



水上摩托車從事海上活動之 法令疑義探討－ 以第二海巡隊執行 水上摩托車海上救難案為例

A Study on the Ambiguous Regulation of Maritime Activities with Jet Ski- Illustrated with Rescue Case for Jet Ski by Offshore Flotilla 2nd

文 | 洪掙論

Article | Hong Bo-lun

壹、案情摘要

一、緣起

台灣水上摩托車活動安全推廣協會為增加國人對馬祖列嶼水域之海岸、碼頭、生態環境實際情形之瞭解，訂於98年5月29、30、31日派遣人員騎乘水上摩托車，自桃園竹圍至馬祖列嶼，執行「馬祖水域發展水上摩托車進行生態旅遊之可行性研究」計畫，為維活動安全，遠程航行期間函請本署派艇隨護協助執行海上安全戒護事宜。

Part I. Case Synopsis

I. Origin

In order to promote national's appreciation of the coast, pier, and ecological environment of waters around Matsu islands, Taiwan Personal Water-craft Association (TPWA) planed to ride jet skis from Taoyuan to Matsu islands, 29-31 May 2009. TPWA called this project as "Feasibility Study of Ecological Tour for the Jet Ski Development at Matsu Waters." For the long-distance cruise safety, prior to the move TPWA requested the security escort done by patrol vessels from Coast Guard Administration (CGA) .



二、處理結果

該協會參與本次活動共計17部水上摩托車，因當日海象不佳，造成其中1部水上摩托車失聯、2部脫隊之危難狀況，經本隊、第十海巡隊、第十二海巡隊動員5艘巡防艇及空中勤務總隊、空軍海鷗直昇機的搜救下，成功救回所有參與活動人員。

貳、執行情形

一、期前規劃處置情形

(一) 法令研析

交通部為發展水域觀光活動，特訂定「水域遊憩活動管理辦法」以為規範，其中有關水上摩托車之活動範圍，係授權各水域管理機關自行依轄管水域狀況訂定規範，經查本次活動航程跨越桃園縣政府及福建省連江縣政府所管轄海域，為示慎重及秉持依法行政理念，本隊特就活動適法性洽詢上述水域管理機關，均告以：本次活動範圍未列為公告禁止區域，惟執勤時應依水域遊憩活動管理辦法依法行政。

(二) 職權劃分

98.05.13聯繫台灣水上摩托車活動安全推廣協會，得知本次活動航程規劃係自桃園竹圍漁港出發前往馬祖列嶼，事涉本總局第十二海巡隊及第十海巡隊轄區，惟查該協會並未函請第十二海巡隊派艇戒護，為維活動安全，本隊主動函請該協會另函請本總局第十二海巡隊派艇戒護並副陳總局核處。

(三) 行業管理

本隊於98.05.22接獲總局指示，為防範海事事件發生，請本隊主動聯繫該協會建立雙方緊急呼叫搜救系統，另遠距航行期間請派遣50噸級以上巡防艇隨行戒護（於N25.32、E120.36處與第十海巡隊現地交接），俾利管制活動全般狀況，如有違反水域遊憩管理辦法，則依本署常用勤務執行標準作業程序彙編1.1.12海上水域遊憩活動違反相關規定處置。考量本次活動航程跨越危險海域，基於行業管理之理念，為

II. Mission Result

Affected by the miserable weather and rough waves, the project was in distress which caused one lost and two missing from the seventeen jet skies echelon. Then the rescue mission was consequently implemented by five patrol boats from Offshore Flotilla 2nd, 10th, 12th and helicopters of Airborne Service Corps and Navy to successfully save each of the participants.

Part II. Scenario of Operation

I. Preparation and Plan in Advance

(I) Research and Analysis of Regulations

In order to develop hydro-tourist activities, the Ministry of Transportation and Communications promulgates "Regulations Governing Water Recreation Activities" which authorizes each competence authorities of water administration to formulate rules based on their status in terms of the activity water for jet ski. It was found that the range of this project cruised through waters of Taoyuan County Government and Lienchiang County Government, Fukien Province. Being prudence and complied with the regulation, Offshore Flotilla 2nd inquired competence authorities for the legitimacy of this project. Then it was replied that the cruise range was not listed in the proclaimed restricted areas and coast guard should carry out duty of works by laws according to the Regulations Governing Water Recreation Activities.

