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海岸巡防機關 執行漁業檢查問題之探討

Examining the issue of Fishery Inspection by Coast Guard patrol agencies





一、前言

漁業檢查是一般國家維護漁業資源、建立漁業作業秩序的主要方法，但漁業檢查對於一般人民人身自由權之限制頗深，基於對人權的保障，須按漁業法規所規定之要件及程序執行。所謂漁業法規包括國際漁業法及國內漁業法兩大部分¹，國際法上將漁業管轄權區分沿海國漁業管轄水域及公海，前者又分為內水、領海、群島水域、專屬經濟區及大陸礁層，在執行漁業檢查時，對於國家在各水域所擁有之漁業管轄權自應詳細研究；在國內法方面，漁業法規定漁業檢查應由漁政主管機關執行，但實務上有仍有多項漁業檢查，係由海岸巡防機關（以下簡稱巡防機關）執行，由於漁業法並未賦予巡防機關執行漁業檢查之權力，其發動檢查之合法性與正當性不無疑義。故本文擬自漁業檢查之內涵及漁業管轄權進行探討，並就我國漁業法規所規定之檢查程序予以歸納分析，進而釐清巡防機關執行漁業檢查之職權，同時對目前漁業檢查之癥結問題提出解決方法。

二、漁業檢查之內涵

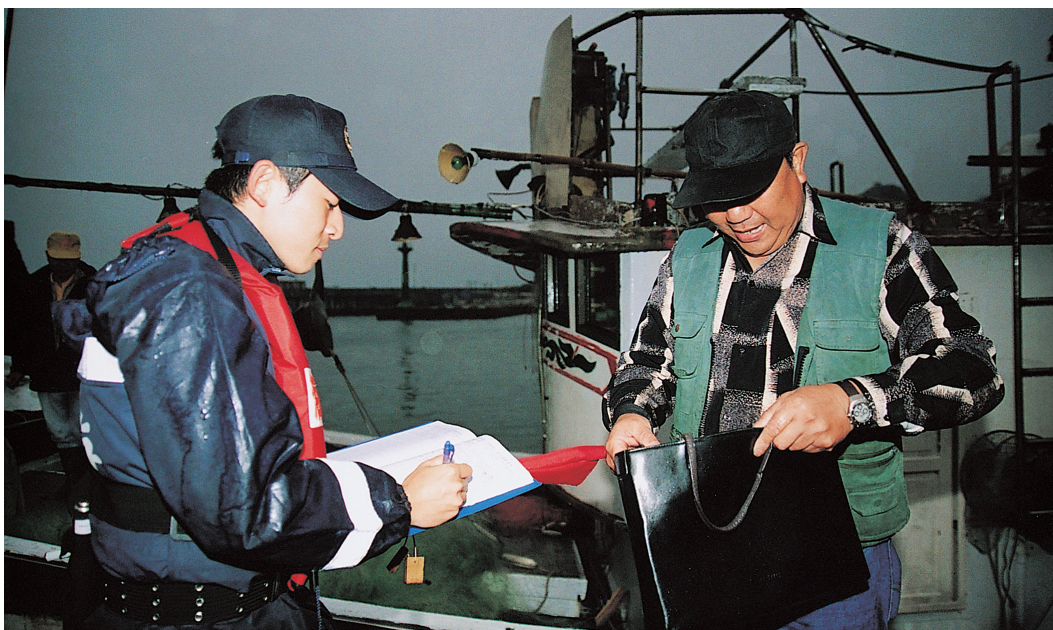
建立漁業作業秩序，確保漁業資源永續利用，乃現代漁業先進國家所追求的兩大漁業管理目標²，為維護海洋生物資源，確保漁業管理法規得以落實，國際社會均積極努力建立有效之漁業執法機制，此執法機制大都透過漁業檢查之方式來達成。臺灣因四周海域生物資源豐富，漁業向為我民生經濟命脈，更是世界主要遠洋漁業國家，但隨著沿海國相繼宣布 200 浬經濟海域後，我國遠洋漁船逐漸喪失傳統作業漁場，加以沿近海漁業資源由於過度捕撈及污染，漸趨枯竭³，漁業資源之維護及管

