海口海事法院

海事审判白皮书

（中英文对照本）

Haikou Maritime Court White Paper on Trials

（2016–2018）

中华人民共和国海口海事法院
Haikou Maritime Court of PRC
2019.6

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前　言

进入21世纪，海洋在推动国家经济发展和促进对外开放、交流、合作中的作用更加重要，在维护国家主权、安全、发展利益中的地位更加突出，在推进国家生态文明建设中的角色更加显著，在国际政治、经济、军事、科技竞争中的战略地位明显上升，走向海洋几乎已成为世界所有强国共同的国家战略。随着海洋强国战略、“一带一路”建设、自贸区（港）建设等重大国家战略的实施，海事审判在维护国家海洋权益、保护海洋生态环境、规范海洋开发利用等方面肩负着更加重大的职责使命。海事法院必须进一步提高政治站位、扛起职责担当，积极主动服务和融入国家重大战略，做好新一轮改革开放的先行者、开拓者和贡献者。

2016年以来，海口海事法院审判工作取得新的进展，同时也发现一些需要关注、解决的问题和风险。本白皮书介绍了海口海事法院 2016-2018 年依法履行海事审判职能的主要情况，通报涉海工程建设纠纷、海域使用引发的行政纠纷、船员劳务合同纠纷、涉邮轮游艇纠纷四类案件审理过程中发现的问题并针对性地提出对策建议，同时选取有代表性的案例进行发布，以期为海洋开发、利用、保护及海洋产业发展提供有益参考。

Preface

In the twenty-first century, ocean has become more important in boosting the national economy and in promoting the opening up, exchange and cooperation with other nations, and it also plays a more significant role in safeguarding the sovereignty, security, and development interests of the State and in achieving national ecological progress. The strategic importance of ocean in international politics, economy, military affairs, and technology competition has been elevated. An ocean orientation has been adopted as the national strategy by almost all great powers in the world. Following the implementation of the major national strategies such as the Marine Power Strategy, the Belt and Road Initiative, and construction of free trade zones (ports), maritime judiciary has shouldered greater duties and responsibilities in protecting the maritime rights and interests the State, preserving marine ecological environment, and regulating the exploitation and utilization of ocean resources. Maritime courts shall strengthen their political consciousness and fulfill their duties by serving and fully involving themselves in the national strategies, and play a pioneering role in making contributions in the latest round of reform and opening up.

Since 2016, Haikou Maritime Court has made new gains in case hearing, but there are many problems and risks that await our attention and solutions. This Report gives a brief introduction to the maritime trials conducted by Haikou Maritime Court according to law during 2016-2018, discusses the problems emerging during the trial of four types of cases, including crew service contract dispute, sea-related engineering construction dispute, administrative dispute arising from the use of sea areas, and dispute related to cruises and yachts, and proposes suggestions and solutions to these issues. The Court also selects some typical cases for disclosure, hoping that they may serve as helpful guidance in the exploitation, utilization and protection of the ocean and the development of the marine industry.

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2016、2017、2018 年度，我院受理案件总数分别为 1675 件、952 件和 1153 件，其中新收案件分别为 1533 件、905 件和 1138 件；旧存案件分别为 142 件、47 件、15 件。案件受理数量波动较大。

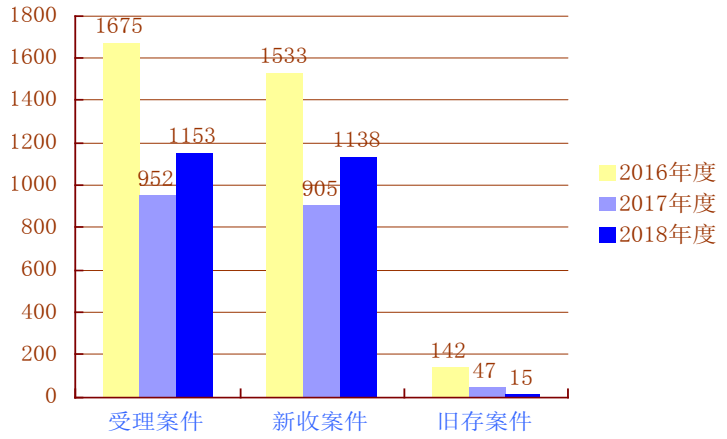

图 1：2016、2017、2018 年度受理案件情况（件）

2016、2017、2018 年度，我院结案数量分别为 1628 件、937 件和 1110 件，其中旧存案件结案数分别为 129 件、45 件和 13 件；结案率分别为 91.81%、98.42%和 96.27%。

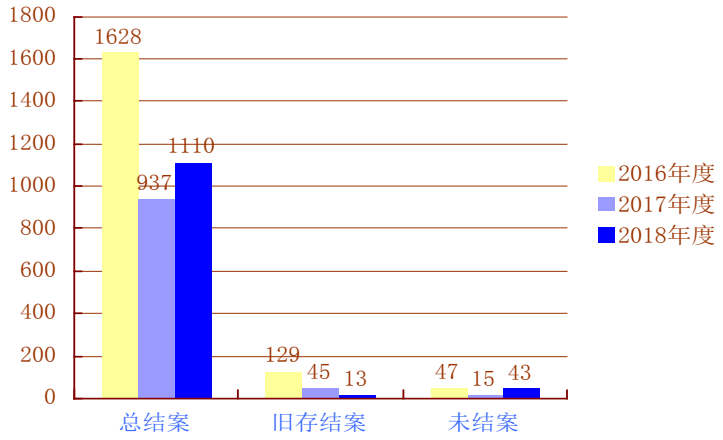

图 2：2016、2017、2018 年度结案情况（件）

（1）诉讼类案件情况

2016、2017、2018 年度，我院受理的诉讼类案件分别为 476 件、337 件和 363 件，新收案件分别为 417 件、298 件和 353 件，新收诉讼案件立案标的额分别为 12.58 亿元、5.45 亿元和 22.38 亿元。

2016、2017、2018 年度，我院审结的诉讼类案件分别为 437 件、327 件和 351 件，结案率分别为 91.81%、97.03%和 96.69%。

2016 年度审结的诉讼类案件中，调解结案 109 件，占比 24.94%；撤诉 55 件，占比 12.59%；判决 247 件，占比 56.52%；其他方式 26 件，占比 5.95%。2017 年度审结的诉讼类案件中，调解结案 58 件，占比 17.74%；撤诉 37 件，占比 11.31%；判决 197 件，占比 60.24%；其他方式 35 件，占比 10.70%。2018 年度审结的诉讼类案件中，调解结案 55 件，占比 15.67%；撤诉 41 件，占比 11.68%；判决 207 件，58.97%；其他方式 45 件，占比 13.68%。

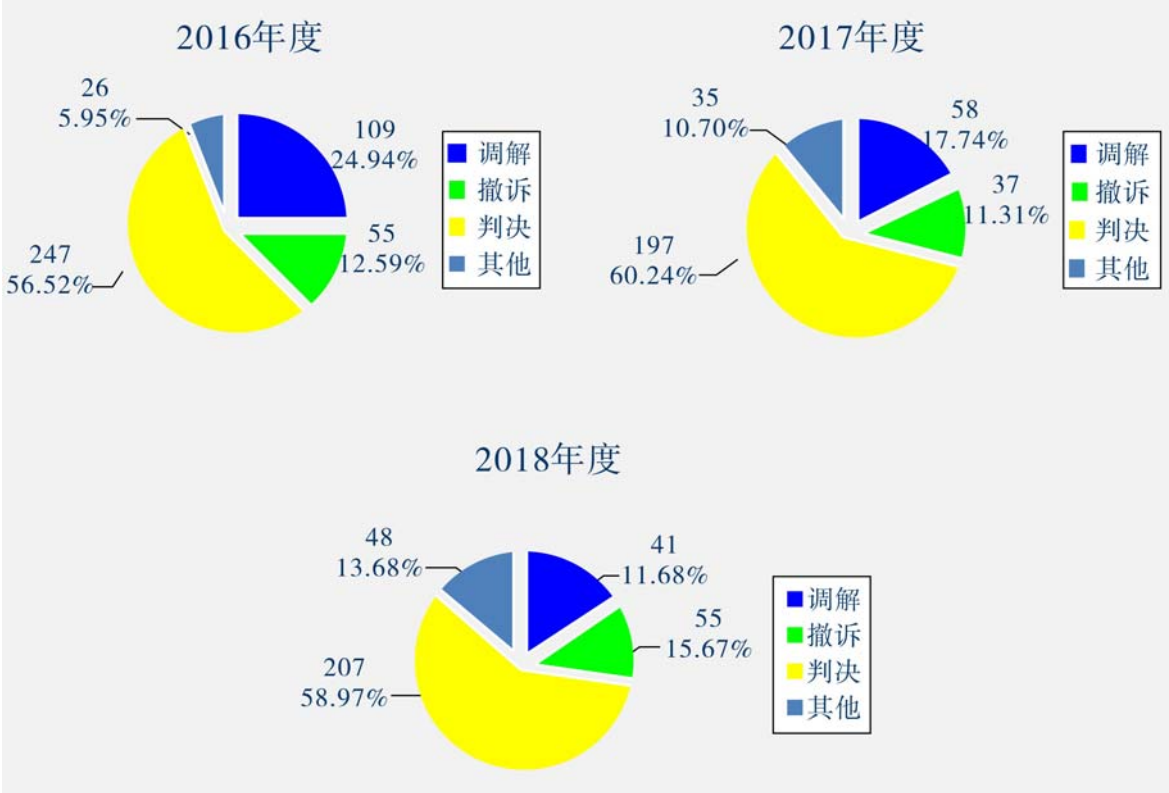

图 3：2016、2017、2018 年度诉讼案件结案方式（件）

（2）执行类案件情况

2016、2017、2018年度，我院受理的执行类案件分别为957件、534件和749件，新收案件分别为878件、528件和746件，新收执行案件申请执行标的额分别为16.66亿元、12.33亿元和15.32亿元。

2016、2017、2018年度，我院执结的执行类案件分别为951件、531件和719件，结案率分别为99.37%、99.44%和95.99%。

（3）程序类案件情况

2016、2017、2018年度，我院受理的程序类案件分别为242件、81件和41件；新收案件分别为238件、79件和39件。

2016、2017、2018年度，我院审结的程序类案件分别为240件、79件和40件，结案率分别为98.35%、97.53%和97.56%。

表1：2016、2017、2018年度三类案件收结案情况（件）

案件类型	2016年度		2017年度		2018年度	
	收案	结案	收案	结案	收案	结案
诉讼类	476	437	337	327	363	351
执行类	957	951	534	531	749	719
程序类	242	240	81	79	41	40
合　计	1675	1628	952	937	1153	1110

2．案件上诉情况

2016-2018年度共受理一审案件1089件，截至2019年5月20日已审结1081件。上诉案件共计399件（含2019年移送上诉案件97件），占同期审结一审案件总数的36.91%。二审审结336件，其中发回重审和改判共计79件，占二审已审结案件总数的23.51%（占同期一审结案总数的7.31%）；维持原判共计161件，占二审已审结案件总数的47.92%；调解结案44件，占二审已审结案件总数的13.10%；撤诉46件，占二审已审结案件总数的13.69%；撤销原判决，移送其他法院审理6件，占二审已审结案件总数的1.79%。

3．其他情况

（1）审限使用情况

2016、2017、2018 年度已结案件案均法定审限使用率分别为 51.42%、35.96%和 41.83%，办案效率较高，但波动明显。

（2）生效裁判文书上网情况

2016、2017、2018 年度生效裁判文书上网数量分别为 958 篇、390 篇和 534 篇，文书上网率均为 100%。

（3）案卷归档情况

2016、2017、2018 年度案卷归档数量分别为 516 件、655 件和 732 件，归档率分别为 78.77%、98.94%和 99.46%，呈逐年上升趋势。

（二）主要特点

1．收结案量总体下降

由于管辖范围调整，自 2016 年 9 月后我院不再受理海南省高级人民法院指定的全省仲裁执行、仲裁保全案件，执行异议案件、执行异议之诉案件收案数量也相应下降，导致 2017 年度收结案数量大幅下降，受案数量由 2016 年的 1675 件下降至 952 件，其中涉仲裁执行案件由 593 件骤减至 159 件。根据海南省高级人民法院《关于对部分基层人民法院首次执行实施案件指定执行的方案》要求，我院于 2018 年 7 月 1 日起受理海口市龙华区人民法院部分执行案件，截至 2018 年底，共受理指定执行案件 395 件，占全年执行案件的 52.74%。因此，2018 年收案和结案数量均高于 2017 年，但对比 2016 年分别下降了 31.16%和 31.82%。

2．海事行政类案件增长明显

2016 年至 2018 年，海事行政案件受理数量分别为 15 件、25 件和 108 件，其中新收案件分别为 13 件、23 件和 106 件。自 2011 年 8 月 21 日起开始受理海事行政案件以来，我院共受理该类型案件 178 件，其中，2016-2018 年度新收的行政案件 142 件，占 79.78%。

表 2：2016、2017、2018 年度海事行政类案件类型（件）

年份	总计	类　　型		
		行政诉讼	非诉行政强制执行审查	行政赔偿
2016 年	15	8	4	3
2017 年	25	11	11	3
2018 年	108	81	22	5

3．船员劳务合同纠纷案件大幅度下降，案件调撤率逐年上升

2016、2017、2018 年度，我院审理的船员劳务合同纠纷数量分别为 174 件、43 件和 22 件，占当年受理诉讼类案件的比例分别为 36.55%、12.76%和 6.06%，数量和占比逐年下降。近三年受理的案件已全部审结。

船员劳务合同纠纷案件多数因拖欠工资而引起，涉及民生权益，影响较大。我院对此类案件审理高度重视，坚持“快立、快审、快结”，加大调解力度力争案结事了。2016 年审结的案件中，调解结案 54 件，撤诉 11 件，调撤率 37.36%；2017 年审结的案件中，调解结案 16 件，撤诉 2 件，调撤率 41.86%；2018 年审结的案件中，调解结案 7 件，撤诉 10 件，调撤率 77.27%，调撤率逐年上升。

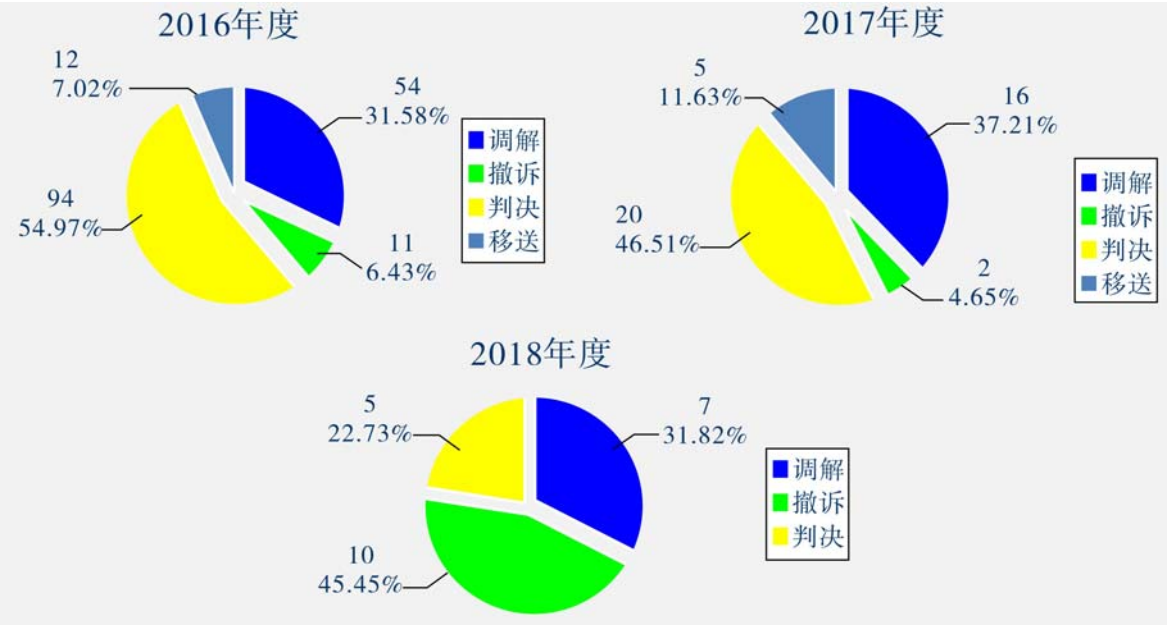

图 4：2016、2017、2018 年度船员劳务合同纠纷案件结案方式（件）

4．执行案件收案数量、类型占比变化较大，办案绩效指标趋好

2016 年度受理的 957 件执行案件中，首次执行案件 566 件，占比 59.14%；恢复执行案件 176 件，占比 18.39%；财产保全执行案件 108 件，占比 11.29%；执行异议案件 106 件，占比 11.08%；委托执行案件 1 件，占比 0.10%。

2017 年度受理的 534 件执行案件中，首次执行案件 235 件，占比 44.01%；恢复执行案件 121 件，占比 22.66%；财产保全执行案件 83 件，占比 15.54%；执行异议案件 82 件，占比 15.36%；执行监督案件 13 件，占比 2.43%。

2018 年度受理的 749 件执行案件中，首次执行案件 530 件，占比 70.76%；恢复执行案件 56 件，占比 7.48%；财产保全执行案件 87 件，占比 11.62%；执行异议案件 72 件，占比 9.61%；执行监督案件 4 件，占比 0.53%。

与 2016、2017 年度相比，2018 年首次执行案件比例明显上升，恢复执行案件和执行异议案件比例明显下降。此外，2018 年，我院无财产可供执行案件终本合格率为 99.6%，有财产可供执行案件法定期限内实际执结率为 98.24%，执行信访案件办结率为 100%，所有指标较前两年有明显提高，且全部超过最高人民法院的指标要求，表明“基本解决执行难”工作取得明显效果。

表 3：2016、2017、2018 年度执行案件类型（件）

年　份	总计	执行实施类				执行审查类	
		执保	执恢	执委	执	执异	执监
2016 年	957	108	176	1	566	106	0
2017 年	534	83	121	0	235	82	13
2018 年	749	87	56	0	530	72	4

5．特别程序案件数量下降幅度较大

特别程序案件由2016年的134件急剧下降至2017年的19件和2018件的3件（其中1件为旧存案件），主要是受申请海事债权登记与受偿案件收案数量影响，2016年受理该类案件131件，2017年受理17件，2018年未受理该类案件，主要原因是因海运业不景气引发纠纷而请求拍卖船舶的情况已趋于缓解。2016、2017、2018年拍卖船舶数量分别为7艘、2艘和1艘。

（三）特色工作

1．深化司法体制改革，不断提升审判质效

制定《院领导及综合部门法官办案暂行办法》和《关于加强与规范案件分案工作管理的规定》，明确规定院庭长主要承办疑难、复杂案件；制定《重大、敏感案件报告制度》，规范敏感案件管理，有效预防和减少审执风险；制定《关于简化程序、加快办案的规定》，规范案件审理程序，提升审判效率；制定《关于进一步规范案件分案工作管理的规定》，破解不同部门、不同法官案件分配不均衡，忙闲不均的问题；制定《法官办案质效量化比较考评办法（试行）》，优化法官考核指标；完善监督惩戒体系，以科学管理促公正高效。

2．立足海事审判特色，服务国家发展大局

制定《海口海事法院关于服务和保障海南自由贸易试验区和中国特色自由贸易港建设的意见》，提出探索海事审判程序创新、建立完善海事审判工作机制等5方面26项具体举措，助力自贸区（港）建设；组成专题调研组，完成以“依法行使对我国管辖海域的司法管辖权”为主题的调研报告，强化海事司法管辖权；依法妥善审结发生在南沙华阳礁海域的海上保险合同纠纷案等涉三沙案件，以海事司法管辖宣示我国领海主权。

3．推进海上巡回法庭和岛屿审判点建设，积极行使海事司法管辖权

出台《海上巡回法庭及岛屿审判点工作制度》。开展足迹遍及南海海域、航程2000余海里的海上巡回审判和法治宣传。第一个岛屿审判点在西沙晋卿岛挂牌成立，第一个海上巡回法庭在中国海监“2166”号执法船挂牌成立。

4．完善司法为民举措，充分保障当事人权益

开通诉讼服务平台，完善电话立案、网上立案和在线立案咨询等多种便民服务措施，方便当事人诉讼；运用高度盖然性证明标准，审理当事人举证困难的案件，为妥善化解同类海上侵权纠纷提供参考；推行“全天候”保全快速响应工作机制，为紧急保全开通绿色通道；加大信访案件办理力度，由院领导主持研究和组织化解执行信访案件。

5．推动体制机制创新，扛起海事司法责任担当

组建以青年干警为主的改革创新研究小组，让青年干警亲身参与谋划海事司法的改革和创新，充分发挥青年干警的创新热情；适用简易程序审理事实清楚、法律关系明确、争议不大的涉外案件；推行境外诉讼主体概括性身份证明和授权委托书制度；签署外国法查明合作协议，拓宽外国法查明渠道；推行对涉海行政机关主持下达成的海商事纠纷和解、调解协议按申请予以司法确认并赋予强制执行效力的创新做法。

6．强化互动协作，凝聚工作合力

与海南海事局、华东政法大学、海南省海洋与渔业监察总队等机关、高校搭建良性互动与合作平台，在业务调研、教育培训、信息共享等方面开展合作。协调开放服务于司法、执法工作的数据端口，努力实现数据共享、信息互通。参与多家海事法院共建的信息化应用平台建设工作，实现精品案例、已查明的外国法等资源的共享。

二、海事司法相关法律问题及解决意见

（一）涉海工程建设纠纷

1．案件基本情况

2016年至2018年，海口海事法院共审理涉海工程建设合同纠纷类案件76件，类型主要有围填海工程、渔港建设工程、航道与港口疏浚工程、船坞与码头建造工程、河流与岸滩整治工程纠纷，其中涉围填海工程所引发的纠纷案件数量最多、占比最大，共有42件，占比55.3%（不含渔港或码头建设工程承包合同纠纷所包含的围填海工程）。

围填海工程类案件呈现如下特点：一是案件涉及如意岛、海花岛、南海明珠岛、日月岛、凤凰岛、三亚新机场等省内主要围填海工程，社会关注度高、影响大；二是案件集中爆发于2017年中央环保督查组和国家海洋督查组进驻海南之后，尤其是在全面叫停海南围填海项目建设之后，案件敏感度高；三是涉案标的额大、法律关系复杂、当事人争议大、鉴定难度大、耗时长，由此导致案件处理难度大、调撤率低；四是纠纷发生原因多为发包人（含项目业主和各层级分包人）资金周转困难未能按时支付工程款。

2．相关法律问题及解决意见

（1）围填海工程引发纠纷案由确定问题。《民事案件案由规定》对围填海工程引发纠纷的案件并无专有案由，司法实践中主要是以建设工程合同纠纷、海洋开发利用纠纷、其他海事海商纠纷作为此类案件的立案案由。建设工程合同纠纷适用于所有建设工程纠纷案件，不能体现海事法院对围填海工程纠纷案件的专门管辖。围填海工程属于对海洋资源开发利用的其中一种方式，海洋开发利用纠纷案由不能完全反映围填海类工程与其他海洋开发利用纠纷（如油气等海底矿藏资源开发利用）的区别。而其他海事海商纠纷是海事海商类纠纷案件的兜底案由，不能准

确反映围填海工程纠纷案件的特征和所涉的基本法律关系。但根据《最高人民法院关于海事法院受理案件范围的规定》，海洋、通海可航水域工程建设（含水下疏浚、围海造地、电缆或者管道铺设以及码头、船坞、钻井平台、人工岛、隧道、大桥等建设）纠纷案件被列在“海洋及通海可航水域开发利用与环境保护相关纠纷案件”项下。据此，在当前所适用的《民事案件案由规定》体系下，围填海工程纠纷案件立案案由确定为“海洋开发利用纠纷”最为恰当。同时，可就此问题积极向最高人民法院提出建议，争取在下一次案由规定修改时，将围填海工程纠纷或海洋工程建设合同纠纷作为海洋开发利用纠纷的下级案由。

（2）围填海建设工程项目招投标问题。当前司法实践中对于必须招投标的工程范围标准（如“关系社会公共利益、公共安全”“使用国有资金投资”）把握不一，由此导致出现必须招投标的工程项目圈定范围过宽或过窄两个极端。圈定范围过宽导致大量合同无效，不利于市场交易活动的安全稳定；圈定范围过窄可能导致国有资金和工程质量缺乏有效监管，不利于公共安全的保障。此类案件审理过程中，一方当事人往往以未按程序进行招投标为由，主张合同无效。我们认为，根据《招标投标法》第三条、《招标投标法实施条例》第三条、《必须招标的工程项目规定》第二条至第五条、《必须招标的基础设施和公用事业项目范围规定》第二条的规定，必须进行招投标的围填海工程项目有：a.以国有资金投资或国家融资作为项目预算资金，使用该预算资金 200 万元人民币以上，且该资金占投资额 10%以上的项目；b.使用国有企业事业单位资金，并且该资金占控股或者主导地位的项目；c.使用世界银行、亚洲开发银行等国际组织贷款、援助资金的项目；d.使用外国政府及其机构贷款、援助资金的项目。必须招投标的项目未进行招投标的，合同无效。按上述标准，如项目使用企业自有资金，可不进行招投标，此时是否进行招投标不对合同效力产生影响。鉴于此类工程项目数量不多，有施工资质的企业也不多，可以考虑在全国范围内设置一个专业的涉海工

