

Original Paper

Research on the Application of the Collective Discussion System for Administrative Officials in Maritime Administrative Penalties

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Abstract

The collective discussion and decision-making system of administrative heads in maritime administrative penalties combines internal democratic decision-making, power balance attributes, and special internal administrative procedural characteristics. The current system has the problem of unclear applicable standards, and normative documents at or above the provincial level have not elaborated on situations such as “complex circumstances” and “major violations”, resulting in excessive discretionary power of administrative agencies and significant differences in handling similar cases in practice. In this regard, the applicable situations can be refined from three dimensions: the clear procedural requirements focus on the amount threshold and rigid procedural requirements, the composite standard discretion type covers professional identification difficulties, legal application disputes, and evidence chain doubts, and the social impact assessment type focuses on the group effects and media attention caused by the case, in order to regulate maritime administrative penalties and ensure the rational use of marine resources.

Keywords

Administrative penalties in maritime areas, collective discussion system, applicable standards, improved procedures

1. Introduction

At present, with the vigorous development of the marine economy and the deepening of the strategy of building a maritime power, there are frequent activities in the development and utilization of sea areas, which puts higher demands on the fairness and scientificity of administrative penalties in sea areas. The importance of the collective discussion and decision-making system among administrative officials is becoming increasingly prominent. Early maritime regulations provided relatively simple provisions for this system, but with the development of maritime rule of law, although it has been refined, problems frequently arise in practice. Based on this background, this article selects typical cases of maritime administrative penalties based on existing marine regulations, deeply explores their applicable legal issues, draws on useful experience, and strives to improve the system, providing effective ideas and

methods for regulating maritime administrative penalties and ensuring the rational use of marine resources, and assisting in the construction of maritime rule of law.

2. The Nature of the Collective Discussion System among the Heads of Administrative Agencies in Maritime Administrative Penalties

To analyze the nature of this system, it is necessary to approach it from multiple perspectives: it involves the functions of internal democratic decision-making and power balance, as well as the attributes of special internal administrative procedures, and is also related to the theoretical disputes and consensus of internal and external procedures. The following analysis will be conducted layer by layer.

2.1 Reflection of Internal Democratic Decision Making and Power Balance

The collective discussion procedure is an important mechanism for democratic decision-making within administrative agencies, and its core value lies in optimizing the quality of decision-making through collective wisdom while constraining the abuse of administrative power. Jiang Ming'an divides administrative democracy into two forms: external democracy and internal democracy. The former emphasizes public participation (such as hearings and publicity systems), while the latter focuses on procedural norms within the administrative system (such as collective discussions and hierarchical approvals) (Jiang, M. A., 2023, pp. 13-17). In the field of administrative penalties, collective discussions are mainly applicable to two types of special cases: cases with complex illegal circumstances and cases involving major illegal acts. Such cases often have high social sensitivity or difficulty in legal application, and require collective discussion to ensure the legality and rationality of the punishment decision.

From the perspective of institutional design, the collective discussion procedure has a dual function: on the one hand, it provides a platform for law enforcement personnel to express professional opinions, which helps overcome personal cognitive limitations; On the other hand, it achieves a balance between efficiency and fairness through the operation mechanism of democratic centralism (i.e., "collective discussion + executive decision-making"). It is worth noting that this institutional arrangement is not purely "democratic decision-making", but retains the final decision-making power of the executive head and requires them to bear corresponding responsibilities, effectively avoiding the dilemma of "collective responsibility but no one is responsible".

2.2 Special Internal Administrative Procedures

From the perspective of administrative procedural law, collective discussion and decision-making have distinct procedural characteristics. The 57th article of the revised Administrative Penalty Law in 2021 clearly positions it as a key procedural link "after the investigation is concluded and before the penalty decision", revealing its pivotal position in the process of administrative penalty. Yano Hiroshi's theory of administrative process emphasizes that modern administrative law should focus on the dynamic process of the exercise of administrative power, rather than solely on the final decision (Jiang, L. H., 2014). Under this theoretical framework, collective discussion, as a key link in the formation of administrative decisions, has a direct impact on the legitimacy of the final punishment decision due to its procedural

legitimacy.

