Research on Legal Issues of Protection of China’s Offshore Fishery Resources After Nuclear Discharge into the Sea Incident

Yaxuan Li
Dalian Ocean University, Dalian, Liaoning, China.

How to cite this paper: Yaxuan Li. (2024) Research on Legal Issues of Protection of China’s Offshore Fishery Resources After Nuclear Discharge into the Sea Incident. Journal of Humanities, Arts and Social Science, 8(2), 471-475. DOI: 10.26855/jhass.2024.02.029

Received: February 5, 2024
Accepted: March 3, 2024
Published: March 29, 2024

*Corresponding author: Yaxuan Li, Dalian Ocean University, Dalian, Liaoning, China.

Abstract
At present, the supervision of offshore fishery resources is primarily based on the United Nations Convention on the Law of the Sea. The content mainly focuses on marine environmental protection and does not address the regulation of pollutants after they are discharged into the sea. After the nuclear discharge incident into the sea in Japan, it is evident that current international conventions, such as the Convention on Nuclear Safety and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Substances, are unable to effectively regulate nuclear discharge into the sea within the scope of international law. On this basis, it is necessary to enhance the supervision mechanism for the fishing of pelagic fishery resources. This can be achieved by focusing on the pelagic fishing area, expanding the no-fishing zone towards the direction of nuclear sewage discharge through increased supervision, and the establishment of relevant laws. It is essential to prohibit local fishermen from catching fish exposed to radiation and implement policies to enhance control measures to mitigate the impact of nuclear sewage on pelagic fishery resources.

Keywords
Convention on the Law of the Sea, Pelagic fisheries, Nuclear discharge into the sea

Marine Japan's nuclear discharge into the sea event will not only cause damage to the ecological environment of the Pacific Ocean and even the global sea area but also have a negative chain reaction on the entire Marine ecosystem and have a great impact on fishery resources. China's Marine fishing ground is divided into coastal and far-sea fishing grounds, which will have a certain degree of impact after nuclear discharge into the sea. As a neighbor of Japan, China's offshore fishery resources are facing a crisis of exhaustion due to over-exploitation. Pelagic fishing has become the main way for Chinese fishery enterprises, fishery organizations, and fishermen to obtain Marine resources. Therefore, in the event of Japan's nuclear discharge into the sea, China has become the first country affected by nuclear sewage pollution.

China's ocean waters are located in the Pacific Rim, which is the area through which Japan's nuclear sewage flows and the pollution of nuclear sewage on the high seas will seriously threaten the development of China's Marine fisheries. According to the data of the China Fishery Statistical Yearbook in 2022, China's total annual economic output value of fishery resources is 3087.314 billion yuan, ranking first in the world, and deep-sea fishery products account for half of the proportion, which is an important economic source of Marine resources. After the discharge of nuclear wastewater, aquatic organisms will metabolically absorb radioactive substances in the nuclear wastewater and spread them in the living waters. Failure to take necessary measures to prevent them will cause an incalculable impact on the Marine resources of China and other interested countries. Therefore, how to properly protect and regulate fishery
resources by legal means after the occurrence of discharge and sea entry events has become an urgent problem to be solved.

1. Discharging nuclear weapons into the sea infringes on China's deep-sea fishing rights and interests

Articles 192 and 194 of UNCLOS set forth the obligation of States to protect and preserve the Marine environment and the duty to take the necessary measures to ensure that activities under their jurisdiction or control do not cause pollution of the Marine environment of other States. As a contracting state, Japan has ignored its obligations and dumped radioactive sewage into the sea, which not only violates its obligations under international law but also damages the deep-sea fishing resources of neighboring countries led by China and infringes on China's deep-sea fishing rights and interests.