程招投标服务平台，避免各地重复建设平台造成资源的浪费。此外，在招投标过程中，发包人和相关主管部门，应当加强对承包人施工资质的审核，防止出现无资质施工、跨越资质等级施工或挂靠施工情形。

（3）围填海工程项目是否需要办理建设工程规划许可证。在此类案件审理中，曾有发包人以涉案项目未取得建设工程规划许可证为由主张施工合同无效。我们认为，此种观点混淆了海域使用与土地开发的行政审批程序。根据《海域使用管理法》第三条的规定，围填海工程项目施工前，应当取得用海审批。根据《城乡规划法》第四十条的规定，在城市、镇规划区内进行建筑物、构筑物等应当向主管部门申请办理建设工程规划许可证，申请时，应当提交使用土地的有关证明文件、建设工程设计方案等材料。也就是说，办理建设工程规划许可证需以取得项目用地手续为前提。在围填海项目中，围填海工程施工前，土地尚未形成，不存在按上述规定办理建设项目规划许可证的条件。

（4）未取得海域使用权证对围填海工程施工合同效力的影响。一种意见认为：未取得海域使用权进行围填海工程建设与未取得建设工程规划许可证进行工程建设性质一样，均属违反法律强制性规定的情形，法律后果也类似，故未取得海域使用权证的，相应围填海工程施工合同无效。另一种意见认为：海域使用权证是海洋行政主管部门为加强海域使用管理所实施的一种行政许可，《海域使用管理法》第三条第二款、第四十二条等均为管理性强制性规定，而非效力性强制性规定，违反该规定并不导致相应的围填海工程施工合同无效。从维护经济活动稳定、鼓励交易的角度，不宜轻易否定当事人自愿达成协议的效力。因此，我们倾向于第二种意见。这一争议产生的根源在于海洋行政机关对海域使用疏于管理。从现有情况来看，恢复海域原状几乎成为未取得海域使用权即进行围填海施工这一违法行为行政处罚的必有措施。但围填海工程建设周期较长、施工难度大、资金投入大，施工过程对海洋生态环境影响大，一旦建成，恢复原状成本十分高昂且对海洋生态环境的二次破坏更

大。因此，我们建议：各级海洋行政主管部门应当加强海域使用管理，严把海域使用的事前审批关，强化海域使用的日常巡查和批后监管，坚决杜绝未批先用、边用边批等违法用海现象出现；发现违法用海情形的，应当第一时间责令停止施工，防止损害和损失的进一步扩大；对于拒不执行行政处罚的，应当及时向海事法院申请强制执行；对于造成严重海洋生态环境损害的，海警、检察机关应及时启动刑事追责程序；对于行政机关消极履职、渎职的，检察机关可发送检察建议书或发起行政公益诉讼；鼓励海洋行政机关、检察机关和公益组织提起环境公益诉讼,形成依法用海的良好氛围以及保护海洋生态环境的合力。

（5）围填海工程承包人施工资质问题。根据《最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释》第一条第（一）项、第（二）项的规定，承包人未取得相应资质、超越资质等级或借用他人资质施工的，相应的承包合同无效。司法实践中，对于围填海工程的总承包人、分包人、施工人的资质问题，往往认识不一。根据我国对建筑业企业资质的分类分级标准，我们认为：人工岛建设的围填海工程的总承包人应当具有港口与航道工程施工总承包一级资质；如果施工内容仅为陆域吹填，则可视吹填量的大小，总承包人具有港口与航道工程施工总承包二级或三级资质即可；如果就其中部分工程进行分包的，分包人应当具有与其所承包工程施工内容相对应类别和等级的专业承包资质或劳务分包资质。对于案件审理中发现的无资质施工、跨越资质等级施工或借用他人资质施工的情形，应依法认定合同无效，同时将有关问题线索移送相关行政管理机关，强化对此类违法违规行为的打击力度。

（6）围填海工程施工合同纠纷中建设工程价款优先受偿权问题。区别于一般建设工程形成的标的物为建筑物或构筑物，围填海建设工程所形成的标的物为土地。根据当前的司法实践，建设工程价款优先权的客体并不包含该建筑物或构筑物所占用的土地（土地使用权）。据此，一种观点认为：围填海建设工程所形成的标的物为土地，其在物权法上表

现为土地使用权，该土地使用权不能成为建设工程价款优先受偿权的客体，施工人对围填海建设工程不享有建设工程价款优先受偿权。另一种观点认为：虽然围填海建设工程与其他建设工程所形成的标的物有所区别，但围填海建设工程所形成的土地并非天然存在，它是施工人的人力、物力、财力投入的物化，与建筑物、构筑物一样，可以作为建设工程价款优先受偿权的客体；其他建设工程价款优先受偿权客体不包含该建筑物所占用土地（土地使用权），是因为其土地乃自然形成、天然存在，与施工人的施工行为无任何关系；但对于未取得海域使用权证情况下所进行的围填海施工，属违法占用海域的行为，海洋行政主管机关可要求退还海域并恢复原状，此种情形下的围填海工程属不宜折价或拍卖的建设工程，施工人不得对其建设工程价款主张优先受偿权。从建设工程价款优先受偿制度的立法目的来看，我们持第二种观点。近几年围填海工程纠纷案件多源于此轮中央环保督查和海洋督查，故在判断涉案建设项目是否适宜折价或拍卖时，除了应当考虑该项目本身的合法性外，还应当考虑涉案项目的督查整改方案，防止司法判决与督查整改方案冲突。

（7）违法分包人、转包人、被挂靠人对实际施工人工程款是否负有清偿责任。在多层转包、分包、挂靠情形下，各层级承包人对实际施工人工程款是否具有清偿责任，目前分歧较大。第一种意见认为：从合同相对性角度，实际施工人仅能向合同相对方及《建设工程施工合同解释》第二十六条第二款规定的发包人（项目业主）主张权利，且发包人仅在其欠付的工程款范围内承担责任，其他层级的承包人（含违法分包人、转包人，下同）对实际施工人的工程款不负清偿责任。第二种意见认为：各违法分包、转包人对合同无效均有过错，故只要实际施工人被拖欠工程款，各层级的承包人以及项目业主均对该欠付工程款负连带清偿责任。第三种意见认为：各层级承包人及项目业主在各自欠付工程款范围内对实际施工人的工程款承担连带清偿责任。我们认为必须在法律有明确规定的情况下，才能突破合同的相对性，因此认同第一种意见。同时，对

审判中发现违法分包、转包或借用他人资质进行施工取得的非法所得，应依法予以没收，通过司法行为向社会表达对于此类行为的否定态度，达到净化行业风气、规范行业秩序的目的。另，如果此类案件涉及到农民工工资等易引发群体事件的问题，应当慎重对待，积极组织各方协调，以化解社会稳定风险。

（8）以开具发票作为工程款支付条件时的处理。契约自由是民事活动的基本原则，但在建设工程领域，发包人常常利用其优势地位，在发包合同中设置不利于承包人的条款。如发包人往往将承包人开具工程款发票作为工程款的付款条件，并明确约定，发包人在未收到发票时可拒绝付款且不承担逾期付款违约责任。其实，发包人将开具发票作为付款前提条件的目的在于确保发票及时开具，防止工程款已经支付但无法收到发票的情况出现。作为建设工程施工合同的承包人，其主要合同义务为保质保量完成工程施工，开具发票显然不是其主要合同义务，也不是双方合同的主要目的。在承包人已经完成合同约定的工程施工并验收合格，甚至在双方已进行工程款结算的情况下，若仍以承包人未开具发票认定相应工程进度款未达支付条件，将导致发包人和承包人权利义务的严重失衡。在此情形下，应当认定发包人具有支付工程款的义务，但其不承担逾期付款的违约责任。我们建议，作为建设工程合同当事人的发包人和承包人，应进一步加强合同签约前的合规审查，做好风险预判，防止合同无效情形以及极端不合理或可能导致双方利益失衡的条款出现；履约过程中同样要加强风险防控，交接材料等要有书面签收手续，对于己方违约行为的后果要有充分认识，避免因小失大；纠纷发生后，应积极寻求协商解决的办法，对于已完工程量、工程价款等双方无争议或争议不大的事项，可通过书面方式予以确定，降低将来举证、鉴定等诉讼成本，提高诉讼效率。

（二）海域使用引发的行政纠纷

1．案件基本情况

2016年至2018年,海口海事法院受理因海域使用引发的海事行政诉讼、非诉行政强制执行审查共34件，其中，因非法占用海域引发的行政处罚纠纷5件，因海域使用引发的行政许可纠纷5件，因非法占用海域引发的行政强制及赔偿纠纷4件，因非法运输海洋珍贵野生动物引发的行政处罚纠纷2件，非诉行政强制执行审查18件。

2．相关法律问题及解决意见

（1）对《海域使用管理法》第四十二条的理解适用问题。一般情况下，行政机关对非法占用海域行为作出处罚时适用的是《海域使用管理法》第四十二条。该条规定：“未经批准或者骗取批准，非法占用海域的，责令退还非法占用的海域，恢复海域原状，没收违法所得，并处非法占用海域期间内该海域面积应缴纳的海域使用金五倍以上十五倍以下的罚款；对未经批准或者骗取批准，进行围海、填海活动的，并处非法占用海域期间内该海域面积应缴纳的海域使用金十倍以上二十倍以下的罚款。”

问题一,处罚非法围填海行为时是否需要考虑“非法占用海域期间”。海洋主管部门认为，围填海项目需要一次性征收海域使用金，无论占用海域时间是1天还是10年，海域使用金的征收方式都是一次性的，因而对非法围填海行为的罚款不能以非法占用海域期间来计算罚款金额。我们认为，从《海域使用管理法》第四十二条文义来看，对非法占用海域进行围海、填海活动及其他非法占用海域的行为处以罚款,都必须以“非法占用海域期间”该海域面积应缴纳的海域使用金作为罚款基数，再乘以相应倍数（处罚幅度）而得出具体罚款金额。如果非法占用1天与非法占用10年的处罚数额相同，显然违反《行政处罚法》第四条第二款关于“设定和实施行政处罚必须以事实为依据，与违法行为的事实、性质、情节以及社会危害程度相当”的规定。至于“财综【2007】10号通知”

关于围填海项目应当一次性征收海域使用金的规定，是对合法用海单位或个人计征海域使用金的规定，而《海域使用管理法》第四十二条是对非法占用海域行为予以处罚的规定，两者性质不同、调整对象不同，不能混为一谈。

问题二，非法填海造地项目中，恢复海域原状措施的适用问题。我们认为，《海域使用管理法》第四十二条所规定的责令退还非法占用的海域、恢复海域原状、没收违法所得及并处罚款四种措施不一定全部适用于某一特定违法行为。对已形成巨大陆域面积的填海工程，如何恢复海域原状、恢复原状是否造成海洋环境二次污染和损害，应当事先进行环境影响评估，未经评估不宜盲目要求行政相对人恢复海域原状。对于符合海洋功能区划且属于完善相关手续之后必须继续推进的项目，也不宜适用“恢复海域原状”措施。

（2）如何认定海事行政赔偿案件中“合法权益”问题。在海域使用引发的行政赔偿案件中，行政相对人未取得《海域使用权》和《养殖许可证》从事海上养殖的，其经营所得和拆迁损失一般不能认定为合法权益。但渔业主管部门下属的执法大队在无权批准使用海域、许可养殖的情况下，向行政相对人颁发了《设置渔排批准书》。而行政相对人误认为取得设置渔排批准等同于合法有效的证书，长期从事渔排养殖经营活动。我们认为，行政机关下属部门在无审批许可授权的情况下，向行政相对人颁发许可证书，行政相对人基于对行政机关的信赖，误认为其获得的行政许可合法有效，从而从事经营活动的，其在许可范围内的经营投资及所得应视为合法权益，由此遭受的损失应予赔偿。因此，行政相对人对渔排和养殖鱼苗的所有权应视同为合法权益，因拆迁渔排所遭受的损失应予赔偿。

（3）行政相对人对损失的发生存在过错，行政机关的责任承担问题。在海域使用引发的行政强制案件中，有的行政相对人未取得《海域使用

权证》、《养殖许可证》就擅自设置渔排，有的行政相对人在获得拆迁补偿后私自在原海域恢复生产作业。行政相对人经多次催告仍拒不自行拆除设施的情况下，行政机关才采取强制措施。对此，我们认为，在判定赔偿责任时，必须同时具备“违法行为，损害结果，违法行为与损害结果之间具有因果关系，损害客体必须是公民的合法权益”四个要件。行政机关的行为违法只是行政相对人获得赔偿的条件之一。如因行政相对人的违法行为导致其损失的，行政机关不承担赔偿责任。如果损失的产生虽与行政机关的违法行为存在因果关系，但行政相对人亦有过错的，应按照行政相对人的过错大小，酌情减轻行政赔偿机关的责任。对于行政相对人主观是明知或故意，且损失的发生与行政相对人的主观过错具有因果关系的，应认定为行政相对人对损失的发生存在过错。

（4）行政行为的外化及可诉性的问题。判断行政行为是否外化和可诉，关键在于审查该行政行为是否对行政相对人的权益产生实际影响。一般情况下，行政机关内部运作阶段的行为，即便针对具体的行政相对人，甚至已被行政相对人知悉，但因未付诸实施，对行政相对人的权益尚未产生影响，属于不可诉的行政行为。在一宗海域使用引发的行政许可纠纷中，案外人提交了行政机关对其下级机关的批复作为证据，认为因该批复变更了行政相对人的海域使用权限，自身权益受到侵害故而提起行政诉讼，要求撤销该批复。我们认为，批复直接对象是下级行政机关，尽管批复中行政机关要求下级机关变更行政相对人的海域使用权限，但下级机关尚未付诸实施。行政相对人持有的海域使用权证书仍合法有效，海域使用期限并未因此变更，其权利未受实际影响。故即使行政相对人在另案诉讼中知悉该批复内容，但不属于行政行为的外化。因此，该批复不具有可诉性。

（5）复议机关改变原行政行为和依据但未改变处理结果时的诉讼审查对象问题。复议机关改变原行政行为和依据但未改变处理结果的，视

为复议机关维持原行政行为。根据原行政行为与复议决定的统一性和整体性原则，复议决定改变原行政行为认定的事实和依据但未改变处理结果时，原行政行为已不是其作出时的状态，而是以复议决定的形式体现出来的状态。故诉讼最终审查的是以复议决定的形式体现出来的行政行为。行政处罚中认定事实、适用法律有误，但在行政复议时已经对错误进行了纠正并维持了原处理结果的，如经审查被诉行政行为认定事实确凿及法律适用正确的，应驳回行政相对人的诉讼请求。

（6）非诉行政强制执行中加处罚款和滞纳金的执行问题。行政机关有权在行政处罚决定中明确加处罚款内容或单独作出加处罚款或者滞纳金的行政决定，并可申请法院强制执行。根据《行政强制法》第四十五条的规定，行政机关依法作出金钱给付义务的行政决定，当事人逾期不履行的，行政机关可以依法加处罚款或者滞纳金。加处罚款或者滞纳金的标准应告知当事人。加处罚款或者滞纳金的数额不得超出金钱给付义务的数额。加处罚款或者滞纳金，是法律赋予行政机关的一种强制执行措施，也是一种可诉的行政行为。加处罚款或者滞纳金的方式可以在行政决定中直接告知当事人，在行政决定指定的履行期限届满时，加处罚款内容自动生效。依照《行政强制法》第四十六条的规定，没有强制执行权的行政机关可就行政决定和加处罚款一并申请人民法院强制执行。如果行政机关在行政决定中未明确加处罚款内容，行政决定指定的履行期限届满，当事人未自动履行义务的，行政机关可以作出单独的加处罚款行政决定。此时，行政决定直接生效。行政机关可单独就该加处罚款行政决定申请人民法院强制执行。

（7）对存在轻微瑕疵的海上执法行为的审理问题。海洋主管部门在行政执法中应注重行政执法程序的合法性、行政处罚对象准确性、行政处罚依据和违法行为对应统一等问题。对于行政诉讼法和行政强制法等法律、法规所规定的执法程序，必须严格执行，特别要注重保障行政相

对人的重大程序权利，如陈述申辩权、申请听证权以及告知其依法享有的申请复议、提起诉讼的权利。在作出行政处罚时，对处罚对象的身份情况应有相应证据材料证实。对行政相对人的违法行为作出处罚时必须有证实其违法行为的证据材料入卷，所引用的处罚依据也应与违法行为相对应。在审理海事行政案件时，应充分考虑海洋流动性强、证据固定困难等因素。对于实体处理正确，仅存在程序轻微瑕疵的，不宜撤销行政行为或径直认定行政行为违法。对于矛盾冲突较小，不影响社会公众利益的行政处罚等，应尽量采取协商解决的途径，促进当事人达成一致意见，实质性化解行政纠纷。

（三）船员劳务合同纠纷

1．案件基本情况

2016年至2018年，海口海事法院共受理船员劳务合同纠纷239件，案件呈现出以下一些特点：一是船员劳务合同纠纷案件中系列案所占比例高，三年间本院受理的船员劳务合同纠纷中系列案数量所占比例超过95%；二是船员劳务合同纠纷中委托诉讼代理人的比例较低，且部分代理人对船员劳务合同纠纷乃至海事海商纠纷不太熟悉；三是船员提供劳动或劳务的形式较为特殊，现有法律法规直接适用时有困难；四是船员法律意识较为薄弱，在船服务期间证据意识不强，船公司、船员管理公司等用人单位（以下简称用人单位）管理不够规范。导致各方当事人在案件审理过程中陈述多、证据少，且证据往往难以反映整个劳动关系的形成、存续和消灭过程。

2．相关法律问题及解决意见

（1）船员服务类型呈现多元化趋势，且与法律规定不尽一致，使船员与用人单位之间法律关系的认定和适用的诉讼程序更加复杂。从航运业生产经营实践来看，大致可以根据船员服务类型及其与服务对象的关系，将船员分为两类，即自由船员与自有船员，自有船员是指隶属于某

一船公司或者船员管理公司的船员，他们与船公司或者船员管理公司之间存在长期稳定的劳动合同关系，享有一般性劳动法律规范所确认的权利和义务，不论其在船上工作抑或在岸上休假、待岗，其权益通常能够通过劳动合同加以确定和保护。而自由船员不隶属于任何确定的公司，他们往往要依赖船员管理公司或船员服务机构提供短期就业机会，接受这些船员管理公司或者船员服务机构的派遣到指定船舶之上工作，进而与船公司产生联系。根据《船员条例》第二十七条的规定，船员用人单位应当与船员订立劳动合同，但在司法实践中，未订立劳动合同上船服务的情形经常发生，并不罕见。

问题一，如何认定船员与用人单位间的关系。近年来，船员在起诉时往往声称自己与船公司之间属于劳动合同关系，并依据劳动合同法等法律的规定，向船公司等主张未签订劳动合同的双倍工资、经济补偿金、赔偿金等。船员提出上述诉讼请求后，部分情况下船公司会抗辩称双方并非劳动合同关系，而是短期雇佣关系，并认为不应适用劳动合同法，而应适用有关劳务报酬的法律法规进行处理。从法律规定角度来看，考虑到《船员条例》对船员和用人单位之间应当订立的合同类型有明确规定，船员依照劳动合同法提起诉讼无可厚非。但另一方面，从相关案件中查明的事实来看，一是在目前航运业不景气的情况下，许多船员，尤其是低级船员与用人单位之间的法律关系实际上更类似于临时性用工的劳务合同，而非劳动合同，双方在合同订立时也没有形成劳动关系的意思表示；二是许多船员在合同订立时对合同性质等问题不了解也不关心，发生纠纷后发现劳动合同法对自身较为有利，于是在案件审理过程中有意识地对陈述进行编排和裁剪，影响案件事实认定和最终处理。在此情况下，是应当严格按照《船员条例》的规定，统一适用劳动合同法处理船员与用人单位间就提供劳动产生的纠纷，还是在特定条件下可以以劳务合同、劳务报酬的相关法律规定处理此类纠纷?

问题二，在同时存在船公司和船员管理公司、劳务派遣公司的情况

下，如何确定用人单位主体。目前，许多船公司实际上是通过船员管理公司、派遣公司提供船员的。但在诉讼过程中，我们发现，一是许多船员不清楚自己是与谁签订的合同，应该向谁主张权利，二是船公司在案件处理过程中有时会基于自己的利益，在一审过程中故意隐瞒管理公司、派遣公司的存在，而在二审中提出。这样做的直接后果就是可能导致二审法院需要将案件发回一审法院重新审理，进而严重影响诉讼进程。

问题三，对于《船员条例》规定以外的船员与用人单位之间的劳动合同、劳务合同纠纷应如何处理。按照《船员条例》第四条的规定，船员必须是经船员注册取得船员服务簿的人员。但从本院近年来的审判实践来看，目前用人单位雇佣上船工作的人员除传统船员之外，还有传统船员之外的其他船员。如在本院审理的（2017）琼72民初168-177号案中，船员与用人单位之间签订了《渔民劳动合同》约定船员等人上船从事渔业生产，此类纠纷是否适用船员劳务合同的相关规定，应当适用何种法律作出处理，在案件办理中存在争议。

对于由船员与用人单位之间法律关系的性质引发的上述纠纷，我们认为可以从以下方面加以解决。

一是船员与用人单位在船员劳动合同、劳务合同的签订过程中要注意遵循法律规定。对适用《船员条例》的船员，符合条件的应当按照《船员条例》的规定签订劳动合同，如确属于短期用工不适合签订劳动合同的，应签订劳务合同。在合同的形式上，劳动合同应依法采取书面形式，劳务合同也最好以书面形式签订。对于不适用《船员条例》的其他在船工作人员，也应签订与实际情况相符合的劳动合同或劳务合同。在合同签订过程中，用人单位和船员应当自愿、平等、合法地进行协商，明确各方的权利义务，并以合乎法律规定的书面形式予以记录。其中，对于由用人单位向船员提供格式合同的，用人单位应当按照相关法律法规的要求，清晰、准确、公平、合理地设计合同条款并向船员进行说明；在劳务派遣的情况下，用人单位应向船员明确说明劳务派遣关系的存在并

在合同或其他书面文件中载明劳务派遣单位、以劳务派遣形式用工的单位等重要信息。

二是船员与用人单位在船员劳动过程中应留存必要的各类记录。用人单位在雇佣船员从事劳动过程中，无论签订的是何种合同，都应清晰、全面的留存合同、船员劳动记录、工资发放记录、奖惩记录等材料；船员应明确自己提供劳动的对象，应在服务过程中注意留存各类证据，尤其是船员适任证书、船员培训合格证书、船员健康证书、劳动合同、船员服务簿、工资发放记录、在船工作期间的联系人身份信息及联系方法等。船公司和船员应当重视船员服务簿在认定船员劳动关系和优先权等方面的重要价值，船员服务簿上所记载的内容应当清晰、准确、真实。

三是应当进一步完善船员管理的各类法律法规及具体制度。首先应当明确是否所有类型的在船工作人员都应当参照《船员条例》的规定签订书面劳动合同；其次应当明确适用何种法律处理用人单位短期、零散用工引发的法律纠纷。

（2）在足以认定船员与用人单位间是劳动合同关系的情况下，船员劳动关系的特殊性也使得在此类案件审判过程中正确运用法律存在一定困难。从本院近年来此类案件的审理情况来看，有以下一些问题值得关注。

问题一，船员劳动合同的存续期间具有特殊性，如何计算存在争议。船员为用人单位提供劳动的期间往往并非具体的时间范围，而是具体航次或具体运输任务期间。同时，船公司从用人便利和熟悉船舶情况考虑，往往会在一个相对更长的时间范围内（如两到三年期间）在若干航次中反复使用某一批船员，在这种情况下，船员与用人单位的劳动合同存续期间是应当每个航次、任务单独计算，还是在更长的时间尺度上一并计算?