I. Prologue

While fishery inspection remains a primary means that most countries instill in maintaining fishery order toward fishery resources, and in light how it greatly affects the personal freedom of all people, it is prudent that fishery inspection be conducted as per the criteria and procedure specified in the Fisheries Act, so to better protect human rights. The term fishery administration laws and regulations consists of two parts - the international fishery law and domestic fishery law. The international law has fishery management jurisdiction divided into coastal country fishery jurisdictional waters and high seas, in which the former is subdivided into inland sea, territorial sea, archipelago sea, exclusive economic zone and continental reefs, at which scrutiny is to be studies in terms of enforcing fishery inspection within a nation's jurisdictional waters. In domestic fishery law, despite that the Fishery Administration Law regulates that fishery inspection is to be enforced by competent fishery administration authorities, it is however true that many fishery inspections are executed by Coast Guard Administration (Coast Guard Administration), which brings forth the legitimacy and adequacy of the inspection since the Fisheries Act has not empowered Coast Guard Administration the authority to conduct fishery inspection. In light of which, the article has attempted to broach from examining the content of fishery inspection and fishery jurisdiction, coupled with recapping the inspection procedures as stipulated under Taiwan's Fisheries Act and regulations, to alleviate the job responsibilities of fishery inspection by Coast Guard Administration, and to present solution that best address certain crucial issues in the present fishery inspection.

II. The essence of fishery inspection

Maintaining fishery operating order and ensuring sustainable utilization of fishery resources remain two major objectives² in fishery management sought by developed fishery countries. To maintain marine biology resources, and ensure that fishery management laws and regulations are properly enforced, the world community has been actively seeking to instill an effective fishery law enforcement mechanism, which is largely achieved through fishery inspection. With a wealth of marine resources in the seas surrounding the island, the fishery industry has been a key economic resources to Taiwan as well as the key one of the many deep-ocean fishing countries around the world. Yet as many coastal countries rushing to declare a 200 nautical mile exclusive economic zone, Taiwan's deep-ocean fishing fleets are losing ground to common fishing sites and are bracing a dwindle supply of fishery catch due to over fishing and pollutions. As the maintenance and management of fishery resources becoming ever more important to Taiwan, this would excel the importance of fishery inspection to be a part of the vital mission of Taiwan's fishery administration system in terms of mandatory action that the competent fishery administration authori-



理對我國也更形重要，而漁業檢查即是漁政主管機關為達成維護漁業作業秩序，確保漁業資源，所為之強制處分，是我國漁業管理體制中非常重要的工作。

漁業檢查是漁業主管機關為達成漁業管理、建立漁業作業秩序及保育漁業資源之目的，對於漁業活動所為之強制處分，包括檢查、詢問、調查及其他手段，在性質上屬於行政檢查⁴。此外，依據漁業法第66條，對拒絕、規避或妨礙調查或拒不提出報告者，處新台幣1萬5千元以上7萬5千元以下罰鍰，但除了罰則外，不得使用強制力直接施於義務人。因此，若依強制程度區分，漁業檢查係透過間接的強制力，對於拒絕或妨礙檢查之相對人科加處罰，或剝奪其法律上之利益來擔保檢查的時效性，應可歸類於強制檢查中之間接強制檢查⁵。

三、國際法上沿海國之漁業管轄權

國際法上沿海國所享有捕魚權能的基礎，因海域屬於內水、領海、大陸礁層、專屬經濟區或公海之不同而有所差異，各國並

ties do in maintaining the fishery operating order and ensuring fishery resources.

Fishery inspection is what the competent government fishery authorities instigate of mandatory action against fishery activities in a move to achieve the objectives of fishery management, instilling fishery operating order and preserving fishery resources, which includes inspection, inquiry, investigation and other relevant means, which fall under administrative inspection⁴ by nature. In addition, as stipulated under Article 66 of the Fisheries Act, those that refuse, circumvent or obstruct an investigation or refuse to submit a report are punishable by a punitive fine at over NT\$15,000 and up to NT\$75,000, and besides the penalty fine, no coercive force may be exerted unto the obligated party. With that, to distinguish the level of mandate, fishing inspection utilizes indirect mandate to levy punitive action on parties that refuse or obstruct an inspection, or to ensure the validity of timing by stripping a party's legal rights, which could be classified under indirect mandatory inspection⁵ under the mandatory inspection scheme.

III. Jurisdiction of Coastal State under international law

Given that international laws have bestowed coastal countries the rights to fish, while the recognition of sea territories does vary in terms of how an area falls under internal water, territorial sea, continental shelf, exclusive economic zone or high seas, fishery jurisdiction⁶ is defined by a coastal country's sea territories, and fishery inspection is hinged on whether a coastal country holds such jurisdictional claim over a particular region of water. Below describes fishery jurisdiction claim by international laws governing fishery jurisdictional waters and



得對有關海域為各種與漁業有關之管轄⁶，而漁業檢查能否執行，端視沿海國於該水域漁業管轄權之有無而定，以下即針對沿海國的漁業管轄水域及公海兩部分說明國際法上之漁業管轄權：

(一) 沿海國的漁業管轄水域

1、內水及領海：

沿海國在內水及領海中享有領土主權。基於此種權利，內水及領海中之漁業，完全受沿海國之管轄⁷。此項管轄包括訂定有關漁業資源採捕活動之各種規定、在內水及領海實施漁業檢查以及對違法行為之制裁⁸，檢查的對象亦包含本國與非本國之人員、船舶。換言之，在內水及領海之內，基於領土主權，沿海國對於漁業具有完整的管轄權。

