TOPIC: China Coast Guard Regulation No. 3

BOTTOM LINE

- China Coast Guard (CCG) Regulation #3 raises significant legal concerns.
- The regulation is set to take effect on 15 June 2024 and will authorize CCG commanders to detain foreign vessels and persons in “waters under China’s jurisdiction” for up to 60 days.¹
- Moreover, the regulation appears to implement the 2021 CCG Law, and therefore suffers from the same legal deficiencies as the 2021 CCG Law, including vague language on geographic application (e.g., “waters under China’s jurisdiction”) and the potential to use force (e.g., “other law enforcement actions”).²
- Concern regarding the scope of geographic application is underpinned by the legally baseless dashed-line claim within which the People’s Republic of China’s (PRC) asserts “indisputable sovereignty.”³
- The PRC’s sweeping maritime and territorial claims across the South China Sea provide pretext for unlawful enforcement of CCG Regulation #3 on the high seas and in foreign exclusive economic zones (EEZ) where all nations enjoy high-seas freedoms of navigation, overflight, and other lawful uses of the sea.⁴
- CCG Regulation #3 is the latest example of the PRC’s increasingly assertive behavior coupled with its use of domestic law and regulation as an instrument of coercion.

WHY THIS MATTERS

- CCG Regulation #3’s potential to escalate regional tensions, infringe on coastal state sovereign rights, and impede high-seas freedoms guaranteed to all nations makes it a matter of significant international concern
- CCG regulation #3 is a vehicle for the PRC to impose domestic jurisdiction on foreign flagged vessels and foreign persons beyond its lawful territorial sea, and possibly across the entirety of its sweeping maritime claims.
- Implementation of the regulation would be escalatory and detrimental to regional peace and security.
- The PRC could use the 2021 CCG Law and CCG Regulation #3 to justify continued and increasingly forceful interference with lawful activities by the Philippines in the Philippine EEZ.
- The regulation’s vague language on fisheries enforcement in “important fishery waters” coupled with the PRC’s annual fishing moratorium across the South China Sea increases uncertainty for coastal states that rely on fisheries rights for economic sustenance.⁵
- CCG Regulation #3 does not exempt warships and other sovereign immune vessels from its scope, leaving open the possibility of enforcement against public vessels in a manner contrary to international law.
- If the PRC’s use of domestic law and regulations as an instrument of coercion is left unchallenged, the PRC could be emboldened to take further coercive action against the Philippines and other countries.
- The PRC’s disregard of the binding 2016 Arbitral Tribunal award and customary international law reflected in the United Nations Convention on the law of the Sea (UNCLOS) threatens the rule of law across the region.
- Upholding international law is fundamental to the rules-based international order that benefits all nations.
The CCG Bureau was established in March 2013 by consolidating four maritime law enforcement agencies.\textsuperscript{vi}

In July 2018, the Bureau was transferred to the People’s Armed Police Force under the unified command of the Central Military Commission. It now consists of the North, East and South China Sea Sub-bureaus.\textsuperscript{vii}

After the 2018 reorganization, collaboration increased between the People’s Liberation Army (PLA) and the CCG in terms of organization, personnel, and equipment, as evidenced by the transfer of retired PLA Navy ships to the CCG and appointment of former PLA Navy officers to major CCG positions.\textsuperscript{viii}

The CCG now has more than 200 vessels and aircraft (fixed-wing and rotary-wing).\textsuperscript{ix}

Enactment of the CCG Law in January 2021 exemplified and reinforced the CCG’s growing strength, militarization, and forward posture.\textsuperscript{x}

The CCG Law contains ambiguous and undefined language on the scope of geographic application and authority to use weapons, among other problematic provisions.\textsuperscript{xi}

On 15 May 2024, the CCG announced that CCG Regulation #3 (i.e., “Decree No. 3” or the “Regulations on Administrative Law Enforcement Procedures for Coast Guard Agencies”) would come into effect on 15 June 2024.

The new regulation appears to implement the 2021 CCG Law.\textsuperscript{xii}

According to the PRC’s Ministry of Foreign Affairs, the purpose of the regulation is to standardize administrative law enforcement procedure and build on two criminal procedure regulations issued in 2023.\textsuperscript{xiii}

The new regulation is the first known CCG policy that explicitly authorizes detention of foreign vessels and individuals for “trespass” in “waters under China’s jurisdiction.”\textsuperscript{xiv}

News of the regulation broke with the arrival of a 100-boat convoy of Philippine civilians on 15 May 2024 at Scarborough Shoal. The convoy reportedly delivered food and fuel to Philippine fisherman and installed buoy markers despite the presence of CCG, maritime militia, and PLA Navy vessels.\textsuperscript{xv}
The new regulation consists of 92 pages, 16 chapters, and 281 articles. While some of the 281 articles are administrative in nature, articles 11, 35, 105, 257, 263, and 266 present a more troubling picture. Article 11 outlines broad CCG jurisdiction over “administrative cases” involving an “illegal violation” in waters considered to be “under the jurisdiction of our country [PRC].” Such waters are not defined in the regulation or in the 2021 CCG Law.

