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取締三哩違規拖網捕魚現況分析— 以中部（苗栗、彰化、南投）海域為例

An analysis on the current state of crackdown against illegal dragnet fishing within three nautical miles from the shorelines - showcasing the sea territories in the central region, encompassing Miaoli, Taichung and Changhwa

壹、背景說明

依據海岸巡防法第四條規定，執行漁業巡護及漁業資源之維護事項，為本署法定職掌。主管機關為行政院農業委員會，海巡單位為執行機關之角色，協助主管機關對於違反相關漁業法規定捕魚之漁船，執行蒐證、取締、移送。然因各濱海縣市政府所轄海域漁情及資源特性各有不同，分別訂有不同規定及公告事項，以保護特殊魚種及規範漁捕行為，相鄰或相向縣市規定及作法或有不同，因而造成我海巡單位執法之困擾，甚而引發民怨。邇來上級要求針對轄內近岸 3 哩內違法及違規之漁捕行為採取積極作為，以回應民衆之要求，本文針對中部海域各縣市政府所規範之相關法令詳加分析，就執行是項工作之作法提出建議，俾利執行單位參考。

貳、沿近海禁止拖網規定

因漁船於近岸以細網目拖網，造成魚種苗銳減，且底拖漁船對魚種缺乏選擇性，混

Part 1 Background description

As stipulated under Article 4 of the Coast Guard Administration Law, the mission of CGA includes executing fishery escort and fishery resource maintenance work. The Executive Yuan Agriculture Council is the department in charge of fishery policy and the Coast Guard units assist to investigate on fishing boats that violate pertinent fishery administration law by evidence collecting, crackdown, and indictment. Yet with varied fishery scenario and resource characteristics in the sea territories under the jurisdiction of various oceanfront counties and municipalities, the varied stipulations and implementation in adjacent counties and municipalities have led to difficulties in the Coast Guard's law enforcement, or even to the level of drawing public ridicules. In response to the public's demand, the article intends to provide an in-depth analysis to relevant laws and regulations instigated by the various county and municipal governments in the central sea territories and to provide recommendation on implementation for executing the work, intended as references to the execution unit.

Part 2 Stipulations pertaining to the near-coast fishing ban

Fishing boats that use fine dragnet in near coast areas not only cause a drastic reduction to the fish varieties, but the non-selective trapping of trawler fishing boats not further deplete the fishery resources in near coast areas for the mixed catch. In order to maintain a sustainable utilization of the fishery resources, the Fishery Administration Law has

獲情形嚴重影響近海漁業資源甚鉅。為維漁業資源之永續利用，漁業法規針對特定海域禁止使用拖網捕魚規定已行之有年。略舉其要概述如下：

一、中華民國（以下同）56年4月10日，台灣省政府令頒「拖網漁業及建造漁船管理規定」中，規定小型拖網漁船禁止在距岸3浬內、100浬外及超越軍事警戒線作業，中型（50至300噸）拖網漁船禁止在距岸12浬內及超越軍事警戒線作業。

二、59年4月30日修正漁業法第28條及80年2月1日修正之漁業法第9條規定「為開發或保育水產資源，或為其他公益之必要，主管機關於漁業經營之核准時，得加限制或附以條件」。因此主管機關於核准拖網漁業執照時，均附加上述3浬或12浬內禁止拖網之限制條件。

三、為使禁止拖網作業區之規定，更加明確具體，行政院農委會依據漁業法第44條第4款規定，於88年11月24日以農漁字第88635344號公告「台灣地區拖網漁船禁漁區位置及有關限制事宜。」

（一）禁止未滿50噸拖網漁船於距岸3浬內作業，及禁止50噸以上拖網漁船於距岸12浬內作業。

（二）例外規定：另規定直轄市或縣市政府倘有特殊漁業資源需使用拖網漁法才得以捕撈者（如櫻花蝦、赤尾青蝦等），得參酌轄屬漁業環境及海域條件，評估在不致影響其他漁業資源狀況下，依據漁業法第51條訂定作業規範，並提具詳實資料報行政院農委會核備後實施。另烏魚汛期間，有關拖網漁船之禁漁位置及有關作業規定，依農委會88年10月30日（88）農漁字第88675410公告之「烏魚汛期海上作業規範」辦理。