2、鄰接區及專屬經濟海域：

鄰接區並不享有領域主權，鄰接區設立之目的乃著眼於制定有關關稅、出入境管理、財政、衛生等國內法令，以保護「領土上之法益」為目標⁹。顯然，漁業並非鄰接區所得享有之權能，對於漁業管轄權亦無單獨的法律地位，因此，有關漁業之管轄權應回歸其水域之性質－專屬經濟海域，而採取相同之管轄措施；而在專屬經濟海域內，沿海國享有漁撈的自由，並且為維護其漁業權利，可以對本國及非本國之人、船舶進行必要之登船、檢查、拿捕以及對違法行為制裁。值得注意的是，對於外國人之查緝，基本上亦適用對本國人查緝之相同規定，但為達成有效查緝入漁船舶之目的，沿海國常與入漁國達成協議，許可入漁國在查緝方面與沿海國進行合作¹⁰。

3、漁業檢查程序：

沿海國得對其漁業管轄水域，實施登臨、檢查、逮捕以及對違法者進行司法程序及裁判。但在沿海國之漁業管轄水域中執行

high seas among the coastal countries,

(I) Coastal countries' fishery jurisdictional

1. Internal water and territorial sea:

Costal countries are given the territorial rights to their respective internal waters and territorial seas. As bound by this entitlement claim, fishery conducted within an inland water and territorial sea fall under the sole jurisdiction of a coastal country⁷. The jurisdiction encompasses all stipulations governing catching and trapping activities against fishery resources, fishery inspection conducted in internal waters and sea territories, and judgment⁸ against illegal conducts, where the applicable inspection subjects cover domestic and non-domestic persons, vessels. In other words, within internal waters and territorial seas, given the territorial sovereignty claim, a coastal country has the absolute jurisdiction on its fishery.

2. Contiguous zone and exclusive economic zone:

Contiguous zone is not given territorial claim, and the purpose of setting up contiguous zone lies in defining domestics laws and regulations pertaining to customs, immigration, fiscal, or sanitary laws and regulation, gearing to achieve the objective⁹ of protective the territorial equitable claim. Evidently, the fishery industry does not fall under the empowerment bestowed by contiguous zone, nor does the jurisdiction over fishery falls under any other legal footing; as a result, the jurisdiction of fishery ought to be reverted to that by nature of the water territories - meaning to fall under the exclusive economic zone, which would justify that it be heeding to the identical jurisdictional measures. While within exclusive economic zone, a coastal country would enjoy the freedom of fishery catch, and may, in the interest of maintaining its fishery rights, conduct its domestic and foreign vessels with essential boarding, inspection, arrest and/or judgment against illegal conducts. Noteworthy, the inspection and crackdown on foreign nationals are essentially same as that defined for local citizens, except that coastal countries often come to an agreement with incoming fishing countries by allowing the inspection and crackdown on incoming fishing countries be collaborated¹⁰ with the authorities of such coastal countries in a move to achieve effective inspection and crackdown on incoming foreign fishing vessels.

3. Fishery inspection procedure:

Coastal countries may conduct boarding, inspection, arrest and investigate judicial proceedings and judgment against violators on sea territories that fall under a country's fishery jurisdiction. However, fishery inspection and crackdown procedure that coastal countries conduct within their respective fish-



漁業查緝之程序，國際法並無原則或細節性規定，係由各國自行訂定¹¹。因此，漁業檢查程序仍須依據各沿海國國內法之規定實施。

(二) 公海

依據公海自由原則（Freedom of The High Seas），各國均得自由使用公海，任何國家對公海之一部或全部並無排他管轄權，但基於屬人管轄權，各國得對在公海之本國人實施管轄；基於船旗國管轄權，各國得在公海中對於擁有其國籍之船舶實施管轄。至於漁業檢查程序方面，依據公海自由原則，沿海國僅對於具有其國籍之船舶及國民進行查緝，是以各國所訂定之漁業檢查程序，在公海上，僅得適用於具有其國籍之船舶¹²，此外，各國在公海上負有保育及養護責任，為達有效執法之目的，各國亦應在公海上之查緝方面進行合作，共同維護公海生物資源。

四、國內法漁業檢查之相關規定

我國對於漁業檢查之相關規定主要是明定在漁業法中，依該法之規定，漁業之檢查區分為一般與個別的漁業檢查兩類：

（一）一般的漁業檢查，依第46條之規定，為達到水產資源保育之目的，主管機關得對特定漁業種類，實施漁獲數量、作業狀況及海況等之調查，並得要求漁業人或漁業從業人員，提出漁獲數量、時期、漁具、漁法及其他有關事項之報告，該漁業人或漁業從業人員不得拒絕，違者可依同法第66條第2款規定處新台幣1萬元以上7萬5千元以下之罰鍰¹³。

（二）個別的漁業檢查，依第四十九條之規定，主管機關得於必要時，派員至漁業人之漁船及其他有關場所，檢查其漁獲物、

every jurisdictional waters, no specific details are given in the international laws, and are defined from country to country¹¹. Therefore, fishery inspection procedure remains bound by stipulations of the domestic law of a coastal country.

