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# The rule of law system for China's marine security

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This paper examines the current status of China's legislation on safeguarding sovereignty and security, resource security, navigation security, ecological security, and regulating law enforcement and judicial activities, and summarizes the characteristics of existing marine security legislation. This paper utilizes literature analysis and comparative analysis methods, under China's Overall National Security Outlook, this paper proposes a path of improvement by consolidating marine-related norms, promoting the formulation of a basic law on the seas, refining the legal provisions on marine security, improving the marine data classification and grading system and safeguarding marine data security, and pushing forward the reform of the adjudication mechanism of the maritime courts to enhance the ability to actively safeguard the rights and interests of the oceans and seas through the use of the rule of law.

## KEYWORDS

marine security, rule of law system, legislation, improvement, the Overall National Security Outlook

## 1 Introduction

Marine space used to be a "natural barrier" to national security. Along with technological progress, it has gradually evolved into a "new frontier" for human activities that naturally extends from the land, opening up new channels of transportation and resources and becoming a new object of the game and a new source of risk. It has historically assumed the critical strategic mission of safeguarding national security and space for survival and development.

Since the fifteenth and sixteenth centuries, there has been a gradual awakening of the global awareness of maritime rights (Huang, 2004), and in the whole process of overall civilization, a gradual shift away from the law of the jungle of the strongest and the weakest in the initial state of nature, and away from the logic of confrontation of strength to the logic of constraint by rules and regulations, and onto the track of the rule of law in modernization. Marine awareness and awareness of the rule of law are both landmark issues in the progress of modern civilization, and the maintenance of maritime rights and interests through the rule of law and the safeguarding of marine security has increasingly become a global consensus.

The EU, the UK, the US, and other countries are no longer satisfied with traditional marine security based on free navigation and innocent passage and have formulated their own marine security strategies. The EU formulated the *Maritime Security Strategy* in 2014 (EU, 2014), which, in addition to guaranteeing free navigation and safeguarding maritime economic interests, pays more attention to responding to marine security risks and threats, focusing on the security and risks of ports and port facilities, offshore installations, submarine pipelines, marine scientific research, and other fields. In 2023, the EU published an update of the 2014 *Maritime Security Strategy* and its *Action Plan*, pointing out that the scope of maritime security is gradually expanding, and that it needs to focus on some emerging areas of risk, such as marine pollution and climate change, geo-risks, cyber-attacks against maritime installations, and put forward a six-point action program in a targeted manner (EU, 2023). The UK government set up the Joint Maritime Security Center (UK, 2022a) and submitted the *National Maritime Security Strategy* to Parliament in 2022, which not only includes free navigation, port security, border security, illegal immigration, and other issues but also covers ship security, maritime crime, ship flag protection, environmental risks, illegal and overfishing, maritime network risks and other non-traditional maritime security (UK, 2022b). In the US, the Clinton Administration first proposed the Maritime Security Program in 1996 as part of the 1996 *Maritime Security Law*. It focuses on maritime transportation safety, maritime security, coast guard and other security, and enhancing their respective capabilities. With the ever-changing world situation, the Maritime Administration of the US Department of Transportation has added the Office of Maritime Security (US Department of Transportation, 1966), which is mainly responsible for matters such as anti-piracy and armed hijacking of ships, enhancing industry awareness, port security, regional threats, and maritime cyber risks. Recently, the Biden Administration released its latest ocean strategy document, the *National Strategy for a Sustainable Ocean Economy* (US, 2024), which is intended to demonstrate the US government's commitment to protecting nature and its well-being through a joint effort by all of society and intends to achieve sustainable, inclusive, and prosperous ocean by protecting healthy ocean ecosystems, strengthening community resiliency, and advancing the just economy.

Marine security has become an essential condition for China's peaceful development and is the center of gravity of national security. It is related to both external and internal security, homeland and national security, traditional and non-traditional security, development and security, and its own security and common security. It must be guaranteed by strengthening the rule of law on marine security. Using methods such as literature analysis and comparative research, the paper compiles and analyzes relevant studies on the rule of law for marine security at home and abroad and compares the legislation and strategies for marine security in different countries and regions, identifying commonalities and differences, and summarizing China's shortcomings and challenges with regard to the rule of law for marine security on this basis. The paper aims to provide theoretical support and practical guidance for the construction and improvement of China's marine security rule of law system, in

order to promote the realization of the country's marine security and the strategy of a strong maritime nation. The paper has formed the following structure under the guidance of the research objectives: firstly, the current Chinese domestic literature on the construction of the rule of law on marine security is sorted out, then the current status of the current marine security legislative system is analyzed, and on the basis of exploring the problems faced by the construction of the rule of law on marine security, suggestions for the improvement of the system of the rule of law on marine security are put forward.