（三）罰則：違反前述禁止近岸拖網捕魚者，依漁業法第65條第5款規

banned the use of dragnet for fishing in specific seawaters for many years. Some of which are briefly summarized as follows:

I. On April 10, 1967, the Taiwan Provincial Government promulgated the "Dragnet fishing and fishing boat building management stipulation, which stipulated that small dragnet fishing boats were banned from operating within three nautical miles from shore, or beyond 100 nautical miles trespassing the military alert line and middle dragnet fishing boats (from 50 to 300 tons) were banned from operating within 12 nautical miles from shore or trespassing the military alert line.

II. On April 30, 1970, amendments were enlisted to Article 28 of the Fishery Administration Law and on February 1, 1991, amendments were enlisted o Article 9 of the Fishery Administration Law were amended. They stipulated that "to develop or conserve aquatic resources or in support of other essential public equity, the competent government agency when issuing fishery operating permit may enlist restriction or provisions". As a result, the competent government agency when issuing the dragnet fishing license would enlist the foresaid restrictive conditions of banding dragnet fishing within the 3 or 12 nautical miles from shore.

III. In a move to bring more tangible measures to stipulations in areas banned from dragnet fishing, the Executive Yuan Agriculture Council had, on Nov. 24, 1999, referring to stipulations set forth under par 4, Article 44 of the Fishery Administration Law, to promulgate a "Taiwan area dragnet fishing banned fishing site location and related restrictive measures" through a public announcement, reference Agriculture, Fishery No. 88635344.

(I) It banned fishing boats less than 50 tons from operating within three nautical miles from shore, and banned dragnet fishing boats over 50 tons from operating within 12 nautical miles from shore.

(II) Exceptional stipulations: In addition, it also stipulated that dragnet fishing may only be allowed in the wake of unique fishery resources sought by a central-ruled municipality, county or municipal government (such as the Sakura shrimps, red-tail shrimps and so froth) by referring to the fishery environment and oceanographic conditions, with due assessment made to ensure that it does not hinder other fishery resources, which is subject to operating guideline set forth under Article 51 of the Fishery Administration Law and to be implemented pending approval by the Executive Yuan Agriculture Council with detailed data submitted. In addition, during the peak mallet fishing season, for logistics concerning the banned fishing sites and pertinent operations against dragnet fishing, the Agriculture Council had promulgated, on Oct. 30, 1999, through a public announcement, ref. Agriculture, Fishery No. 88675410, the "Mallet peak fishing season operating guide" as the guideline for implementation.

(III) Penalty clause: Those that violate the foresaid near-coast dragnet fishing ban, according to stipulations set forth under par 5, Article 65 of the Fishery Administration Law, are punishable by a punitive fine rated at (a range of NT\$30,000 to NT\$150,000) over \$30,000 and up to \$150,000. And the principle governing the penalty judgment is to be implemented as per a correspon-

定，處新台幣 3 萬元以上 15 萬元以下罰款。裁罰原則依行政院農委會 89 年 12 月 13 日（89）農漁字 891321806 號函辦理。

參、中部海域開放近岸 3 哩捕魚情形

中部海域部分縣市針對轄內海域擁有之魴鱸漁業資源，依據漁業法第 37 條第 1 款及第 44 條第 3 款及第 4 款規定，訂定相關魴鱸漁業管理規則，提報行政院農業委員會核備，其所轄海域禁漁期外，皆開放魴鱸漁業採捕。其餘未公告縣市，係全年禁止魴鱸漁業採捕行為。