问题二，船员最低配员规定及船员出入境规定可能对船员解除劳动合同的自由产生影响，如何认定存在争议。如在本院审理的（2017）琼

72民初120号案中，原告因个人婚期原因希望提前离船，因被告未同意原告的离船时间，原告遂自行离船。原告自行离船后，被告船舶又因未满足最低配员要求被海事局处罚。鉴于此，原被告双方矛盾升级，也为该案的审判和执行造成了诸多困难。在船员劳动合同没有规定，但由于船员最低配员规定及船员出入境规定对船员解除劳动合同产生限制的情况下，海事法院应如何认定和处理相关情况尚存争议。

问题三，船员工资报酬是否包含加班工资存在争议。用人单位往往表示在签订船员劳动合同的过程中双方已确认船员工资应当包括加班工资，船员则往往作出相反陈述。但从船员提供劳动的特殊性质来看，船员在船舶运营期间必然要在正常工作时间之外和节假日工作。一方面，船员作为有专门知识，从事专业性工作的劳动者应当知晓其工作的特殊性；另一方面，相关合同中往往缺少对此的专门约定。

对于由于船员提供劳动的特殊性引发的上述问题，我们认为可以从以下方面加以解决。

一是船员和用人单位之间在签订劳动合同、劳务合同或其他类型合同的过程中，应结合船员提供劳动的特殊性，就专门问题进行专门约定。如船员不能如期离船时用人单位所需承担的责任问题，节假日工资问题等均应在合同订立中加以明确。但船员作为有专门知识的专业性劳动人员，应当知晓船舶在航行期间存在的一系列特殊性，也应当知晓这些特殊性对船员自身的权利义务可能产生的影响。除合同有专门约定或明显存在特殊情况，不应任意主张与航运实践、惯例不符的工资、报酬等。二是相关法律法规应当对如何处理船员非自愿在船工作期间的劳动报酬、船员节假日工作期间的劳动报酬等由船员劳动特殊性引发的法律问题进行更为详细和具体的规定。

（四）涉邮轮、游艇纠纷

1．案件基本情况

2016年至2018年，海口海事法院受理的涉邮轮、游艇纠纷共61件，标的额近1.1亿元，主要案件类型为：服务合同纠纷（占60.66%）、海域使用权纠纷（占16.39%）、船舶买卖合同纠纷（占6.56%）、租赁合同纠纷（占6.56%）和船舶租用合同纠纷（占3.28%）。涉邮轮、游艇纠纷自2017年以来呈较大幅度上升，2017年较上一年增长2.5倍，2018年较上一年增长6.43倍；从案件类型看，2017年以来，涉邮轮、游艇纠纷的主要案件类型由传统的船舶买卖合同纠纷、船舶建造合同纠纷转向服务合同纠纷、海域使用权纠纷。

2．相关法律问题及解决意见

（1）游艇买卖合同纠纷中不按合同约定账户支付价款问题。在多起游艇买卖合同纠纷案件中，买卖双方在合同中约定以卖方公司账户作为接收货款的账户，但在实际付款过程中，买方则依据卖方（通常是公司法定代表人或控股股东）指示将货款付至卖方公司股东、法定代表人或其他第三人个人账户，由此不当履行合同的行为引起双方就该收付款方式是否构成卖方公司的股东或法定代表人与公司资产混同、滥用法人独立人格和股东有限责任逃避债务问题，以及向卖方公司以外的第三人付款是否为有效付款的问题。一方面，买方主张因卖方以其法定代表人或股东个人账户接收货款的行为属于股东与公司法人财产混同，进而主张适用《公司法》第二十二条之规定，揭开公司法人面纱，由股东与公司承担连带责任；另一方面，在有些案件中，卖方（公司）据此抗辩称，买方未按约定账户支付货款，构成无效支付，未履行支付义务，要求返还游艇。对此，我们认为：各方当事人在经济交易过程中，均应按合同约定的方式履约，特别是在支付环节，买方应当按照合同约定的账户进行付款，留存相关凭证，规范支付行为，避免因自身支付不当引发纠纷；卖方公司应当自觉遵守《公司法》及相关财务规定，规范公司财务管理，不以股东或其他个人账户收取货款，避免对方以股东与公司法人人格混同为由，要求股东与公司承担连带责任，为公司带来负面影响。

（2）先交付后签约形式下的船舶所有权转移问题。在一宗游艇买卖合同纠纷中，买卖双方采取先交付后签约的形式进行船舶买卖，卖方先行将游艇交付给买方后，双方签订买卖合同，买方陆续支付大部分船款给卖方，并开始占有使用。在完成所有权变更手续前，该游艇发生火灾损毁，双方就涉案游艇所有权和风险转移引发纠纷。依据《民法通则》第七十二条和《物权法》第二十三条的规定，游艇的所有权于完成交付时即转移至买方名下，此后风险应由买方承担。至于该船未完成所有权转让登记，并不影响该游艇所有权在买卖双方之间已发生转移的效力，未经登记的船舶所有权只是不具有对抗善意第三人的效力。因此，我们认为：在买卖游艇过程中，一方面要及时做好验船工作，另一方面，要尽快办理船舶所有权变更手续。

（3）游艇擅自停泊于他人海域使用权海域内的侵权问题。因经营海上军事博物馆需要，被告经三亚市政府协调，将数艘船舶停靠在原告享有海域使用权的海域，且未支付相关费用。原告要求被告按照其所制定的码头泊位收费标准支付海域使用费用，被告认为其锚泊行为系经过三亚市政府同意，故不愿支付，就此产生纠纷。在这批擅自使用他人海域的侵权纠纷案件中，虽然被告未经约定擅自使用原告海域的行为已构成侵权，但其停泊行为系经政府部门协调、沟通后做出，虽存在过错，但责任较小，且非恶意侵权。为此，我们认为：第一，在此类涉及公益的海上项目经营过程中，行政机关应发挥更加积极的引导作用，树立契约意识，尊重他人合法权益，尊重市场经济规则，组织、协调双方就有偿使用海域等问题进行磋商，营造平等、高效、法治的营商环境。第二，关于海域锚泊涉及海域使用收费应与码头泊位收费标准有所区别。船只在海域锚泊与停靠在码头泊位，对产权人而言，所付出的管理成本是不一样的。因此，在海域锚泊，不应依据码头泊位收费标准，对此类案件的侵权损失应以涉案船舶造成占用海域面积的海域出让金计算损失较为适宜。

（4）涉游艇会籍服务合同纠纷中的问题。一是会员信息登记制度不完善。购买游艇会籍的主体来源广，会员散布全国各地，但签约时留存信息不全，后续联络不畅，甚至导致诉讼阶段送达难。二是服务管理程序不合法。会籍服务合同中虽然约定了游艇会有权对年费、更名费等费用视物价通胀及人力成本等因素，每年在一定幅度内调整，但经营单位忽略了在上调时履行告知的程序，导致该部分请求无法得到支持。三是游艇服务合同履行不到位。游艇会未依约向会员交付主卡和附属卡，引发会员反诉认为其未交卡行为构成根本违约的争议。四是会籍条款表述存在争议。双方在关键性会籍条款的用词和表述上，对条款的文意和内涵产生歧义从而对权利义务性质发生争议。如在《会籍条款》中约定游艇会提供“指定泊位使用权一个”，游艇会认为意指确保会员需要泊位时提供合适的泊位，会员则认为游艇会应为其提供固定泊位供其占有、使用。五是会籍使用效率较低。会籍费需要数十万元甚至上百万元，每年年费还需数万元，但有些会员并非每年都使用或者使用次数较低，此前仅允许会员本人享受会籍服务，导致会籍使用效率和价值较低。对此，我们认为：一是游艇产业相关单位在向消费者提供服务时，应当做好相关信息的收集、固定、更新，特别是联系方式的留存与核实，降低维权成本；二是注意提升服务管理程序的规范性，严格按照法律规定履行告知义务；三是及时向会员交付主卡和附属卡；四是完善会籍条款，对关键性会籍条款的用词和表述尽可能明确，避免因对条款的文意和内涵产生歧义从而对权利义务性质发生争议；五是游艇会员服务单位应当不断完善自身服务，对会籍管理和会员优惠政策赋予更加灵活、开放的使用政策，例如，为游艇会员提供会籍转租等业务，既可提高自身业务量，也可为会员提供收益，提升良好会员体验度以及提高会籍使用率和价值，增强游艇服务商品吸引力，促进游艇经济繁荣。

三、典型案例

（一）福州丰达船务有限公司诉中国太平洋财产保险股份有限公司福建分公司船舶保险合同纠纷案

【基本案情】

被保险人丰达公司为其所属“天利69”轮向保险人中国太平洋财产保险股份有限公司福建分公司（下称太保福建分公司）投保船舶一切险。“天利69”轮船舶证书载明航行区域为近海，营业运输证核定的经营范围为国内沿海及长江中下游普通货物运输。2014年10月24日，“天利69”轮在南沙华阳礁附近锚泊、等待卸货过程中，发生搁浅。在救助过程中由于破损口进水无法控制，最终导致船舶沉没。沉没地点概位为北纬8°53′589″，东经112°51′267″，水深约2000米。经三沙海事局调查认定：“天利69”轮应对事故负全部责任。

丰达公司随即向太保福建分公司提出理赔请求，太保福建分公司以事故发生时被保险船舶不在保险合同约定的航区范围等为由拒赔。丰达公司遂诉至本院，请求判令太保福建分公司向其支付“天利69”轮船舶保险赔偿金1020万元。

【裁判结果】

本院认为，根据涉案保险单的约定，太保福建分公司就“天利69”轮承保的是沿海内河船舶保险条款一切险及有关附加险，航行范围为近海航区及长江A、B级；而本案所涉事故发生地南沙华阳礁附近水域属于我国远海航区，故事故航次“天利69”轮属超航区航行，且未事先通知保险公司并征得其同意，违反了被保险人的保证义务。根据保险单所附《沿海内河船舶保险条款》第十六条“……对于保险船舶出售、光船出租、变更航行区域或保险船舶所有人、管理人、经营人、名称、技术

状况和用途的改变、被征购征用，应事先书面通知保险人，经保险人同意并办理批改手续后，保险合同继续有效。否则自上述情况出现时保险合同自动解除”的约定，涉案保险合同在保险船舶离开约定航行区域时，即本案所涉事故发生前已自动解除，事故发生时双方之间已不存在保险合同关系。因此，本案所涉事故所造成的保险船舶损失不属于保险责任范围，太保福建分公司对涉案船舶损失不承担保险赔偿责任。本院据此判决驳回丰达公司的诉讼请求，丰达公司不服提起上诉，海南省高级人民法院二审维持原判。

【典型意义】

本案为海上船舶保险合同纠纷，因案涉南海海域运输而受到广泛关注。该案的审理，具有以下典型意义：第一，厘清了航区的概念。丰达公司庭审中主张，涉案事故发生地距华阳礁不足1海里，应属沿海航区。我们认为，航区属于国内航行海船技术规范中的专门名词，其含义不能作任意解释，而应由专司航海保障和船舶检验登记的主管行政机关规定。我国行使这一职权的机关是中华人民共和国海事局，故航区的界定应以该局公布的规范为准。根据相关规范对航区的划分，明确界定南沙华阳礁附近水域属于远海航区。第二，明确了被保险人违反保证义务的后果。保险船舶超航区航行，且未事先通知保险人并征得其同意，属被保险人违反保证义务的行为。根据最高人民法院《关于适用<中华人民共和国保险法>若干问题的解释（二）》第九条第二款的规定，被保险人违反保证义务的情形，不属于保险法第十七条第二款规定的“免除保险人责任的条款”，故保险人对由此造成的后果无须提示、说明及通知。第三，统一了相关案件的裁判标准。我国沿海船舶超航区航行情况比较普遍，全国保险业界和海上运输业界高度关注本案，急盼通过司法裁判界定航区与主权的关系，规范行业行为。本判决认定航区划分与主权无关，船舶应按核定航区营运，超航区航行将有可能使保险船舶因违反保证义务而

得不到保险赔偿，遏制了超航区航行等不安全行为，规范了国内海上运输市场。

（二）杨建欢诉宁波市秦宁船务代理有限公司等船员劳务合同纠纷案

【基本案情】

南通腾云公司是“腾云”轮的船舶所有权人，南通海运公司是该轮登记的经营人，秦宁公司是该轮的实际经营人。2015年8月7日，杨建欢受聘到“腾云”轮上工作，任职船长，月工资33000元。秦宁公司长期拖欠船员工资，仅于2015年11月发放杨建欢工资46080元；货主三沙某建材有限公司于2016年2月4日代秦宁公司向杨建欢支付了3个月的工资。截至2016年6月4日，秦宁公司拖欠工资182400元，且自2015年11月10日起再未向船员提供生活费用。杨建欢遂诉至我院。

【裁判结果】

本院认为，杨建欢与秦宁公司虽未订立书面劳动合同，但双方已经形成了事实上的劳动合同关系，杨建欢有权要求秦宁公司支付拖欠的工资182400元、1个月工资的经济补偿33000元、因违法未签订书面劳动合同所应当支付的双倍工资差额231000元、船员生活费3100元和遣返费1200元；其他费用因其并非用工方法定或约定应付费用，或因缺乏证据证明而不予支持。因南通腾云公司、南通海运公司非船员用工方，无需承担连带赔偿责任。另外，因船员生活费不在《海商法》所确定的船舶优先权范围，双倍工资差额和经济补偿均不具有劳务报酬性质，因此杨建欢仅就拖欠的工资及遣返费对“腾云”轮具有船舶优先权。

本院据此判令上述内容并驳回杨建欢其他诉讼请求。各方当事人未提起上诉。

【典型意义】

本案明确在船员劳务合同纠纷案件中，船员不得就双倍工资差额部分、经济补偿金、赔偿金主张船舶优先权。因为，双倍工资差额部分、经济补偿金、赔偿金的支付虽然是基于双方劳动关系的成立而产生，但其并非劳动者提供劳动的价值体现，而是用人单位因其违法行为而承担的法定惩罚性赔偿，不具有劳务报酬性质，不属于《海商法》第二十二条规定的享有船舶优先权的工资或其他劳动报酬。

（三）大韩海运株式会社申请承认与执行外国仲裁裁决案

【基本案情】

2008年8月5日，大韩海运株式会社作为船东与作为承租人的大新华轮船（香港）有限公司签订《租船合同》，将“K Daphne”轮予以出租，海航集团有限公司向大韩海运出具《履约保函》，对大新华轮船（香港）有限公司在前述《租船合同》下的履约义务承担保证责任。海航集团的对外担保行为未经我国外汇管理部门的审批。双方在合同履行期间发生纠纷。2016年1月13日，由蒂莫西·马歇尔（Timothy Marshall ）、帕特里克·奥多诺（Patrick O'Donovan）、大卫·法灵顿（David Farrington）三位仲裁员组成仲裁庭在伦敦就大韩海运与海航集团关于“K Daphne”轮2008年8月5日《租船合同》和《履约保函》的纠纷作出《最终裁决》，裁定海航集团赔偿大韩海运 77830179.46 美元及其利息。因海航集团未履行该《最终裁决》确定的付款义务，大韩海运向我院提出承认与执行该《最终裁决》之申请。在我院对该案司法审查期间，大韩海运申请对海航集团价值5.6亿元人民币的财产进行保全，并提供了相应担保。

【裁判结果】

经审查，本院作出（2016）琼72协外认1号民事裁定书，准许了大韩海运的财产保全申请。海航集团不服该裁定申请复议，本院审查后认为，在承认与执行外国仲裁裁决期间申请财产保全没有法律依据，故作

出（2016）琼72协外认1号之一民事裁定书，撤销原保全裁定，驳回了大韩海运的保全申请。2017年8月15日，本院作出（2016）琼72协外认1号之二民事裁定书，认为涉案《最终裁决》不具有《承认及执行外国仲裁裁决公约》第五条规定的不予承认和执行的情形，亦不违反我国加入该公约时做出的保留性声明，故对涉案《最终裁决》应予承认和执行。与此同时，双方当事人就本案达成庭外和解。

【典型意义】

本案审理过程体现了我国审判机关公平公正和全面履行公约义务的良好国际形象。本案是一宗重大涉外案件，外方当事人大韩海运曾因担心遭受不公正待遇求助于韩国驻华大使馆。但本院在审查过程中既坚决维护我国的司法主权，依法驳回大韩海运的保全申请；同时严格依照《承认及执行外国仲裁裁决公约》，本着“有利于执行”的公约理念，谨慎把握公共政策对外国裁决的否定效力，最终作出未经批准的对外担保行为不构成违反我国公共政策的认定，并对涉案外国裁决予以承认和执行。本案平等保护了中外当事人的合法权益，处理结果得到双方当事人的一致认同。其次，本案填补了承认与执行外国仲裁裁决司法审查期间财产保全制度的法律空白。我国现有法律仅对外国仲裁裁决的承认和执行作了规定，但承认与执行外国仲裁裁决的司法审查期间的财产保全制度尚属空白。本院认为，承认与执行外国仲裁裁决司法审查期间的财产保全属于国际司法协助的范畴，在当前我国法律尚未对此作出制度安排的情况下，应当以我国与仲裁裁决作出国共同参加的国际条约或两国之间存在的互惠原则作为依据，在没有上述依据时，对于当事人的保全申请应不予准许。

（四）临高椰丰海洋开发有限公司诉海口市海洋和渔业监察支队、海口市海洋和渔业局渔业行政处罚及行政复议案

【基本案情】

2017年10月12日，海口市海洋和渔业监察支队作出琼海口海渔监察罚（2015）0603001号渔业行政处罚决定。该处罚决定认定，椰丰公司未持有《水生野生动物特许运输证》，在南沙仁爱礁附近海域采挖砗磲贝壳34.8吨，并运回海南文昌翁田镇湖心港，违反《水生野生动物保护实施条例》第十八条、第二十条的规定。经鉴定，该批砗磲贝壳为国家一级重点保护水生野生动物库氏砗磲贝壳，价值为38280元。监察支队依照《水生野生动物保护条例》第二十八条的规定，对椰丰公司作出没收34.8吨砗磲贝壳并处罚款306240元的处罚决定。

椰丰公司不服，向海口市海洋和渔业局申请行政复议。海口市海洋和渔业局于2018年1月31日作出市海渔行复决（2018）1号《行政复议决定书》，认为（2015）0603001号行政处罚决定引用《水生野生动物保护条例》第十八条没有事实依据，属适用法律错误，但不影响处罚结果的正当性，维持海口市海洋和渔业监察支队的行政处罚决定。椰丰公司诉至本院，请求撤销（2015）0603001号《渔业行政处罚决定书》及（2018）1号《行政复议决定书》。

【裁判结果】

本院认为，椰丰公司运输的砗磲贝壳虽为死体，亦属于法律法规保护的范围，其行为构成非法运输国家重点保护水生野生动物产品。（2015）0603001号《渔业行政处罚决定书》引用《水生野生动物保护条例》第十八条认定椰丰公司有出售、收购砗磲贝壳的行为缺乏事实依据，但（2018）1号《行政复议决定书》在复议时已经对原行政处罚决定在认定事实和适用依据上的错误进行了纠正，并维持了原处理结果。被诉行政行为认定的事实及适用依据均合法，故判决驳回椰丰公司的诉讼请求。椰丰公司不服提起上诉，海南省高级人民法院二审维持原判。

【典型意义】

当下海南非法采挖、出售砗磲的行为猖獗，必须加大对砗磲和砗磲贝壳的保护力度。保护砗磲，不仅要禁止违法捕捞砗磲的行为，同时要对购买、出售、运输、采挖等各方面涉及砗磲及其制品的环节加以约束和限制。砗磲贝壳虽为死体，但在采集过程中必然对其周围的珊瑚礁造成永久性的破坏，同时也损害了海洋环境资源。本案依法支持行政机关打击非法运输砗磲贝壳，是对“绿水青山就是金山银山”环保理念的坚决贯彻落实。其次，本案对“原行政行为与复议决定的统一性和整体性原则”作出了恰当的解释。复议机关改变原行政行为和依据但未改变处理结果的，视为复议机关维持原行政行为。根据原行政行为与复议决定的统一性和整体性原则，复议决定改变原行政行为认定的事实和依据但未改变处理结果时，原行政行为已不是其作出时的状态，而是以复议决定的形式体现出来的状态，故本案最终审查的是以复议决定的形式体现出来的行政行为。

（五）孙才明、羊海诉东方市海洋与渔业局行政赔偿案

【基本案情】

2011年6月8日，东方市渔业执法大队（东方市海洋与渔业局的下属机构，现为东方市海洋与渔业监察大队）根据孙才明的申请，批准其在八所渔港（西北防波堤）位置设置渔排（250平米），使用时间为2011年6月8日至2026年6月8日。期间，东方市海洋与渔业监察大队收取孙才明、羊海渔排管理费2000元。孙才明、羊海设置渔排并未取得《海域使用权证》、《养殖许可证》。

2018年1月18日起，东方市海洋与渔业局陆续向孙才明、羊海发出《强制拆除海上违法渔排催告书》、《关于限期拆除八所中心渔港港池内违建渔排的通告》、《强制拆除海上违法建筑催告书》。5月29日，东方市海洋与渔业局对孙才明、羊海的渔排实施了强制拖离措施。据拖

离渔排现场照片所示，拖离的渔排为十口（含房子），每口面积为 4 米×4 米，总面积为 160 平方米。孙才明、羊海认为东方市海洋与渔业局的强制拖离行为对其造成了巨大经济，起诉请求判令东方市海洋与渔业局赔偿建造鱼排损失、购买鱼苗和养殖花费损失共计 1848600 元。

【裁判结果】

本院认为，东方市海洋与渔业局在未保障孙才明、羊海程序性权利的情况下径行实施强制拖离，属于程序违法（已另案判决确认强制拖离行为违法），受害人孙才明、羊海有权请求赔偿。因其未就主张的鱼苗及养殖花费损失举证证明，结合渔排市场造价、折旧率和其在未取得《海域使用权证》、《养殖许可证》就擅自设置渔排等因素，判决东方市海洋与渔业局赔偿孙才明、羊海的渔排损失 70000 元，并驳回其其他诉讼请求。东方市海洋与渔业局不服提起上诉，海南省高级人民法院二审维持原判。

【典型意义】

本案就国家赔偿中“合法权益”的范围作出了合理解释。根据《国家赔偿法》第二条的规定，行政机关及其工作人员行使职权，侵犯公民、法人或者其他组织合法权益，造成损害的，受害人有权请求赔偿。一般情况下，行政相对人未取得《海域使用权》和《养殖许可证》从事海上养殖，其经营所得不能认定为合法权益。但本案中，渔业主管部门下属的执法大队本身无权批准使用海域、许可养殖，却向行政相对人颁发了《设置渔排批准书》。而行政相对人基于对渔业主管部门的信赖，误认为取得设置渔排批准等同于合法有效的证书，长期从事渔排养殖经营活动。行政相对人对渔排和养殖鱼苗的所有权应视同为合法权益,因拆迁渔排所遭受的损失应予赔偿。

其次，行政相对人对损失的产生存在过错的，应予减轻行政赔偿机关的责任。本案中，行政相对人未取得《海域使用权证》、《养殖许可

证》就擅自设置渔排，且在行政机关三次催告期间均未采取有效措施避免鱼苗损失，自身也存在一定过错。按照其过错大小，酌情减轻行政机关的赔偿责任。

（六）“丰盛油 8”轮火灾引发的九宗海难救助纠纷案

【基本案情】

2016 年 10 月 20 日 1231 时，东莞市丰海海运有限公司（简称丰海公司）所属“丰盛油 8”轮在海南省东方市八所港装载石脑油期间，机舱发生闪爆起火，约在 1250 时和 1300 时再发生两次爆炸。当时，该轮货舱已装载了中国石化扬子石油化工有限公司（简称扬子石化公司）购买的石脑油 3400 多吨。事发后，东方市成立了应急指挥部，省政府组成应急处置小组赶赴八所港指导事故应急处置。应急指挥部组织多家单位在不同时间参加对事故船舶的救助，并疏散人员到安全地带。在多方救助下，“丰盛油 8”轮于 11 月 17 日 0900 时脱离火灾险情，随后，过驳船上装载的石脑油，12 月 6 日过驳完毕。本次海难救助获救船货总价值为 16745804 元，其中，船舶获救价值 5685000 元，获救货物价值 11060804 元，同时有效防止船载石脑油对周围环境造成污染损害。12 月 16 日，中国平安财产保险股份有限公司东莞分公司（简称东莞平安保险公司）就本次事故出具《担保函》，承诺保证支付因事故产生的应由“丰盛油 8”轮船舶所有人/光租人承担的赔偿款项（不超过 300 万元）。此外，在本次事故发生期间，东莞平安保险公司承保了“丰盛油 8”轮的“沿海内河船舶保险一切险”和“沿海内河船东保障和赔偿责任保险”，保险金额（责任限额）分别为 4000 万元和 4800 万元。

事后，共有 9 家救助单位向海口海事法院提起海难救助纠纷诉讼，基本情况，详见“各案情况一览表”：

各案情况一览表

案号	原告	被告	原告诉讼请求	本院认定基本事实
（2018）琼72民初205号	国投洋浦港有限公司拖轮分公司	丰海公司、扬子石化公司、东莞平安保险公司	1.被告丰海公司、扬子石化公司按比例支付救助款项167728元及该款利息；2.被告东莞平安保险公司对被告丰海公司应支付的救助款项承担连带清偿责任。	原告所属“洋港拖5”轮应海南省搜救中心要求于10月24日0930时到达现场锚泊待命，于当日下午协助“丰盛油8”轮离开泊位后撤离现场。救助费用为46410元。
（2018）琼72民初206号	海南厦港拖轮有限公司	同上	三被告连带支付救助款项（包括救助报酬、特别补偿、雇佣救助酬金）2067904元及其利息。	原告所属“厦港拖16”轮于10月24日0930时到达现场锚泊待命；当日，“丰盛油8”轮由“厦港拖16”轮拖带到八所港6#锚地抛锚后，“厦港拖16”轮对“丰盛油8”轮进行24小时看护。救助费用为1130170元。12月10日，原告与被告丰海公司签订《拖轮救助费用确认表》，确认第二阶段费用为242476元。
（2018）琼72民初207号	三亚华利清污有限公司	同上	1.被告丰海公司、扬子石化公司共同支付救助报酬和特别补偿共4812275.13元；2.被告东莞平安保险公司在保险承保范围内承担连带赔偿责任。	原告所属“华利3”工作船（清污船）根据通知要求于10月20日进入事故现场，在化工码头门口处值守，待命防污清污。所属“华利油9”轮及租赁经营的“天星油6”轮，于“丰盛油8”轮过驳石脑油期间，在过驳现场外围值守、待命。救助费用为672000元。