The dichotomy of internal and external procedures proposed by Zhang Shufang provides an important reference for understanding the nature of collective discussion. She pointed out that internal procedures mainly adjust the relationships between various entities within the administrative system, while external procedures regulate the interaction between administrative agencies and counterparties (Zhang, S. F., 2008, pp. 38-44). Although collective discussion is formally an internal procedure, its uniqueness lies in the fact that it directly determines the outcome of administrative penalties and has a substantial impact on the rights and obligations of the parties involved. He Haibo refers to such programs as “internal programs with external effectiveness”, believing that although they have no relative involvement, they can generate external legal effects by determining the output of content (He, H. B., 2022, p. 357). This particularity has led to a unique position for collective discussion procedures in the administrative procedural system, and has also sparked theoretical disputes over whether they should be subject to judicial review.

2.3 Internal and External Program Disputes and Theoretical Consensus

There is a clear divergence in academia regarding the legal attributes of collective discussion procedures, which essentially reflects different understandings of the classification standards for administrative procedures. Professor Ye Bifeng holds the “external program theory”, which has a distinct perspective on institutional evolution in its argumentation logic. He believes that with the clear provisions of the Administrative Penalty Law on the collective discussion system, the system has shifted from the traditional category of organizational law (internal rules of procedure) to the category of behavioral law (legal procedural requirements), especially when combined with the system of explaining reasons, which highlights its external procedural characteristics (Ye, B. F., 2022, pp. 31-42). This viewpoint emphasizes the role of legal provisions in shaping the nature of procedures and has important theoretical implications. However, most scholars still adhere to the “internal program theory”, which is mainly based on the standards of program participants. Scholars such as Zhang Shufang and He Haibo believe that the core criterion for determining the internal and external attributes of a program lies in whether the relative person participates in the program’s operation. Professor Lu Zhengfeng further deepened this viewpoint, proposing that internal procedures can be divided into pure internal procedures and external behavioral pre procedures, and categorizing collective discussions into the latter (Lu, Z. F., 2018, pp. 106-112). This refined classification method not only acknowledges the internal procedural nature of collective discussion, but also reveals its differences from general internal procedures.

The current theoretical consensus tends to classify collective discussion as an internal procedure, but at the same time emphasizes its particularity: firstly, although it does not involve direct participation of the parties involved, it has a significant impact on the rights and interests of the parties involved; Secondly, as a legal procedure, its operational flaws may lead to the revocation of administrative penalty decisions; Finally, with the development of procedural rule of law, such internal procedures are gradually being included in the scope of judicial review. This understanding not only conforms to the current legal

framework, but also responds to practical needs, providing a theoretical basis for improving the administrative penalty procedure system.

3. Analysis of the Application Standards Issues in the Collective Discussion and Decision Making of Administrative Officials in Maritime Administrative Penalties

The core issue of unclear application standards in the collective discussion procedure of administrative agency heads in maritime administrative penalties. The lack of specific standards for “complex circumstances,” “major violations,” and “heavier penalties” in normative documents at or above the provincial level has led to excessive discretionary power of administrative agencies in handling individual cases, and a lack of industry unified discretion standards guidance, resulting in chaotic practices.

In the field of property penalties, there is a lack of unified standards for determining whether the amount of fines triggers collective discussions, which makes it difficult to ensure the fairness and credibility of administrative penalties. Taking the case of a breeding farm in Dalian refusing to accept the administrative penalty decision of a natural resources bureau (Dalian Maritime Court, Administrative Judgment No. (2021) Liao 72 Xingchu 12) as an example, the bureau held a hearing on the relevant penalty matters, but did not make a hearing record in accordance with the law. After the hearing procedure ended, without collective discussion by the responsible persons, an administrative penalty of “ordering restoration to the original state and imposing a fine of 3.2 million yuan” was imposed directly. The above-mentioned behavior seriously violates the legal procedures and goes against the legal provision that “when imposing heavier administrative penalties on complex or major illegal acts, it should be discussed collectively by the responsible persons”. In the end, the court revoked the administrative penalty decision in accordance with the law. In sharp contrast, the administrative penalty case of Beihai Naizhi Marine Technology Co., Ltd. v. Beihai Marine and Fisheries Bureau mentioned earlier. The Ocean and Fisheries Bureau of Beihai City has determined that Beihai Naizhi Marine Technology Co., Ltd. illegally occupies and implements the encirclement and reclamation of 0.38 hectares of sea area. After two rounds of review (the administrative agency considers it equivalent to a collective discussion procedure), the bureau has finally ordered the return of the illegally occupied sea area, restored the original state of the sea area, and imposed a fine of RMB 2.5677 million, which is fifteen times the amount of sea area use fees that should be paid during the illegal occupation period. In these two cases, a certain breeding farm case was fined 3.2 million yuan but no collective discussion was held, while the Naizhi Company case was fined 2.5677 million yuan. Although the amount was relatively low, it was subject to collective discussion. Such differences highlight that in the application of collective discussions on maritime administrative penalties, various regions often set their own standards based on factors such as local economic level and law enforcement capabilities, resulting in unclear conditions for the application of collective discussions and difficulty in ensuring fairness and impartiality in law enforcement. In the case of Huang Guofei and Chen Xiansheng (Guangdong Provincial High People’s