一、開放捕撈縣市

- （一）新竹縣：「新竹縣魴鱸漁業管理規則」。
- （二）新竹市：「新竹市魴鱸漁業管理規則」。
- （三）台中縣：「台中縣魴鱸漁業管理規則」。

二、禁漁期：台灣北部及西部海域每年 6 月 16 日至 9 月 15 日。

三、作業範圍限制：不得在距岸 500 公尺以內水域作業。

四、其他：各區漁會成立產銷班，由核准經營魴鱸漁業之漁船主參加，並由各區漁會訂定作業公約，針對漁獲量、漁獲體長、混獲比例等作管理。

- （一）雲林縣設置漁礁禁漁區，規定使用網具類漁船均不得進入漁礁投放區作業，違者依漁業法第 65 條第 5 款或第 10 條規定核處。
- （二）苗栗縣全年禁止採捕魴鱸魚，6 哩內並禁止燈火漁船作業。

肆、3 哩違規拖網問題分析

一、處理目前作法：

巡防艇於接獲通報或巡航中發現漁船違規於距岸 3 哩內拖網作業捕魚時，先以雷達鎖定違規作業漁船，並確認在 3 哩內時，以衛星定位儀（GPS）標定該船確切作業位置，並依下列程序處置：

- （一）照相並全程連續錄影存證。
- （二）登檢檢查填寫紀錄表。

dence issued by the Executive Yuan Agriculture Council, ref. Agriculture, Fishery No. 891321806, dated Dec. 13, 2000.

Part 3 The state of three-nautical-mile fishing permitted in the waters of the central region

In the central sea territories, some of the counties and municipalities' administration, according to stipulations set forth under par 1, Article 37 and par 3, Article 44 of the Fishery Administration Law, have set up relevant whitefish and paddlefish fishery management rules for the whitefish and paddlefish fishery resources within their respective sea territories. With the Executive Yuan Agriculture Council's deregulating whitefish and paddlefish fishery, they are free of fishery catching except in the banned period in their respective sea territories. And the rest of the counties and municipalities that did not make the public announcement are to have their year round whitefish and paddlefish fishery banned.

I. Counties and municipalities that deregulated fishery catching

- (I) Hsinchu County: Hsinchu County whitefish, paddlefish fishery management rule
- (II) Hsinchu City: Hsinchu City whitefish, paddlefish fishery management rule
- (III) Taichung County: Taichung County whitefish, paddlefish fishery management rule

II. Fishing ban periods: from June 16 to September 15 of every year in Taiwan's northern and western sea territories.

III. Restrictions in the operating areas: it is prohibited to operate in waters 500 meters from shore.

IV. Others: All fishermen's associations have had a production and distribution network set up, which is participated by fishing boats sanctioned for operating whitefish and paddlefish fishery, with a general operating agreement instigated by the various regional fishermen's associations, gearing to manage the fishery catching volume, body length, and proportion of mixed catch.

- (I) Yunlin County has launched a fishery reef fishing banning area by stipulating that fishing boats fitted with dragnet are banned from entering the fishery reef placement area, and violators are subject to penalty cited under par 5, Article 65 of Article 10 of the Fishery Administration Law.
- (II) Miaoli County bans whitefish and paddlefish catching all year round, and bans fishing boat light operations within six nautical miles.

Part 4 An analysis on issues of illegal three nautical mile dragnet fishing

I. Current handling method:

A patrol vessel, when lodges in a report or comes across fishing boats engaging in illegal dragnet fishing within three nautical miles from shore, would first lock the position of the illegally operating fishing boat with radar, identify the boat's precise operating location using global positioning system when found the boat to be within the three nautical miles, and the case is responded by and follow the procedure below,

- (I) Photograph taking and video filming of the entire process.
- (II) Aboard the ship for inspection and the record sheet filled out.
- (III) Produce a written statement (to provide a chance for the violator to depose opinions).

(三) 製作筆錄 (給予陳訴意見之機會)。

(四) 將相關事證函送主管機關處理。

二、執行窒礙因素：

(一) 距岸 3 哩及海上縣界定位困難

法規規定距岸 3 哩內禁止拖網捕魚，惟礙於海域潮差所造成之高低潮海岸線落差，因而產生認定上之困難；且相鄰縣境之海域劃界，因目前主管機關內政部尚未勘劃，亦為執法上之困擾。民衆以透過海巡 118 專線反應報案 3 哩內發現漁船違規拖網作業，然巡防艇抵達時雷達定位後，經發生漁船作業海域在 3 哩外情形，而改採勸導驅離，報案民衆誤以為巡防艇延誤處置包庇，而作業漁船則抱怨、抗議巡防艇防礙合法作業。