(II) Classification of Jurisdiction

After coordinating with TPWA on 13 May 2009, Offshore Flotilla 2nd learned that this project would depart from Chuwei fishing port, Taoyuan County to Matsu Islands. Though the cruising range was across the jurisdiction waters of Offshore Flotilla 12th and 10th, TPWA had not requested the escort from Offshore Flotilla 12th. Offshore Flotilla 2nd informed TPWA to send another request to Flotilla 12th and simultaneously notify Maritime Patrol Directorate General (MPDG).

(III) Business Administration

On 22 May 2009 MPDG instructed Offshore Flotilla 12th build emergency contact & rescue system with TPWA and dispatch patrol boats above 50 tons for this long distance cruise (mission handover with Offshore Flotilla 10th at 25.32N, 120.36E) to well control this mission. If there was violation of "Regulations Governing Water Recreation Activities," Offshore Flotilla 12th should enforce the law in compliance with Rule

宣導本隊為民服務及強化民眾風險管理觀念，本隊乃就該活動可能發生風險、活動期間應注意事項及相關法令規定等傳真該協會，請其務必妥適規劃、謹慎辦理，並告知若有違法者將依法蒐證取締。

(四) 橫向聯繫

本次活動事涉多個水域管理及海域執法機關，水上摩托車屬近岸休閒遊樂機具，設備較為簡陋，加上海象瞬息萬變，活動期間具有高度風險性，為妥適規劃勤務，並擬妥完備救援計畫，本隊姚隊長多次指示業管單位研判可能突發狀況及預設應變策略以便因應，並將本次活動事宜、相關法令規定、勤務規劃重點、執勤注意事項等傳真桃園縣政府、福建省連江縣政府等水域管理機關審處，同時通報北部地區巡防局二三大隊、第十二海巡隊及第十海巡隊等活動管轄相關單位參處，俾利突發狀況之因應處置，以確保活動成員生命財產安全。

二、活動當日執勤作為

(一) 勤指中心作為

為防範海事事件發生，本隊勤指中心於活動前一日即主動聯繫主辦單位，告知因海象轉差，水上摩托車遠距航行具有高度風險，建議取消活動；惟該協會仍堅持按照原訂計畫執行。當日0500時本隊PP-5030艇即進入竹圍港完成勤務部署，經與水上摩托車總領隊魏聖峰會面得知，參與本次活動共計17部水上摩托車，因是日海象不佳（風力6至7陣風8級），為維活動安全，本隊PP-5030艇再度建議該協會取消活動，惟該協會17部水上摩托車仍堅持於0535時出港，本隊PP-5030艇遂隨行戒護並通報值班室。

1.1.12 of the CGA's SOP Book. Considering the dangerous cruise and business administration and to propagate the public service and enhance public awareness of hazardous management, Offshore Flotilla 12th faxed TPWA the feasible risk, activity notes and the related regulations. In addition to the advice of proper planning and prudent operation, the flotilla informed TPWA it would crack down illegal activities by regulations if there was.

(IV) Horizontal Coordination

This cruise not only involved several hydro administrations and law-enforcement agencies, but jet skis also were poor equipped near shore recreational crafts, as well as the changing environment on the sea should jeopardize the safety. In order to well prepare this mission and formulate comprehensive contingency rescue plan, superintendent Yao of the flotilla instructed, in several occasions, the competent units to study possible scenarios and pre-plan for contingency strategy in case. Furthermore, the flotilla faxed the information of this activity, related legal provisions, operation assignments and mission notes to Taoyuan County Government, Lienchiang County Government, Fukien Province and other hydro authorities for audition. In addition, Coastal Patrol Corps 23rd of the Northern Coastal Patrol Office, Offshore Flotilla 12th, 10th and the related authorities were also informed for reference to facilitate coping with contingency measures and ensure the safety.