（2018）琼72民初208号	洋浦益明港口服务有限公司	同上	1.被告丰海公司、扬子石化公司支付救助报酬500万元及利息；2.在原告获得的救助报酬不足3388024元时，被告丰海公司支付特别补偿费用至3388024元；3.原告就前两项诉讼请求对“丰盛油8”轮享有船舶优先权；4.被告东莞平安保险公司对被告丰海公司应付款项承担连带支付义务。	原告所属“海卫2”清污船于10月22日对“丰盛油8”轮机舱进行抽离油污水救助作业；23日1735时，“丰盛油8”轮在抽油污水救助作业中再次发生爆炸，“海卫2”轮停止作业并撤离人员；25日“海卫2”轮离开八所港，随后将接收的油污水过驳至其光船租赁的“日港油1”轮，后又由“日港油1”驳至“慈航9”轮。救助费用为1171522.77元。
（2018）琼72民初209号	海南八所港务有限责任公司	同上	1.被告丰海公司支付救助报酬106.61万元和相当于救助费用的特别补偿106.61万元；2.被告扬子石化公司对被告丰海公司应承担的救助报酬和特别补偿费承担连带责任；3.被告东莞平安保险公司在保险责任范围内对被告丰海公司、扬子石化公司的债务承担连带责任。	原告所属“八港拖6”轮、“八港拖7”轮按应急指挥部要求于10月20日至24日到事发码头港区水域应急待命，之后参与现场处置。救助费用为747800元。
（2018）琼72民初210号	海洋石油富岛有限公司	同上	1.被告丰海公司支付救助报酬312709.2元和相当于救助费用的特别补偿312709.2元；2.被告扬子石化公司对被告丰海公司应当承担的救助报酬和特别补偿费承担连带责任；3.被告东莞平安保险公司在保险责任范围内对被告丰海公司、扬子石化公司的债务承担连带责任。	原告出动消防装备、救护车及消防人员从10月20日至24日进行应急抢险救助。救助费用为312709.2元。

（2018）琼72民初211号	海南宇康船舶科技服务有限公司	同上	三被告连带支付救助报酬和特别补偿共计147741元及利息。	原告于10月23日接到海口海事局通知后，派出四名专业人员携带两台防爆卸载设备前往八所港参与救援，直至10月26日结束。救助费用为40541元。
（2018）琼72民初212号	交通运输部南海救助局	同上	三被告向连带支付救助款项23798720元及利息。	原告派出“南海救101”轮和“南海救112”轮于10月24日相继抵达现场，并在“丰盛油8”轮被“厦港拖16”轮拖带出八所港码头时作为接替船备用；之后，“南海救101”轮对“丰盛油8”轮进行24小时看护，直至11月18日撤离现场。在救助过程中，南海救助局曾与丰海公司就过驳期间如需“南海救101”轮全程监护则按商业程序来走进行协商，但并未谈成。救助费用为3976833元。
（2018）琼72民初213号	丰海公司	扬子石化公司	被告支付救助报酬400万元。	原告所属“丰海16”轮（被救助船的姊妹船）于11月20日至22日、12月4日至6日对“丰盛油8”轮货舱石脑油进行过驳。救助费用为1159663.02元。

【裁判结果】

1．裁判理由（九案综述）

“丰盛油8”轮机舱爆炸起火导致该轮及其货舱装载的危险品货物处于危险之中，政府部门对该事故进行应急处置，组织多家单位实施救助，9家救助单位因此与被救助方形成了海商法上的“无效果无报酬”的海难救助法律关系。原告南海救助局与丰海公司并未达成雇佣救助合意，其主张所实施救助同时兼有“无效果无报酬”救助与雇佣救助性质，理由不成立。如果允许船方（被告一）在救助后期未经货方（被告二）

同意，与个别救助方（原告）签订雇佣救助合同并将双方约定的酬金并入“无效果无报酬”的救助费用之中处理或者直接作为救助报酬让货方承担，则将会导致对其他救助方和货方不利的结果。这即违背合同相对性原则，也与海难救助法律制度的基本精神不符。原告厦港拖轮公司主张的第二阶段救助酬金242476元，是船方丰海公司在“无效果无报酬”的救助作业的紧迫性已经消除的情况下，未经货方同意自行与厦港拖轮公司约定的。因此该酬金不能并入“无效果无报酬”的救助报酬进行分配，应由丰海公司自行承担。扬子石化公司主张应当考虑救助人存在过度救助、过错救助的因素减少救助报酬金额，因其未能举证证明，本院不予采纳。

根据本次救助作业耗时长、救助单位多、救助费用大、救助效果明显等多方因素，按获救财产价值总价值的 45%确定救助报酬总金额为7535611.87 元。丰海公司、扬子石化公司分别按其获救财产占全部获救财产的价值的比例（即 33.95%和 66.05%）承担救助报酬。综合考虑本次救助的整个过程及各救助方在防止或者减少环境污染损害方面的技能和努力、救助成效、危险的性质和程度、救助方所用的时间、支出的费用和遭受的损失、救助方提供服务的及时性、救助设备的备用状况、效能和设备的价值等多种因素，确定 9 家救助单位应获得救助报酬的分配比例（详见“判决结果一览表”）。

本次救助属于海商法第一百八十二条所规定的对构成环境污染损害危险的船舶或者船上货物进行的救助。部分原告因其所获救助报酬少于可得到的相当于救助费用的特别补偿，有权按海商法第一百八十二条规定，从船舶所有人处获得特别补偿，请求金额为救助费用与救助报酬的差额。

由于事故救助结束后，东莞平安保险公司按海商法相关规定为被救助船舶的船东（丰海公司）提供 300 万元担保，而且东莞平安保险公司承保被救助船舶的船东责任保险和船舶保险，丰海公司作为上述责任保

险的被保险人怠于请求保险人支付保险赔偿金，因此，救助人可在其提起的海难救助纠纷案件中直接请求平安东莞公司承担船东（丰海公司）所应支付款项的连带责任。

2．裁判结果

判决结果一览表

案 号	判决结果	救助报酬分配比例
（2018）琼 72 民初 205 号	一、被告丰海公司向原告洋浦港拖轮公司支付救助报酬和特别补偿共计 16546.37 元。二、被告扬子石化公司向原告洋浦港拖轮公司支付救助报酬 29863.63 元。三、被告东莞平安保险公司对被告丰海公司应承担的救助款项 16546.37 元负连带清偿责任。	0.6%
（2018）琼 72 民初 206 号	一、被告丰海公司向原告厦港拖轮公司支付救助报酬、特别补偿、约定酬金共计 675827.96 元。二、被告扬子石化公司向原告厦港拖轮公司支付救助报酬 696818.04 元。三、被告东莞平安保险对被告丰海公司应支付的救助款项 675827.96 元负连带清偿责任。	14%
（2018）琼 72 民初 207 号	一、被告丰海公司向原告华利清污公司支付救助报酬 332584.23 元。二、被告扬子石化公司向原告华利清污公司支付救助报酬 647045.31 元。三、被告东莞平安保险对被告丰海公司应支付的 332584.23 元救助报酬负连带清偿责任。	13%
（2018）琼 72 民初 208 号	一、被告丰海公司向原告益明港口公司支付救助报酬 460501.24 元。二、被告扬子石化公司向原告益明港口公司支付救助报酬 895908.90 元。三、被告东莞平安保险对被告丰海公司应支付的救助款项 460501.24 元负连带清偿责任。	18%
（2018）琼 72 民初 209 号	一、被告丰海公司向原告八所港务公司支付救助报酬和特别补偿共计 349618.27 元。二、被告扬子石化公司向原告八所港务公司支付救助报酬 398181.73 元。三、被告东莞平安保险对被告丰海公司应支付的救助款项 349618.27 元负连带清偿责任。	8%

（2018）琼72民初210号	一、被告丰海公司向原告石油富岛公司支付救助报酬和特别补偿共计113618.33元。二、被告扬子石化公司向原告石油富岛公司支付救助报酬199090.87元。三、被告东莞平安保险对被告丰海公司应支付的113618.33元救助款项负连带清偿责任。	4%
（2018）琼72民初211号	一、被告丰海公司向原告宇康船舶公司支付救助报酬和特别补偿共计20631.91元。二、被告扬子石化公司向原告宇康船舶公司支付救助报酬19909.09元。三、被告东莞平安保险对被告丰海公司应支付的救助款项20631.91元负连带清偿责任。	0.4%
（2018）琼72民初212号	一、被告丰海公司向原告南海救助局支付救助报酬和特别补偿共计2483651.51元。二、被告扬子石化公司向原告南海救助局支付救助报酬1493181.49元。三、被告东莞平安保险对被告丰海公司应支付的救助款项2483651.51元负连带清偿责任。	30%
（2018）琼72民初213号	被告扬子石化公司向原告丰海公司支付救助报酬597272.6元。	12%

【典型意义】

一是本次海难救助引发的九宗案件几乎涉及我国海商法有关海难救助的所有重要制度，案件审理所适用的相关法律和司法解释条文多达13条。

二是确定救助报酬占获救财产价值比例，兼顾并平衡救助人与被救助人的权益。救助报酬占获救财产价值的比例如何确定，海商法未作明确规定。据不完全统计，司法实践中这一比例为10%左右。本院综合考量救助作业耗时长达48天、救助单位众多、救助费用高昂且救助效果明显等多方因素，确定救助报酬总额为获救财产价值的45%。九宗案件的当事人均未就此提出上诉。可见，这一比例虽然较高，但能被所有当事人接受，是公平、合理的比例。这一点对审判实践具有一定借鉴意义。

三是海商法上的“无效果无报酬”的海难救助，其本质是法律鼓励和倡导的救助行为，并非商业行为。因此，“救助费用”应当是已经支付或者应当支付的费用，包括其遭受的直接损失。救助费用是救助人分配救助报酬应当考虑的一个重要因素，但各救助人之间分配救助报酬的比例，不能简单地与他们之间救助费用比例划等号。在多个救助人参与同一海难事故救助的情况下，应当根据海商法第一百八十条规定，综合考虑整个救助过程及每个救助人在防止或者减少环境污染损害方面的技能和努力、救助成效、危险的性质和程度、救助方所用的时间、支出的费用和遭受的损失、救助方提供服务的及时性、救助设备的备用状况、效能和设备的价值等多种因素，合理确定救助报酬分配比例。因此，有的救助人获得的救助报酬可能多于其救助费用；有的救助人获得的救助报酬可能少于其救助费用。上述九宗案件同时出现这两种情况，正是综合考虑各救助人实施救助的多种因素的结果。

四是本案被告东莞平安保险公司既为本次事故出具《担保函》，承诺保证支付因事故产生的应由“丰盛油 8”轮船舶所有人/光租人承担的赔偿款项（不超过 300 万元），又承保事故船舶的相关保险，保险金额已超过被担保人（被保险人）丰海公司应承担的责任。而且丰海公司怠于请求保险人支付保险赔偿金，甚至存在与保险人达成和解协议放弃部分保险权利而损害第三方即本案原告利益的可能性。因此，直接判决东莞平安保险公司对丰海公司应支付的救助报酬和特别补偿承担连带清偿责任，既符合保险法的规定，也减少当事人的讼累。

（七）三亚新机场临空产业园空港区建设发展有限公司不服三亚市海洋与渔业局海域行政处罚案

【基本案情】

2016 年 11 月 15 日，中国海监三亚市支队（被告海洋与渔业局下属

机构）在三亚市天涯区红塘湾海域对三亚新机场工地现场检查时，发现新机场临空产业园一期正南方 1 公里处正在填海造地。因原告新机场空港区公司不能提供工程项目的海域使用权证及相关审批材料，海洋与渔业局予以立案调查并于 17 日向新机场空港区公司送达《责令停止违法行为通知书》。12 月 21 日，三亚市海洋与渔业监测中心对工程现场进行实地测量，确定违法用海面积为 1.4174 公顷。2017 年 5 月 15 日，海洋与渔业局作出并送达【2016】15 号处罚决定，责令新机场空港区公司退还非法占用的海域，恢复海域原状，并处罚款 22324050 元。新机场空港区公司不服该处罚决定，向我院起诉请求予以撤销。

另查明，三亚凤凰国际机场迁建项目（下称三亚新机场项目）是海南省重点建设项目，《海南省国民经济和社会发展第十三个五年规划纲要》将三亚机场迁建规划列为海南省重点基础设施十大工程之一。三亚新机场规划由空港海港运营区（又称人工岛）、临空国际旅游商贸区（又称莲花岛、临空产业园、临空经济区）和机场配套产业区（陆域）三部分组成，填海造地面积达 28.18 平方公里。项目业主和建设单位为海航集团，新机场空港区公司为海航集团下属企业。

2011 年 11 月，海南省政府召开专题会议研究推进三亚机场迁建工作。2012 年 12 月，省政府决定成立三亚机场迁建工作领导小组，负责统筹协调三亚机场迁建中的重大问题。海航集团会同省发改委、海航机场集团有限公司开展项目前期工作，按计划推进项目报批工作。2013 年 8 月，省政府召开专题会议，原则同意三亚机场迁建选址通过填海获取土地，以红塘湾场址为迁建的首选场址。2014 年 11 月，省发改委报请中国民用航空局对三亚新机场选址红塘湾的选址报告进行审批。因不符合海洋功能区划，国家海洋局报请国务院同意《海南省海洋功能区划（2011-2020 年）》红塘湾海域修改方案，将红塘湾局部海洋功能区划调整为工业与城镇用海区，以符合修建机场。海南省 2016 年、2017 年重点项目投资计划先后将三亚新机场项目列为新项目和续建项目。省政府要

求加强三亚新机场前期工作，强调三亚新机场建设的各项工作要始终坚持科学论证、于法有据、合法合规，依法依规办理填海工程手续，确保在2016年底前开工建设，2020年建成投入使用。

为加快三亚新机场项目建设，海航集团下属的三亚新机场投资建设有限公司从临空国际旅游商贸区和空港海港运营区分别划出临空产业园一期和人工岛起步区，未经批准先行启动填海工程。2016年7月，临空产业园一期47.8879公顷的海域使用权获得批准，海域使用期限为50年。同样，新机场空港区公司在尚未获得海域使用权的情况下，从2016年10月相继开始进行跨海栈桥、振沉钢圆筒和人工岛起步区等用海工程施工，且在相关部门通知停工并作出处罚的情况下，边交罚款边继续施工，直至2017年7月才全面停止施工。国家海洋局办公室于2017年7月作出通知，不予批准人工岛环境影响评价报告，并告知建设单位如工程确需建设，应对通知所提到的问题进行充分论证后按规定程序将报告书重新报批。2017年，中央第四环境保护督察小组在《海南省环境保护督察反馈意见》中指出“三亚市新机场临空国际旅游商贸区项目存在未批先建、野蛮施工破坏海洋生态环境问题”。针对中央环保督察反馈意见指出的问题，《海南省贯彻落实中央环保督察组督察反馈意见整改方案》提出的整改措施包括“根据《海南省总体规划（空间类2015-2030）》和《三亚市总体规划（空间类2015-2030）》及海洋功能区划要求，加快三亚新机场及临空产业配套项目前期工作，完善项目手续。”该整改方案已报经上级批准，整改方案并未提到调整三亚新机场选址；《中共中央国务院关于支持海南全面深化改革开放的指导意见》提出开展三亚新机场前期工作。

【裁判结果】

本院认为，新机场空港区公司在未依法取得海域使用权的情况下，开始人工岛起步区工程建设，其行为属于未经批准填海造地非法占用海域；海洋与渔业局依照《海域使用管理法》第四十二条的规定予以行政

处罚并无不当，但因未准确完整理解该条文，导致在确定罚款基数时未考虑“非法占用海域期间”，因此造成处罚金额明显不当。其次，海洋与渔业局未充分考虑涉案项目系重点基础设施项目的性质，以及项目已获得大部分支持性文件等现状，乃至恢复原状是否造成海洋环境二次污染损害等因素，其作出的“责令退还非法占用的海域，恢复海域原状”处罚决定明显不合理。因此，判决撤销海洋与渔业局作出的【2016】15号处罚决定，并责令其重新作出行政处罚。海洋与渔业局不服提起上诉，海南省高级人民法院二审维持原判。

【典型意义】

本案厘清了涉海行政机关对适用《海域使用管理法》第四十二条（下称第42条）的模糊认识，对准确适用该条文具有重要的指导意义。同时，为如何处理好支持重点项目建设与依法使用海域、加强海洋环境保护的关系，提供可借鉴、参考的意见。

一是处罚非法围填海或占用海域行为时应考虑“非法占用海域期间”。首先，《财政部、国家海洋局关于加强海域使用金征收管理的通知》是对合法用海单位或个人计征海域使用金的规定，而第42条是对非法占用海域行为予以处罚的规定，两者性质不同、调整对象不同。其次，第42条的规定已经考虑到了非法占用海域进行围填海活动与其他非法占用海域行为的不同危害程度，对前者规定了更高的处罚幅度，且同时将“非法占用海域期间”和“非法占用海域面积”作为考量违法行为危害程度的情节并据此确定罚款金额。这符合违法行为与处罚相当的原则，体现了制度设计的合理性。因此，在依据第42条对违法围填海或占用海域行为处以罚款时，应考虑非法占用海域期间的长短，而不能一次性顶格征收50年的海域使用金。

二是责令退还非法占用的海域，恢复海域原状，没收违法所得这三种处罚方式并非并列关系。首先，第42条规定文意上即已表明前述三种处罚方式不属于并列关系，在适用该条规定进行行政处罚时不必然同时

适用，只有并处罚款可与这三种处罚方式之一项或多项同时适用。其次，违法用海具有违法事实差异性和违法行为复杂性的特点，如若不根据违法事实的具体情况和违法行为的情节轻重而一概同时适用上述处罚方式，既违背了实施行政处罚时应遵循过罚相当的原则，也不能保障行政处罚目的的有效实现。

三是行政处罚应兼顾合法性和合理性相结合的要求。行政处罚的宗旨在于纠正行政违法行为，保障和监督行政机关有效实施行政管理，维护公共利益和社会秩序。因此，在进行行政处罚尤其是涉重点基础设施工程时，应从经济、政治、社会、生态等全方位多角度考虑，秉持合理性原则，保持谦抑，过罚相当。涉案三亚新机场项目系重点基础设施工程，机场场址已获批复且国家要求开展前期工作，如何恢复海域原状及恢复原状是否造成海洋环境二次污染损害。本院综合考虑涉案项目性质、现状、可否续建等因素，贯彻《海南省环境保护督察反馈意见》提出的“该恢复的恢复、该调整的调整、该补救的补救”的原则，纠正行政机关简单套用第42条规定的全部处罚方式的做法，兼顾行政行为的合法性和合理性，体现行政审判法律效果与社会效果的统一。

Ⅰ. Analysis on Judicial Work of Haikou Maritime Court during 2016–2018

（Ⅰ）Overall performance

1. Acceptance of case

In 2016, 2017 & 2018, the Court accepted 1675, 952 and 1153 cases respectively, among which there were 1533, 905 and 1138 new cases and 142, 47 and 15 suspended cases. The number of cases accepted varied greatly.

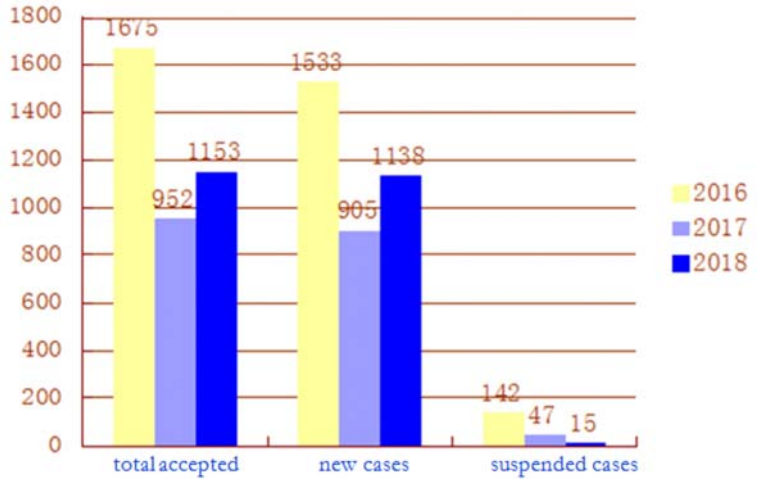

Figure 1: Cases accepted in 2016, 2017 & 2018（unit: case）

In 2016, 2017 & 2018, the Court concluded 1628, 937 and 1110 cases respectively(with 129, 45 and 13 suspended cases concluded), with a closing rate standing at 91.81%, 98.42% and 96.27%.

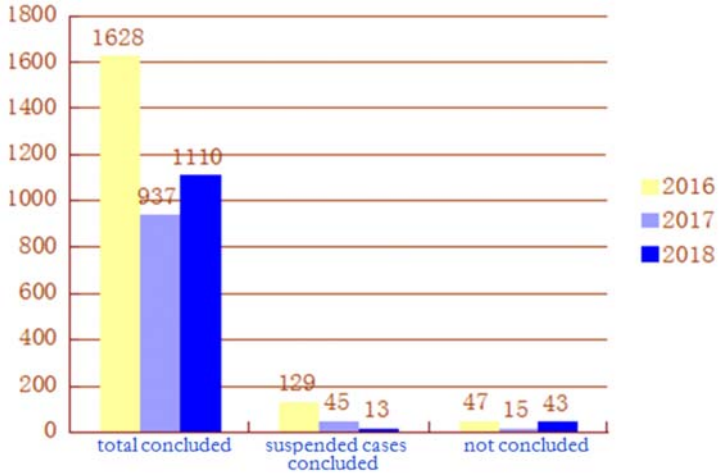

Figure 2: Cases concluded in 2016, 2017 & 2018（unit: case）

（1）Litigation cases

In 2016, 2017 & 2018, the Court accepted 476, 337 and 363 litigation cases respectively. Among them there were 417, 298 and 353 new cases, involving a value of RMB1.258 billion, RMB545 million and RMB2.238 billion respectively.

In 2016, 2017 & 2018, the Court concluded 437, 327 and 351 litigation cases respectively, with a closing rate of 91.81%, 97.03% and 96.69%.

Among the litigation cases concluded in 2016, 109 cases were settled through mediation（accounting for 24.94%）, 55 cases by withdrawal（12.59%）, 247 cases by sentencing （56.52%）, and 26 cases concluded by other means（5.95%）. In 2017, of all the litigation cases there were 58 cases settled through mediation（17.74%）, 37 cases by withdrawal（11.31%）, 197 cases by sentencing（60.24%）, and 35 cases concluded by other means（10.70%）. And of all the litigation cases concluded in 2018, there were 55 cases settled through mediation（15.67%）, 41 cases by withdrawal（11.68%）, 207 cases by sentencing（58.97%）, and 45 cases concluded by other means（13.68%）.

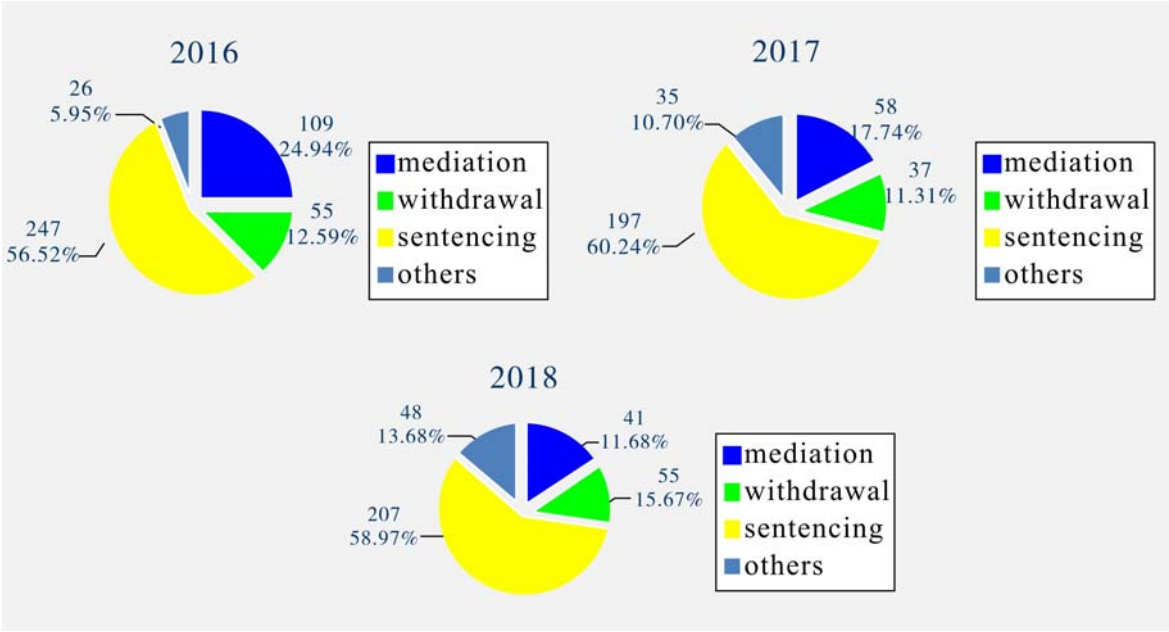

Figure 3: Means for concluding litigation cases in 2016, 2017 & 2018（unit: case）

（2）Enforcement cases

In 2016, 2017 & 2018, the Court accepted 957, 534 and 749 enforcement cases. Among them, there were 878, 528 and 746 new cases, involving an enforcement value of RMB1.666 billion, RMB1.233 billion and RMB1.532 billion respectively.

In 2016, 2017 & 2018, the Court concluded 951, 531 and 719 enforcement cases, with a closing rate of 99.37%, 99.44% and 95.99% respectively.

（3）Procedural cases

In 2016, 2017 & 2018, the Court accepted 242, 81 and 41 procedural cases, among which there were 238, 79 and 39 new cases.

In 2016, 2017 & 2018, the Court concluded 240, 79 and 40 procedural cases, with a closing rate of 98.35%, 97.53% and 97.56% respectively.