## 2 Literature review

In recent years, the study of marine security and the rule of law in marine security has become a significant issue of concern to scholars. Marine security has gradually evolved from a subset of transportation security to an essential aspect of international security and geopolitical relations (Liu X. Y., 2023). Understood in the former sense, the rule of law on marine security has become a fundamental justification for maritime activities to safeguard the sovereignty and freedom of activities such as maritime transportation, the exploration of marine resources, and the maintenance of international maritime public order.

There is no unified concept of marine security, and its scope is constantly changing with the development of society and changes in the international situation; any element that involves a country's marine security interests can constitute marine security in a broad sense (Klein, 2011, p. 8). Some scholars believe that marine security can be summarized as an objective state in which there is no danger to national maritime interests, including no threat from the sea, and maritime rights and interests, and maritime exploitation and utilization activities are not infringed upon or encountered in danger (Wu and Zhang, 2010), which can be precisely divided into two categories: traditional marine security and non-traditional marine security (Wu, 2021). The former includes maritime military security and sea defense security. In contrast, the latter includes emerging security issues such as maritime terrorism, illegal activities at sea, marine natural disasters, marine pollution, ocean acidification, and safety of sea lanes and routes (Jin, 2012; Wu and Zhang, 2015), which some scholars have also expressed as territorial and sovereignty security, security of maritime rights and interests, security of strategic maritime corridors, and security of strategic activities at sea (Xing, 2019), or summarized into four subconcepts, namely, maritime strength, marine security, blue economy and artificial activity capability (Bueger, 2015). Marine security has become an all-round, multi-level, and comprehensive concept (Li, 2019), which needs to be combined with specific sub-concepts in a particular context to achieve a clear ideology and designation (Wang, 2024). The ever-changing international situation has led to expanding the scope of marine security and increasing its strategic importance.

The rule of law in marine security is not controversial in the Chinese academic community. The scholar believes that the rule of law for marine security refers to a comprehensive system for safeguarding the maritime rights and interests of the State,

maintaining the order of the seas, and protecting the marine environment through legal means, and that the system of the rule of law for marine security comprises four aspects, namely, legislation, law enforcement, justice, and international cooperation, and that it should focus on systematization and coordination (Xue, 2005). Then, based on the concept of the rule of law in marine security, the scholar summarized the core of the rule of law in marine security, namely, the core of the rule of law in marine security is to safeguard the sovereignty and jurisdiction of the State in the maritime domain, while taking into account the basic principles of the international law of the sea. The State should actively participate in international maritime affairs and promote the improvement of the international legal system of the oceans and seas to safeguard the maritime interests of the State (Amirell, 2016). At this level, China's strategic approach of building a marine community of shared future provides a Chinese program for the sustainable development of marine resources and calls on all countries to improve the governance of marine security (Fu and Wang, 2023).

The role of the rule of law for marine security in social development and the need to build a rule of law system for marine security has gradually emerged. The scholar has pointed out that global trade relies on the transportation of large quantities of goods and raw materials around the world by sea, and that marine security has a bearing on the global economy, but that there are still several critical issues in the current rule of law system for marine security, such as piracy, terrorism, regulatory methods, and economic disputes resulting from marine security measures. The rule of law in marine security is a critical issue in the current marine security rule of law system (Marlow, 2010). Furthermore, countries around the world have begun to intensify their competition for economic benefits and marine resources (Shriram and Giri, 2023). In the face of the complex international situation, China needs to make corresponding adjustments in its strategic theories and policies, and to shape the regional cooperation structure on peripheral maritime issues (Yang, 2022). However, establishing the rule of law in marine security takes much work, and multiple factors must be considered. It has been noted that when States and regional organizations emphasize their need, willingness, or obligation to "ensure the freedom of the seas," "preserve the global commons," "promote good governance of the seas," or "ensure the management of the seas," it is the geopolitical forces and factors that come into play, and not just "good faith" intentions (Germond, 2015).

In this regard, many Chinese scholars have conducted valuable discussions on the rule of law in marine security in China. The scholar has analyzed the new challenges and shortcomings facing China's rule of law on marine security based on the background of the significant change that has not occurred in a century and explored the path to enhance the level of the rule of law on marine security (Zhang H. W., 2022). From the perspective of the Overall National Security Outlook, the scholar put forward legislative proposals and implementation paths to strengthen China's marine security by analyzing the historical changes and development paths of China's awareness of safeguarding marine security (Wang G., 2022). The scholar discusses the importance of

accurately grasping the relevant policies for the rule of law in China's marine security from the perspective of China's foreign policy on boundary and ocean affairs with its own characteristics (Hai, 2022). In addition, some scholars study the rule of law on national marine security from the perspective of the law of the sea (Jin, 2010). As well as systematic theoretical research on the construction of the rule of law security system for China's marine security in the new era (Guo and Yan, 2024). Finally, the scholar suggests giving full play to the fundamental role of marine cultural exchanges and integration and promoting the realization of the framework of marine cultural cooperation by proposing concrete and feasible practical paths (Cody, 2022).