(II) High seas:

As bound by the Freedom of the High Seas, all countries may freely access the high seas, and any country's partial or entire claim to the high seas does not exclude the jurisdiction claim of the others, yet given the human judicial claim, a country may exercise its judicial claim at the high seas on its domestic citizens; given the jurisdiction over the flag state, a country may exercise its jurisdiction on vessels that bears its nationality. As to fishery inspection procedure, as bound by the Freedom of the High Seas, coastal countries may only conduct investigation and crackdown on vessels and citizens that bear a country's nationality, hence the fishery inspection procedure that world countries draft is only applicable to vessels that bear a country's nationality¹² at the high seas. Moreover, all countries are obligated to conserve and preserve the living resources in the high seas, and to achieve the objective of effective law enforcement and cooperation.

IV. Taiwan's relevant fishery inspection regulations

Taiwan's relevant fishery inspection is major regulated under the Fisheries Act, and according to which, fishery inspection is divided into two categories of general inspection and individual fishery inspection,

(I) General fishery inspection, which according to stipulations set forth under Article 46, allows the competent government authorities, for the purpose of conserving marine resources, to investigate specific fishery types, volume of fishery catch, operating conditions and oceanographic conditions, and may demand the fishermen or fishing workers to submit reports on volume of fishery catch, time, fishing gear, fishing measure and other relevant matters, to which neither a fisherman nor a fishing worker may refuse, and violators are subject to a punitive fine, as stipulated under section 2, Article 66 of the same law, at over NT\$10,000 and up to NT\$75,000.

(II) Individual fishery inspection, which according to stipulations set forth under Article 49, empowers the competent government authorities to dispatch inspectors to board a fisherman's fishing vessel and other relevant venues to inspect whose fishery catch, fishing gear, accounting ledger and other related articles when deemed necessary, and may question related parties, to which the related party shan't refuse. When coming across relevant fishery crime, the authorities may conduct search or seize a fishing boat, fishery catch and other criminal evidence, and may further confiscate the fishery catch, fishing gear and other evidence if found breaching other related fishery law. Of those that refuse or circumvent, or obstruct the stipulations stated herein, or

漁具、簿據及其他物件，並得詢問關係人，關係人不得拒絕。如發現有關漁業犯罪之情事，不及即時洽請司法機關為搜索或扣押之處置時，得將其漁船、漁獲物或其它足以證明犯罪事實之物件，暫予扣押，若違反其他漁業法則得將其漁獲物、漁具及其他物件，先予封存。拒絕、規避或妨礙本條之規定或無正當理由拒不答覆或為虛偽之陳述者，主管機關得依同法第 65 條第 6 款之規定，處新台幣 3 萬元以上 15 萬以下之罰鍰。

此外，中華民國領海及鄰接區法、中華民國專屬經濟海域及大陸礁層法，台灣地區與大陸地區人民關係條例及其施行細則及娛樂漁業管理辦法等相關法規，亦有相關之規定，並賦予我國國防、警察或其他機關，對有違犯我國漁業法令之虞之船舶，得進行緊追、登臨、檢查，必要時，得強制驅離、或逮捕其人員，或扣留其船舶、設備、物品等，並提起司法程序之權責¹⁴。

五、海岸巡防機關執行漁業檢查之定位

依漁業法之規定，其主管機關在中央為行政院農業委員會；在直轄市為直轄市政府；在縣（市）為縣（市）政府（第 2 條）。主管機關得對特定漁業種類，實施漁獲數量、作業狀況及海況等調查，並得要求漁業人或漁業從業人員，提出漁獲數量、時期、漁具、漁法及其他有關事項之報告，該漁業人或漁業從業人員不得拒絕；亦得於必要時，派員至漁業人之漁船及其他有關場所，檢查其漁獲物、漁具、簿據及其他物件，並得詢問關係人，關係人不得拒絕，如發現有漁業犯罪之情事，不及即時洽請司法機關為搜索或扣押之處置時，並得將其漁船、漁獲物或其他足以證明犯罪事實之物件，暫予扣押（第 46 條及第 49 條參照），由此可知，漁業法賦予主管機關行政檢查及採取強制措

refusing to respond or making false statement without just cause, the authorities may impose a punitive fine, rated at over N\$30,000 and up to \$150,000, as per stipulations set forth under par 6, Article 65 of the same law.