Type	2016		2017		2018	
	accepted	concluded	accepted	concluded	accepted	concluded
Litigation	476	437	337	327	363	351
Enforcement	957	951	534	531	749	719
Procedural	242	240	81	79	41	40
Total	**1675**	**1628**	**952**	**937**	**1153**	**1110**

Table 1: Acceptance and conclusion of the three types of cases in 2016, 2017 & 2018 （unit: case）

2. Appeal cases

The Court accepted 1089 first-instance cases during 2016-2018, and concluded 1081 of them by 20 May 2019. There were 399 appeal cases（including 97 appeal cases transferred in 2019）, accounting for 36.91% of the total cases concluded in first instance over the same period. There were 336 cased concluded in second instance, among which 79 were returned for retrial and amendment, accounting for 23.51% of the total cases concluded in

second instance（7.31% of the total cases concluded in first instance over the same period）, 161 cases were ruled to maintain the original sentence, accounting for 47.92% of the total cases concluded in second instance, 44 cases were concluded by means of mediation, accounting for 13.10% of the total cases concluded in second instance, 46 cases by withdrawal, accounting for 13.69% of the total cases concluded in second instance, and 6 cases were rescinded the original sentence and transferred to other courts, accounting for 1.79% of the total cases concluded in second instance.

3. Other information

（1）Utilization of the time limit for case hearing

In 2016, 2017 & 2018, the time spent on concluded cases took up 51.42%, 35.96% and 41.83% of the statutory time limit for case hearing, indicating an increasing efficiency in case handling, but with remarkable fluctuations in the time so spent.

（2）Publication of effective written judgments online

In 2016, 2017 & 2018, there were 958, 390 and 534 effective written judgments disclosed online. 100% of the written judgments got uploaded online.

（3）Archive of case files

In 2016, 2017 & 2018, there were 516, 655 and 732 case files put into archive, with an increasing archive rate of 78.77%, 98.94% and 99.46%.

（Ⅱ）Main features

1. Dramatic fall in the overall number of accepted cases and concluded cases

Due to jurisdiction adjustment, the Court no longer accepted the arbitration enforcement cases and arbitration preservation cases of the whole province designated by the Higher People's Court of Hainan Province since September 2016. This led to the fall in the acceptance of cases of objection to

enforcement and lawsuits concerning the objection to enforcement, hence a significant drop in the number of cases accepted and concluded in 2017, which fell to 952 from the 1675 in 2016. Among them, the number of cases related to arbitration enforcement dropped sharply from 593 to 159. According to the requirements of the Higher People's Court of Hainan Province on the "Plan for Certain People's Courts at Primary Levels in Carrying out Designated Enforcement for the First Time", from 1 July 2018 this Court started to accept some enforcement cases of Long Hua Court. By the end of 2018, the Court accepted 395 designated enforcement cases, accounting for 52.74% of the total enforcement cases of the year. As a result, the number of cases accepted and concluded in 2018 was higher than that of 2017, but the number declined by 31.16% and 31.82% respectively compared to 2016.

2. Significant rise in maritime administrative cases

From 2016 to 2018, the Court accepted 15, 25 and 108 maritime administrative cases respectively, among which there were 13, 23 and 106 new cases. Since 21 August 2011 when this Court started to accept maritime administrative cases, it has accepted 178 such cases, among which there were 142 new administrative cases accepted during 2016-2018, accounting for 79.78%.

Year	Total	Type		
		administration litigation	non-ligation administrative enforcement review	administrative compensation
2016	15	8	4	3
2017	25	11	11	3
2018	108	81	22	5

Table 2: Type of maritime administrative cases in 2016, 2017 & 2018 （unit: case）

3. Significant decline in crew service contract dispute with year-on-year increase in the mediation and withdrawal rate

In 2016, 2017 & 2018, this Court handled 174, 43 and 22 cases of crew service contract dispute, accounting for 36.55%, 12.76% and 6.06% of the total litigation cases accepted in the same year. The number of these cases and the percentage thereof were declining year by year. All the cases accepted over the recent three years have been concluded.

Crew labor service disputes often arose from default of crew salaries, which constituted a big concern for the livelihood of the people. The Court attached great importance to this type of cases and carried out fast-track procedures for filing, hearing and conclusion of cases to resolve the disputes with strengthened efforts on mediation. Of all the cases concluded in 2016, 54 cases were concluded through mediation and 11 by withdrawal, with a mediation and withdrawal rate of 37.36%. In 2017, there were 16 cases concluded by means of mediation and 2 by withdrawal, with a mediation and withdrawal rate of 41.86%. And in 2018, there were 7 cases concluded by means of mediation and 10 by withdrawal, with a mediation and withdrawal rate of 77.27%. The rate of mediation and withdrawal was increasing year by year.

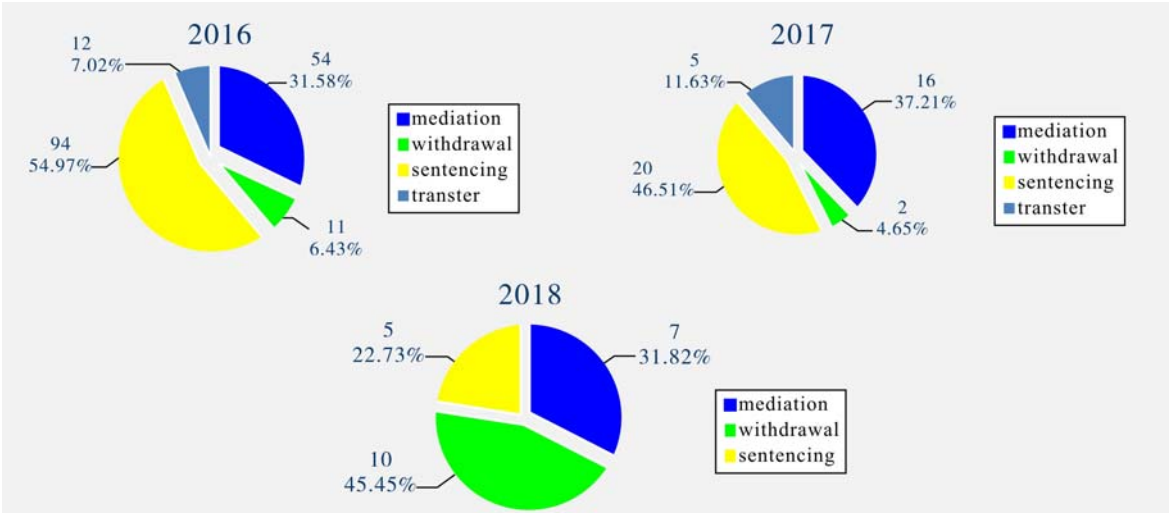

Figure 4: Means for concluding cases of crew service contract dispute in 2016, 2017 & 2018 （unit: case）

4. Great variation in the acceptance number and percentage of the different types of enforcement cases and better case handling performance

Among the 957 enforcement cases accepted in 2016, 566 cases were initial enforcement cases（accounting for 59.14%）, 176 cases for resumption of enforcement（accounting for 18.39%）, 108 enforcement cases for property preservation（accounting for 11.29%）, 106 cases for objection to enforcement（accounting for 11.08%）, and 1 case for entrusted enforcement（accounting for 0.10%）.

Among the 534 enforcement cases accepted in 2017, 235 cases were initial enforcement（accounting for 44.01%）, 121 cases for resumption of enforcement（accounting for 22.66%）, 83 enforcement cases for property preservation（accounting for 15.54%）, 82 cases for objection to enforcement（accounting for 15.36%）, and 13 cases for supervision of enforcement（accounting for 2.43%）.

Among the 749 enforcement cases accepted in 2018, 530 cases were initial enforcement（accounting for 70.76%）, 56 cases for resumption of enforcement（accounting for 7.48%）, 87 enforcement cases for property preservation（accounting for 11.62%）, 72 cases for objection to enforcement（accounting for 9.61%）, and 4 cases for supervision of enforcement（accounting for 0.53%）.

Compared to 2016 and 2017, there was a significant rise of initial enforcement cases in 2018 and a significant decrease in cases for resumption of enforcement and objection to enforcement. In 2018, the rate for conclusion of cases without executable property stood at 99.6%, the rate for conclusion of cases with executable property within the statutory limit of time was 98.24%, and 100% of the petition cases brought to the Court through letters and visits were concluded. All these performance indicators were better than those in the previous two years and outperformed the requirements of the Supreme People's Court, indicating that marked achievements had been made

in the campaign of basically resolving the problem of difficult enforcement.

Year	Total	Enforcement implementation				Enforcement review	
		preservation enforcement	resumption of enforcement	entrusted enforcement	initial enforcement	objection to enforcement	enforcement supervision
2016	957	108	176	1	566	106	0
2017	534	83	121	0	235	82	13
2018	749	87	56	0	530	72	4

Table 3: Type of enforcement cases in 2016, 2017 & 2018（unit: case）

5. Considerable drop in special procedure cases

In 2016, cases subject to special procedures were 134, but dropped to 19 in 2017 and 3 in 2018（including 1 suspended case from the previous year）. The acceptance of cases of application for registration of maritime claims and compensation was the major cause of the decline. The Court handled 131 such cases in 2016, but only 17 in 2017 and none in 2018 mainly due to the sluggish shipping industry in which disputes and applications for auction sale of ships were down. 7, 2 and 1 ships were auctioned off in 2016, 2017 and 2018.

（Ⅲ）Characteristic work

1．Deepening judicial reform and improving the quality and efficiency of trial

The Court promulgated the “Interim Measures on the Participation of the Heads of the Court and Judges from Administration Departments in Trial” and the “Regulations on Strengthening and Regulating the Management of Assignment of Cases”, requiring that the President of the Court and chiefs of the divisions shall be responsible to handle difficult and complicated cases. The Court also introduced the “Reporting System for Major and Sensitive

Cases" to regulate the management of sensitive cases and effectively prevent against and mitigate the risks in case hearing and enforcement. The "Regulations on Streamlining Processes to Accelerate the Handling of Case" was established to regulate case hearing procedures and improve the efficiency of trial. The "Further Regulations on the Management of Assignment of Cases" was introduced to rebalance the assignment of cases to different departments and judges to ensure that judges were fully engaged in duties. The "Measures on Assessment of the Quality and Efficiency of Judges in the Handling of Case（for trial）" was implemented to better assess the judges' performance. The Court also improved the supervision and punishment system to foster fairness and efficiency by means of scientific management.

2. Serving the development of the State by exercise of the distinct functions of maritime trial

To serve the construction of free trade zone（port）, the Court formulated the "Opinions of Haikou Maritime Court on Serving and Safeguarding the Construction of Hainan Pilot Free Trade Zone and Free Trade Port of Chinese Characteristics", by which it proposed 26 measures from 5 perspectives, including exploring innovative maritime trial procedures and establishing full-fledged maritime trial mechanism. To reinforce maritime jurisdiction, the Court also formed a special research team which produced a research report titled "Exercise of Jurisdiction over the Sea Areas under the Jurisdiction of China according to Law". The Court also heard and concluded several cases of marine insurance contract disputes which occurred in waters of Huayang Reef, Nansha Qundao in Sansha City, asserting China's sovereignty over its territorial sea by exercise of maritime jurisdiction.

3. Fostering the construction of offshore circuit courts and trial bases on islands and actively excising the maritime jurisdiction

The Court promulgated the "Work Regulations for Offshore Circuit

Courts and Trial Bases on Islands". A campaign of offshore circuit trial and legal education had been carried out to cover the entire area of South China Sea in a journey of more than 2000 nautical miles. The first island trial base was established on Jinqing Dao of Xisha Qundao, and the first offshore circuit court was erected onboard the law enforcement vessel "Zhong Guo Hai Jian 2166".

4. Improving facilities to provide the people with access to justice and protecting the rights and interests of the litigants

The Court operated a litigation service platform and implemented various measures such as filing cases via phone call or on line, as well as online consultation service for case filing to provide easy access to the litigants. The proof standard of the high degree of probability was applied in the case hearing where the parties faced difficulty in producing evidence, a good example for the resolution of disputes involving torts at sea. A 24-hour fast response system for preservation was in place to facilitate urgent preservation. The Court also intensified efforts to address cases raised by petition through letters and visits, and the heads of the Court were responsible to organize a team to study and settle the petition cases.

5. Making structural innovations and fulfilling the maritime judiciary duties

A reform and innovation research team was established, by which young judges were encouraged to bring new ideas to the reform of maritime judicature with the enthusiasm of the young. Simple procedure was applied in the trial of foreign-related cases which were less controversial and explicit in respect of the facts and legal relationships. The standard that only required general identity certificates of oversea litigants and power of attorney was implemented. A cooperation agreement on ascertainment of foreign laws was concluded to secure more channels for the ascertainment of foreign laws. The Court encouraged the new practice that the settlement and mediation

agreements on maritime disputes which were reached under the coordination of maritime administrative organs shall be given judicial confirmation and enforcement effect upon application.

6. Intensifying interaction and collaboration and pooling strength of other forces

The Court participated in the establishment of an interaction and collaboration platform with Hainan Maritime Safety Administration, East China University of Political Science and Law, and the General Office of Hainan Province for Ocean and Fishery Industry Supervision for the cooperation in work-related research, education and training, and information sharing. It also assisted in the opening of data ports that served the judicial and law enforcement purposes to achieve information sharing and data connectivity. The Court also participated in the construction of information platform with other maritime courts to facilitate the sharing of resources such as selected cases and foreign laws that had been ascertained.

Ⅱ. Legal Issues and Solutions for Maritime Judicial Cases

（Ⅰ）Sea-related engineering construction dispute

1. General information

During 2016-2018, Haikou Maritime Court handled 76 cases of dispute over contract of sea-related engineering construction projects, which included land reclamation, fishing port construction, fairway and port dredging project, construction of docks and piers, and river and riverbank improvement project. Among them, case of reclamation disputes was the most frequent type of the biggest share, with 42 cases accounting for 55.3%（excluding reclamation projects under disputes over fishing port construction contract or pier construction contract）.

Characteristics of cases of reclamation engineering projects: （i）these cases attracted a lot of public attention and made great influence since they involved many major reclamation projects of the province, including Ruyi Island, Haihua Island, South China Sea Pearl Eco-Island, Riyue Island, Phoenix Island, and Sanya new airport project;（ii）these cases were highly sensitive given that most of them were brought to suite in 2017 after the Central Supervision and Inspection Group for Environmental Protection and the State Ocean Supervision and Inspection Group visited Hainan province, especially after all the reclamation projects in the province were called for suspension;（iii）these cases involved a great deal of value and it was a time-consuming task to handle such cases given the complicated legal relationships and strong disagreement between the parties, as well as the great difficulty in making appraisals, and there was less possibility that these cases would be concluded by means of mediation or withdrawal;（iv）most of these cases were arising from the default of employers （including project

owners and contractors at different layers）on the payment of construction funds due to cash flow difficulties.

2. Legal issues and solutions

（1）Determination of the cause of action for reclamation disputes. Since the Provisions on the Cause of Action of Civil Cases does not specify a cause of action for reclamation disputes, in judicial practice, such cases are often brought to action as a construction contract dispute, marine exploitation and utilization dispute, or other maritime disputes. Construction contract dispute covers all the construction disputes, but it does not entail the exclusive jurisdiction of maritime courts over land reclamation disputes. Reclamation is one of the methods that we use to exploit and utilize the ocean resources. However, a marine exploitation and utilization dispute cannot fully reveal the distinction between a land reclamation dispute and other marine exploitation and utilization disputes（such as the exploitation of oil, gas and other seabed mineral resources）. Other maritime disputes only constitute a miscellaneous cause of action for maritime disputes and do not reveal the characteristics and the basic legal relationship involved in a land reclamation dispute. However, in accordance with the Provisions of the Supreme People's Court on the Case Acceptance Scope of Maritime Courts, cases of dispute over engineering construction at sea or in sea-connecting navigable waters（including underwater dredging, land reclamation, cable or pipe laying, and the construction of piers, docks, drilling platform, artificial islands, tunnels, bridges, etc.）are listed under the "cases of disputes related to the development, utilization and environmental protection of seas and sea-connecting navigable waters". Under the applicable scheme of the Provisions on the Cause of Action of Civil Cases, it is most appropriate to take land reclamation dispute as "marine exploitation and utilization dispute". We also suggest making a proposal to the Supreme People's Court to include land reclamation dispute or marine engineering construction contract dispute as a subordinate cause of action of

marine exploitation and utilization disputes in the next amendment to the Provisions.

（2）Bidding process for land reclamation project. In current judicial practice, the standard for determining the scope of construction projects subject to bidding process is arbitrary（as defined by such terms as "related to public interests and public security" or "invested with state-owned funds"）, which often leads to either excessively wide or narrow scope for the construction projects subject to bidding process. A wide scope may render a great deal of contracts invalid, which would impair the safety and stability of market activities, while a narrow scope may leave the state-owned funds and construction quality out of effective control and supervision, which also gives rise to public safety concerns. During the trial of such cases, one party usually claims that the contract is invalid on the reason that a bidding process has not been carried out according to procedures. We consider that in accordance with Article 3 of the Bidding Law, Article 3 of the Regulation on the Implementation of the Bidding Law, Articles 2-5 of the Provisions for Engineering Projects Subject to the Bidding Process, and Article 2 of the Regulations on the Scope of Infrastructure and Public Utility Projects Subject to Bidding Process, land reclamation projects subject to bidding process include those: a. funded by state-owned funds or financed by the State with a budget of more than RMB2 million that accounts for more than 10% of the total investment value; b. using the funds of a state-owned enterprise or public institution which has control over or is dominant in the project; c. using the loans or aid funds provided by international organizations such as the World Bank and Asian Development Bank; d. using the loans or aid funds from foreign governments or their institutions. For projects subject to bidding process, the failure to carry out such process shall render the contract invalid. Subject to the above standards, if a project is funded by the enterprise, it is not subject to the bidding process and the validity of contract is not affected

at all. Given that the number of engineering projects of the kind and enterprises eligible to undertake such projects is limited, we suggest that a specialized bidding service platform for sea-related projects should be established to provide nationwide service coverage and to avoid wasting resources on the building of redundant bidding platforms. During the bidding process, employers and the competent authorities shall strictly examine the construction qualification of contractors to prevent them undertaking the projects without qualification or beyond their qualification grade or conducting the work in the name of other contractors.

（3）Necessity of a building permit for land reclamation project. In the trial of such cases, there was employer who claimed that the contract was invalid because the project in question did not obtain a building permit. In our opinion, the employer had confused the administrative approval for the use of sea areas and for land development. According to Article 3 of the Law on the Administration of Sea Areas, a permit for the use of sea areas shall be obtained before the commencement of a reclamation project. According to Article 40 of the Urban and Rural Planning Law, to build any buildings or structures within a city or town planning area, a building permit shall be first obtained from the competent department. To apply for the permit, the relevant documentary evidence on land use, the engineering design plan of the project as well as other related documents shall be submitted. In order words, the approval for land use shall be completed before the application of a building permit. Back to the reclamation situation, since there is no land before the reclamation, so it is not required to obtain a building permit according to the said regulations of the law.

（4）Impact of the absence of certificate of right to use sea areas on the validity of land reclamation engineering contract. One opinion holds that the undertaking of reclamation project without obtaining the right to use sea areas violates the mandatory regulations of the law and will cause the same

legal consequences as those arising from the undertaking of engineering construction without a building permit. In other words, the absence of the certificate of right to use sea areas in respect of a reclamation project will render the construction contract invalid. Other people hold different opinion that the certificate of right to use sea areas is only an administrative permit granted by the maritime authorities for the purpose of regulating the use of sea areas. The provisions of paragraph 2 of Article 3 and Article 42 of the Law on the Administration of Sea Areas are mandatory provisions on administration rather than mandatory provisions on validity, and therefore the violation of these provisions shall not render the reclamation contract invalid. To maintain the order of economic activities and promote trades, the effect of agreements concluded by the parties at free will shall not be dismissed rashly. We follow the second opinion. The divergence of opinions is rooted in the negligence of maritime authorities in the administration of the use of sea areas. In current situations, when a reclamation project proceeds without obtaining the right to use the sea areas, it has become a practice that an administrative penalty must be imposed to require recovery of the sea areas to the original state. However, as reclamation project requires the input of tremendous time and funds and complicated engineering work, and the process causes great influence on the marine ecological environment, once the project is completed, it will be extremely expensive to recover the sea areas to the original state and may even bring secondary damage to the marine ecology. Now we would like to propose some suggestions as below: the maritime authorities at all levels shall strengthen the administration of the use of sea areas, strictly exercise the approval function before granting the right to use sea areas, step up efforts to take daily inspections and conduct post-approval supervision on the use of sea areas, and resolutely eliminate the illegal activities such as using the sea areas without approval or with approval underway; if any illegal use of the sea areas is detected, the engineering work

shall be called off immediately to prevent further damage and loss; if a party is unwilling to take the administrative penalty imposed on it, an application shall be promptly submitted to the maritime court for enforcement; in the event that serious damage is done to the marine ecological environment, the coast guard and the procuratorate shall promptly initiate criminal procedures against the liable parties; if the relevant administrative organs are unwilling to perform their duties or engaged in misconduct, the procuratorate may send a written prosecutorial suggestion or initiate an administrative public interest litigation; we encourage maritime administrations, the procuratorate and commonweal organizations to lodge environmental public interest litigations, helping to foster a favorable atmosphere for the use of sea areas according to law and create a strong synergy to protect the marine ecological environment.

（5）Construction qualification of the contractors for reclamation projects. In accordance with Article 1.1 and Article 1.2 of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Dispute over Contracts on Undertaking Construction Projects, where a contractor dose not obtain the relevant qualification or undertakes a project in excess of its qualification grade or in the name of other contractors, the construction contract shall be invalid. In judicial practice, opinions are divided over the qualifications for general contractors, subcontractors, and constructors. According to the classification and grading standards of China for the qualification of construction enterprises, we consider that: the general contractor who undertakes land reclamation project for the construction of artificial island shall obtain the first-grade general contractor qualification for the construction project of port and fairway; if the engineering work involves hydraulic fill only, the general contractor shall obtain a second- or third-grade general contractor qualification for the construction project of port and fairway, subject to the engineering quantity; if any part of the project is subcontracted, subcontractor shall obtain such

special contractor qualification or labor subcontracting qualification in the classification and grade as required by the engineering work that it has undertaken. If a party undertakes engineering work without qualification or beyond its qualification grade or conducts the same in the name of other contractors, the construction contract shall made invalid according to law, and the relevant issues shall be transferred to the competent authorities who will crack down on such illegal activities.

（6）Priority of repayment of construction funds in reclamation contract disputes. Unlike general construction projects the subject matters of which are buildings or structures, the subject matter of a reclamation project is land. In current judicial practice, the land（or land use right）occupied by building or structure is not included in the objects eligible for the priority of repayment of construction funds. Being the case, some people hold that since the subject matter of reclamation project is land, which takes the form of land use right under the property law and which is not an object eligible for the priority of repayment of construction funds, the constructors shall not have priority to claim for construction funds for the reclamation projects. Some people hold different opinion that although the subject matter of a reclamation project is different from those built in other construction projects, the land formed by means of reclamation engineering is not a work of nature. Rather, it is a work taking form upon the investment of labors, materials, and funds of the constructors, and so the land formed in the reclamation project shall be eligible for the priority of repayment of the construction funds as is done in the case of buildings or structures. The land（or land use right）occupied by buildings under other construction projects is dismissed the priority of repayment of construction funds based on the fact that the land came into being naturally rather than formed by the engineering work of the constructor. However, a reclamation project undertaken without a certificate of the right to use sea areas shall be deemed an illegal use of sea areas, and

the maritime administrations may demand the return and recovery of the sea area to its original state. Being the case, since the reclamation project is not suitable for conversion into money or for auction sale, the constructor shall not have priority to demand repayment of the construction funds. In consideration of the legislative purpose of priority of repayment of construction funds, we follow the second opinion. In recent years, reclamation project disputes often occur upon the central environmental protection supervision and ocean inspection. Therefore, when determining whether a construction project in dispute is suitable for conversion into money or for auction sale, apart from the legitimacy of the project per se, the rectification proposals from the supervision and inspection group shall also be taken into account to avoid conflicts between the judicial judgment and the rectification proposals.

（7）Liabilities of the party who illegally subcontracts or assigns a contract or who allows others to temporarily affiliate to it for the payment of construction funds to the actual constructors. Opinions are divided over the liability of contractors at different layers in the payment of construction funds to the actual constructors in the case of multilayer assignment of contract, subcontracting, or temporary affiliation. Some people hold that given the privity of contract, the actual constructor can only make claims against the counterparty of the contract and employers（project owners）as defined in paragraph 2 of Article 26 of the Interpretation on Contracts on Undertaking Construction Projects. Employers shall pro tanto pay the construction funds overdue and contractors at other layers（including illegal contractors and subcontractors, sic passim）shall not be held liable to pay the construction funds to the actual constructor. Some people have different opinion that all the illegal contractors and subcontractors are at fault for the invalidation of contract, so contractors at all layers and project owners shall undertake joint and several liabilities to pay the overdue construction funds to the actual

constructors. A third opinion holds that contractors at all layers and project owners shall undertake joint and several liabilities for the payment of construction funds to the actual constructors to the extent the construction funds become due and payable by each of them. In our opinion, the privity of contract can be challenged only upon the explicit provisions of the law, so we follow the first opinion. During the trial, if a court finds out any illegal subcontracting, assignment of contract, or undertaking of projects by using the qualification of other contractors, it shall show disapproval to these illegal acts by confiscating the proceeds obtained from such projects according to law, by which it is hoped that the common practices and orders of the industry is purified and maintained. Furthermore, if these cases involve default on migrant workers' wages which may readily give rise to group protest, the court shall handle the cases with great care and invite collaboration from other departments to eliminate any risks that may impair the stability of the society.