Although the academic community has begun to recognize the importance of the rule of law in maintaining and safeguarding China's national marine security interests, from the point of view of the existing research, the focus of the improvement of the rule of law system for marine security should no longer be limited to the development of the direction of the type of macro-direction of the research and judgment. It should be in-depth legislation of the specific measures, law enforcement of the specific means, the specific way of justice, and the particular development of international cooperation, and to put forward practical recommendations.

### 3 China's legislative system for marine security

Legislation is the foundation of the rule of law. Declaring the territorial sovereignty and maritime rights of one's country and regulating the conduct of one's subjects and the subjects of other countries in the relevant area through legally binding means is a concrete manifestation of State sovereignty and a requirement under international law for the proper acquisition and implementation of the rights of States (Blum, 1965, p. 114). After more than 70 years of legislative practice, China has formed a particular legal system in the field of marine security, which covers the areas of maritime territorial security, maritime resource security, maritime navigation security, and maritime ecological security, as well as law enforcement in the field of marine security and international cooperation in marine security.

#### 3.1 Basic composition of China's legislative system for marine security

##### 3.1.1 Sovereign security legislation

Sovereignty is one of the essential elements of a State, a sign of its independence and a fundamental realization and reliable guarantee of its interests. Article 2 of the *United Nations Charter* stipulates the principle of sovereign equality. Only when the boundaries of sovereignty are clearly defined can jurisdiction, exploitation rights, and other interests be formed based on derivation. In China's legislative system, there is no unified basic law on the seas or specialized law on marine security. However, two laws play the function of safeguarding the security of maritime sovereignty and fundamental rights and interests, namely the

*Territorial Sea and the Contiguous Zone Law*, which came into force in 1992, and the *Exclusive Economic Zone and the Continental Shelf Law*, which came into force in 1998. It extends the scope of application of China's laws from land territory (including internal waters) to the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf. It clarifies the spatial scope of China's maritime legislation.

The *Territorial Sea and Contiguous Zone Law* establishes China's system of the territorial sea, and the contiguous zone based on the 1958 *Declaration on China's Territorial Sea* and its practice. Article 1 of the Law specifies the legislative purpose of "exercising the sovereignty over the territorial sea and its right to control the contiguous zone and safeguarding national security and maritime rights and interests", thus shaping a clear legal basis for sovereignty and the right to control. The Law also grants the relevant authorities the right of hot pursuit of foreign vessels that violate Chinese laws and regulations. It confirms the right of control exercised to prevent violations of laws and regulations relating to security, customs, finance, sanitation, and entry and exit control in China's land territory, internal waters, or territorial sea.

The *Exclusive Economic Zone and the Continental Shelf Law* extends China's sovereign rights further into the sea from the outer limits of the territorial sea, establishing China's sovereign rights over the exclusive economic zone and the continental shelf regarding natural resources and other economic exploitation and exploration activities. It also establishes China's jurisdiction over the construction and use of artificial islands, facilities, and structures in the exclusive economic zones and the continental shelf, marine scientific research and protecting and preserving the marine environment. It establishes the exclusive right to authorize and regulate drilling on the continental shelf for all purposes. In particular, reservations were made concerning the historical rights enjoyed by China.

In addition, based on the fundamental interests in maritime space, the legislative system has made some derivations accordingly. For example, the 2000 *General Flight Rules* divides a number of flight information zones over China's territory, the contiguous zone, the exclusive economic zone, and the adjoining high seas, and the *Law on the Administration of Sea Areas* establishes the rudimentary systems of maritime area use administration such as maritime functional zoning system, maritime area tenure management system, maritime area compensated use system, to strengthen the administration of maritime area use, safeguard the lawful interests and rights and benefits of the State's ownership of maritime areas and the owners of the right to use maritime areas, as well as promoting the rational development and sustainable utilization of maritime areas. Chinese provinces such as Fujian, Guangdong and Zhejiang have also issued special regulations on the *Regulations on the Administration of the Use of Sea Areas*.

### 3.1.2 Resource security legislation

The seas are an essential economic space, and the sustainable development and utilization of the mineral, biological, and deep-sea resources contained in the oceans are directly related to a country's economic growth and energy security (Li, 2024).

In terms of mineral resources, the *Regulation on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises* was the first time that China explicitly declared, in legal form, its ownership of the continental shelf and other petroleum resources in the maritime areas under China's jurisdiction, and explicitly stipulated that the Chinese government protects the rights and interests of foreign enterprises participating in the cooperative exploitation of marine petroleum resources by the law. The *Mineral Resources Law* stipulates the State's ownership of mineral resources and regulates the exploration and exploitation of mineral resources in the territory and maritime areas under its jurisdiction.