Court, Administrative Judgment No. (2020) Yue Xing Zhong 1770), Huangpu Customs imposed fines of 600000 yuan and 200000 yuan respectively on the two individuals. Although the total amount was as high as 800000 yuan, the customs did not submit the case for collective discussion to the case review committee as “not meeting the standards of complex circumstances or major violations”. However, this judgment does not clearly define the quantitative standards of “complexity” and “significance”, nor does it fully consider the impact of fines on individual economies - for small and micro enterprises, such fines may constitute a fatal blow. Behind the different judgments in the same case is the imbalance of fairness and justice in different regions and cases. In the field of qualification penalties, such as revoking licenses and ordering production to stop, they are also deeply mired in procedural difficulties. Administrative agencies may avoid collective discussions based on efficiency considerations, while judicial agencies may have intense conflicting positions due to their emphasis on procedural fairness requirements. Although the Huang Guofei and Chen Xiansheng cases did not involve qualification penalties, this can be seen from the “selective application” of collective discussion procedures by administrative agencies - when the procedures may delay the efficiency of punishment, the rigor of internal decision-making mechanisms easily gives way to the need for quick closure.

What is even more alarming is the confusion of program functions. Some administrative agencies and courts mistakenly equate “cases requiring a hearing” with the conditions for initiating collective discussion, but the hearing is an external defense procedure and the collective discussion is an internal decision-making mechanism, and their purposes are not the same. This cognitive bias is also reflected in the Huang Guofei and Chen Xiansheng cases: although Huangpu Customs informed the two of their hearing rights in accordance with the law, they directly skipped the collective discussion stage and imposed punishment without clearly defining whether the case met the criteria of “complex circumstances” and “major violations”, equating the integrity of the hearing procedure with the legitimacy of internal decision-making. Although judicial case judgments attempt to clarify procedural boundaries, they lack universal binding force and cannot eradicate the recurrence of procedural violations. This exposes the fragmentation and lack of coherence in procedural norms within the legal system, resulting in a loss of precise guidance for the operation of administrative power on the procedural track.

The case of Huang Guofei and Chen Xiansheng not only reflects the reality of vague standards for the application of collective discussion procedures, but also reveals the deep challenges faced by procedural justice in the operation of administrative power. The ambiguity of legal rules, the game between administrative and judicial positions, and the misinterpretation of procedural functions collectively weave a complex network that hinders the unity of the rule of law and the realization of fairness. If the loopholes in the rules are not filled in a timely manner and the procedural boundaries are not clarified, the procedural justice in the field of administrative penalties will continue to hover in chaos, damaging not only the rights and interests of individual parties, but also the foundation and authority of the rule of law.

4. Refined Suggestions on the Application of Collective Discussion and Decision-Making by Administrative Agency Heads in Maritime Administrative Penalties

Based on the legislative experience of the “Regulations on Agricultural Administrative Penalty Procedures” and the application of “hearings” and “legal reviews” in some regions, the author believes that the collective discussion of maritime administrative penalties can focus on three key dimensions.