First, as a neighbor of Japan, China's nuclear discharge into the sea will destroy the Marine ecological environment and biological resources, and pollutants will enter the fishing area and affect the growth and reproduction of fish in the sea area, infringing on China's offshore fishing rights and interests. In terms of international law, the Convention on Fishing on the High Seas signed in 1958 and the Convention on the Law of the Sea clearly point out the obligation of States parties to conserve living resources on the high seas, which elevates the conservation of living resources on the high seas to the legal level, indicating the importance attached to it by international law (Li Xinyi & Gu Zhijie, 2019). In other words, China, as a coastal state, has the right to take necessary measures to conserve living resources on the high seas. Japan's decision to discharge nuclear sewage not only destroyed the fishery resources in the waters under China's jurisdiction but also violated China's right to conservation of fishery culture. In terms of domestic laws, in 2012, the State Oceanic Administration issued the National Marine Function Plan (2011-2020) (hereinafter referred to as the "Plan"), which divides China's competent sea areas into eight functional zones for the purpose of use, and determines the direction of use, protection, and development of key sea areas. Japan's discharge of nuclear sewage will inevitably affect China's functional area planning, lead to confusion in the division of regional functions, and violate China's right to use and manage fishery resources in the sea area under its jurisdiction.

Second, Japan violated its obligation to conserve fishery resources on the high seas. The Convention on Fishing and Conservation of Living Resources of the High Seas adopted by the United Nations Conference on the Oceans pointed out that restrictions should be imposed on the "freedom of fishing on the high seas", including restrictions on fishing tools and types of fish that can be caught, etc. The restriction of fishing proves that the international community has begun to attach importance to the diversity of fishery resources and emphasize the conservation obligations of fishery resources on the high seas. Japan's discharge of nuclear water into the sea violates its obligations to conserve fishery resources on the high seas. Although Japan used the term "nuclear wastewater" instead of "nuclear sewage" to confuse the public, the inspection agency did find cesium-137 in the Pacific Ocean, 643 kilometers away from Japanese waters (Yu Zhirong, 2023). Concentrations ranging from 10 to 1,000 times higher were found in the Pacific Ocean in the months after the Fukushima nuclear disaster, and the substance was also detected in tuna caught off the coast of California, making it extremely dangerous if allowed to spread through migratory spawning. And found a large number of fish and plankton dead. In the discharge of nuclear sewage, Japan said that if the concentration fell to the ideal level, it would discharge 7,800 tons of nuclear sewage within 17 days, which can be seen in its harm. The large-scale death of more than one million grouper fish in South Korea is the alarm bell sounded under the continuous discharge of nuclear sewage in Japan. If the contaminated fish spreads nuclear materials through backtracking, it will bring the radioactive fish to the farther sea, and its damage can not be ignored.

2. Nuclear wastewater discharge supervision and status quo of China's offshore fishery protection

First of all, in terms of nuclear pollution supervision, Japan's discharge of nuclear sewage violates the management provisions of the Convention on the Prohibition of Marine Pollution by Dumping of Wastes and Other Substances, which is established for the purpose of protecting the Marine environment. However, the Convention interprets "waste or other substances" as "materials or substances of any kind, shape and pattern". There is no detailed classification of the dumping of waste, and Japan is a party to the Convention and its discharge of radioactive water without testing to determine its effects should be prohibited under the Convention. Secondly, Japan's discharge of nuclear wastewater without notification violates its obligation to notify acts that may cause a nuclear accident under the
Consequent on Early Notification of a Nuclear Accident, and the importance of the safe use of nuclear facilities is also pointed out in articles 14 and 15 of the Convention on Nuclear Safety 1994 adopted by the International Atomic Energy Agency. In order to carry out safety assessments of nuclear facilities and to protect States parties from radiation during use, the Convention states in the preamble that States should effectively improve the level of nuclear safety prevention and control to prevent exposure to nuclear materials. In addition, the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, adopted by the International Atomic Energy Agency Diplomatic Conference in 1997, emphasizes that “the ultimate responsibility for ensuring the safety of spent fuel and radioactive waste management rests with the State having jurisdiction over these materials”. Japan is responsible for the safe management of its discharge of nuclear wastewater to prevent it from polluting the Marine environment.