In terms of biological resources, the *Fisheries Law* and the *Detailed Rules for the Implementation of the Fisheries Law* extended China's fisheries jurisdiction from internal waters and territorial sea to all other maritime areas under the jurisdiction.

In terms of deep-sea resources, the *Law on the Exploration and Development of Resources in Deep Seabed Areas* is the first Chinese law regulating the activities of Chinese citizens, legal persons, or other organizations engaged in the exploration and exploitation of resources in deep seabed areas in maritime areas beyond the limits of national jurisdiction. It is an essential embodiment of China's active fulfillment of the *United Nations Convention on the Law of the Sea (UNCLOS)* and other international obligations. It is significant to the sustained and healthy development of China's maritime industry and humanity's peaceful utilization of deep seabed resources.

### 3.1.3 Navigation security legislation

The safety of navigation has a bearing on a country's economic and trade activities and the transportation of strategic goods (Ma, 2016). The *Maritime Traffic Safety Law* is the most basic and essential law on the management of China's maritime traffic safety. It establishes the primary system for the management of China's maritime traffic safety by laying down explicit provisions on the strengthening of the management of maritime traffic and on safeguarding the safety of ships, installations and the lives and property of people.

In addition, as maritime activities involve issues such as the scope of maritime areas, ships, and ports, the *Law on the Administration of Sea Areas*, the *Maritime Law*, and the *Ports Law* also contain provisions relating to the safety of navigation on the sea. Together, these provisions constitute a system of legislative safeguards for the safety of navigation that regulates maritime traffic.

### 3.1.4 Ecological security legislation

The inviolability of the marine and island environments directly impacts the sustainable utilization of resources and the ecological balance of coastal areas (Li, 2022). The *Constitution* and the *Marine Environmental Protection Law* have both made general provisions on the marine environment, such as Article 26 of the *Constitution*, which requires that "the State protects and improves the living environment and the ecological environment and prevents and treats pollution and other public hazards", and that "ecological



civilization” has also been explicitly written into China’s 2018 *Amendments to the Constitution*, specifically in various areas.

In terms of marine ecology, the *Marine Environmental Protection Law* explicitly includes safeguarding ecological security as one of its legislative objectives. Article 73 stipulates that the competent department of ecology and environment under the State Council must conform to the safety principle in selecting and designating marine dumping areas. Article 84 stipulates that for the loading and unloading oil and toxic and hazardous cargoes, both sides of the ship and the shore must comply with the safety and anti-fouling operation regulations. The Law is the earliest, most direct, and most important law on marine environmental protection in China and has played a crucial role in protecting the marine environment and building a marine ecological civilization. The amended *Marine Environmental Protection Law* in 2023 improves the legal system of marine environmental protection, strengthens the management of the marine environment and the relevant legal responsibilities, is more adaptable to the requirements of the development of international marine affairs, and is more closely connected with the relevant international treaties (Liu, 2024). In addition, the *Regulation on Control Overdumping of Wastes in the Ocean* and the *Regulation on the Prevention and Control of Marine Pollution from Ships* have been complemented by other documents.

In terms of island ecology, the *Island Protection Law*, in keeping with the legislative intent of protecting the ecosystems of sea islands, rationally exploiting and utilizing natural resources, maintaining the ecological balance of sea islands and their surrounding waters, and promoting sustainable economic and social development, establishes the island protection planning system, island ecology protection system, uninhabited island state ownership and paid use system, special protection of islands for particular purposes system, and island protection supervision and inspection system.

### 3.1.5 Legislation regulating law enforcement and judicial activities relating to marine security

Marine law enforcement is an essential part of safeguarding national maritime sovereignty, protecting the marine environment, and guaranteeing national security (Wang G., 2022). The *Coast Guard Law* was formally enacted in 2021, ensuring its purpose is to safeguard China’s national sovereignty and marine security rights and interests, which regulates and guarantees the maritime police agencies to carry out maritime rights protection and law enforcement work (Liu and Hu, 2024). Article 5 of the Law stipulates that the maritime rights protection and law enforcement work of the marine police agencies is mainly to carry out maritime security and defense and to maintain law and order at sea. Under the authority of the *Coast Guard Law*, since 2023, the China Coast Guard has issued the *Provisions on the Procedures for Handling Criminal Cases by Marine Police Agencies*, the *Provisions on the Procedures for the Handling of Criminal Reconsideration and Review Cases by Coast Guard Agencies* and the *Provisions on the Procedures for the Administrative Law Enforcement by Marine Police Agencies*, which provide a more detailed and more explicit legal basis for safeguarding and supervising the performance of the duties of marine police agencies by the law.