（8）Handling cases where payment of construction funds is conditional on the issuance of invoice. Freedom of contract is a basic principle of civil activities. In engineering construction industry, however, employer often takes advantage of its dominant position to set contractual conditions that are less favorable to contractor. For example, employer often requires that payment of construction funds is conditional on issuance of invoice by contractor, and the parties agree that employer may refuse to make payment without liability for default before it receives invoice. In fact, when employer takes invoice as the precondition of payment, it actually requires that invoice shall be presented in time to avoid a situation that it has effected payment but does not receive an invoice at all. For a contractor under an engineering construction contract, its primary contractual obligation is to complete the engineering work in the quality and quantity as required. Apparently, invoicing is neither a primary obligation nor a major purpose of the contract.

If, while the contractor has completed the engineering work as agreed under the contract and the work has been accepted, and the parties have settled the construction funds, the employer still refuse payment by claiming that the contractor does not issue an invoice to confirm the construction funds, the reciprocity of the rights and obligations between the employer and contractor will collapse. In such circumstance, the court shall rule that the employer is liable to pay the construction funds, but it shall not undertake the liability for overdue payment. We suggest that the employer and contractor under the engineering construction contract should conduct compliance review before signing contract and make due risk predictions to avoid the invalidation of contract or such clauses that are extremely unfair or may give rise to the imbalance of interests between the parties. We also suggest that during the performance of contract, the parties should maintain risk control and only transfer documents and material upon a written confirmation receipt. Each party should be fully aware of the consequences of default on its part and avoid losing the main goal for the sake of small gains. In case of dispute, the parties should consult with each other for settlement. For the part of work having been completed and the construction funds thereof which cause none or little controversy, the parties may settle the issue by means of written confirmation for the purpose of reducing litigation costs on burden of proof or appraisal and promoting the efficiency of lawsuit.

（Ⅱ）Administrative dispute arising from the use of sea areas

1. General information

During 2016-2018, Haikou Maritime Court accepted 34 maritime administrative litigation cases and non-litigation administrative enforcement review cases arising from the use of sea areas. Among them, 5 cases involved dispute over administrative penalty for illegal occupation of sea areas, 5 cases involved dispute over administrative licensing for the use of sea areas, 4

cases involved administrative coercion and compensation dispute arising from illegal occupation of sea areas, 2 cases involved dispute over administrative penalty for smuggling of precious marine wild animals, and 18 were non-litigation administrative enforcement review cases.

2. Legal issues and solutions

(1) Interpretation and application of Article 42 of the Law on the Administration of Sea Areas. Generally, Article 42 of the Law on the Administration of Sea Areas is applied when administrative organs impose a penalty for the illegal occupation of sea areas. The article reads: "Any person who illegally occupies any sea areas without approval or with fraudulently obtained approval shall be ordered to return the illegally occupied sea areas, recover them to their original state with the illegal gains be confiscated and shall be imposed upon a fine of not less than 5 times but not more than 15 times the amount of royalties that should have been paid according to the area size during the period of illegal occupation of the sea areas. Any person who encircles or fills up any part of the sea without approval or with fraudulently obtained approval shall be imposed upon a fine of not less than 10 times but not more than 20 times the royalties that should have been paid according to the area size during the period of illegal use of the sea areas."

Issue 1: Whether an illegal reclamation penalty shall be made based on the "period of illegal occupation of the sea areas"? Maritime authorities consider that since reclamation project shall pay royalties for the use of sea areas in a lump sum manner, regardless of occupation for one day or for one decade, i.e. maritime authorities only charge royalties for once and forever, the penalty on illegal reclamation shall not be calculated based on the period of illegal occupation of sea areas. We hold that according to the context of Article 42 of the Law on the Administration of Sea Areas, penalties imposed on illegal occupation for reclamation purpose or other illegal activities of occupation of sea areas must be calculated on the basis of the royalties

payable for the occupied area size during the "period of illegal occupation of the sea area" with the applicable multiple（or extent of penalty）, hence the actual payable penalty amount. If a one-day illegal occupation and one-decade occupation receive the same penalty amount, it apparently violates paragraph 2 of Article 4 of the Law on Administrative Penalty that reads "Creation and imposition of administrative penalty shall be based on facts and shall be in correspondence with the facts, nature and seriousness of the violations of law and damage done to the society". As for Notice No.10［2007］of the Ministry of Finance which requires that reclamation project shall be charged lump sum royalties for the use of sea areas, it only stipulates how the entity or individual that legally use the sea areas should pay the royalties. The provision of Article 42 of the Law on Administration of Sea Areas is to address the matter of penalty on the illegal use of sea areas. The nature and object of the two regulations are quite different, so it is not appropriate to lump them together.

Issue 2: Whether the measure of recovery of sea areas to original state shall be applied to an illegal reclamation project? We consider that the four measures under Article 42 of the Law on the Administration of Sea Areas, including ordering the liable party to return the illegally occupied sea areas and recover to their original state, confiscating the illegal gains and imposing a fine, are not always applicable to an illegal act simultaneously. For the reclamation projects that have formed a vast land area, an environmental impact assessment shall be conducted in advance in respect of how to recover the sea areas to their original state and whether the recovery would cause secondary pollution or damage to the marine ecological environment. The administrative organs shall not rashly demand the concerned person to recover the sea areas to their original state before making any assessment. The measure of "recovery" shall also not be applied to a project which is carried out based on the marine function zoning and which must be carried

on after it obtains the relevant approvals.

（2）Determination of “legitimate interests” in maritime administrative compensation case. In administrative compensation cases arising from the use of sea areas, if the concerned person conducts aquaculture at sea without the right to use sea areas or the aquaculture license, generally, the business income and demolition loss sustained by such person shall not be deemed its legitimate interests. However, there are cases that the law enforcement battalions affiliated to a fishery administration, while they have no power to approve the use of sea areas or issue an aquaculture license, grants the Permission for Setting up Floating Rafts to the concerned person, and the person believes that the floating raft permit is a valid and effective certificate and hence is engaged in floating raft aquaculture for a long time. In our opinion, while the subordinate departments of an administration have no power of licensing but have done the contrary, for which the concerned person, with trust in the administration, believes that the administrative licensing it has obtained is a valid and effective permit and conducts business accordingly, the business investment and income obtained within the licensing limit shall be deemed the legitimate interests of the concerned person and the person shall be entitled to claim compensation for the losses incurred. The concerned person’s ownership of the floating rafts and fry shall be deemed part of its legitimate interests, and the losses arising from the demolition and dislocation of the floating rafts shall get compensations.

（3）Liability of the administrative organs in circumstance where the concerned person is at fault for the loss. In administrative coercion cases arising from the use of sea areas, some concerned persons set floating rafts without obtaining the certificate of right to use sea area or aquaculture license, and some resume operation in the original sea areas in private even though they have received demolition compensations. The administrative organs have to take coercive measures as such persons refuse to demolish their

facilities despite multiple calls from the administrative organs. In such situation, we consider that the compensation liability shall be determined based on four standards, i.e. the existence of an illegal act, the damage, that the damage is caused by the illegal act, and that the damaged object must be the legitimate interests of a citizen. The illegal act of the administrative organ is only one of the factors that entitle the concerned person to compensations. If the person sustains loss due to the illegal act by himself, the administrative organ shall not be held liable for compensation. If the illegal act of the administrative organ has caused loss but the concerned person is also at fault, the compensation liability of the administrative organ shall be reduced according to the proportion of the fault on the part of the concerned person. If the person is fully aware of the risk of loss or conducts the same by intention, and the loss is a result of the deliberate fault of the person himself, the person shall be deemed at fault for the loss.

（4）Externalization and justiciability of administrative action. To determine whether an administrative action is externalized and justiciable, we should first examine whether the administrative action has caused actual impact on the interests of the concerned person. Generally, an action that undergoes internal operation of an administrative organ shall not be taken as a justiciable administrative action, despite that the action is targeted at a specific concerned person and even that the person is well aware of the operation of the action. This is because the action has not yet been implemented and has no impact on the interests of the concerned person. In an administrative licensing dispute arising from the use of sea areas, a party not involved in the case submitted a reply made by an administrative organ to its subordinate department, charging that the reply had changed the right of the concerned person to use the sea areas due to which its interests were impaired. The party not involved in the case therefore lodged the administrative litigation to demand rescission of the reply. However, the

replay was addressed to the subordinate department of the administrative organ. Although the administrative organ demanded its subordinate department to change the concerned person's right to use sea areas, the ordered had not yet been implemented. The certificate of right to use sea areas held by the concerned person was still valid and effective and the term of validity for the use of sea areas remained unchanged, so the rights of the concerned person was not affected at all. Although the concerned person knew about the content of the reply in other litigation cases, the administrative action of the reply shall not be deemed an externalized action. Therefore, the reply was not justiciable.

（5）Object to be examined in ligation where administrative reconsideration organ amends the original administrative action and basis without changing the punishment decision. If the administrative reconsideration organ amends the original administrative action and basis while leaving the punishment decision unchanged, the original administrative action shall be deemed maintained by the reconsideration organ. According to the principle that original administrative action and reconsideration decision shall be united and integrated with each other, while the reconsideration decision amends the facts and basis affirmed in the original administrative action but retains the original punishment decision, the original administrative action is deemed changed and integrated into the reconsideration decision. Therefore, the object to be examined in litigation shall be the administrative action as amended by the reconsideration decision. If an administrative penalty is wrong in finding facts and in the application of law, but the faults have been amended by the administrative reconsideration with the original punishment decision unchanged, the litigation requests of the concerned person shall be dismissed provided that upon examination the administrative action is correct in finding facts and in the application of law.

（6）Execution of fine or overdue fine in non-litigation administrative

enforcement cases. Administrative organs have power to make an administrative decision on the imposition of a fine or overdue fine, and may apply with the court for enforcement rather than, by means of litigation, request the court to order the imposition of a fine or overdue fine. According to Article 45 of the Administrative Mandatory Law, where the administrative organs make an administrative decision on a payment obligation according to law but the party concerned fails to perform the same within the given time, the administrative organs may impose a fine or overdue fine according to law, and shall inform the party of the charge standard of the fine or overdue fine. The fine or overdue fine shall not exceed the amount of the payment obligation. The imposition of a fine or overdue fine is an administrative coercive measure invested in the administrative organs by law and is also a justiciable administrative action. The administrative organs may inform the party of the payment term of the fine or overdue fine directly in the administrative decision and the imposition decision automatically comes into effect upon the expiry of the performance deadline specified in the decision. In accordance with Article 46 of the Administrative Mandatory Law, an administrative organ without the power of enforcement may apply with the court to enforce the administrative decision and the fine so imposed. If the administrative organs do not expressively impose a fine in the administrative decision, it may, where the party concerned does not perform the obligation voluntarily upon the expiry of the performance deadline specified in the decision, make another decision to impose a fine, and such decision shall take effect immediately. The administrative organ may apply with the court for enforcement of the separate administrative decision on fine.

（7）Handling cases concerning the slightly flawed law enforcement actions at sea. During administrative law enforcement, the maritime authorities shall ensure the lawfulness of the administrative law enforcement procedures, the precision of the party subject to administrative penalty, and the

correspondence between the basis of the administrative penalty and the illegal acts. Maritime authorities shall strictly follow the law enforcement procedures prescribed in the administrative procedure law, the administrative mandatory law and other laws and regulations. Especially, they shall protect the major procedural rights of the concerned person, such as the right to make statement and defense and the right to apply for public hearing, and inform the person that it has the right to apply for reconsideration and to lodge a lawsuit according to law. When imposing an administrative penalty, the administrative organs shall confirm the identity of the person to be punished based on the relevant supporting materials. When the illegal act of the concerned person is imposed a penalty, a file recording the evidential materials to prove the illegal act shall be in place, and the basis for imposition of penalty shall be intended for the punishment of such illegal acts. When handling maritime administrative cases, the court shall take into account of the high fluidity of the sea and the difficulty in preservation of evidence. If the administrative organ imposes a punishment correctly with only slight flaw in respect of procedures, the administrative action shall not be rescinded or deemed illegal. For administrative penalties that are less controversial and do not impair the public interests, the parties are encouraged to resolve the administrative dispute through negotiation.

（Ⅲ）Crew service contract dispute

1. General information

During 2016-2018, Haikou Maritime Court accepted 239 cases of crew service contract disputes which carried some characteristics as below: 1）series cases took up a lion’s share in crew service contract disputes, with more than 95% of them in the total cases of crew service contract disputes accepted by the Court during the three years; 2）there were few agents appointed to handle the crew service contract disputes, and some agents（if

any）were not quite familiar with the crew service contract dispute or even maritime dispute; 3）it was difficult to directly apply the existent laws or regulations due to the particularity of the labor or service provided by seafarers; 4）seafarers did not retain evidence during their service onboard due to a lack of legal awareness, and shipping companies or crew management companies（hereinafter referred to as the "employers"） did not implement good management practices. For these reasons, the parties involved often gave abundant statements during case hearing but could not provide much supporting evidence, and it was always the case that the evidence submitted could not prove the entire process of the establishment, existence, and termination of the labor relationship between them.

2. Legal issues and solutions

（1）Crew service is getting more diversified and is not always covered by the provisions of laws, making it more complicated in the ascertainment of the legal relationship between seafarers and employers and application of legal proceedings. Considering the shipping industry operation practices and based on the type of services provided by seafarers and their relations with the employers they serve, seafarers can be classified into two types, i.e. freelance seafarers and in-house seafarers. In-house seafarers are those employed by a shipping company or crew management company in a long-term labor relationship. They enjoy the rights and obligations invested by the general labor laws, regardless whether they are working onboard or taking leave ashore or waiting for a job assignment. Their rights and interest are confirmed and protected by labor contracts. Freelance seafarers are not employed by a certain company, but they usually depend on the crew management companies or crew service agencies to provide short-term working opportunities by which they are assigned to serve a ship named by the crew management companies or crew service agencies, and hence become connected with the shipping companies. In accordance with Article

27 of the Seafarer Regulation, employers shall conclude a labor contract with seafarers. In judicial practices, however, it is not rare case that seafarers are working onboard without the conclusion of a labor contract.

Issue 1: how to determine the relationship between the crew and the employer? In recent years, seafarers who brought a lawsuit always claimed that they were in a contractual labor relationship with the shipping company and demanded that according to the labor contract law the shipping company shall pay double wages, economic compensation, and indemnities for not concluding a labor contract with them. Upon the litigation requests raised by seafarers, generally the shipping companies would defend that they were only bound by a short-term employment relationship rather than a labor contract relationship, and therefore the labor contract law was not applicable, but the laws and regulations concerning service remunerations shall be applied. Since the Seafarer Regulation has specified the type of contract to be concluded between seafarers and employers, it is reasonable for the seafarers to bring lawsuit according to the labor contract law. However, what can be seen from the facts in the relevant cases is that: 1） in the hard times of the shipping industry, most seafarers（especially low-rank sailors）and employers are actually bound by a legal relationship similar to that of a temporary employment contract rather than a labor contract, and the parties do not express the intend to establish a labor relationship when they sign the contract; 2） most seafarers do not understand or care about the nature of contract when they conclude the same but only come to realize that the labor contract law is more favorable to them after disputes occur, so during the case hearing they will deliberately contrive and tailor their statements to make some effect on the finding of facts and the final judgment. In such situation, should we strictly follow the Seafarer Regulation and apply the relevant provisions under the crew service contract to handle the dispute between seafarers and employers, or should we take it as special circumstance and

apply the laws concerning service contract and service remuneration to address such disputes?

Issue 2: how to determine the employer where a shipping company, crew management company and labor dispatch company are involved at the same time? Currently, most shipping companies are manning their ships through the agency of crew management companies or labor dispatch companies. In the trial of cases, however, we notice that most seafarers are not quite sure with whom they have signed the contract and against whom they should make claims, and that shipping companies may sometimes deliberately conceal the engagement of a management company or dispatch company during the first instance to protect its own interest but only tell the truth in the second instance. This, however, directly leads to a lengthy litigation process because the second-instance court may have to return the case to the first-instance court for retrial.

Issue 3: how to handle the labor contract disputes or service contract disputes between employers and seafarers who are not a qualified seaman as defined under the Seafarer Regulation? In accordance with Article 4 of the Seafarer Regulation, seafarer shall be the personnel who has been registered as a seaman and obtained a seaman's service book. However, it can be seen from our judicial practices in recent years that employers often hire other personnel to serve onboard in addition to the conventional seaman team. For example, in the cases of（2017）Qiong 72 Minchu No.168-177 handle by this Court, the seafarers signed a fisherman labor contract with the employer whereby the parties agreed that the seafarers would serve onboard for fishery operations. However, controversy still arose during the trial in respect of whether the relevant clauses of the seafarer labor contract shall apply to such dispute and which law shall be applied.

We suggest that improvement shall be made in the following aspects to address disputes over the nature of the legal relationship between seafarers

and employers.

First, seafarers and employers shall observe the provisions of law when entering into a crew labor contract or service contract. Seafarer who is a qualified seaman as defined under the Seafarer Regulation shall sign a labor contract according to the Regulation as applicable. If the employment is only temporary and not suitable for a labor contract, a service contract shall be in place. In terms of contract form, the labor contract shall take a written form according to law and the service contract is also recommended to form a written agreement. Other onboard personnel who are not qualified seamen under the Seafarer Regulation shall also sign a labor contract or service contract as applicable. During the conclusion of contract, employers and seafarers shall consult with each other on the basis of free will, equality, and lawfulness, define their rights and obligations, and record the same in a written form according to law. If the contract is a model contract provided by employers to seafarers, the employers shall set the contract terms in a clear, accurate, fair, and reasonable manner according to law, and shall make explanation to the seafarers accordingly. In the case of labor dispatch, employers shall inform seafarers of the engagement of labor dispatch relationship and specify the major information of the labor dispatch company or other employers hiring seafarers by means of labor dispatch on the contract or other written documents.

Second, seafarers and employers shall keep necessary records during the service of the seafarers. During the engagement of seafarers, employers shall keep clear and full records of the contract, working records, pay slips, records on rewards or punishments and other materials, regardless of the type of contract they have signed with the seafarers. Seafarers should know who they are serving for, and retain evidence during the service period, especially their competence certificates, training certificates, health certificates, labor contracts, seaman’s record books, pay slips, and the identities and contract

details of their contact persons while serving onboard. Both the shipping companies and seafarers should realize the great importance of the seaman's record books in the determination of the crew labor relationship and priority rights, and the content of the seaman's record books shall be clear, accurate, and true to the facts.

Third, we should improve the laws and regulations and the mechanisms concerning crew management. Firstly, it shall be made clear whether all the personnel working onboard should conclude a written labor contract according to the Seafarer Regulation; secondly, it shall be made clear which laws shall be applied to address the legal disputes arising from short-term or casual employment by employers.

（2）While we can determine that seafarers and employers are bound by a labor contract relationship, it is still difficult to correctly apply laws during the trial of such cases due to the particularity of crew labor relationship. We would like to draw your attention to some issues that we have noticed during the trial of such cases in recent years.

Issue 1: how to handle disputes over the duration of contract given the particularity of the duration of a crew labor contract? Usually, seafarers are serving employers not for a specific period of time, but for a specific voyage or a carriage assignment. And shipping companies always hire a certain group of seafarers to carry out voyages over a longer period（2-3 years for example）considering the convenience of employment and the seafarers' familiarity with the ships. Being the case, should we calculate the duration of the labor contract between seafarers and employers on the basis of each voyage or each carriage assignment or should we take it as a whole over a longer time span?

Issue 2: how to handle disputes over the freedom of seafarers to terminate labor contract which may be restricted by the minimum manning requirement and customs procedures? For instance, in the case of（2017）

Qiong 72 Minchu No.120 handled by this Court, the claimant wished to disembark to get married before the maturity of contract and did so without the approval of the defendant on the time of disembarkation. Thereafter, the defendant was imposed a fine by the maritime safety administration for failure to meet the minimum manning requirement. For this reason, conflict between the claimant and defendant escalated and posed a great deal problems in the trial and enforcement of the case. It is still a controversial issue as regards how maritime courts determine and handle such disputes where there is no agreement under crew labor contract but the minimum manning requirement and customs procedures may affect the freedom of the seafarers to terminate the labor contract.

Issue 3: it is a controversial issue as regards whether the salaries of crew include overtime payment. Employers always claim that when concluding crew labor contract the parties have confirmed that crew salaries include overtime payment. But seafarers often give the contrary accounts. However, given the nature of service provided by seafarers, it is inevitable that seafarers must work beyond the regular working hours and holidays during the operation of the ship. For one thing, a seafarer who has special knowledge and is engaged in specialized work should be aware of the particularity of his job; for another, the relevant contracts always omit agreements in this regard.

We suggest that the above mentioned issues arising from the particularity of crew service should be address in the following manners.

First, when concluding a labor contract, service contract or other type of contracts, seafarers and employers shall make agreements in certain aspects by taking into account of the particularity of crew service. For instance, the contract shall specify the liability of employers to seafarers who cannot not disembark in time, and make explicit agreement on holiday overtime payments. However, a seafarer who has special knowledge and is engaged in

specialized work should be aware of the particularity of his job during the operation of ship, and he should know the impact of these particularities on his rights and obligations as a seafarer. Unless there is special agreement under the contract or there is apparently a special circumstance, seafarers shall not willfully demand for wages or remunerations that are against the shipping practices. Second, the relevant laws and regulations shall set more detailed provisions on how to address legal issues arising from the particularity of crew service, such as payment for seafarers who are not voluntarily working onboard or payment for seafarers who are working on holidays.

（Ⅳ）Dispute related to cruises and yachts

1. General information

During 2016-2018, Haikou Maritime Court accepted 61 cases of dispute related to cruises and yachts, with a value of nearly RMB110 million. Types of these cases include: service contract dispute（accounting for 60.66%）, dispute over the right to use sea areas（16.39%）, ship purchase contract dispute（6.56%）, leasing contract dispute（6.56%）, and charter party dispute（3.28%）. Disputes related to cruises and yachts rose drastically since 2017, with a year-on-year increase of 2.5 times in 2017 and 6.43 times in 2018. In terms of case type, since 2017, service contract dispute and dispute over the right to use sea areas have become the majority type of disputes related to cruises and yachts, which used to be dominant by the conventional disputes such as ship purchase contract dispute and ship construction contract dispute.

2. Legal issues and solutions

（1）Issues concerning payment of purchase price to the bank account other than that specified in the contract in a yacht purchase contract dispute. In several cases concerning yacht purchase contract dispute, while buyers and sellers had agreed in the contract that the corporate account of the seller shall

be the receiving account, in actual payment the buyers were paying to the account of the shareholder or legal representative of the seller or other third party upon instructions of the seller（usually it was the legal representative or controlling shareholder of the seller）. The improper performance of contract gave rise to some problems such as whether the receipt of payment caused the blending of the seller's shareholder/legal representative with its corporate assets, whether the seller intended to evade debts by abusing the artificial personality of the company and the treatment of shareholder's limited liability, and whether the payment made to a third party other than the seller constituted effective payment. On one hand, the buyer considered that the seller had blended its shareholder with its corporate assets by receiving payment via the personal account of the legal representative or shareholder, and demanded that, according to Article 22 of the Company Law, the corporate vein shall be lifted and the shareholder shall undertake joint and several liabilities with the company. On the other hand, in some cases the seller（company）defended that the buyer did not make payment to the specified account, due to which the payment shall be deemed ineffective. The seller therefore demanded the return of the yacht. In our opinion, during the transactions, the parties shall perform the contract according to the terms agreed therein, especially the payment terms. Buyer shall make payment to the account named in the contract and keep the relevant receipts, and shall regulate its payment activities to avoid the risk of disputes due to the improper payment acts on its part. Seller shall observe the Company Law and the relevant financial regulations, implement standardized management over corporate finance, and not receive payment via the personal account of its shareholder or other individuals to avoid the possible negative impact on the company that the other party may demand the shareholder to undertake joint and several liabilities with the company for blending of the shareholder and the artificial personality of the company.

（2）Issues concerning title transfer where the ship is delivered prior to the conclusion of contract. In a yacht purchase contract dispute, buyer and seller conducted the transaction on the basis that the ship was delivered prior the conclusion of sales contract. The seller delivered the yacht to buyer and the parties signed a sales contract later. After making the large part of purchase payment to the seller, the buyer started to posse and to use the yacht. Unfortunately, before the title transfer procedure was completed, the yacht was destroyed in a fire, hence the dispute over the transfer of title and risks for the yacht. As per Article 72 of the General Principles of the Civil Law and Article 23 of the Property Law, the title of the yacht had been transferred to the buyer upon delivery and buyer shall undertake all the risks thereafter. The title transfer registration, whether completed or not, did not affect the effect of transfer of title of the yacht between buyer and seller. The title of vessel which is not registered is only ineligible to act against a bona fide third party. We suggest that during a yacht transaction, the parties shall conduct inspection promptly and shall complete the title transfer procedures as soon as possible.