Secondly, Japan's discharge of nuclear water into the sea has violated a number of provisions of UNCLOS, including Article 192 of Part XII, Protection and Preservation of the Marine Environment, which states that "States have the obligation to protect the Marine environment". The nuclear sewage discharge claimed by Japan and the Marine environmental preservation measures taken have not played a role in protecting the Marine environment. That is, it will not cause pollution damage to other countries and their environment. The discharge of nuclear substances into the sea is also in violation of the relevant provisions of the London Convention 1972 that hazardous substances cannot be dumped into the sea for the purpose of disposal. The BBNJ (International Agreement on Conservation and Sustainable Use) derived from the Convention on the Law of the Sea is regarded as a powerful weapon for the regulation of Marine resources, but also because of the lag problem of the law, it only provides for the relevant issues of pelagic fishing and does not involve the basic regulation of waste into the sea.

Finally, by summarizing the status quo of waste discharge supervision, it can be concluded that: Everyone is prohibited from destroying the Marine ecological environment and has established their responsibility and obligation to protect the Marine ecological environment, but fishing standards, sewage discharge supervision, and penalties for illegal fishing are scattered in major conventions and agreements, and there is no special law for the purpose of nuclear pollution control, nor is there a clear definition of the illegal responsibility of discharge and pollution subjects. In UNCLOS, there is no subject of regulatory responsibility for Marine pollutants and no implementable measures, so it is difficult to rely on relevant legal provisions at the level of international law to stop Japan's continued discharge of nuclear sewage, and it is difficult to punish Japan's discharge of nuclear sewage through existing laws.

3. China's offshore fishery resources protection in response to the shortcomings of nuclear discharge into the sea

3.1 There is a gap in the supervision of offshore fishing behavior

First of all, the provisions of the licensing system in the Fisheries Law are not thorough enough. The fishing license system only stipulates the subject of license approval in Article 23 of the Fisheries Law, and the required documents in Article 24, and there is a vague clause that "conforms to other conditions stipulated by the fishery administrative department under The State Council", and the way of obtaining it is also administrative approval, which is not confirmed by law, so the fishing license lacks legal effect in a strict sense. Secondly, there are deficiencies in the supervision of far-ocean fishing vessels, and the lack of supervision and management in the acquisition, transfer, inheritance, and approval of vessels has resulted in a situation of uneven quality and qualifications of fishing vessels in far-ocean waters. Due to the lack of supervision of offshore fishing activities, the current law does not provide for the supervision of fishing vessels, fishing gear, and other fishing AIDS, and there are disputes over the design of the system such as the use of fishing gear and the total amount of fishing quota, and there is no regulation on the prohibition of fishing of radioactive fish after the discharge of nuclear sewage. As a result, it is impossible to effectively regulate pelagic fishing behavior after nuclear sewage discharge at the legal level.


3.2 Domestic legislation on pelagic fishing is out of line with international regulations

Under the current framework of international law, it is difficult to regulate the nuclear sewage discharged by Japan through international laws before determining the harm of it. China's existing domestic laws do not link deep-sea
fishing with nuclear pollution, and the Nuclear Safety Law introduced in 2017 only provides general provisions on nuclear pollution, without explaining how to control Marine nuclear pollution. It is very limited to solve Marine environmental safety and protect living resources in China’s deep-sea waters by this law. Moreover, China's regulations on pelagic fishing are lower than the requirements of current international fishery supervision. For example, China’s Regulations on the Administration of Pelagic Fisheries are not strict in stipulating that pelagic fishing vessels should submit production data to the competent fishery authorities, that data are not rigorous and that there is no supervisory body, and the Convention on the Law of the Sea clearly stipulates that the administrative department is the responsible body. China's domestic regulations are far below international standards and the lack of emphasis on offshore fishing practices makes it difficult to curb illegal fishing in polluted waters.