4.1 Clear Procedural Requirements

The author believes that both the first and third items of the “Regulations on Agricultural Administrative Penalty Procedures” belong to the category of clear procedural requirements. In maritime administrative penalties, some cases require collective review by the head of the administrative agency due to clear threshold amounts and procedural requirements, and such situations have rigid binding force. Taking the illegal land reclamation case investigated and dealt with by the Ocean and Fisheries Bureau as an example, if it involves a fine of more than 500000 yuan as stipulated in the Sea Area Use Management Law, and the parties apply for a hearing, it belongs to a typical case with clear procedural requirements. Illegal land reclamation seriously damages the natural attributes and functions of marine ecosystems, posing a great threat to the sustainable use of marine resources. When the fine amount reaches a relatively high standard and the parties apply for a hearing, it indicates that the nature of the case is serious and concerns the significant rights and interests of the parties. At this point, collective deliberation can effectively gather opinions from all parties, ensuring that the punishment decision is accurate and error free in terms of factual determination, legal application, and procedural compliance. For example, in a coastal city, a large enterprise illegally reclaimed land for commercial development projects without legal approval. After the Ocean and Fisheries Bureau intervened in the investigation, according to relevant laws and regulations, it is proposed to impose a fine of 2.5677 million yuan on him. The enterprise applied for a hearing in accordance with the law, and the Ocean and Fisheries Bureau quickly initiated a collective discussion process, organizing internal legal experts, law enforcement backbone, and relevant business department heads to comprehensively review every detail of the case. During the collective discussion, in-depth discussions were conducted on the legality and relevance of evidence, the accurate application of legal provisions, and the reasonableness of punishment ranges. Ultimately, a legal and fair punishment decision was made, which not only effectively cracked down on illegal behavior but also safeguarded the legitimate hearing rights of enterprises (Guangxi Zhuang Autonomous Region High People’s Court, Administrative Judgment No. (2018) Guixingzhong 1163).

4.2 Composite Standard Discretion Type

For maritime disputes with complex cases, relying solely on a single standard is difficult to make accurate judgments, and a composite standard needs to be constructed for discretionary determination. Specifically, it can be refined into the following three aspects:

4.2.1 Difficulties in Professional Identification of Illegal Facts

The marine field is highly specialized and complex, and the determination of many illegal facts involves professional fields such as marine ecological damage assessment and cross ownership of sea areas. This

professionalism is particularly prominent in the assessment of the value of marine ecosystem services. For example, international standards estimate that the annual service function value of China's four major sea areas is 272.806 billion US dollars, while domestic scholars' estimates based on regional characteristics are only 181.36 billion US dollars, with a difference of more than 50%. This significant value bias is caused by different evaluation methods and indicator weights (Jiang, Y. J., 2014). As in the 2011 Bohai Penglai 19-3 oilfield oil spill, the drilling platform operated by ConocoPhillips China Limited leaked hundreds of tons of oil due to leakage and seabed rock cracking, polluting the sea area of over 6000 square kilometers. The oil spill accident resulted in a significant decrease in the species and diversity of plankton in the polluted sea area, and damage to the community structure. Within one month after the accident, the density of planktonic larvae decreased sharply by 69%, and the density of fish eggs decreased by 45-83% compared to the background value (with a malformation rate of 92% in July). The density of larvae and juveniles decreased by 84-90%, causing serious damage to biodiversity. This accident has caused damage to biodiversity. In the assessment of ecological damage caused by oil spill accidents, there are significant difficulties in the professional determination of the compensation amount for ecological losses due to the multidimensional loss of ecosystem service value, including fishery resource loss, carbon sink function decline, and tourism value damage, and the lack of clear weight standards for different evaluation indicators in the Marine Environmental Protection Law. This type of illegal fact involving complex professional identification belongs to the special circumstances stipulated in the Administrative Penalty Law that require collective discussion and decision-making by the responsible persons of administrative organs. Although the specific amount of compensation for marine ecological losses and the assessment agreement for fishery losses in this case have not been made public, the administrative penalty must fully consider the long-term impact of the accident on marine fishery resources, the damage to the service functions of the marine ecosystem, and the actual cost of ecological restoration. As the determination of the amount of loss is directly related to the discretion of the fine amount, in order to ensure that the punishment range matches the severity of ecological damage and avoid an imbalance in discretion, administrative agencies should conduct collective discussions among responsible persons, comprehensively analyze professional evaluation reports, weigh the weights of various loss indicators, and ultimately determine a reasonable and fair punishment decision. This procedure can not only ensure the legality of administrative penalties, but also enhance the scientificity and credibility of law enforcement decisions.