Maritime justice is essential to national maritime sovereignty, security and maritime rights and interests (Jia, 2019). Judicial reforms such as the 1999 *Special Maritime Procedure Law*’s special provisions on the territorial jurisdiction of the maritime disputes concerned. A series of interpretations on maritime justice formulated by the Trial Committee of the Supreme People’s Court since 2015<sup>1</sup>, all of which are conducive to the strengthening of judicial control over marine security and order, have promoted the standardization of the exercise of jurisdiction by the maritime courts by the law, the performance of maritime adjudicative functions, the fair trial of various types of maritime cases, the protection of the legitimate rights and interests of Chinese and foreign parties by the law, and the effective upholding and manifestation of China’s judicial sovereignty over its oceans and seas, as well as the safeguarding of the maritime rights and interests of the country have been safeguarded. China’s current effective laws and regulations related to marine security are summarized in Table 1.

## 3.2 Characterization of existing legislative practice on marine security

First, a strategic plan for national marine security has been initially formed, but the legislative system still needs to be strengthened. To rule the sea by law, the first thing to do is to “have a law”. The 18th and 19th CPC National Congresses planned to build maritime power, and the 20th CPC National Congress included “marine security” as a critical area of national security for the first time (Xi, 2022). The rule of law system is a top priority in improving the national security guarantee system, and the strategic path to safeguard China’s marine security interests through the rule of law is becoming more apparent. At present, China’s legal system for the seas has made remarkable achievements, with the promulgation of the *Marine Environmental Protection Law*, the *Territorial Sea and Contiguous Zone Law*, the *Exclusive Economic Zone and the Continental Shelf Law*, the *Maritime Traffic Safety Law*, the *Provisional Regulations on the Management of National Sea Area Use*, and the *Provisions on Administration of Foreign-related Marine Scientific Research*, among other laws and regulations relating to the seas. At the same time, coastal provinces and cities have also formulated many local marine laws and regulations, effectively promoting the development of China’s marine economy. However, in order to fully meet the needs of marine management under the new situation, the system of legislation is still being further improved. On the one hand, maritime elements need to be reflected in the *Constitution*, and a

1 Such as *Provisions of the Supreme People’s Court on the Scope of Cases Accepted by the Maritime Courts*, *Provisions of the Supreme People’s Court on Jurisdictional Issues in Maritime Litigation*, *Provisions of the Supreme People’s Court on Several Issues Concerning the Trial of Cases Occurring in the Waters under the Jurisdiction (I)*, and *Provisions of the Supreme People’s Court on Several Issues concerning the Trial of Cases Occurring in the Waters under the Jurisdiction (II)*.

TABLE 1 Laws and Regulations Relating to marine security in Force in China.

Legislative field		Name of legal document	Time of enactment
Sovereign security legislation	National legislation	Territorial Sea and the Contiguous Zone Law	1992
		Exclusive Economic Zone and the Continental Shelf Law	1998
		General Flight Rules	2000
		Law on the Administration of Sea Areas	2001
	Local legislation	Regulations on the Administration of the Use of Sea Areas issued by provinces Shandong	2003 (2015 revision)
		Regulations on the Administration of the Use of Sea Areas issued by provinces Jiangsu	2005 (2020 revision)
		Regulations on the Administration of the Use of Sea Areas issued by provinces Fujian	2006 (2016 revision)
		Regulations on the Administration of the Use of Sea Areas issued by provinces Guangdong	2007 (2021 revision)
		Regulations on the Administration of the Use of Sea Areas issued by provinces Zhejiang	2012 (2017 revision)
Resource security legislation	Mineral resources	Regulation on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises	1982 (2013 revision)
		Mineral Resources Law	1986 (2009 revision)
	Biological resources	Fisheries Law	1986 (2013 revision)
		Detailed Rules for the Implementation of the Fisheries Law	1987 (2020 revision)
	Deep-sea resources	Law on the Exploration and Development of Resources in Deep Seabed Areas	2016
Navigation security legislation	The basic law	Maritime Traffic Safety Law	1983 (2021 revision)
	Maritime activities involving sea areas, ships and ports	Law on the Administration of Sea Areas,	2001
		Maritime Law	1992
		Ports Law	2003 (2018 revision)
Ecological security legislation	Marine ecology	Marine Environmental Protection Law	1982 (2023 revision)
		Regulation on Control Overdumping of Wastes in the Ocean	1985 (2017 revision)
		Regulation on the Prevention and Control of Marine Pollution from Ships	2009 (2018 revision)
	Island ecology	Island Protection Law	2009
Legislation regulating law enforcement and judicial activities relating to marine security	Marine law enforcement	Coast Guard Law	2021
	Marine justice	Special Maritime Procedure Law	1999

ruling maritime basic law or a special marine security law should be enacted (Sheng, 2008). On the other hand, the existing legislative level of marine security is not high, and relevant provisions are scattered in the fields of sovereignty security, resource security, ecological security, navigation security, law enforcement and justice, and the legislative process in various fields needs to be narrowed.