In addition, relevant stipulations have also been provided under the Territorial Sea and Contiguous Zone Law of the ROC, the Exclusive Economic Zone and Continental Shelf Law of the ROC, the Taiwan and Mainland China People's Relationship Act and its implementation detail, and the Amusement Fishery Management Act, and with power vested in Taiwan's defense, police and other agencies to conduct hot pursuit, boarding, inspection on vessels suspicious of breaching Taiwan's fishery laws and regulations, and may forcefully expel, arrest the personnel, or detain the vessel, equipment, goods and so forth, when deemed necessary, and are authorized to file for judicial proceeding".

V. The legal ground in conducting fishery inspection by Coast Guard patrol agencies

In Fisheries Act, the competent authorities means the Council of Agriculture of the Executive Yuan at the central government, municipal governments at municipalities, and county / city governments at / counties / cities. (Article 2) on the county / municipality level. The competent government authorities may conduct investigation on specific fishery types, volume of fisher catch, operating conditions and oceanographic conditions, and may demand the fisherman or fishing operator to submit report on volume of fishery catch, timing, fishing gear and other relevant facts, to which no fisherman or fishing operator may refuse, and may dispatch inspector to a fisher's fishing vessel and other relevant venue to inspect whose fishery catch, fishing gear, account book and other relevant objects when deemed necessary. The officer may also question any relevant party who shall not withhold his consent. In carrying out the inspection provided in the preceding paragraph, where the officer finds any commission regarding fisheries offense but is not in the position to request the judicial authority to proceed with search or seizure, he/she may provisionally seize the fishing vessel, the catch, or other objects that may serve as evidence of the offense committed. (as per Article 46 and Article 49). All of which indicate that the Fishery Administration Law has empower the competent government agencies the right to conduct administrative inspection and adopt mandatory measures that are necessary to maintain fishery resources and curtail illegal fishing conducts.

Moreover, the Coast Guard Administration Law empowers the coast guard agencies the authorities to conduct fishery protective patrol and fisher resource maintenance (par 1, Article 4 and par 3, Article 7), and stipulates that when executing measures stipulated under Article 4, the coast guard agencies have the authorities to conduct various inspections at the territories sea, coastlines, harbors and so forth (refer



施之權限，以維護漁業資源，防杜非法捕魚行為。

其次，海岸巡防法賦予巡防機關執行漁業巡護及漁業資源之維護之權限（第4條第1項第7款第3目），並規定巡防機關於執行第四條所定事項時，得於海域、海岸及港口等區域行使各項檢查之職權（第5條參照），爰此，巡防機關似得基於職權主動執行漁業取締、檢查等工作，惟此一觀點仍須從二方面來檢視，首先海岸巡防法僅規定漁業巡護及漁業資源維護為巡防機關執行事項，其後即未再有實施程序、得採行之措置等實體規定，亦無違反規定之法律效果及罰則規定，就法律保留及依法行政原則來看，巡防機關人員無法僅依海岸巡防法之規定執行漁業检查工作，相關執行情序、可採行之措施等仍須回歸漁業法之規定辦理¹⁵。另一方面，從漁業法之角度觀察，漁業法第46條、第49條及54條¹⁶有關漁業調查、檢查、詢問、巡緝及護漁等漁業執法工作，均明定由主管機關派員執行，其他機關必須在請求協助或保護之場合始得實施（第54條第6款參照）。換言之，若非主管機關或主管機關請求協助之機關則無權為之。但海岸巡防法第4條第7款卻又規定漁業巡護及漁業資源維護為巡防機關之執行事項，賦予巡防機關執行之權利與義務，且為巡防機關無可旁貸之責任，必須主動執行¹⁷，使巡防機關似得視為執行漁業法之有權機關，不待主管機關請求協助，即得主動依據海岸巡防法及漁業法之規定，執行取締、蒐證及移（函）送等事實行為。然而，海岸巡防法及漁業法均未就巡防機關執行漁業檢查之程序、範圍明確規定，不僅漁民對於巡防機關人員是否有權執行漁業檢查產生質疑，未來巡防機關與漁政主管機關間之權限劃分及巡防機關執行漁業法規之權限，亦將產生爭議。