4.2.2 Disputes over the Application of Law

Marine administrative law enforcement involves multiple laws and regulations, and in some complex cases, multiple laws may be violated simultaneously, leading to disputes in the application of the law. Taking ship oil pollution cases as an example, such cases may involve both the Marine Environmental Protection Law and the Fisheries Law. The Marine Environmental Protection Law mainly provides comprehensive regulations on the standards, monitoring, prevention, and control of ship oil pollution emissions from the perspective of overall marine environmental protection; The Fisheries Law focuses

on the protection of fishery resources and the maintenance of fishery production order, and also has corresponding punishment provisions for the damage caused to fishery resources by ship oil pollution. In practical law enforcement, when a ship experiences oil spill while sailing near the sea, it not only pollutes the marine ecological environment but also causes serious losses to the surrounding fisheries and aquaculture. At this point, law enforcement personnel need to carefully analyze whether the vessel's navigation behavior complies with the provisions of the Marine Environmental Protection Law regarding the equipment, operation specifications, and emission standards for ship anti pollution. At the same time, they also need to consider whether the degree of damage caused by oil pollution to fishery resources meets the punishment standards stipulated in the Fisheries Law, as well as how to coordinate and apply the two laws. This requires law enforcement personnel to have solid legal knowledge and rich practical experience. Through collective discussions, they can fully discuss the legislative purposes, scope of application, and specific provisions of different legal provisions in order to accurately make judgments on legal application.

4.2.3 Doubtful Evidence Chain

When there is doubt about the evidence chain in maritime administrative penalty cases, that is, there is evidence contradiction or legal application logic break in the determination of key facts, this itself constitutes the core situation of "complex circumstances". The complexity of such cases often stems from the temporal and spatial continuity of maritime use behavior and the particularity of professional technical judgment, which poses significant challenges to building a complete and consistent evidence system. For example, in a dispute over the right to use a certain sea area, the administrative agency failed to clearly identify the spatial boundary of the illegal behavior, and confused the illegal behavior in an independent area (such as the S7 area of the weighbridge management room) that was clearly located outside the boundary of the plaintiff's sea area use certificate with its reclamation behavior in a legal sea area, mistakenly applying the provisions on "unauthorized change of sea area use" instead of the provisions applicable to illegal occupation of the sea (Xiamen Maritime Court, Administrative Judgment No. (2019) Min 72 Xing Chu 22). This fundamental qualitative error in the illegal facts directly led to confusion of the punishment targets and inaccurate calculation of the fine base, ultimately being rejected by judicial review due to "unclear facts and insufficient main evidence". Another typical case is another illegal occupation of sea areas, where the administrative agency found that the critical time point of "completion of construction in December 2021" for the project involved lacked sufficient evidence support, and this time point directly determined the calculation of the illegal occupation period and the determination of the fine amount. More prominently, in this case, the administrative agency will apply the one-time collection of sea use fees for non permeable structures after legally obtaining the right to use the sea area, and directly mechanically apply them to the calculation of fines for administrative penalties, reflecting a deviation from the understanding of the purpose of legal norms (Xiamen Maritime Court, Administrative Judgment No. (2023) Min 72 Xing Chu 43). Although the case underwent a collective discussion procedure, the discussion failed to effectively address core issues such as weak evidence

during the illegal period and misplaced legal application standards, resulting in the revocation of the punishment decision due to “unclear factual findings and incorrect application of the law”. Such cases fully demonstrate that when maritime administrative penalties face doubts about the evidence chain, such as contradictions between ownership certificates and on-site conditions, insufficient evidence during the illegal period, or poor connection between professional technical judgments and legal constitutive elements, the collective discussion of administrative agency leaders must not be superficial. It must substantially focus on the verification relationship between the temporal and spatial boundaries of illegal behavior and ownership certificates, the matching degree between professional technical identification and legal requirements, and whether the application of punishment standards accurately distinguishes the collection characteristics of sea use fees from the punitive purposes of administrative penalties. Only through this in-depth and substantive collective analysis can we systematically bridge the gap in the evidence chain and ensure that administrative penalties have a solid foundation of legitimacy in both factual determination and legal application.