II. Operation for the Activity

(I) Work of the Duty Command Center

With the attempt to prevent the occurrence of distress, the Duty Command Center of the flotilla had, one day before the activity, informed TWPA the condition on the sea had turned worse, and suggested it cancel the project for safety concern. Nonetheless, TWPA insisted its implementation based on original plan. At 05:00am on that very day, patrol boat PP-5030 of the flotilla entered Chu-wei fishing port to furnish duty deployment, and it was learned from the leader of jet ski, Wei Shen-fung, that there would be seventeen jet skis for this cruise. Since the waves were quite rough (wind scale reaching 6 to 7 and flurry scale 8), PP-5030 once again suggested TWPA cancel this cruise to ensure the safety. However, the riders were persistent in their departure by 5:35am, and then PP-5030 began the cruise escort and reported the status to the duty office of the flotilla.

（二）現場勤務作為

車隊出發不久，即遇上8級狂浪陣風，本隊PP-5030艇主動以無線電四度警示要求水上摩托車隊伍停止跨海活動，以維安全，惟該協會總領隊魏聖峰評估認為不影響橫渡行程，堅持繼續朝馬祖方向前進，於0905時，PP-5030艇主動清點車隊，發現民眾洪善鄰未尾隨失聯，當機立斷通知所有車隊返航，立即展開搜救行動並將上述情形回報值班室，值班室獲報後火速通報總局、國家搜救中心及第三巡防區請求支援，現場計有本隊PP-5030艇、PP-5050艇、第十海巡隊PP-5051艇、PP-3555艇、新竹海巡隊PP-2019艇等5艘巡防艇投入搜救工作，另空勤總隊及空軍海鷗直昇機亦加入救援行動，於中午12時10分接獲總局通報，洪員已由巴拿馬籍貨輪「Ravenna」救起，現場立即調派本隊PP-5050艇前往永安外海57浬處將該員接駁至艇上；另於1038時，PP-5030再度清點車隊發現民眾胡又升及周志朋所騎乘之水上摩托車脫隊，現場立即調派新竹海巡隊PP-2019艇於永安至竹圍一帶沿岸搜尋，直至下午1400時於觀音外海0.5浬處尋獲2位脫隊人員並將其安全戒護進入竹圍港；本隊PP-5030艇及第十海巡隊PP-5051艇於戒護期間，屢次發現水上摩托車機械故障及油料耗盡需緊急救援之狀況，其中PP-5030艇成功撈救3人並拖帶2部水上摩托車及戒護9部水上摩托車，PP-5051艇亦成功撈救2人並拖帶3部水上摩托車安全進入竹圍港，圓滿達成海難救助任務。

（三）後續事故調查

本隊於本案執行完畢後，隨即製作總領隊魏聖峰及洪善麟訪談筆錄，並探討事故發生原因及相關法令疑義，全案依據「水域遊憩活動管理辦法」相關規定函送主管機關依規定辦理。

（II）Operation on the Scene

Not long after the departure, riders immediately confronted strong winds and waves of scale 8. PP-5030 alerted riders four times with radio to stop this sea-crossing cruise for safety. Yet, Wei Shen-fung thought the weather wasn't bad enough to affect this cruise and continued to head towards Matsu. At 09:05am, when PP-5030 counted the riders and found one of them, Hong Shang-lin, was missing and lost the contact, it then immediately notified the riders to turn backward, reported the emergency to the duty office and began the rescue and search action. With no time lag, the flotilla requested back up from MPDG, National Rescue Center and Coastal Patrol Office 3rd. Then there were PP-5030, PP-5050 of this flotilla, PP-3555 and PP-5051 of Offshore Flotilla 10th, PP-2019 of Hsinchu Offshore Flotilla and helicopters of Airborne Service Corps and Navy were devoted into the operation of rescue and search. At 12:10am after receiving the notification that Hong Shang-lin was rescued by Panamanian liner "Ravenna," PP-5050 was immediately dispatched at the spot by the flotilla to take him at 57 NM from Yong-an coast. Consequently at 10:38am, PP-5030 again counted the riders to find two jet skis, ridden by Hu You-sheng and Cho Chi-pang, were lagging far behind the team, and then PP-2019 of Hsinchu Offshore Flotilla was instantly assigned to search along the shoreline from Yong-an to Chu-wei. Until 02:00pm the two people were rescued at 0.5 NM from Kuan-yin coast and sent back to Chu-wei fishing port. During this cruise, PP-5030 and PP-5051 found several jet skis emergencies like malfunction and out of fuel in which PP-5030 salvaged three people, tugged two jet skis and escorted nine riders, as well as PP-5051 salvaged two people, tugged three jet skis back to Chu-wei fishing port. After finished the rescue and escort duty, coast guard had successfully implemented its mission.