（3）Infringement arising from the unauthorized anchorage of yacht in the sea areas under the use right of others. For the purpose of operating a military museum at sea, under the coordination of Sanya people's government, the defendant anchored several ships in the sea areas under the use right of the claimant without paying any fees. The claimant therefore demanded the defendant to pay royalties for the use of sea areas based on the berthing charges set by the claimant, but the defendant refused to make payment by arguing that the anchorage was approved by the Sanya government, hence the rise of dispute. In these infringement cases arising from unauthorized occupation of sea areas under the use right of others, although the unauthorized use of sea areas on the part of defendants infringed upon the use right of the claimants, the anchorage was carried out under the

coordination of the government departments. Defendants were at fault for the unauthorized use, but it did not constitute a willful infringement and therefore the defendants shall undertake less liability. Our suggestion: first, during the operation of public interest projects at sea, administrative organs shall play a guiding role to honour the spirit of contract, respect the legitimate interests of others, and follow the rules of market economy to organize and coordinate the parties to consult with each other on the compensation of the use of sea areas, with a view to creating an equal, efficient, and law-based business environment. Second, the charge of royalties for anchorage at sea shall be different from the charge for berthing at port. Anchorage at sea and berthing in port cause different management costs on the part of the property owner. Therefore, the anchorage at sea shall not be charged as berthing charges do. It is more appropriate that the loss caused by the infringement shall be calculated based on the transaction fees for the sea areas occupied by the ships.

（4）Issues concerning disputes over yacht membership service contract. First, there are problems in the membership registration system. Members of yacht clubs come from different parts of the country, but they do not provide detailed information when signing service contracts. This caused difficulty in subsequent communications and even in the service of process. Second, service management procedures are illegal. Although the membership service contract stipulates that yacht club has the right to make annual adjustments to the annual fees and charges for the change of name based on the CPI and human labor costs, operators often omitted the notification procedure when they add charges, hence some requests were not be upheld by the court. Third, the yacht service contract is not fully performed. Yacht club fails to deliver master card and supplementary card to its members as agreed, for which members are lodging counterclaims arguing that the failure of the club to deliver membership card constitutes a fundamental breach of contract.

Forth, wording of membership clauses is controversial. The wordings and expressions of major membership clauses give rise to ambiguity in the meanings and connotations of the clauses, hence the disputes over the nature of rights and obligations of the parties. For example, under membership clause the parties agree that the club will provide "a designated berth for use by the member". On the part of the club, the clause means that the club will provide a proper berth when the member needs one, but the member argues that under the clause the club should provide a fixed berth for exclusive procession and occupation by the member. Fifth, membership service is not used often. Membership dues may cost more than hundreds of thousands or even millions, plus an annual fee of more than ten thousands. However, some members do not use the service every year or they only use it for very limited times. In the old days, only the members per se had access to the membership services, which led to low usage frequency and value of the membership services. Our suggestion: first, when the relevant operators of the yacht industry provide services to members, they shall collect, preserve and update the relevant information, especially the recording and verification of the contact details, to lower the costs in the protection of rights and interests. Second, yacht clubs shall improve the standardization of their service management procedures, and strictly abide by the law to perform the notification obligations. Third, yacht clubs shall deliver the master cards and supplementary cards to members in time. Fourth, yacht clubs shall improve the membership clauses, and try not to use ambiguous words and expressions to describe the critical membership clauses, avoiding ambiguity in the meanings and connotations of the clauses which may give rise to disputes over the nature of rights and obligations of the parties. Fifth, yacht membership service providers shall improve their service quality and take more flexible and open approaches in membership management and member benefit policies. For example, they may provide membership subletting

services for yacht members, by which they not only increase their business values, but also generate incomes for members, improve the membership experience as well as the usage frequency and value of the membership service, and ultimately enhance the appeal of yacht service and promote the prosperity of the yacht economy.

Ⅲ. Typical Cases

（Ⅰ）Fuzhou Fengda Shipping Co., Ltd. v China Pacific Property Insurance Co., Ltd. Fujian Branch on disputes over hull insurance contract

【Basic facts】

The insured, Fengda had taken out all risks hull insurance for its vessel M/V “Tianli 69” with the insurer, CPIC Fujian Branch. The ship certificates showed that the trading limit for M/V “Tianli 69” was offshore and her Business Transportation Licence showed that her permitted business scope was the transportation of general cargo in domestic offshore areas and the middle and lower reaches of the Yangtze River. On 24 October 2014, M/V “Tianli 69” went aground when she was anchored near Huayang Reef, Nansha awaiting discharge. The ship sank during the rescue operation for failure in containing the flooding through the damaged part. Her sinking location was approximately 8°53′589″ N, 112°51′267″ E in waters about 2,000 metres deep. Sansha Maritime Safety Administration investigated into the accident and found that M/V “Tianli 69” should be solely liable.

Fengda filed a claim with CPIC Fujian Branch, and the latter denied the claim on the grounds that at the time of the accident the insured vessel was outside the trading limit agreed in the insurance contract. Fengda then brought an action to this Court, requesting to order CPIC Fujian Branch to make a settlement under the hull insurance in the sum of RMB10.2 million.

【Judgments】

Opinions of this Court: the insurance policy taken out with CPIC Fujian Branch covered “Tianli 69” against all risks and relevant additional risks under the Hull Insurance Clauses for Ships Engaging in Coastal and Inland

River Transportation, and the covered trading limit was offshore areas and Classes A and B areas on Yangtze River. However, the accident took place in the waters near Huayang Reef, Nansha, which was in the far seas. M/V "Tianli 69" was outside her trading limit without prior notice to or consent of the insurer. This was a breach of the insured's duty. Article 16 of the Hull Insurance Clauses for Ships Engaging in Coastal and Inland River Transportation which was appended to the policy provided that "…prior written notice shall be given to the insurer of any sale or bareboat charter of the insured ship or any change in her trading limit or owner, manager, operator, name, technical condition or use or of her requisition for title or for use. The insurance contract remains in effect with the insurer's consent and upon completion of necessary formalities, or otherwise automatically terminates upon the occurrence of any of the foregoing." Accordingly, the insurance contract in dispute had automatically terminated when the insured ship sailed out of the agreed trading areas, which had happened before the accident took place. The legal relationship between the parties under the insurance contract had ceased to exist at the time of the accident. For this reason, the loss of the insured ship resulted from the accident should not be covered by the insurance, and CPIC Fujian Branch should not be held liable for making settlement for such loss. This Court thus rejected the claims made by Fengda, who was unsatisfied with our judgment and proceeded to file an appeal. The Higher People's Court of Hainan Province heard the second instance proceedings and affirmed the original judgment.

【Significance】

This case concerns disputes arising from marine hull insurance contract and has attracted wide attention as it involves transportation in the South China Sea. The trial of the case has the following significance: first, it clarifies the concept of trading limit. During the court hearing, Fengda

claimed that the location of the accident was less than 1 nautical mile from Huayang Reef and therefore should be deemed as within the offshore trading limits. We hold that trading limit was a specific term in China's Specifications for Domestic Voyage Ships, and its meaning should be defined by authorities in charge of shipping insurance and vessel inspections and registration, instead of being interpreted in an arbitral manner. In China, such authorities are the Maritime Safety Administration of the People's Republic of China. Accordingly, the definition of trading limit shall be subject to the specifications they issue. In such specifications, the waters near Huayang Reef, Nansha is classified as far sea areas. Second, it affirms the consequences of breach of duty by the insured. The insured ship was sailing outside her trading limit without prior notice to or consent of the insurer. Such act was a breach of the insured's duty. As provided for in Article 9.2 of the Interpretation II of the Supreme People's Court on Several Issues concerning the Application of the Insurance Law of the People's Republic of China, circumstances in which the insured breached its duty are not under "clauses exempting the insurer from liability" as set out in Article 17.2 of the Insurance Law, and the insurer is not obliged to warn, explain or notify in respect of the consequences thereof. Third, it sets a unified criterion for the trial of similar cases. It is not uncommon that Chinese coastal vessels usually navigate outside their trading limits. The nationwide insurance industry and shipping industry have been following this case with interest and expecting the judicial decisions to define the relationship between trading limits and jurisdictions so as to set standards for the industries. This judgment has decided that the division of trading limits have nothing to do with jurisdictions, vessels shall operate within their trading limits, and that the insured vessels navigating outside their trading limits might not be covered by their insurance due to breach of duty. Such decisions have imposed restraints on unsafe navigation outside trading limits and set standards for the domestic shipping market.

（Ⅱ）Yang Jianhuan v Ningbo Qinning Shipping Agency Co., Ltd. et al in respect of disputes over crew service contract

【Basic facts】

Nantong Tengyun Co., Ltd. was the owner of M/V "Tengyun", and Nantong Shipping Co., Ltd. was her registered operator and Qinning Shipping Agency Co., Ltd. her actual operator. On 7 August 2015, Yang Jianhuan was employed to serve as master on M/V "Tengyun" for a wage of RMB33,000 per month. Qinning delayed in paying the crew wages, and only paid Yang Jianhuan wages in the sum of RMB46,080 in November 2015. A cargo owner, a building materials company in Sansha, paid Yang Jianhuan wages for three months on behalf of Qinning on 4 February 2016. Qinning had been in arrears with wages of RMB182,400 up to 4 June 2016, and had stopped to pay for the crew maintenance costs since 10 November 2015. Yang Jianhuan thus brought an action before this Court.

【Judgments】

This Court held that although Yang Jianhuan did not enter into a written labour contract with Qinning, an actual labour relation had been created between the two parties. Yang Jianhuan had the right to demand that Qinning shall pay the delayed wages of RMB182,400 plus severance payment equivalent to one month's wage, i.e. RMB33,000, double pay differences in the sum of RMB231,000 for not signing a written labour contract in compliance with the applicable law, maintenance costs of RMB3,100 and repatriation costs of RMB1,200. Other claims were rejected as they were not legally required or agreed to be paid by the employer or not supported by sufficient evidence. Nantong Tengyun Co., Ltd. and Nantong Shipping Co., Ltd. were not held jointly or severally liable as they were not employer of the crew. As the crew's maintenance costs did not have maritime liens as set out in the Maritime Law, and the double pay differences and severance payment

were not of the nature of labour remunerations, Yang Jianhuan had the maritime liens on M/V "Tengyun" only in respect of the delayed wages and repatriation costs.

Accordingly, this Court made the above decisions and rejected the other claims made by Yang Jianhuan. The parties involved did not file an appeal.

【Significance】

This case has made it clear that crew have no maritime liens in respect of double pay differences, severance payment or reimbursements. Although paid based on a labour relation, they do not reflect the values of the services provided by labourers as they are punitive compensations legally imposed on employers for violating the law. They are not of the nature of labour remunerations and do not fall into the scope of wages or other remunerations entitled to maritime liens as set out in Article 22 of the Maritime Law.

（Ⅲ）Application of Korea Line Corporation for recognition and enforcement of foreign arbitration award

【Basic facts】

On 5 August 2018, Korea Line Corporation（"KLC"）as shipowner and Grand China Shipping（HK）Co. Ltd.（"GCS"）as charterer signed the Charter Party for the chartering of M/V "K Daphne". A Performance Guarantee was issued in favor of KLC by HNA Group Co., Ltd.（"HNA"）to guarantee GCS's performance of its obligations under the said Charter Party. The cross-border guarantee provided by HNA had not been reviewed and approved by the relevant administration of foreign exchange of the P.R.C. Dispute arose during the performance of the Charter Party. On 13 January 2016, the tribunal formed by Mr. Timothy Marshall, Mr. Patrick O'Donovan and Mr. David Farrington rendered the Final Arbitration Award in London regarding the dispute between KLC and HNA over the Charter Party dated 5

August 2008 and the Performance Guarantee for M/V “K Daphne”, ruling that HNA shall pay KLC an amount of USD77,830,179.46 and interests accrued therefrom. As HNA failed to fulfill its payment obligation ruled under the Final Arbitration Award, KLC applied with this Court for recognition and enforcement of the Final Arbitration Award. During the examination of the case by this Court, KLC applied for property preservation against HNA in an amount of RMB560 million and provided security accordingly.

【Judgments】

Upon examination, this Court rendered the Civil Ruling of（2016）Q72 XWR No.1, approving KLC’s application for property preservation. HNA was dissatisfied with the Ruling and applied for reconsideration. Upon examination, this Court held that there was no legal basis to make a property preservation application during the trial of recognition and enforcement of foreign arbitration award, and hence rendered the Civil Ruling of（2016）Q72 XWR No.1（1）to revoke the aforesaid Ruling and rejected KLC’s application. On 15 August 2017, this Court rendered the Civil Ruling of（2016）Q72 XWR No.1（2）, holding that the circumstances provided for in Article 5 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards where the recognition and enforcement of award could be rejected should not apply to the subject Final Arbitration Award and the application for recognition and enforcement of the Final Arbitration Award does not violate the reservations announced by China when it acceded to the said Convention. Hence, this Court ruled to recognize and enforce the Final Arbitration Award. In the meantime, the parties reached an out-of-court settlement agreement.

【Significance】

The Chinese judiciary showed a good image before the world by fully

implementing the international conventions in a fair and equitable manner during the hearing of case. This is a major case involving foreign elements. The foreign litigant KLC was concerned about unfair treatment by the court and sought for assistance from the Korean Embassy. However, upon hearing the case, the Court rejected KLC's application for property preservation by firmly upholding the State's judicial sovereignty. Meanwhile, the Court strictly followed the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the idea of "facilitating enforcement" contained therein to cautiously examine the rejection of a foreign arbitration award by a public policy, and eventually ascertained that the unapproved cross-border guarantee did not constitute a violation to China's public policy and hence approved the recognition and enforcement of the foreign arbitration award. In this case, the lawful rights and interests of both parties were equally protected, and the decisions made by this Court were unanimously accepted by both parties. Further, this case has filled the lacunae in respect of property preservation during the examination of application for recognition and enforcement of foreign arbitration award. While there are existing laws prescribing the recognition and enforcement of foreign arbitration award, no applicable law has been made for property preservation during the examination of application for recognition and enforcement of foreign arbitration award. The Court holds that property preservation during the examination of application for recognition and enforcement of foreign arbitration award shall be deemed an international judicial assistance. Given that no applicable law is made in this respect, the international conventions to which China and the country where the arbitration award was rendered are parties or the reciprocity agreements between the two countries shall be applied. In the absence of such basis, the application for property preservation shall be dismissed.

（Ⅳ）Lingao Yefeng Ocean Development Co., Ltd. v Haikou Oceans and Fisheries Monitoring Division & Haikou Oceans and Fisheries Bureau in respect of administrative penalty and administrative reconsideration for fisheries offences

【Basic facts】

On 12 October 2017, Haikou Oceans and Fisheries Monitoring Division made the Decision QHKHYJCF（2015）No. 0603001 on Administrative Penalties for Fisheries Offences. The Decision found that Yefeng dredged 34.8 tons of giant clam shells in the waters near Ren'ai Reef, Nansha and transported them to Huxin Port, Wengtian Town, Wenchang, Hainan province without a Special Permit for the Transport of Aquatic Wild Animals. Such act was a violation of Articles 18 and Article 20 of the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals. It was verified that these shells belonged to giant clams（Tridacna gigas）which were listed as aquatic wild animals under Class I State Protection and they valued RMB38,280. In accordance with Article 28 of the Regulations of the People's Republic of China on the Protection of Aquatic Wild Animals, the Monitoring Division decided to confiscate the 34.8 tons of giant clam shells and impose a fine on Yefeng in the sum of RMB306,240.

Yefeng disagreed with the decision and applied to Haikou Oceans and Fisheries Bureau for administrative reconsideration. On 31 January 2018 Haikou Oceans and Fisheries Bureau made a Decision on Administrative Reconsideration SHYXFJ（2018）No.1. The Decision found that the Decision （2015） No. 0603001 on Administrative Penalties made a mistake in the application of law by referring to Article 18 of the Regulations on the Protection of Aquatic Wild Animals, as such reference was not based on factual grounds. However, this mistake did not affect the justice of the penalties. Accordingly, the Bureau supported the penalty decision made by

Haikou Oceans and Fisheries Monitoring Division. Yefeng then brought an action to this Court and requested to dismiss Decision （2015） No. 0603001 on Administrative Penalties for Fisheries Offences and Decision （2018） No.1 on Administrative Reconsideration.

【Judgments】

Opinions of this Court: although the giant clam shells transported by Yefeng were dead, their dead bodies were still protected by the applicable laws and regulations. Thus the act of Yefeng constituted illegal transport of products made of aquatic wild animals under state priority protection. Decision（2015）No. 0603001 on Administrative Penalties for Fisheries Offences referred to Article 18 of the Regulations on the Protection of Aquatic Wild Animals and determined that Yefeng was involved in the selling and buying of giant clam shells. The finding was not true to the facts. However, Decision（2018）No.1 on Administrative Reconsideration had corrected the mistakes in fact finding and application of law in the original decision on administrative penalties, and had supported the original decision. This administrative action being suited was based on lawful fact findings and application of law. Accordingly, this Court made a judgment to reject the claims made by Yefeng, who was unsatisfied with the results and proceeded to file an appeal. The Higher People's Court of Hainan Province affirmed the original judgment in the second instance.

【Significance】

Nowadays, illegal harvest and trade of giant clams is rampant in Hainan province. More efforts must be made to better protect giant clams and giant clam shells. In addition to putting a ban on illegal harvest of giant clams, restrictions shall be imposed on the purchase, sale, transport, dredging and other activities involving giant clams and related products. Although giant clam shells are dead bodies, the collection of them inevitably causes

permanent damage to the nearby coral reefs and to the ocean ecosystem and resources. In this case, we supported the administrative authorities in cracking down the illegal transport of giant clam shells, fully implementing the environmental philosophy that "lucid waters and lush mountains are invaluable assets". Further, the case provided an appropriate interpretation on the principle that "the original administrative action and the reconsideration decision shall be united and integrated with each other". When the reconsidering authorities modify the original administrative act and its basis without changing its punishment decision, it shall be deemed that the reconsidering authorities affirm the original administrative action. Based on the principles of unity and integrity between the original administrative action and the reconsideration decision, when the reconsideration decision changes the facts found in the original administrative action and the basis thereof without changing the punishment decision, the original administrative action has been changed and is integrated into the reconsideration decision. Accordingly, the administrative action subject to examination in this case was the one as amended by the reconsideration decision.

（Ⅴ）Sun Caiming & Yang Hai v Dongfang Oceans and Fisheries Bureau in respect of administrative compensation

【Basic facts】

On 8 June 2011, Dongfang Fisheries Law Enforcement Brigade（affiliated to Dongfang Oceans and Fisheries Bureau, currently known as Dongfang Oceans and Fisheries Monitoring Brigade） at request granted Sun Caiming the permission to set up floating rafts（250m^2）in the areas of（the northwest breakwater of）Basuo Port, to be effective from 8 June 2011 to 8 June 2026. Dongfang Oceans and Fisheries Monitoring Brigade charged Sun Caiming and Yang Hai in the sum of RMB2,000 for the administration of the floating rafts. Sun Caiming and Yang Hai did not obtain a certificate of right

to use sea areas or an aquaculture permit before setting up the floating rafts.

From 18 January 2018, Dongfang Oceans and Fisheries Bureau started to send notices to Sun Caiming and Yang Hai, including the "Notice of Compulsory Removal of Illegal Floating Rafts at Sea", "Notice of Deadline for Removal of Illegal Floating Rafts in the Basin of Basuo Central Fishing Port", and "Notice of Compulsory Removal of Illegal Marine Constructions". On 29 May, Dongfang Oceans and Fisheries Bureau towed away the floating rafts of Sun Caiming and Yang Hai by coercive measures. As shown in the photos taken at the scene, the towed away floating rafts consisted of ten rafts（including living accommodations）, measuring 4m * 4m each and totaling 160m^2. Sun Caiming and Yang Hai considered that the tow-away enforced by Dongfang Oceans and Fisheries Bureau caused huge financial losses to them. Therefore, they brought an action to request Dongfang Oceans and Fisheries Bureau to pay RMB1,848,600 as compensation for the loss of the floating rafts and costs on the purchase and farming of fry.

【Judgments】

This Court held that Dongfang Oceans and Fisheries Bureau violated the administrative procedures by enforcing the tow-away without protecting the procedural rights of Sun Caiming and Yang Hai（it had been adjudged in a separate case that the compulsory tow-away was illegal）. Consequently, the injured parties, i.e. Sun Caiming and Yang Hai, had the right to claim for compensations. However, they did not provide evidence for the alleged loss for costs on fry purchase and farming and did not obtain a certificate of right to use sea areas or an aquaculture permit before setting up floating rafts. Further taking into account the market prices for constructing floating rafts and the rate of depreciation thereof, this Court ordered Dongfang Oceans and Fisheries Bureau to pay Sun Caiming and Yang Hai the sum of RMB70,000 as compensation for the loss of the floating rafts. The other claims were rejected. Dongfang Oceans and Fisheries Bureau was unsatisfied with the

judgment and proceeded to file an appeal. The Higher People's Court of Hainan Province affirmed the original judgment in the second instance.

【Significance】

This case has provided a reasonable interpretation on the range of "legitimate interests" for the purpose of state compensation. In accordance with Article 2 of the Law of the People's Republic of China on State Compensation, if the exercise of duty by the administrative authorities or the staff thereof infringes upon the legitimate interests of a citizen, legal person or any other organization and causes damage, the injured party has the right to claim for compensations. Generally, if a concerned person is engaged in aquaculture without obtaining a certificate of right to use sea areas or an aquaculture permit, the proceeds obtained from the aquaculture operations shall not be deemed the legitimate interests of the person. In the subject case, while the law enforcement brigade affiliated to the fisheries authorities had no power to authorize the use of sea areas or issue an aquaculture license but granted the Permission to Set up Floating Rafts to the concerned person. The concerned person, with trust in the fisheries authorities, believed that the administrative licensing was a valid and effective permit and had been engaged in the business for a long time. The concerned person's ownership of the floating rafts and fry shall be deemed part of its legitimate interests, and the losses arising from the demolition and dislocation of the floating rafts shall get compensations.

However, if the concerned person is at fault for the loss, the administrative authorities shall assume less liability accordingly. In this case, the concerned person was also at fault by setting up the floating rafts without obtaining a certificate of right to use sea areas or an aquaculture permit and also failing to take effective measures to avoid the loss of fry during the period when they received notices from the administrative authorities. The administrative authorities therefore shall assume less liability for compensation.

（Ⅵ）Nine cases of marine salvage disputes following a fire on M/V "Feng Sheng You 8"

【Basic facts】

At 1231hrs on 20 October 2016, a flash explosion and fire broke out in the engine room of M/V "Feng Sheng You 8" owned by Dongguan Fenghai Shipping Co., Ltd.（hereafter "Fenghai"）when she was loading naphtha at Basuo Port, Dongfang, Hainan Province. Two more explosions took place at 1250hrs and 1300hrs. At the time of the accident, about 3,400 tons of naphtha purchased from Sinopec Yangzi Petrochemical Co., Ltd.（hereafter "Yangzi Petrochemical"）had been loaded into the holds of the ship. After the accident, Dongfang municipal authorities set up an emergency command centre, and the provincial government dispatched an emergency response team to Basuo Port to direct the emergency response. The emergency command centre mobilized several parties to participate in the salvage of the ship at different stages and evacuate people to safe areas. Through joint efforts of these parties, the fire on M/V "Feng Sheng You 8" was extinguished at 0900hrs of 17 November. Operations were taken to transfer the naphtha loaded on board, and the transfer was completed on 6 December. The total salved value of the ship and the cargo on board was RMB16,745,804, which included RMB5,685,000 for the salved ship and RMB11,060,804 for the salved cargo. The salvage operations also effectively prevented pollution of the surrounding environment by the naphtha loaded on board. On 16 December, Ping An Property & Casualty Insurance Company of China, Ltd. Donguan Branch（hereafter "Dongguan Ping An"）issued a Letter of Guarantee to assure the payment of compensation to be borne by the owner/bareboat charterer of M/V "Feng Sheng You 8" as a result of the accident（not exceeding RMB3 million）. In addition, at the time of the accident, Dongguan Ping An had underwritten the "all risk hull insurance for ships engaged in coastal and inland river transportation" and the "shipowner protection and

indemnity insurance for ships engaged in coastal and inland river transportation" for M/V "Feng Sheng You 8" for compensations（limits of liability）in the sum of RMB40 million and RMB48 million respectively.

After the accident, 9 entities engaged in the salvage operation brought actions before Haikou Maritime Court in respect of disputes over the salvage. Information on the cases is shown in the table below:

Information of the Cases

Case No.	Claimant（s）	Defendant（s）	Requests made by the claimant（s）	Basic facts ascertained by this Court
（2018）Q72MC No. 205	SDIC Yangpu Port Ltd. Tugboat Subsidiary	Fenghai, Yangzi Petrochemical, Dongguan Ping An P&C	1. To order Fenghai and Yangzi Petrochemical to pay in proportion the salvage costs at RMB167,728 and the interest thereon; 2. To order Dongguan Ping An to be jointly and severally liable for the salvage costs payable by Fenghai	The vessel "Yang Gang Tuo 5" owned by the claimant arrived and anchored on standby at the site of the accident at 0930hrs on 24 October at the request of Hainan Search and Rescue Centre. In the afternoon on the same day she assisted M/V "Feng Sheng You 8" in unberthing and afterwards left the site.The costs of salvage were in the sum of RMB46,410.
（2018）Q72MC No. 206	Hainan Xiagang Tugboat Co., Ltd.	Same as above	To order the three defendants to jointly and severally pay the salvage costs at RMB2,067,904（including the salvage reward, special compensation and contracted salvage remuneration） and the interest thereon.	The vessel "Xia Gang Tuo 16" owned by the claimant arrived and dropped anchor on standby at the site of the accident at 0930hrs on 24 October; on the same day she towed M/V "Feng Sheng You 8" to 6# anchorage in Basuo Port, where the latter dropped anchor. Afterwards "Xia Gang Tuo 16" guarded M/V "Feng Sheng You 8" on a 24-hour basis. The costs of salvage were in the sum of RMB1,130,170. On 10 December, the claimant and Fenghai signed a Confirmation of Tugboat Salvage Costs and confirmed that the costs at the second stage were in the sum of RMB242,476.

