and implementation of bilateral or multilateral inter-governmental fisheries agreements, as well as with regional fishery management organisations. SOA is responsible for the participation in negotiations for and implementation of bilateral fisheries agreements, law enforcement and inspections in co-managing areas in accordance with bilateral agreements, organisation and coordination for joint law enforcement and inspection activities together with counterparts of relevant countries or regions [6].

MA is responsible for the drafting of policies and regulations for protection of ecological environment of fishery water areas, conduction of surveys on marine wildlife resources, issuance of permission for fishing, domestication and breeding of marine wild animals. MA and SOA jointly propose plans for the designation of marine wildlife reserves. SOA is responsible for the law enforcement and inspection in this area, and when necessary, submission of the violation to the issuing authority for rescission of administrative license [6].

### **Assignment of duties with the general administration of customs**

The Customs and the China Coast Guard shall establish an intelligence sharing system, where anti-smuggling departments provides the China Coast Guard with timely information about smuggling, and the China Coast Guard uncover and suppress smuggling, and sends feedback to the Customs [6]. The smuggling cases shall then be transferred to the Customs with jurisdiction. The detailed regulation concerning such transfers shall be worked out together by these two departments.

The Customs and the China Coast Guard shall strengthen their cooperation. The two departments could conduct unified anti-smuggling operations in order to suppress smuggling on the sea and in places without a Customs office [6]. Whenever the Customs, in anti-smuggling operations on mainland, inland waterways, border rivers and lakes, discovers smuggling activities on the sea, such information shall be reported to the China Coast Guard for suppression, and vice versa [6].

If the Customs spots a vessel under Customs control departing from the customs surveillance zone without permission, or meets with forceful resistance while carrying out duties, it may notify the China Coast Guard for interception [6]. The Customs and the China Coast Guard shall strengthen their cooperation on waters near the Pearl River Estuary [6]. The two departments shall provide mutual support for law enforcement activities on waters within the connecting line between Qi'ao island light beacon and that of the Mazhou Island [6].

#### Assignment of duties with the ministry of transport

The Ministry of Transport (hereinafter MT) and the China Maritime Safety Administration under it are responsible for the supervision of marine traffic safety, inspection and registration of vessels and the relevant facilities on water, prevention and control of pollution caused by vessels, sailing safeguards and other administrative or law enforcement activities [6]. MT is also responsible for emergency response to marine traffic accidents and vessel-induced pollution incidents, and cooperation in activities for safeguarding marine rights [6].

The China Coast Guard, in their monitoring cruise, shall check any marine pollution incident caused by vessels discovered, conduct on-the-spot investigation, collect evidence, the penalty shall be imposed by relevant authorities in accordance with international treaties, domestic laws and regulations on prevention and control of vessel-induced pollution [6]. MT and SOA shall establish a coordinated mechanism for conduction of joint law enforcement operations, prevention and protection of pollution and other relevant duties.

#### Assignment of duties with the ministry of environmental protection

The Ministry of Environmental Protection is responsible for direction, coordination and supervision of the protection of marine ecological environment, preventing and controlling of pollution and damage to the marine environment caused by land-based pollutants and coastal construction projects [6]. SOA is responsible for supervision and protection of marine ecological environment, conduction of surveys, monitoring, surveillance, evaluation and scientific research of the marine environment, prevention and control of pollution damage to the marine environment caused by marine construction projects and dumping of wastes [6]. The two departments shall strengthen communication and coordination on investigation and handling of major pollution damage to the marine environment, as well as exchange of relevant information.

The aforementioned two departments shall establish a marine ecological environment protection data sharing system, which ensures exchange of data on marine environment management and surveillance [6]. They shall strengthen joint law enforcement and inspection activities for marine ecological environment protection, as well as the supervision of the implementation of marine environment protection by local people's governments and departments involved in marine affairs in coastal areas [6].

#### Summary

From the above discussion, it is not difficult to conclude that China is moving toward a holistic approach to ocean governance. SOA is now transformed into a department responsible for coordinating the scattered central marine administrative bodies. SOA should further strengthen the relationship between the central and local governments. SOA could also comprehensively plan marine affairs so that the various

bodies could be clearer regarding their respective functions and the developing pace of the central and local governments could be unified.