Second, China has actively translated international rules, such as UNCLOS, into domestic law and gradually improve the operability of legislation (Yu, 2023). In China's practice of transforming UNCLOS into domestic law, it has more direct reference to principled provisions and oath provisions, and the detailed interpretation or matching system needs to be further improved. In addition, with the emergence of new challenges

such as global climate change, biodiversity conservation, ocean acidification, and polar governance, combined with China's strategic concept of building a non-zero-sum "ocean community with a shared future", how to establish a global maritime order based on international maritime rule of law in the future international governance of marine security needs to improve the necessary issue setting capacity (Wu, 2023).

Third, some progress has been made in promoting the rule of law at the national level and the rule of law relating to foreign affairs in an integrated manner, and the means and methods are being further diversified. China has concluded 16,000 foreign-related maritime cases in 2023 (Supreme People's Court, 2024). Resolving disputes over maritime rights and interests through

various legal means has become one of the core connotations of China's efforts to build a strong maritime nation and safeguard marine security. On the whole, China's approaches and means to deal with maritime disputes and disputes over maritime rights and interests focus on traditional political diplomacy and maritime law enforcement (Zhang N., 2022), and it is gradually realizing the organic integration of civil activities, administrative management and law enforcement, judicial jurisdiction and trial, and introducing mechanisms such as public interest litigation (Wang and Duan, 2019).

Fourth, marine rule of law institutions are relatively complete, and marine rule of law education and awareness of marine security rule of law need to be further strengthened. At present, in addition to the national legislature, including the National People's Congress, there are marine law enforcement agencies such as marine surveillance, public security, fisheries administration, fisheries supervision and marine environment monitoring, and maritime judicial organs such as maritime prosecutors and courts. It should be said that the national marine legislation, law enforcement and judicial institutions are relatively complete. In addition, marine rule of law education is an important part of national cultural education, and the formation of national awareness of marine security rule of law mainly depends on education (Liu X. H., 2023). China needs to set up marine rule of law culture propaganda institutions (such as Marine radio, television), improve special marine education and its administrative institutions, and no courses related to marine security rule of law culture have been set up in middle and primary schools.

## 4 Problems facing marine security and their legislative response in China

The rule of law has become the preferred option for safeguarding China's marine security interests. Marine security interests refer to the sovereign unity and territorial integrity of the State, the well-being of the people, the sustainable economic and social development of the economy, and other primary maritime interests of the State in maritime space and the direction of the seas (State Oceanic Administration, 2017, p. 223).

### 4.1 Complexity and variability of disputes over maritime rights and interests

Neighboring countries have differences and disputes with China over the ownership of islands and reefs and the delimitation of maritime areas, such as the South China Sea (Zeng, 2021). The instability of the international situation and the intervention of certain countries have made it more challenging to resolve these disputes. Therefore, the construction of the rule of law for marine security in China should, first and foremost, clarify the boundaries of rights and interests, safeguard national sovereignty, and make a positive response in the application of international law and the improvement of domestic legislation.

### 4.2 Intense competition for marine resources

With the growth in global resource demand, competition for marine energy, fisheries, and other resources has intensified (Su, 2023). China is facing pressure to participate in formulating international rules and safeguarding its rights and interests in developing marine resources by the law. In terms of marine resources, the sea area to which China belongs is rich in resources, with a large number of marine biological resources and mineral resources such as oil and natural gas. However, due to heavy fishing and marine pollution over a long period, offshore marine resources are becoming increasingly depleted, biological diversity is being challenged, and marine biological disasters such as red tides caused by pollution are occasionally occur (Man, 2014).

The *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement)* was adopted on 19 June 2023 by the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction convened under the auspices of the United Nations. The *BBNJ Agreement* becomes the third implementing agreement to *UNCLOS*. Under the overall objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long-term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination, the *BBNJ Agreement* addresses four main issues: marine genetic resources, including the fair and equitable sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. However, China lacks mature legal norms for the development and utilization of emerging marine resources. China should establish and improve the rule of law safeguards for exploration and development in accordance with the *BBNJ Agreement* to cope with the legal risks that may arise.