(二) 蒐證取締技巧

不論日間或是夜間執行取締，因巡防艇外觀雪白及特殊燈號，造成違法漁民見狀從容停止作業，駛離現場，規避蒐證造成困難。據了解，CT2 級拖網漁船自開始起網到收好漁網僅約 10 分鐘，甚而更短時間，造成巡防艇接近時無法有效蒐證違規事實，難以依法函送主管機關處分。

(三) 事權分工

有關類案，海巡署受理報案協助執行取締，各區漁會辦理輔導，處分由地方或中央漁業主管機關負責，易造成蒐證與處罰無法配合之情況。

(四) 各縣市作法不一

對於 3 哩內違規拖網捕魚各縣市政府做法不一，有嚴格取締者，有配合民情未積極取締者。海巡署將處理之違規案件函送各縣市政府漁業主管機關裁罰，有需罰款、或切結或參加講習者，往往造成漁民誤以為執法人員裁罰不公，對執行機關進行陳情或抗議。

伍、建議因應策略

禁止近岸拖網目的在保護漁業資源，此為保育團體及多數國人所贊同，少數漁民基於個人利益所採取之苟且作為，不為法律及公益所容。海巡人員更不容因少數個案之負面反對意見，而動搖執法決心。惟執行窒礙

(IV) Forward pertinent material evidence to competent government authorities.

II. Factors that hinder the implementation:

(I) Difficulties in defining the three nautical miles from the shore and sea county boundaries

With regard to the legally stipulated ban of dragnet fishing within three nautical miles from shore, there is difficulty in boundary assessment as hindered by the variations to the coastlines due to the low tide and high tide marks as a result of the tidal drop in the sea areas. Besides, the lack of comprehensive surveys and zonings to the sea territories in nearby counties by the competent government authorities has also marred law enforcement. Though that the public report illegal dragnet fishing boat operating cases to the Coast Guard's 118 hotline, it is highly possible that the fishing boat had move on to beyond the three nautical miles mark when the patrol boat arrived on the scene with full speed. The patrol vessel's persuasion and expelling often misleads the public to reckon that the patrol boat had delayed the response in accommodating the illegal fishing boat, whereas the fishing boats are complaining that the patrol boat was hindering their legal fishing operations.

(II) Gathering and crackdown techniques

Regardless of the crackdown being conducted in daytime or at night, the patrol boat's white haul and unique signature tend to cause difficulty in the crackdown. With information gathered indicates that it only takes 10 minutes for CT-2 grade of fishing boats to round up and put away the fishing net, or even in a shorter time, this has prevented the patrol both from effectively gathering the facts upon getting close to the boat, little else to issue indictment for forwarding to the competent authorities for penalty judgment.

(III) Administration jurisdictional task-sharing

In such similar cases, where the Coast Guard Administration renders support in the crackdown upon lodging in a case, and the regional fishermen's association is to provide facilitation, the penalty judgment that is presided by competent central or local fishery authorities tends to create bias between evidence gathered and the penalty action issued.

(IV) Varied implementation among the counties and municipalities

With varied implementation governing illegal dragnet fishing within three nautical miles from shore by the various counties and municipalities, some enforce strict crackdown, and others are somewhat lax in pursue of active crackdown responding to the public demand. The Coast Guard Administration's forwarding illegal cases to the fishery agency in various county and municipal governments for penalty judgments, where the circumstances call for penalty fine, or affidavits, or partaking lecture, often lead to the fishermen's misinterpreting the law enforcement officers with unfair penalty judgment and file grievance or protest against the execution agency.