#### Discussions and Conclusions

The implementation of China's super ministry reform is of great significance. The attempt is to ensure that each department acts on its own to avoid cross of functions, so as to achieve the goals of reducing the costs of law enforcement and improving the effectiveness of law enforcement [10]. The original sectoral based governance approaches could be centralised as one. Before the reform, the law enforcement forces at sea in China cut across various public bodies. The China Marine Surveillance within the State Oceanic Administration is responsible for the law enforcement of the protection of maritime rights and the use of sea area. The China Coast Guard within the Ministry of Public Security is responsible for the law enforcement of maritime security. The Customs Bureau within the General Administration of Customs is responsible for the law enforcement against smuggling. The China Fishery within the Ministry of Agriculture is responsible for the law enforcement of maritime fishery [1]. Among them, only the Customs Anti-contraband Policemen and the China Coast Guard within the Ministry of Public Security have criminal law enforcement power.

In accordance with Article 3, Section 1 of the China's Criminal Procedure Act, "the public security organs shall be responsible for investigation, detention, and execution of arrest in criminal cases." The Customs Anti-contraband Policemen are under the dual leadership of the Ministry of Public Security and the General Administration of Customs. The China Coast Guard is subjected to the management of the Ministry of Public Security. Therefore, both the Customs Anti-contraband Policemen and the China Coast Guard belong to the public security organs, and have the criminal law enforcement power.

Anti-contraband Policemen are not only a professional anti-contraband team within the Customs, but also a kind of police within the public security organ. According to the "Customs Act", the Customs Anti-contraband Policemen exercise criminal law enforcement power according to the provisions of the "Criminal Procedure Act". The Customs Anti-contraband Policemen, who are in charge of the investigation of tax-related smuggling cases according to law, perform its duties of conducting investigations, making detentions and arrests and carrying out preliminary inquiries of the offences of smuggling, suspects of smuggling offences, and those seized by the customs service departments.

The local public security organs and the administrative law enforcement departments, such as the Industry and Commerce Department are also responsible for the investigation of non tax-related smuggling cases occurred in the customs supervision zones. Examples such as the smuggling of weapons, ammunition, drugs, counterfeit currency, pornographic materials, reactionary propaganda and cultural relic, should hand over to the People's Procuratorate when the investigation of which they have completed. In addition, the case should hand over to the customs investigation department to handle the offences that do not constitute smugglings after investigation.

The China Coast Guard is originally under the command of Border Defense Bureau of the Ministry of Public Security, which is mainly responsible for the offshore security and criminal investigation activities. It belongs to the armed police and is the active forces under the leadership of the Ministry of Public Security. In accordance with Article 6, Section 1 of the "People's Police Act" and Article 3 of the "Criminal Procedure Act", the China Coast Guard has the maritime

criminal law enforcement power. "Working Rules on the Maritime Law Enforcement by Public Security Organs" (hereinafter Working Rules) specifies the excise of criminal law enforcement power of the China Coast Guard. According to Articles 2, 4, 6, 7 and 8 of the Working Rules, the China Coast Guard is responsible for the maritime law enforcement tasks of the public security organs. It exercises jurisdiction and investigation of illegal activities or suspected criminal behaviours in violation of relevant public security administrative laws, regulations and rules occurred in China's inland waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. It has the right to take measures such as boarding, inspection, detention, and arrest.

The integrated SOA exercises law enforcement in the name of the China Coast Guard under the business guidance of the Ministry of Public Security. Does this mean that the China Coast Guard does not accept the leadership of the Ministry of Public Security? If it does not accept the leadership of the Ministry of Public Security, does the China Coast Guard belong to the category of "public security force"? According to the "Criminal Procedure Act", the public security organs enjoy the right to exercise criminal investigation. If the China Coast Guard does not belong to the "public security force" category, it then does not enjoy the right to exercise criminal investigation. This would undoubtedly impose a big barrier to the effective deployment of the maritime law enforcement activities of the China Coast Guard. Therefore, it needs to pass legislation to clarify the legal status of the new China Coast Guard, specify its maritime criminal law enforcement power in order to exercise criminal investigation, and specific administrative law enforcement powers such as the power to manage maritime public security, the power to protect and monitor the environment, the power

to supervise fishery administration and fishing ports, and the power to protect national interests. It is, therefore, expected to conduct more comprehensive law enforcement functions.

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Citation: Chang YC, (2014) Getting into a New Maritime Era?-A Commentary on the Restructuring of the State Oceanic Administration in China. *Oceanography* 2: 126. doi:[10.4172/2332-2632.1000126](https://doi.org/10.4172/2332-2632.1000126)

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