to Article 5). Derived from which, the coast guard agencies may, as per power vested, actively executive fishery crackdown and inspection work, except that such perspective needs to be broached from two aspects. First, the Coast Guard Administration Law merely stipulates that fishery protective patrol and fisher resource maintenance are what coast guard agencies required to execute, yet no further implementation procedure has been referred to thereafter, nor any tangible stipulations pertaining to adoptable measure, or any legal ramification or punitive clause stipulated governing violations, which as gauged by the principle of legally withholding and administrative proceeding as empowered by law would render coast guard personnel unfeasible to conduct fishery inspection on the grounds of the Fisheries Act alone, while logistics concerning the execution procedure and feasible measures would still need to be revamped under the Fisheries Act¹⁵. On the other hand, to broach from the Fisheries Act, as provided under Article 46, Article 49 and Article 54 of the F Fisheries Act pertaining to fishery law enforcement work, namely fishery investigation, inspection, inquiry, crackdown, fishery protection, clear stipulations have been given that all such work are to be executed by personnel dispatched from competent government authorities, and that by other agencies may only be conducted at circumstances where assistance or protection has been requested (refer to par 6, Article 54). In other words, no such work may be performed unless sought by competent government authorities, or by an agency that the competent government authorities have requested for assistance. Whereas par 7, Article 4 of the Coast Guard Administration Law does stipulate that fishery protective patrol and fishery resource maintenance are what coast guard agencies are authorized to execute, and has empowered coast guard agencies the rights and obligations to enforce the Fisheries Act, and of responsibilities mandated of coast guard agencies and be executed voluntarily¹⁷, which would justify the coast guard agencies be regarded as authorized government agencies in reinforcing the Fisheries Act without the competent government authorities' requesting for assistance but to carry out the tangible acts of crackdown, evidence gathering and judicial referral voluntarily as per the Coast Guard Administration Law and the Fishery Administration Law. Nevertheless, neither the Coast Guard Administration Law nor the Fishery Administration Law provided any clear stipulations as to the procedure and scope that the coast guard agencies are to carry out fishery inspection, which not only poise to create gray area in how fishermen would question whether coast guard personnel have the right to conduct fishery inspection, but could also led to dispute in the division of responsibilities between the coast guard agencies and the fishery administration agencies, and the authorities of the coast guard agencies in enforcing the fishery laws and regulations in the future.

VI. Conclusion

As fishery inspection falls under administrative inspection, and involves stipulations governed by international fishery laws and do-

六、結論

漁業檢查在性質上屬於行政檢查，涉及國際漁業法及國內漁業法之規定，而沿海國之漁業管轄權，應依據不同的水域而區分，對於沿海國之漁業管轄水域（包含內水及領海、群島水域、專屬經濟區），得制定相關漁業法規，對本國及非本國之人員、船舶執行必要之登船、檢查、拿捕以及司法程序等權限，在公海上，依據公海自由原則，沿海國僅對於具有其國籍之船舶及國民進行查緝。因海岸巡防法並無漁業檢查程序之規定，亦無相關罰則，故巡防機關，在執行漁業檢查時，仍須回歸漁業法規之規定進行檢查、蒐證並函送主管機關處分或移送檢察機關偵辦，加以海岸巡防法及漁業法均未就巡防機關執行漁業檢查之程序、範圍明確規定，未來巡防機關與漁政主管機關間之權限劃分，仍將產生爭議，為符依法行政及法律保留原則，必須修正漁業法，比照海洋污染防治法之方式，賦予巡防機關取締、查緝及檢查之權限與執行之程序規定。但修法涉及漁業政策與立法機關審議法案之期程，在時程上恐緩不濟急。因此，在相關法令尚未修正前，現階段欲使漁業檢查工作納入正軌，仍須漁政主管機關與巡防機關儘速針對漁業檢查執执行程序、範圍或其他注意事項等進行協商及明確之授權，以為執法依據，或由漁業主管機關指派漁業檢查員配合巡防機關執行漁業檢查工作，以解決此一問題。

（作者任職於海岸巡防總局科長）

mestic fishery laws, logistics concerning fishery jurisdiction ought to be distinguished by varied water regions, and relevant fishery laws and regulations are to be stipulated governing coastal countries' fishery jurisdiction waters, including that of internal water, territorial seas, archipelagic waters, exclusive economic zones, as well as authorities, judicial procedure and such pertaining to essential vessel boarding, inspection and arrest on domestic and non-domestic persons and vessels. In the high seas, as bound by the principle of the Freedom of the High Seas, coastal countries may only conduct inspection and/or crackdown on vessels and citizens that holds a valid registration of citizenship of the country. Yet in lieu of relevant stipulations governing fishery inspection procedure or relevant punitive clauses under the Coast Guard Administration Law, during fishery inspection, inspections would still need to be conducted, evidence gathered by reverting back to the Fisheries Act, and a referral made to competent government agencies for corrective action, or referral made to a D.A.'s office for investigation to continue. This, coupled with no stipulations governing the fishery inspection procedure and scope as defined under the Coast Guard Administration Law or the Fisheries Act, on Law, would continue to create dispute in terms of the division of authorities between coast guard agencies and competent fishery agencies. Hence in search of upholding the principle of administrative or legal detention, there is a compelling necessity to amend the Fisheries Act, by commensurate to that sought for the Ocean Pollution Prevention and Treatment Law, to empower coast guard agencies with proper authorities in conducting reporting, crackdown and inspection rights and relevant execution procedures. However, as law amendments are invariably tied to the fishery policy and review session scheduling at the legislative branch, the timetable may not be sufficient to support the current pressing needs. In light of which, and before amendments could be made to relevant laws and regulations, streamlining the present stage's fishery inspection would require competent fishery authorities and coast guard agencies to negotiate and define the empowerment pertaining to fishery inspection procedure, scope and relevant cautions to serve as the basis of law enforcement, or to resolve the interim issue by having competent fishery authorities assign fishery inspector to join coast guard agencies in carrying out fishery inspection work.