（III）Subsequent Investigation

After the operation, the Offshore Flotilla 2nd immediately collected statements of Wei Shen-fung and Hong Shang-lin and investigated the cause of the accident as well as the ambiguity regarding related legal provisions. The case had then, based on related provisions of "the Regulations Governing Water Recreation Activities," sent to the competent authority for administration accordingly.

參、經驗分享

一、法令面探討

查「水域遊憩活動管理辦法」係依據「發展觀光條例」第36條之授權，就有關水域遊憩活動之範圍、種類、時間及行為等加以規範，其旨在「保障遊客安全」，而其主要功能在於規範民間水域遊憩活動之經營與管理，以促進水域觀光產業之發展，並授權各水域管理機關針對各轄管水域狀況自訂適當之規範據以執行。惟目前除少數特定國家風景管理區域外，大部分之海域均未有明確規範可循，宜請主管機關儘速制定，以利執行。

二、勤務調度得宜

本次救援任務之成功歸功於指揮官事前狀況預判分析正確、事中統整勤務指揮有方，於事發當時研判海象狀況、海流效應後依救難搜救作業程序，當機立斷調派線上PP-5050艇馳赴現場救援，同時亦協調指揮PP-5051艇及PP-2019艇迅速依規劃區域進行搜救，另為爭取救援時間，並向行政院國家搜救指揮中心申請救援，空中勤務總隊及空軍海鷗直昇機得於最短時間抵達事故現場協助搜尋，集結救援能量於事發海域展開協尋，終於成功救援所有參與活動之民眾。



Part III. Experience Sharing

I. Review on Legal Provisions

It is found that "the Regulations Governing Water Recreation Activities" is authorized from Article 36 of "Statute for the Development of Tourism" to stipulate the range, type, time, and behavior of recreational hydro activity with the intention to "ensure safety of tourist." Its primary function is to regulate the management and operation of private recreational activity at sea territory so as to facilitate the development of tourism industry at sea. Besides, it also authorizes the competent hydro authority to formulate its own and suitable rules for regulation and implementation with regard to each sea territory under its jurisdiction. However, most of the sea territory has not yet, aside from a few specific management areas for national scenic spots, clear regulations for abidance. It is, therefore, recommended that the competent authorities should formulate related rules and regulations for implementation.

II. Suitable Duty Assignment

The success of this rescue mission can be attributed to the accurate analysis and judgment of the pre-event scenario judgment by the commander, and wise direction and integration of duty mission during the event. When accident occurred, rescue salvaging operation procedure was carried after they had determined the situation of the sea and ocean current at the spot, and immediately coordinated patrol boat PP-5050 stand-by to speed to the site for rescue. In addition, the duty command center had also coordinated PP-5051 and PP-2019 to expedite to the planned area to conduct search. Furthermore, to vie for more time of rescue the duty command center also requested assistance from the National Rescue Center, Executive Yuan, National Air-borne Service Corps and Navy so that they could reach the site helping for search at the shortest span of time. As rescue momentum was gathered to unveil search at the site of accident, thus each of the participants could be saved successfully.

三、通訊設備不足

經歷本次海上救難事件，彰顯海上人命之搜救為第一要務，此次活動發現水上摩拖車之設備簡陋，通訊不足，僅具備手持式VHF無線電，通訊距離僅約五百公尺，一旦落海或脫隊即如同失聯，下落不明，且在惡劣海況下，水上摩拖車載浮載沉，搜救極為困難。

四、行業管理缺失

近年來隨著親海活動的推廣，水域遊憩活動日益興盛，其中水上摩拖車亦大受歡迎，惟業者在推廣相關遊憩活動時，應善盡活動安全及行業管理責任，妥善規劃活動內容，舉辦人員安全講習，加強安全維護措施，並應自行聘僱民船戒護，以避免浪費國家資源及社會成本。