（2018）Q72MC No. 207	Sanya Huali Pollution Response Co., Ltd.	Same as above	1. To order Fenghai and Yangzi Petrochemical to jointly pay the salvage reward and special compensation which total RMB4,812,275.13; 2. To hold Dongguan Ping An jointly and severally liable to the extent of the insurance coverage.	The work boat “Hua Li 3”（clean-up vessel） owned by the claimant arrived at the site of the accident at request on 20 October and was put on watch at the gate of the petrochemical wharf on standby for pollution prevention and clean-up operations. “Hua Li You 9” owned by the claimant and “Tian Xing You 6” operated by the claimant under a charter party were put on watch and standby on the periphery of the site when the STS transfer of naphtha off M/V “Feng Sheng You 8” was underway. The costs of salvage were in the sum of RMB672,000.
（2018）Q72MC No. 208	Yangpu Yiming Port Services Co., Ltd.	Same as above	1. To order Fenghai and Yangzi Petrochemical to pay the salvage reward of RMB5 million and the interest thereon; 2. Where the salvage reward recovered by the claimant is less than RMB3,388,024, to order Fenghai to pay special compensation to top it up to RMB3,388,024; 3. The claimant shall have a lien on M/V “Feng Sheng You 8” in respect of the foregoing claims; 4. To order Dongguan Ping An to be jointly and severally liable for the amounts payable by Fenghai	The clean-up vessel “Hai Wei 2” owned by the claimant performed salvage operations for M/V “Feng Sheng You 8” by pumping oily wastewater from the ship; at 1735hrs on 23 October, another explosion occurred on M/V “Hai Sheng You 8” during the operations. “Hai Wei 2” ceased the operations and evacuated her personnel; on 25 October, “Hai Wei 2” departed from Basuo Port and subsequently transferred the slop it had received onto “Ri Gang You 1” operated by the claimant under a bareboat charter party. Afterwards the slop was later transferred from “Ri Gang You 1” to “Ci Hang 9”. The costs of salvage were in the sum of RMB1,171,522.77.

（2018）Q72MC No. 209	Hainan Basuo Port Affairs Co., Ltd.	Same as above	1. To order Fenghai to pay a salvage reward in the sum of RMB1,066,100 and special compensation equivalent to the salvage reward of RMB1,066,100; 2. To order Yangzi Petrochemical to be jointly and severally liable for the salvage reward and special compensation payable by Fenghai; 3. To hold Dongguan Ping An jointly and severally liable for the above obligations of Fenghai and Yangzi Petrochemical to the extent of the insurance coverage.	The vessels “Ba Gang Tuo 6” and “Ba Gang Tuo 7” owned by the claimant arrived in the harbour waters at the port where the accident took place and were put on standby during 20-24 October at the request of the emergency command centre. They were later engaged in operations on site. The costs of salvage were in the sum of RMB747,800.
（2018）Q72MC No. 210	CNOOC Fudao Co., Ltd.	Same as above	1. To order Fenghai to pay the salvage reward in the sum of RMB312,709.2 and special compensation equivalent to the salvage reward, i.e. RMB312,709.2; 2. To order Yangzi Petrochemical to be jointly and severally liable for the salvage reward and special compensation payable by Fenghai; 3. To hold Dongguan Ping An jointly and severally liable for the above obligations of Fenghai and Yangzi Petrochemical to the extent of the insurance coverage.	The claimant dispatched fire fighting equipment, ambulances, and fire-fighters to assist in the emergency salvage during 20-24 October. The costs of salvage were in the sum of RMB312,709.2.

（2018）Q72MC No. 211	Hainan Yukang Ship Technology Service Co., Ltd.	Same as above	To order the three defendants to jointly and severally pay the salvage reward and special compensation totalling RMB147,741 and the interest thereon.	The claimant assigned four professionals with two explosion-proof offloading devices to Basuo Port to assist in the salvage operations on 23 October upon notice given by Haikou Maritime Safety Administration. Their work completed on 26 October. The costs of salvage were in the sum of RMB40,541.
（2018）Q72MC No. 212	Nanhai Rescue Bureau of the Ministry of Transport	Same as above	To order the three defendants to jointly and severally pay the costs of salvage in the sum of RMB23,798,720 and the interest thereon.	The claimant dispatched “Nan Hai Jiu 101” and “Nan Hai Jiu 112” to the site of the accident on 24 October, and were put on standby as replacements when M/V “Feng Sheng You 8” was being towed out of the wharf of Basuo Port by “Xia Gang Tuo 16”; afterwards, “Nan Hai Jiu 101” guarded M/V “Feng Sheng You 8” on a 24-hour basis until 18 November when she left the site. During the salvage, Nanhai Rescue Bureau negotiated with Fenghai on the commercial charges if the guarding of “Nan Hai Jiu 101” was required for the transfer operations, but no consensus was reached. The costs of the salvage were in the sum of RMB3,976,833.
（2018）Q72MC No. 213	Fenghai	Yangzi Petrochemical	To order the defendant to pay the salvage reward in the sum of RMB4 million.	M/V “Feng Hai 16” （a sister ship of the salved ship） owned by the claimant performed ship-to-ship transfer of naphtha from the holds of M/V “Feng Sheng You 8” during 20-22 November and 4-6 December. The costs of salvage were in the sum of RMB1,159,663.02.

【Judgments】

1. Reasoning （summary of the nine cases）

M/V “Feng Sheng You 8” and the dangerous cargo carried on board were at risk after a flash explosion and fire broke out in her engine room. The government authorities took emergency response to the accident and mobilized multiple forces for the salvage operations. The 9 parties engaged in the operations were thus bound by a “No Cure, No Pay” salvage legal relationship with the salved party or parties under the Maritime Law. One of the claimants, Nanhai Rescue Bureau, claimed that the salvage services it provided were both on “No Cure, No Pay” basis and under a salvage contract; such claim was groundless as it had not reached consensus with Fenghai on a salvage contract. If the ship interests（Defendant 1）, at the later stage of the salvage operations and without the prior consent of the cargo interests （Defendant 2）, had entered into a salvage contract with certain salvor（the above claimant）and incorporated the agreed remuneration into the “No Cure, No Pay” salvage reward or simply agreed on it as salvage reward payable by the cargo interests, it would have caused unfavourable results on the other salvors and the cargo interests. This would go against the principle of privity of contract as well as the fundamental spirit of the salvage law. The salvage reward incurred at the second stage in the sum of RMB242,476 claimed by one of the claimants, i.e. Hainan Xiagang Tugboat Co., Ltd., were agreed on by the ship interests Fenghai and Xiagang without the consent of the cargo interests and after the urgent basis for “No Cure, No Pay” salvage operations had been eliminated. Therefore, such reward should not be taken as the “No Cure, No Pay” salvage reward for apportionment. Instead, it shall be solely borne by Fenghai. Yangzi Petrochemical alleged that the amounts of salvage reward should be reduced as the salvors had taken salvage actions in excess of the needs or were at fault in carrying out the salvage operations. This Court dismissed such allegation as no evidence was provided to support it.

Given that the salvage operations lasted for a long time, involved many salvors, generated high costs and yielded useful results, the aggregate salvage reward was determined in the sum of RMB7,535,611.87, i.e. 45% of the total value of the salved property. Fenghai and Yangzi Petrochemical should pay the salvage reward in proportion to their respective salved property（namely 33.95% and 66.05%）. The apportionment of the salvage reward among the 9 salvors was determined（see the Schedule of Judgments）based on comprehensive consideration of the whole salvage process and the skills and efforts put in by each salvor in preventing or mitigating pollution of the environment, results achieved, natures and extents of risks run by, time spent, costs and losses incurred, timeliness of services provided, as well as backup conditions, efficiency and values of equipment used by each salvor.

The salvage operations were carried out for a ship which by itself or its cargo posed threats to the environment as set out in Article 182 of the Maritime Law. Some of the claimants who rendered services and earned a reward less than the special compensation equivalent to the salvage costs, according to Article 182 of the Maritime Law, shall be entitled to claim special compensation from the shipowner equivalent to the difference between the reward and the costs of the salvage operations.

After the accident, Dongguan Ping An provided a guarantee of RMB3 million on behalf of the owner of the salved ship, i.e. Fenghai, according to the relevant provisions of the Maritime Law. Dongguan Ping An had also underwritten for the shipowner P & I insurance and hull insurance for the salved ship. Fenghai as the insured of the above insurances omitted to request the insurer to pay the insurance compensation. Accordingly, in the cases brought by the salvors in respect of salvage disputes, the salvors were entitled to directly request Dongguan Ping An to be jointly and severally liable for the compensation payable by the shipowner Fenghai.

2. Judgments

Schedule of judgements

Case No.	Judgments	Percentage of salvage reward
（2018）Q72MC No. 205	1. To order Fenghai to pay the claimant SDIC Yangpu Port Ltd. Tugboat Subsidiary the salvage reward and special compensation in the total sum of RMB16,546.37; 2. To order Yangzi Petrochemical to pay the claimant SDIC Yangpu Port Ltd. Tugboat Subsidiary the salvage reward in the sum of RMB29,863.63; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB16,546.37, payable by Fenghai.	0.6%
（2018）Q72MC No. 206	1. To order Fenghai to pay the claimant Hainan Xiagang Tugboat Co., Ltd. the salvage reward, special compensation and agreed remuneration in the total sum of RMB675,827.96; 2. To order Yangzi Petrochemical to pay the claimant Hainan Xiagang Tugboat Co., Ltd. the salvage reward in the sum of RMB696,818.04; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB675,827.96, payable by Fenghai.	14%
（2018）Q72MC No. 207	1. To order Fenghai to pay the claimant Huali Pollution Response Co., Ltd. the salvage reward in the sum of RMB332,584.23; 2. To order Yangzi Petrochemical to pay the claimant Huali Pollution Response Co., Ltd. the salvage reward in the sum of RMB647,045.31; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage reward, i.e. RMB332,584.23, payable by Fenghai.	13%
（2018）Q72MC No. 208	1. To order Fenghai to pay the claimant Yangpu Yiming Port Services Co., Ltd. the salvage reward in the sum of RMB460,501.24; 2. To order Yangzi Petrochemical to pay the claimant Yangpu Yiming Port Services Co., Ltd. the salvage reward in the sum of RMB895,908.90; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage reward, i.e. RMB460,501.24, payable by Fenghai.	18%
（2018）Q72MC No. 209	1. To order Fenghai to pay the claimant Hainan Basuo Port Affairs Co., Ltd. the salvage reward and special compensation in the total sum of RMB349,618.27; 2. To order Yangzi Petrochemical to pay the claimant Hainan Basuo Port Affairs Co., Ltd. the salvage reward in the sum of RMB398,181.73; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB349,618.27, payable by Fenghai.	8%

（2018）Q72MC No. 210	1. To order Fenghai to pay the claimant CNOOC Fudao Co., Ltd. the salvage reward and special compensation in the total sum of RMB113,618.33; 2. To order Yangzi Petrochemical to pay the claimant CNOOC Fudao Co., Ltd. the salvage reward in the sum of RMB199,090.87; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB113,618.33, payable by Fenghai.	4%
（2018）Q72MC No. 211	1. To order Fenghai to pay the claimant Hainan Yukang Ship Technology Service Co., Ltd. the salvage reward and special compensation in the total sum of RMB20,631.91; 2. To order Yangzi Petrochemical to pay the claimant Hainan Yukang Ship Technology Service Co., Ltd. the salvage reward in the sum of RMB19,909.09; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB20,631.91, payable by Fenghai.	0.4%
（2018）Q72MC No. 212	1. To order Fenghai to pay the claimant Nanhai Rescue Bureau the salvage reward and special compensation in the total sum of RMB2,483,651.51; 2. To order Yangzi Petrochemical to pay the claimant Nanhai Rescue Bureau the salvage reward in the sum of RMB1,493,181.49; and 3. To order Dongguan Ping An to be jointly and severally liable for the salvage payments, i.e. RMB2,483,651.51, payable by Fenghai.	30%
（2018）Q72MC No. 213	To order Yangzi Petrochemical to pay the claimant Fenghai the salvage reward in the sum of RMB597,272.6.	12%

【Significance】

First, the 9 cases initiated out of the salvage operations touched almost all important mechanisms related to marine salvage under the Maritime Law of China. Up to 13 legal provisions and judicial interpretations were applied in the trial of the cases.

Second, the proportions of salvage reward to the salved property were determined based on considerations to and balance between the rights and interests of both the salvors and the salved parties. The Maritime Law has no specific provisions on the proportions of salvage reward to the salved property. Roughly speaking, the proportion in judicial practise is about 10%.

This Court determined that the total salvage reward should be 45% of the value of the salved property, taking into account of the fact that the salvage operations lasted for as long as 48 days and other factors such as the participation of many salvors as well as the high costs and useful results of the operations. None of the parties to the 9 cases filed an appeal. The proportion was high but accepted by all parties involved. Thus, it was obvious that it was fair and reasonable. This case can serve as a good precedent in judicial practice.

Third, salvage operations on a "No Cure, No Pay" basis under the Maritime Law are in nature salvage actions encouraged and promoted by law rather than commercial activities. Accordingly, "costs of salvage" shall be costs and expenses incurred or payable, including direct loss suffered. Costs of salvage are an important factor in the apportionment of salvage reward among salvors. However, the apportionment of salvage reward among salvors shall not be simply based on the proportion of costs of salvage each salvor has incurred. Where multiple salvors participate in the salvage operations for a same marine accident, the apportionment of salvage reward between the salvors shall be reasonably determined subject to Article 180 of the Maritime Law based on comprehensive consideration of the whole salvage process and the skills and efforts put in by each salvor in preventing or mitigating pollution of the environment, results achieved, natures and extents of risks run by, time spent, costs and losses incurred, timeliness of services provided, as well as backup conditions, efficiency and values of equipment used by each salvor. Accordingly, some salvors may earn a salvage reward in excess of the costs of salvage they have incurred, while some may earn a reward falling short of the costs. Both happened in the 9 cases as a result of comprehensive consideration of different factors in the salvage services rendered by the salvors.

Fourth, one of the defendants, Dongguan Ping An, issued a Letter of

Guarantee for the accident to assure the payment of compensation to be borne by the owner/bareboat charterer of M/V "Feng Sheng You 8" as a result of the accident（not exceeding RMB3 million）, and it also underwrote the relevant insurances for the ship, with the total insurance exceeding the liabilities to be borne by Fenghai, i.e. the guaranteed（insured）. Fenghai omitted to request the insurer to pay the insurance compensation, and it was possible that Fenghai might settle with the insurer by giving up some of its rights under the insurances which would prejudice the rights and interest of third parties, namely the claimants in these cases. In view of these, this Court directly ordered Dongguan Ping An to be jointly and severally liable for the salvage reward and special compensation payable by Fenghai. Such decision was in compliance with the insurance law and reduced the trouble of litigation for the parties involved.

（Ⅶ）Sanya New Airport Industrial Park Airport Zone Construction & Development Co., Ltd. v Sanya Oceans and Fisheries Bureau in respect of marine administrative penalties

【Basic facts】

On 15 November 2016, Sanya Division of China Marine Surveillance（affiliated to the Defendant Sanya Oceans and Fisheries Bureau）detected an ongoing project of land reclamation 1 kilometer south of Phase I of New Airport Industrial Park when they were inspecting the construction site of Sanya New Airport in the waters of Hongtangwan, Tianya District, Sanya. As the plaintiff, Sanya New Airport Industrial Park Airport Zone Construction & Development Co., Ltd.（hereinafter "New Airport Zone Company"）, failed to present a certificate of right to use sea areas and related approvals for the project, Sanya Oceans and Fisheries Bureau decided to investigate into the project and on 17 November gave New Airport Zone Company an Order to

Cease an Illegal Act. On 21 December, Sanya Oceans and Fisheries Monitoring Centre measured the site of the project and ascertained that the area of sea illegally used was 1.4174 hectares. On 15 May 2017, Sanya Oceans and Fisheries Bureau made and served Decision［2016］No. 15 on Penalties, ordering New Airport Zone Company to return and restore the illegally occupied sea areas and imposing a fine of RMB22,324,050. New Airport Zone Company disagreed with the decision and brought an action before this Court requesting for the dismissal of the decision.

It was also ascertained that the Relocation Project of Sanya Phoenix International Airport（hereinafter "Sanya new airport project"）was a major construction project of Hainan Province. The Outline of the 13th Five-Year Plan for the National Economic and Social Development of Hainan Province listed the relocation project of Sanya Airport among the ten major infrastructure projects of Hainan Province. The plan of Sanya New Airport comprised three areas, namely the Air and Sea Port Operational Area（also known as the Artificial Island）, Airport International Tourism and Trade Area（also known as Lianhua Island, Airport Industrial Park or Airport Economy Zone）, and Airport Supporting Industrial Area （on land）. The area of land to be reclaimed for the project was up to 28.18 km^2. The owner and constructor of the project was HNA Group. New Airport Zone Company was affiliated to HNA Group.

In November 2011, Hainan Provincial Government held a special meeting to study and advance the relocation project of Sanya Airport. In December 2012, the Provincial Government decided to set up a leading team to take charge of the arrangements for and coordination of major issues of the project. HNA Group undertook the preliminary work of the project by working with the Development and Reform Commission of the province and HNA Airport Group Co. Ltd., and was responsible to report and obtain various approvals as required in different phrases of the project. In August

2013, the Provincial Government held a special meeting on which it generally agreed to relocate Sanya Airport on a reclaimed land and that Hongtangwan waters was preferred for the relocation. In November 2014, the Provincial Development and Reform Commission submitted a report on selecting Hongtangwan as the relocation site of Sanya New Airport to the Civil Aviation Administration of China for approval. As it was not consistent with marine functional zoning, the State Oceanic Administration reported to the State Council and applied for approval for amendments to the Marine Functional Zoning of Hainan Province（2011-2020）regarding Hongtangwan waters. The proposed amendments were to change part of the marine functional zones in Hongtangwan into waters for industrial and urban uses so that the airport could be constructed there. Thereafter, Sanya New Airport project was listed as a new project and a continuing project in the 2016 and 2017 plans for investment in key projects of Hainan Province. The Provincial Government demanded more efforts to be made to the preliminary work of the project and required that all the construction works shall be based on scientific reasoning and carried out in compliance with applicable laws and regulations, and that land reclamation procedures shall be completed properly to make sure that the project would be commenced by the end of 2016 and completed and put into use in 2020.

To advance the construction of Sanya New Airport, Sanya New Airport Investment and Construction Co., Ltd., an affiliate to HNA Group, designated Phase I of New Airport Industrial Park and Artificial Island Starting Zone respectively out of the Airport International Tourism and Trade Area and the Air and Sea Port Operational Area. Then it started a land reclamation project without authorization. In July 2016, permission was given for the use of 47.8879 hectares of sea areas for Phase I of New Airport Industrial Park, and the right to use was granted for a period of 50 years. Likewise, New Airport Zone Company commenced sea-taking projects, including a sea-crossing

bridge, steel vibrating cylinders and Artificial Island Starting Zone since October 2016 without obtaining the right to use sea areas. Even when competent authorities ordered it to stop the works and imposed fines, the company did not stop working but carried on by paying the fines. The construction came to a full stop in July 2017 when the State Oceanic Administration Office gave notification in July that the assessment report on the impacts of the Artificial Island on the environment did not pass, and that the constructor of the project was required to provide sufficient reasoning about the problems mentioned in the notification in an amended report and resubmit it according to procedures. In 2017, the Fourth Environment Supervisory Inspection Group released the Opinions on the Environment Supervisory Inspection of Hainan Province, in which it pointed out that "Sanya New Airport International Tourism and Trade Area Project commenced construction before obtaining authorization and the barbarous approaches damaged the marine ecosystem". To address the problems pinpointed by the opinions of environment supervisory inspection group, rectification measures were proposed in the Rectification Measures of Hainan Province in Implementing the Opinions of the Environment Supervisory Inspection Group. The measures included accelerating the preliminary work of the Sanya New Airport and its supporting industrial projects and completing necessary formalities in accordance with the Master Plan of Hainan Province（Space 2015-2030）, the Master Plan of Sanya City（Space 2015-2030） and the requirements for marine functional zoning. The rectification plan was submitted and approved by higher authorities, despite that the plan did not mention any adjustment to the selected location of Sanya New Airport at all. The Guiding Opinions of the CPC Central Committee and the State Council on Supporting Hainan in Comprehensively Deepening Reform and Opening-up proposed that preliminary work of Sanya New Airport shall be commenced.

【Judgments】

Opinions of this Court: New Airport Zone Company commenced the project of the Artificial Island Starting Zone without legally obtaining the right to use sea areas. The act constituted illegal occupation of sea areas by reclaiming land without authorization. It was appropriate for Sanya Oceans and Fisheries Bureau to impose administrative penalties according to Article 42 of the Law on the Administration of Sea Areas. However, due to its failure to correctly and fully understand the provision, it did not take into account of "the period of illegal occupation of sea areas" when considering the penalty basis. As a result, the amount of penalties was apparently inappropriate. Moreover, Sanya Oceans and Fisheries Bureau did not fully consider the fact that the project concerned was a key infrastructure project and that it had already obtained most of the supporting documents. Neither did it consider whether restoration of the reclaimed land would cause secondary pollution to the marine environment. Thus, the penalty decision that ordered "return and recovery the illegally occupied sea areas to their original state" was obviously unreasonable. For this reason, this Court made a judgment to dismiss the Decision［2016］No. 15 on Administrative Penalties made by Sanya Oceans and Fisheries Bureau and ordered it to make new administrative penalties. Sanya Oceans and Fisheries Bureau was unsatisfied with the results and proceeded to file an appeal. The Higher People's Court of Hainan Province affirmed the original judgment in the second instance proceedings.

【Significance】

This case clarifies the vague understanding of marine administrative authorities on the application of Article 42 of the Law on the Administration of Sea Areas （hereafter "Article 42 provision"） and provides significant guidance for the correct application of the provision. It also sets a good

example on how to support the construction of key projects while protecting the lawful use of sea areas and the marine environment.

First, when imposing penalties for illegal land reclamation or occupation of sea areas, the "period of illegal occupation of sea areas" shall be taken into account. First of all, the Notice of the Ministry of Finance and State Oceanic Administration on Strengthening Management on the Collection of Royalties for the Use of Sea Areas provides for the collection of royalties from entities and individuals who legally use the sea areas, whereas the Article 42 provision sets out penalties for illegal occupation of sea areas. They are of different natures and indented for different targets. Moreover, Article 42 provision has taken into account the different extents of damage caused by illegal occupation of sea areas for land reclamation and other acts of illegal occupation of sea areas. Based on this it sets out more severe penalties for the former. At the same time, it decides on the amounts of penalty by considering the "period of illegal occupation of sea areas" and the "size of sea areas illegally occupied" as measurement for the extent of damage caused by the violation act. It respects the principal that a punishment shall be proportional to the severity of an illegal act itself, which is also the intention of this mechanism. Therefore, when imposing a penalty for illegal reclamation or occupation of sea areas subject to the Article 42 provision, consideration shall be given to the period of illegal occupation of sea areas instead of simply collecting a maximal royalty in a lump sum for 50 years.

Second, the three punishment measures including ordering the return of illegally occupied sea areas, ordering the recovery of the sea areas to original state, and forfeiting the illegal proceeds do not stand side by side. First of all, Article 42 provision expressly specifies that the above three punishment measures do not stand side by side. When imposing administrative penalties under this provision, it is unnecessary to impose all three measures at the same time. Only fines may be imposed together with one or more of these

measures. Moreover, illegal use of sea areas involves different background facts and complicated violations. If the above penalties are imposed at the same time without regarding the specific facts and severity of the violation acts, it would be against the principle of proportionality and might cause failure to the purpose of the administrative penalty.

Third, administrative penalty shall be both legal and reasonable. The purpose of administrative penalty is to correct administrative violations, to support and monitor the administration acts of the administrative authorities, and to protect public interests and maintain the social order. When imposing administrative penalties, particularly when key infrastructure projects are involved, we should take into account of various aspects such as the economy, politics, society, and ecosystem. A penalty should be reasonable and proportional to the severity of the illegal act. Sanya New Airport project was a key infrastructure project, the selection of site had been approved and the State had requested to commence the preliminary work. As regards how to recover the sea areas to their original state and whether the recovery would cause secondary pollution and damage to the marine environment, in consideration of the nature, current status, and possibility of continuity of the project and according to the principles proposed in the Opinions on Environment Supervisory Inspection of Hainan Province, i.e. “restore what needs to be restored, adjust what needs to be adjusted, and remedy what needs to be remedied”, this Court corrected the decision made by the administrative authorities who simply applied all the penalty measures under Article 42 provision as punishment. The judgment of the court achieved both the juridical purpose and social effects by taking into account of the lawfulness and reasonableness of the administrative actions.