Part 5 Recommendation for countermeasure strategy

The purpose of banning near-coast dragnet fishing which is agreed by conservative groups and a majority of the local residents, rests on protecting fishery resource. A small number of fishermen's personal selfish profit have done taking to whose own person gain can not be tolerated by law or public interest. Coast Guard personnel are not to sway in their law enforcement determination simply because of

亦應透過適當管道反映，概述如下。

一、3 浬邊界附近彈性作法

- (一) 內政部尚未完成縣市行政海域範圍之劃定，且漁業署亦未對距岸 3 浬界線及各縣市區漁會漁業權海域範圍界線正式公告。
- (二) 以保育漁業為目的，取締違規為方法觀念，對於 3 浬邊界處之取締，採柔性態度，以驅離或警告方式為之。

二、強化蒐證及移送程序

- (一) 取締 3 浬違規捕魚需全程進行攝（錄）影蒐證，並將船身、船名、編號、網具、拖網情形及捕撈魚種拍攝清楚，另輔以巡防艇航跡儀、衛星定位儀所顯示船位數據及雷達距離圈所顯示之離岸距離，並對照該船與岸上特定標的物或岸上景物之相對位置。
- (二) 製作臨檢紀錄表及移送表，應依何人、事、時、地、物及如何等「六何」要件詳述違規事實，並請船長親自簽名捺印，或敘明拒絕簽名之情形。
- (三) 違規捕魚種應採樣存證，當場製作詢問筆錄，並將採證送驗，主管機關處分前應予當事人陳述意見。

三、執勤態度立場堅決語氣和緩

依「海域執法作業規範」及標準作業流程執行登臨檢查，態度懇切語氣和緩，告知違規事實，全程蒐證。

四、適時辦理法令及執行訓練

- (一) 依據漁業法 44 條規定，違反中央公告海域資源管理事項，行政處分由漁業執照核發機關辦理；違反縣市主管機關所公告事項，則由該公告機關處分。
- (二) 蒐集轄內領有合格執照漁船名冊，並現場查驗合格證明文書。

the negative, opposing opinions of a small number of cases. Yet the difficulties in the execution would also need to be reflected via viable means as described below,

I. Flexible implementation in the vicinity of the three nautical mile boundaries

- (I) The Ministry of the Interior has not concluded defining the parameters of county and municipal administrative sea territories, nor has the Fishery Administration issued formal public announcement governing the boundary of three nautical miles from shore or the boundaries governing the parameter of sea territories in relation to the fishing rights of the various county and municipal fishermen's associations.
- (II) By taking to the objective of protecting the fishery industry, a soft approach is to be adopted in crackdowns conducted at the borders of the three nautical mile part taking to an illegal crackdown method and concept, and the action is to heed to expelling or warning method.

II. Strengthen evidence gathering and indictment procedure

- (I) Cracking down illegal fishing within three nautical miles requires gathering evidence by videotaping the entire process, taking clear shots of the vessel haul, vessel name, number, net gears, and state of fish varieties caught, backed by patrol boat's tracking device, boat position lodged in by the GPS, and distance from shore as detected by the radar rings, as well as the corresponding positions of the boat to specific objects ashore or against tangible backdrops ashore.
- (II) There is a necessity to produce random inspection record sheet or indictment sheet by documenting the violation facts by going with the six critical elements of who, why, when, where, what and how and have the captain sign or fingerprint the report, or describe whey the captain had refused giving whose signature.
- (III) Of illegally caught fish varieties, it is prudent to gather the evidence, produce interrogation records right on the scene, and have the evidence gathered forwarded for lab work, and the competent government authorities' judgment should take into account the opinions given by the case parties involved.

III. A stern law enforcement attitude with moderated tone of voice

The "Sea territorial law enforcement operating guide" and standard of procedure are (ot be) adopted in executing vessel boarding inspection by taking to an earnest and moderated tone of voice by informing the facts in rule violation, with evidence gathered throughout the entire process.