The content of the Fisheries Law itself does not have extraterritorial effects, and it is necessary to indirectly produce extraterritorial effects through the media, that is, "indirect extraterritorial effects through the Criminal Law" or "with the Provisions on the Management of DWF Fisheries" as the medium (Xue Guifang & Fang Xu. 2018).

4. After the nuclear discharge into the sea incident, China should take countermeasures and improve suggestions

4.1 Enactment of legislation to regulate the fishing of radioactive fish in pelagic waters

The incident of nuclear discharge into the sea will have an impact on China's pelagic fishing industry, and the implementation of legislation on the pelagic fishing industry is the basic condition to solve the plight of the pelagic fishing industry. At present, China's main laws concerning the supervision of pelagic fishing include the "Fisheries Law" and the "Regulations on the Management of Pelagic Fishing". In the former, the scope of control on fishing activities in the Fisheries Law is limited to fishing activities in the waters under the jurisdiction of China and does not involve the pelagic fishery too much, while the effectiveness level of the latter is only that the effectiveness level of departmental regulations is much lower than that of the law. The Provisions on the Administration of Pelagic Fisheries, as a policy provision specifically for the control of pelagic fishing, does not define the fishing right. Therefore, China currently does not have a law that can prohibit the fishing of nuclear-irradiated fish in pelagic waters. Therefore, China should formulate rules and regulations to specifically regulate pelagic fishing and prohibit fishing of radioactive fish in waters affected by nuclear sewage, and at the same time promote the improvement of the revision of the Fisheries Law to provide legal guarantee for the standardized development of pelagic fisheries.

4.2 Improve the supervision mechanism for ocean fishing and increase the supervision force of ocean fishing behavior

Different from other agricultural activities in China, the Fisheries Law, as a law to protect fishery resources and regulate the rights and obligations of fishermen, is mainly a law to achieve regulatory objectives through administrative means (Guo Yunfeng, 2023).

On the basis of the current Fisheries Law, we will improve the supervision mechanism of pelagic fishing, increase the examination and approval of fishing licenses, and increase the administrative penalties for illegal fishing. The combination of administrative measures and the fishing license examination and approval system enhances the offshore fishing supervision mechanism, thereby strengthening regulatory enforcement.

4.3 Strengthen the extraterritorial effect of the legal system with the Fisheries Law as the core

The extraterritorial effect of China's Fisheries Law is obtained by means of "learning from". In the face of nuclear wastewater discharge, if there is no complete legal regulation, it will not only be impossible to effectively manage offshore fisheries but also damage the image of China as a major fishing country. Therefore, China's Fisheries Law should adjust relevant principles to effectively supervise China’s ocean-going fishing vessels under the general direction of fishery management and resource conservation. Therefore, the application of the principle of personal jurisdiction was added to the legal provisions concerning the legal regulation of pelagic fisheries in the Fisheries Law as a prerequisite, that is, the citizens, legal persons, and other organizations of the People’s Republic of China engaged in pelagic fisheries should be subject to the jurisdiction of the Fisheries Law and strengthen supervision.
5. Conclusion

After Japan's nuclear discharge into the sea incident, how to regulate the fishing behavior of the ocean fishing industry to protect China's ocean fishing resources from the pollution of nuclear substances is the primary issue facing China. Through the summary and analysis of the conventions established by the International Ocean Organization and the relevant legislation of China on the supervision of offshore fisheries, it can be found that there are still problems in the supervision of offshore fisheries in China in dealing with the discharge of nuclear sewage. At present, China lacks punishment measures for illegal acts of offshore fishing, and the domestic supervision standards lag behind the international standards. The enactment of special legislation to enhance the extraterritorial effect of the Fisheries Law to strengthen the supervision of extraterritorial fishing can prevent the ecological environment and biological resources of China's ocean waters from being damaged by nuclear sewage to an extent.

References


Yu Zhirong. It is urgent to urge Japan to cancel its nuclear water discharge plan [J]. Journal of Ocean University of China (Social Science Edition), 2023(4).