### 4.3 Increased pressure on marine ecosystems

Global climate change has led to problems such as sea-level rise and ocean acidification, which threaten our marine ecological security (Feng, 2024). These risks are caused by both natural causes, such as the Indian Ocean tsunami that hit Thailand, Indonesia, and other countries in 2004; man-made causes, such as the oil pollution from ConocoPhillip's drilling platform that occurred in China's Bohai Bay in 2011; and also by a combination of natural and man-made causes, such as the Tohoku Earthquake and Tsunami in Japan in 2011, as well as the leakage and pollution from a nuclear power plant. The international community's response to the marine ecological problem has been positive. The international community's cooperation mechanism

for dealing with marine ecological issues is imperfect. China needs to strengthen the construction of the rule of law for domestic marine ecological protection, while striving for more discourse power and international cooperation opportunities (Huang and Xu, 2023).

Transboundary marine pollution incidents occur occasionally, and the related definition of responsibility and governance mechanisms are controversial at the international level. China must improve its domestic laws to strengthen its response and safeguard its rights and interests under the international legal framework (Yuan, 2022).

#### 4.4 Legal gaps arising from developments in marine science and technology

Rapid marine science and technology development, such as deep-sea exploration and marine biotechnology, has brought new security and legal issues. Existing laws are inadequate in regulating emerging marine science and technology activities, and China needs to formulate relevant laws and regulations promptly to ensure the safe and orderly development of marine science and technology.

The international rules for the protection and utilization of marine scientific and technological achievements have not yet been harmonized, and our country, while promoting marine scientific and technological innovation, should protect its intellectual property rights and technological advantages through the rule of law.

### 5 Overall improvement of the rule of law system for marine security in China

In order to maintain China's marine security and accelerate the building of a strong maritime country, the first and foremost meaning of the rule of law is to have a law to follow. With the development of science and technology and changes in the international situation, the connotation of the rule of law in marine security has gradually been enriched. It has evolved into a comprehensive system of the rule of law in marine security, covering legislation, law enforcement, justice and compliance (Bueger, 2015). The rule of law for marine security should safeguard the maritime rights and interests of States, maintain maritime order, protect the marine environment, and address issues arising from the development of marine science and technology. With globalization and the complexity of international relations, more attention should be paid to the systematic and coordinated nature of the rule of law for marine security, emphasizing coordination and cooperation among various sectors and levels to maximize overall effectiveness.

#### 5.1 Consolidating sea-related norms and promoting the formulation of the basic law on the seas

The formulation of the basic law on the seas will lead to the construction of the rule of law for the sea and provide a fundamental legal basis for maintaining China's marine security. It will declare China's basic claims for the sea and establish the overall framework of China's legal system for the seas (Yang, 2021).

The world's central coastal States are actively defending their maritime claims and rights and interests in the form of laws, and the most common practice is to formulate a comprehensive and integrated basic law on the seas. For example, Canada enacted the *Oceans Act* in 1997, the UK promulgated the *Marine and Coastal Access Act* in 2009, and Japan and Vietnam have also adopted basic laws on the seas to provide comprehensive rule of law guarantees for the development of their ocean endeavors. Japan updates its ocean action plan every five years by its basic law to ensure the implementation of the various regimes in the *Basic Act on Ocean Policy*.

Accelerating the building of a strong maritime country is a national strategy and an essential manifestation of the national governance system and governance capacity in the maritime domain (Lin, 2021). In the field of marine strategy, China has long used policy documents instead of legislation, and has formulated and implemented planning documents such as the *China Ocean Agenda 21*, the *National Ocean Development Plan*, the *State Council on Functional Divisions of the Sea*, and the *Outline of the National Plan for the Development of the Marine Economy*, but these policy documents have not been able to fundamentally serve as guidance for the operation of the rule of law on the oceans of China, which is required at the level of a national strategy. Therefore, China urgently needs to promulgate the basic law on the seas to fundamentally resolve the situation in which there is no basis for implementing marine strategies. At the same time, it should cover the legal system of marine security, refine the conceptual formulation of laws and regulations, standardize the paradigm of expression, and improve the transparency, scientificity, and operability of the law, so as to cope with the increasingly complex situation of marine security.

#### 5.2 Refining the legal provisions on marine security

The concept of the Overall National Security Outlook and the introduction of the *National Security Law* highlight the great importance that the State attaches to national security and the importance of national security to the development of China. The Overall National Security Outlook emphasizes people's security as the tenet, political security as the fundamental, economic security as the basis, military, cultural, and social security as the safeguard, and the promotion of international security as its backbone.<sup>2</sup> From an overall perspective, it coordinates all aspects of national security in the new era, incorporates the rule of law throughout the entire process of safeguarding national security, effectively prevents and

<sup>2</sup> Article 3 of the *National Security Law* (2015).



resolves security risks, and advocates the security concept and outlook of “common, comprehensive, cooperative and sustainable security” (Li, 2021).