IV. Timely staging of legal/regulatory and execution training

- (I) As stipulated under Article 44 of the Fishery Administration Law, the administration actions for violations to central government



● 以雷達測量距岸距離
Radars are used to measure the distance from the shore



● 錄影蒐證要求：船名清楚
Video evidence gathering demand: The boat name must be clear



● 錄影蒐證要求：拖網捕魚情形
Video evidence gathering demand: The state of dragnet fishing

五、加強漁民法令及政策宣導

- (一) 漁民對相關漁具、漁法、漁區及禁漁期等規定誤解，往往造成執法困擾，應利用機會加強宣導。
- (二) 製作標語、海報或圖卡適時宣導說明，加強溝通。

六、嚴格執法注意程序

應就目前法規疑義及執行取締移送之具體作法，與中央或地方主管機關開會協調解決，律訂執法作業標準，並邀各區漁會、漁民代表列席，以統一主、協辦機關處分步驟。

陸、結論

漁業資源是一種再生性資源，為避免資源過度利用，影響其再生能力，故資源保育工作內容應包括減少對資源捕撈壓力、增殖漁業資源、維護漁場作業秩序及建立國人保育觀念等方面，惟有將保育的觀念深植人心，建立全民保育之共識，方能彰顯資源保育工作之成效，台中海巡隊 94 年迄今執行中部地區海域巡防勤務取締海洋資源保護工作，計驅離大陸漁船 168 艘次、大陸漁民 914 人次，帶案大陸漁船 110 艘、大陸漁民 1,049 人，取締 3 哩內拖網捕魚 18 件，海巡署為落實保護海洋工作，並製發相關宣導手冊由執勤同仁向大陸漁工加強相關法令規定宣導，以行動展現海巡單位保護我國漁民權益維護海域治安之決心，同時籲請民眾若發現任何不法或需海巡署服務事項，可透過「118」服務專線通報，海巡署將立即處理。

(本文作者任職於第三【台中】海巡隊)

announced sea territorial resource management measures are to be sought by the fishery licensing agency, and that for violations against county or municipal governing agency issued public announcements are to be sought by the agency issuing such public announcement.

- (II) To gather a manifest on legally licensed fishing boats within the jurisdiction, and to validate the licensing document on the scene.

V. Stepping up the fishermen's legal and policy awareness campaigning

- (I) As fishermen easily misunderstand stipulations against the fishing gears, fishing law, fishing sites and banned fishing periods that (tend to) lead to difficulty in law enforcement, it is prudent to utilize opportunities to step up the awareness campaigning.
- (II) It is prudent to produce signage, poster and placard with adequate awareness description in a move to step up the communication.

VI. Strictly enforcing law enforcement cautionary procedure

It is prudent to coordinate and resolve some of the legal and regulatory leery and the tangible method in crackdown and indictment with competent central or local government authorities in order to alleviate a set of law enforcement criteria, and with invitations extended to the various regional fishermen's associations and fisherman representatives to be present at the hearing in order to unify the steps of responses by the host agency and facilitation agency.

Part 6 Recapitulations

Fishery resources are a form of regenerative resource, and it is best for us to avoid over utilization and stop hindering the regeneration. Hence, the resource conservation work should revolve around reducing the pressure of over fishing the resources, expanding the fishery resources, maintaining the order of the fishing sites, and instilling the local residents with a conservation concept. Only by deep-rooting the conservation concept in people's hearts and by instilling a nationwide conservation consensus can the result of resource conservation work be manifested. In the Taichung Patrol Corps' patrol duty on cracking down marine resource conservation work in the central regional seas from 2005 had expelled a total of 168 sailings of mainland fishing vessels, 914 persons/entries of mainland fishermen, with 110 mainland fishing boats with prior cases, 1,049 mainland fisherman, 18 cases of dragnet fishing within three nautical miles from shore. The Coast Guard Administration in an effort to enforce marine conservation work has also issued duty personnel with relevant awareness campaigning handbooks to campaign with mainland fishermen as per relevant laws and regulations in a move to showcase its determination in safeguarding the equity of the Taiwanese fishermen and in upholding the security of the seas, and urges the public to report in via the 118 service hotline when coming from any illicit action or when in need of services from the Coast Guard Administration.

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● 錄影蒐證要求：違規拖網捕魚漁船起網情形之一
Video evidence gathering demand: A scenario of fishing net gathering by illegal dragnet fishing



● 錄影蒐證要求：違規拖網捕魚漁船起網情形之二
Video evidence gathering demand: Another scenario of fishing net gathering by illegal dragnet fishing boat