五、主管機關作為

本活動航程跨越危險海域，水域管理機關又無明確規範並將之列為禁止區域，本隊秉持依法行政理念，僅能就現實客觀條件及可能發生狀況予以規勸，基於生命無價，兼顧人民自由權利之保障，建議主管機關儘速研修相關法令，以確保民眾生命財產之安全。

III. Inadequate Telecom Equipment

With experience of this event of sea accident, it well demonstrates that life rescue is considered as the foremost of all. Nonetheless, it was found that jet ski was poor equipped, with inadequate telecom as there was only hand-held VHF radio only valid with 500m distance of communication. Thus, if anyone falls into sea or lags behind the fleet, they would be out of contact with no idea of whereabouts. Besides, under the circumstances of rough sea it is hard to rescue jet ski for its swiffting float and sink on the sea.

IV. Failure Business Management

With the promotion of water-intimacy activity at recent years, recreational activity at sea has become more and more popular. Among them, jet ski is reckoned to have received the greatest popularity; however, the industry should fulfill their role regarding activity safety as well management responsible of the business as they promote related recreational activity. Besides, they should also well plan the content of the event, sponsor safety seminar for related personnel, enhance measures to uphold, safety, and hire private boats for safety escort on their own, thus helping to avoid wasting national resource and social cost.

V. Responsibility of the competent authority

Since this cruise across dangerous waters but without specific rules made by hydro authority, Offshore Flotilla 2nd can merely, based on the belief of implementation according to the law, resort to reality, objective conditions, and possible scenario of occurrence for dissuasion. We, therefore, suggested the competent authority to swiftly revise related legal provisions as life is priceless but it is necessary that their rights of freedom should be guaranteed to ensure the safety of life and property.

肆、策進作為

一、加強災難防處

所謂：「預防勝於治療」，事前的預防永遠比事後的處理有效。本案活動內容與航程的規劃，具有高度風險性，基於「防患於未然」之理念，應事先預判可能發生之危害，窮盡一切之可能加以防範，並預做最壞之打算，擬妥完備應變計畫及勤務作為，方能在第一時間因應各種突發狀況，將傷害減至最低。

二、落實行業管理

水上摩托車為水上休閒娛樂機具，僅適合於近岸安全水域活動，因不屬於「船舶法」所規範之船舶，自不適合於海上航行，惟本案活動航程跨越台灣至馬祖危險海域，實已遠超過一般水域遊憩活動範圍，試想設備齊全之船舶尚有「船舶法」規範其航行事項，而以水上摩托車設備之簡陋，卻可毫無限制的在大海航行，於法理實有違礙，建議主管機關應儘速妥適修法，律定相關活動之安全規範，並督促業者落實行業管理責任，以保障人民生命財產安全。

（本文作者任職於海洋巡防總局第二【淡水】海巡隊）



Part IV. Improvement Actions

I. Strengthen the Disaster Prevention

It is said that "prevention is better than cure," and thus prevention is always more effective than aftermath administration. Given the fact that the content of the event and planning of the cruise is dangerous, it is necessary to predict all of the possible risks based on the belief of "prevention is better than cure," while all measures for prevention should be exhausted and planned for the worst scenario. In addition, comprehensive contingency plan and duty action should be well furnished so that the occurrence of various situations can be coped with at the very first moment, helping to reduce the harm to the lowest.

II. Realize Business Management

Due to the fact that jet ski is classified as entertainment gear of water recreation, it is only suitable to be maneuvered at safe waters by the shore. However, since it is not stipulated craft by "the Law of Ships," jet ski is not appropriate to ride on sea for cruise. Moreover, since the cruise of this event will cross dangerous waters from Taiwan to Matsu, it has well gone beyond the range of regular water recreational activity. Let us take a thought that if fully-equipped vessels would have to be regulated by "the Law of Ships" to stipulate items of its cruise, yet it does not really seem reasonable and accommodating to legal provisions as the equipment of jet ski is very much shabby but can cruise at sea but unrestrained. As such, we suggested that the competent authority should swiftly and suitably revise related laws in order to stipulate safety protocols of relevant events, and supervise the industry to quickly realize responsible business management so as to ensure the safety of life and property.

（The author is currently with the Offshore Flotilla 2nd (Tamsui) of the Maritime Patrol Directorate General）