Under the vision of a holistic approach to national security, marine security is not only an important element but also a basic manifestation of national security (Qin, 2015). In terms of marine security, the Overall National Security Outlook mentions deep-sea security, and the *National Security Law* mentions “non-traditional security”, “protection of territorial sea security”, “safeguarding national maritime rights and interests”, and “maintaining China’s security in the international seabed area”, all of which fully demonstrate that marine security is an essential component of national security. However, these provisions do not explicitly specify what marine security in these areas encompasses, nor do they define the relevant elements of marine security. At a time when marine security is becoming increasingly important, there is an urgent practical need to refine the relevant provisions on marine security at the legal level.

In formulating the basic law on the seas, specific provisions on marine security can be perfected. Guided by the Overall National Security Outlook and the relevant provisions of the *National Security Law*, the specific contents of marine security can be refined, and specific provisions can be made on China’s concept of marine security, the basic principle of protecting marine security, the primary connotation of marine security, the functional departments responsible for safeguarding marine security, and the mechanism for preventing and resolving risks to marine security, to cope with the maritime risks faced by China and safeguard its marine security.

### 5.3 Improving the classification and grading system of marine data to ensure the security of marine data

Marine data plays a vital role in marine security, and improving the classification and grading system of marine data and protecting marine data is of great practical significance for safeguarding marine security and promoting data circulation.

Concerning the classification and grading of marine data, based on safeguarding marine security, marine scientific and technological development and changes in the marine industry should be tracked, and marine data relating to national security, the lifeblood of the national economy, meaningful livelihoods and significant public interests should be recognized as core national data and subjected to a stricter management system, by the provisions of Article 21 of the *Data Security Law*. It has also determined a specific catalog of essential data in the marine field by the data classification and hierarchical protection system and has provided vital protection for data included in the catalog. At the same time, consideration can be given to the establishment of a corresponding marine data exchange platform to standardize the management of various types of maritime and ocean data at all levels and to enhance the protection of data to safeguard China’s marine security better.

### 5.4 Promoting the reform of the trial mechanism of the Maritime Court and improving the ability to safeguard maritime rights and interests using the rule of law

The protection of national security interests has become an essential element in the construction of foreign-related rule of law (Zhang, 2022). In the foreign-related rule of law, China’s maritime judicial trial system and mechanism have distinctive features, and the current Chinese maritime trial system has apparent localized and trans-regional features. At the same time, maritime judicial cases have an apparent specialization, most foreign-related. The Supreme People’s Court pointed out in the *China Maritime Trial (2018-2021)* that since establishing the 11 maritime courts, China’s maritime trial practice has been increasingly developed. China has built the Asia-Pacific Maritime Judicial Center and is moving towards building an international maritime justice center. In the context of the new era of integrating the rule of law at the national level and the rule of law relating to foreign affairs, the establishment of a sound “three-trial-in-one model” maritime trial mechanism will become a trend in the development of the rule of law relating to foreign maritime affairs (China International Commercial Court, 2022). For example, the Ningbo Maritime Court publicly pronounced judgment on China’s first maritime criminal case involving a significant liability incident involving a ship, the case of the vessel Triumph Worker 999, which has led to the development of maritime criminal, maritime administration, marine environmental resources and other areas of innovation (Zhejiang Maritime Safety Administration, 2019).

Concerning disputes over islands and maritime rights and interests between China and its neighbors, China’s sovereignty and jurisdiction in the disputed maritime areas should be strengthened in light of the realities of the situation through the adoption of comprehensive means, such as the strengthening of civil activities, administrative management and law enforcement, and judicial jurisdiction and trial (Bai and Wang, 2017). For individuals, enterprises, and organizations at home and abroad that seriously infringe upon China’s marine security, in addition to administrative penalties by the law, it is necessary to introduce a litigation mechanism to increase public interest litigation in the field of the legal protection of marine security and to pursue the legal responsibility of units and individuals that harm the country’s maritime rights and interests.

## 6 Conclusion

Marine security is a crucial area of national security in China, and the rule of law system is the first step in improving the national security system. The rule of law will become the priority choice for maintaining China’s national marine security interests. As a country moving from a major maritime country to a strong maritime country, it is crucial to effectively safeguard national marine security interests as the strategy of maritime strengthening continues to advance. Strengthening the rule of law in China’s marine security is an important initiative to respond positively to

the adherence to the rule of law comprehensively and promote the construction of China under the rule of law. How effective it is will affect the realization of China's strategic goal of becoming a strong maritime power and the effectiveness of China's efforts to maintain the world's marine security order. In addition, while promoting the strategy of constructing a strong maritime country, China should promote the construction of a marine security community and strengthen international or regional cooperation in the prevention of and response to marine security risks to safeguard its marine security better.

## Data availability statement

The original contributions presented in the study are included in the article/supplementary material. Further inquiries can be directed to the corresponding author.

## Author contributions

LW: Writing – original draft, Writing – review & editing.

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