(The author is a chief of the Coastal Patrol Directorate General)



註 釋

- 1 黃異著，漁業法規，渤海堂文化公司，民國88年4月出版，頁1。
- 2 黃明和，漁業管理與執法，行政院海岸巡防署邁向海洋新世紀海上執法及災防救護學術研討會論文集，頁204。3 行政院農業委員會漁業署89年年報，行政院農業委員會漁業署編印，民國90年，頁20。4 行政機關為行使其法定權限、達成行政目的，督促人民遵守法令規定，事先必須進行各種資料蒐集之調查工作，包括質問、進入、檢查、調查等，行政法學上將之稱為「行政調查 (Administrative Investigation)」，或稱為「資訊取得 (Acquisition of Information)」，或「行政檢查 (Administrative Inspection)」，乃行政機關為達成特定行政目的，對於特定行政客體所為之查察蒐集資料活動，是行政法中不可或缺之行政輔助手段。參見梁添盛，「論行政上之即時強制」，收錄於氏著，警察法專題研究（一），中央警官學校，民國84年9月20日出版五刷，頁146至147；法治斌等著，行政檢查之研究，行政院研究發展考核委員會編印，民國85年，頁14。
- 5 參照法治斌等著，前揭書，頁24。行政檢查若依強制程度區分，可區分為任意檢查及強制檢查，而強制檢查又依得否以實力取得所需資料，區分為間接強制檢查及直接強制檢查。
- 6 同註1，頁16。
- 7 同註1，頁38。
- 8 黃異著，海洋秩序與國際法，學林文化，2000年3月1版，頁441。
- 9 魏靜芬、徐克銘著，國際海洋法與海域執法，神州圖書，2001年6月，頁83。
- 10 同註8，頁442。
- 11 同註8，頁444。
- 12 參見註8，頁443至446
- 13 法治斌等著，前揭書，頁167。
- 14 中華民國領海及鄰接區法第17條規定：「中華民國之國防、警察、海關或其他有關機關人員，對於在領海或鄰接區內之人或物，認有違犯中華民國相關法令之虞者，得進行緊迫、登臨、檢查，必要時，得予扣留、逮捕或留置。」；中華民國專屬經濟海域及大陸礁層法第16條規定：「中華民國之國防、警察或其他機關，對在專屬經濟海域或大陸礁層之人或物，認有違犯中華民國相關法令之虞者，得進行緊迫、登臨、檢查，必要時，得強制驅離、或逮捕其人員，或扣留其船舶、航空器、設備、物品等，並提起司法程序。」

Footnotes:

1. Y.T., Huang, Fishery Laws and Regulations, Poh Hai Tang Cultural Publishing, Apr. 1999, p.1.
2. M.H., Huang, Fishery Management and Law Enforcement, a thesis compendium for the Executive Yuan Coast Guard Administration's bracing toward a new millennial maritime law enforcement and disaster rescue symposium, p.204.
3. The Executive Yuan Council of Agriculture Fishery Administration 2000 Yearly Report, Executive Yuan Council of Agriculture Fishery Administration, 2001, p.20.
4. What administrative agencies strive to exercise whose legally vested authorities to achieve administrative objectives and steer the citizens to abide by the laws and regulations is to come with a host of proper investigative work for information gathering, including questioning, entering, inspection and so forth, which in judicial administration study is referred to as administrative investigation, or as acquisition of information, or as administrative inspection, which is what administrative agencies conduct of data gathering activities on specific administrative entity for the purpose of attaining certain administrative objectives, which remain a crucial administrative auxiliary means indispensable in the administrative law. Refer to T.S., Liang, "Profiling the Real Time Administrative Oppression", excerpted by S.C., Yu, A Topical Study on Police Administration Law (I), Central Police Officers Academy, Sept. 20, 1995, 5th ed., pp.146-147; T.B., Fah et al, A Study on Administrative Inspection, Executive Yuan Research and Development Audit Council, 1996, p.14.
5. Refer to T.B., Fah et al, the aforementioned, p.24. Administrative inspection, when distinguished by level of mandatory enforcement, can be divided into random inspection and mandatory inspection, in which mandatory inspection can be further subdivided into indirect mandatory inspection and direct mandatory inspection, as distinguished by whether tangible force is used to derive the data.
6. Same as Footnote 1, p.16.
7. Same as Footnote 1, p.38.
8. Y., Huang, Maritime Order vs. International Laws, Shueh Lin Cultural Publishing, 1st ed., Mar. 2000, p.441.
9. J.F., Wei and K.M. Hsu, International Maritime Laws vs. Sea Territorial Law Enforcement, Shenzhou Publishing, Jun. 2001, p.83.
10. Same as Footnote 8, p.442.
11. Same as Footnote 8, p.444.
12. Refer to Footnote 8, pp.443-446.
13. T.B. Fah et al., the aforementioned, p.167.
14. Article 17 of the Territorial Water and Adjacent Regions Law of the ROC stipulates, "When suspicious of breaching the relevant laws and regulations of the Republic of China, personnel from National Defense, Police Administration, Customs and other relevant agencies of the Republic of China may conduct close chase, coming onboard and inspection, and may seize, arrest or detain evidential materials when deemed necessary"; Article 16 of the Exclusive Economic Sea Territories and Continental Reefs Law of the Republic of China stipulates, "When suspicious of breaching the relevant laws and regulations of the Republic of China of any person or subject within the exclusive economic sea territories or continental reefs, the National Defense, Police Administration or other agencies of the Republic of China may conduct close chase, coming onboard, inspection, and may forcefully expel, or arrest the persons, or detain the ship, aircraft,

15 此與巡防機關人員執勤時，發現有違反國家安全法、海關緝私條例、中華民國領海及鄰接區法、中華民國專屬經濟區及大陸礁層法、船舶法、海洋污染防治法等法規之情事時，因各法規所規定有權機關、實施檢查之要件、程序及項目等均有所不同，必須依不同違法之態樣，回歸所涉各該法令之規定辦理之作法相同。

16 依據漁業法第 54 條第 2 款規定，為保障漁業安全及維護漁區秩序，主管機關應配置巡護船隊，實施救護、巡緝及護魚工作。

17 本署於 90 年 4 月召開法規委員會，針對海岸巡防機關於各該事項之執行權限及得執行之範圍疑義進行研討，其結論第一點認為巡防機關對海岸巡防法第 4 條第 1 項第 7 款所規定之執行事項均有執行之權限，且為巡防機關無可旁貸之責任，應主動執行；此外其第 2 點 4 則認為巡防機關所謂「執行」或「協助執行」等規定，賦予海岸巡防機關執行之權利與責任，與行政程序法第 19 條所規定之「行政協助」意義不同，因此，即使主管機關未請求協助，海巡署仍有義務主動執行，尚不得因主管機關未為請求，巡防機關即不執行。

equipment, articles and so forth, when deemed necessary, and subject to the filing of judicial proceedings”.

15. This is tied to the varied empowered agencies, in the wake of suspicious breach reported by duty personnel from patrol and defense agencies, as stipulated under the National Security Law, Customs Trafficking Crackdown Act, Territorial Sea and Adjacent Regions Law of the ROC, Exclusive Economic Zone and Continental Reefs Law of the ROC, Vessel Management Law, Ocean Pollution Prevention and Treatment Law, under which the criteria, proceeding and categories of inspections also vary, hence it works the same way in how a specific scenario of violation is to be reverted back to stipulations governed under a particular law.

16. As stipulated under par 2, Article 54 of the Fishery Administration Law, to protect fishery safety and maintain fishing zone order, the competent government authorities are to allocate frigate vessel fleet to conduct rescue, crackdown and fishery protection work.

17. The first critical point derived from findings concluded at a Q&A forum held by the administration's legal compliance commission in April 2001 in going over the execution empowerment and execution scope of maritime patrol by Coast Guard patrol agencies revealed that as there were execution limitations as far as the executable measures governing coast guard agencies, as cited under item 7, par 1, Article 4 of the Coast Guard Administration Law, and that it would be the critical responsibility of coast guard agencies to actively enforce the same; in addition, item 4, par 2 reckoned that the wordings of “Execution” and “Facilitate to execute” have empowered coast guard agencies the right and responsibility to execute, which do difference from the meaning of “Administrative assistance” as cited under Article 19 of the Administrative Proceeding Law; therefore, even if a competent government agency has not sought assistance, the Coast Guard Administration remains liable to actively execution its duties, and that the patrol agencies shan't shun from execution in the absence of requests coming from competent government agencies.