4.3 Social Impact Assessment Type

When maritime administrative penalty cases trigger media attention or group effects, their social attention is high and their impact is wide, and they must be forcibly included in the scope of collective discussion. The outcome of such cases not only concerns the vital interests of the parties involved, but also has a significant impact on social stability and public interests. For example, illegal fishing cases involving more than 5 people or multiple fishing boats, due to the large number of fishing boats and the livelihood issues of many fishermen, are prone to trigger mass incidents.

In terms of mass violations, the case of 10 electric fish gangs in the Taihu Lake Lake in Jiangsu Province in 2024 and the case of nine fishing boats dismantling Beidou in Fujian Province in 2023 form a double proof: the former needs to coordinate the law enforcement agencies in Jiangsu and Zhejiang provinces through collective discussion, assess the irreversible damage of electric trawls to the Taihu Lake Lake biological chain, and finally impose a fine of 30000 yuan on 10 parties and confiscate all the tools of the crime; The latter posed a major navigation safety hazard due to the coordinated evasion of supervision by 9 ships. After analysis and judgment, a fine of 754000 yuan was imposed, and a comprehensive use of “technology+law” methods was employed. The fishermen and fishing boats involved in such cases may come from different fishing villages and have been engaged in fishing operations during the fishing ban period for a long time. After the case was exposed, local fishermen were inevitably emotionally agitated, and some fishermen even expressed their demands through collective petitioning and other means. The relevant law enforcement departments should quickly include the case in the collective discussion procedure, and organize sufficient communication and negotiation among fishery experts, legal workers, grassroots government representatives, and fishermen representatives. In collective discussions, it is necessary to consider both strictly cracking down on illegal fishing activities in accordance with the law, protecting the long-term interests of fishery resources, and taking into account the actual living difficulties and reasonable demands of fishermen. Ultimately, a comprehensive set of punishment and

assistance measures should be formulated. Punish illegal fishing vessels in accordance with the law, and provide assistance policies such as fishery breeding technology training and employment guidance for affected fishermen, effectively resolving social conflicts and maintaining social stability.

In terms of media focus, taking the ecological environment damage incidents in nature reserves as an example, after such incidents are exposed by the media, their destructive behavior is highly likely to attract widespread public attention due to the core ecological functions of nature reserves, such as maintaining biodiversity and protecting endangered species. Through collective discussion, various factors such as ecological protection, social public opinion, and public interests can be comprehensively considered to ensure that punishment decisions are scientific and reasonable. The illegal fishing case in natural reserves investigated and dealt with by Zhanjiang City in 2023 is clear evidence: two ship owners, Cai and others, used nets smaller than the minimum mesh size in the core area of the protected area to fish in violation of the fishing ban regulations, directly damaging the habitat and ecological chain of pangolins. As a first-class protected animal in China, the habitat destruction of the pangolin is a major ecological event that will inevitably trigger public supervision. Law enforcement agencies should immediately initiate a collective discussion process, invite ecological experts to assess habitat damage, and listen to public opinions to balance ecological protection and livelihood demands. Taking into account the illegal circumstances, such as the use of prohibited online devices, private transportation of unlicensed personnel, and the feasibility of ecological restoration, a fair and reasonable administrative penalty will be ultimately imposed. This not only strictly fulfills the regulatory responsibilities of the Nature Reserve Regulations, but also responds to social concerns through the public announcement of law enforcement results, demonstrating a “zero tolerance” law enforcement stance towards ecologically sensitive areas, controlling public opinion risks, and dispelling public doubts.

5. Conclusion

This study clarifies the “special internal procedure” attribute of the collective discussion system in maritime administrative penalties, theoretically deepening the application of the administrative procedure dichotomy in the field of maritime law enforcement, and filling the gap in existing research on the characteristics of maritime areas; The three-dimensional refinement standard proposed in practice provides an operational path for solving the problem of ambiguous identification. Compared with existing research, this article breaks through the perspective of a single procedural approach and constructs a composite system based on the professionalism of the sea area. However, compared with the macro theories of scholars such as Jiang Ming’an, there is a lack of cross disciplinary comparisons. There are limitations in the research, such as the lack of in-depth exploration of the technical path of provincial discretion standards, and the improvement of judicial review and administrative procedure reception. Suggest promoting the special revision of discretionary benchmarks and establishing a quantitative model in the future; In the future, collaborative research on maritime and terrestrial procedures can be expanded to provide more systematic support for the unification of maritime rule of law.

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