Article 105 describes CCG authority to detain foreign ships that illegally enter “territorial waters” (“territorial waters” are not defined in the regulation or in the 2021 CCG Law).

Article 257 outlines the circumstances, offenses, and length of time that the CCG can detain foreign nationals for violating exit and entry management. The article authorizes detention if “further investigation is required,” subject to approval by the cognizant CCG area commander. The article lists offenses for which foreign nationals can be detained, including “illegal entry and exit into the country [China]”; “assisting others to illegally enter and exit the country”; and “endangering national security interests, disrupting social and public order, or engaging in other illegal and criminal activities.” Detention up to 60 days may be authorized if the case is “complicated.”

Article 266 requires the responsible “CCG organ” to provide specific information on detained foreign nationals and vessels, such as name, sex, identity documents, the ship’s registration, name, the case’s circumstances, and the legal basis for detention to higher headquarters. The provincial-level CCG bureaus are required to notify the relevant diplomatic mission and “foreign affairs department” of a foreign national’s detention within 48 hours.

Article 35 implements Article 25 of the 2021 CCG Law, which authorizes the CCG to “delimit temporary maritime security zones,” including for “military use of the sea and safety and use of maritime military facilities.”

In addition to restating the purposes for establishing maritime security zones listed in the CCG Law, Article 35 authorizes establishing maritime security zones “involving important fishery waters” if related to “fishery production operations.”

Article 263 purports to prohibit “unauthorized” surveying and mapping in “waters under China’s jurisdiction,” and warns that such circumstances are considered “grave or serious.”

CCG Regulation #3 does not exempt warships and other sovereign immune vessels from its scope or acknowledge the doctrine of sovereign immunity under international law.

The regulation does not specifically address the use of weapons like the 2021 CCG Law, but it does expressly reference the CCG Law and use vague language on authorized activities (e.g., “other law enforcement actions”) that could be construed to encompass the use of force in accordance with the CCG Law.
The timing of the CCG’s announcement may be intended to *intimidate the Philippines from exercising navigational rights and freedoms in its EEZ*, particularly near Second Thomas Shoal and Scarborough Shoal.xxvi

- A Philippine government official responded to CCG’s issuance of the regulation by condemning “China’s blatant escalation of tensions in the West Philippine Sea.”xxvii
- The Philippines Department of Foreign Affairs said that, “the regulations are issued on the basis of the 2021 Coast Guard law which also illegally expanded the maritime law enforcement powers of China’s Coast Guard. China would be in direct violation of international law should it enforce these new regulations in the waters and maritime features within the illegal, null and void, and expansive 10-dash line, which would effectively cover areas of the West Philippine Sea where the Philippines has sovereignty, sovereign rights and jurisdiction, or in the high seas.”xxviii
- See USINDOPACOM’s [TACAID](https://www.tacaid.org) page for more information on events surrounding Second Thomas Shoal.

The PRC’s *sweeping maritime and territorial claims presage potential unlawful enforcement of* CCG Regulation #3 on the high seas and in foreign EEZs where all nations enjoy freedoms of navigation, overflight, and other lawful uses of the sea.xxix

- In submitting its *legally baseless dashed-line claim* to the UN General Assembly in 2009, the PRC declared that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”xxx
- In 2013, the Philippines exercised its right under UNCLOS to seek legal arbitration to contest the PRC’s claims. The Permanent Court of Arbitration (Arbitral Tribunal) *firmly and unanimously rejected the PRC’s claims* in 2016.xxxi
- The Arbitral Tribunal found that PRC’s claims to “historic rights” or other sovereign rights with respect to the maritime areas of the SCS encompassed by the so-called “nine-dash line” are *contrary to UNCLOS and without lawful effect.*xxi Likewise, the PRC’s dashed-line claim *does not provide a basis for any entitlement by the PRC to exercise domestic law enforcement jurisdiction.*xxxii
- Despite the binding Arbitral Tribunal award, the PRC persists in perpetuating its dashed-line claim and territorial claims to maritime features.xxxiv
- In the Spratlys alone, the PRC’s claim to sovereignty over “Nansha Qundao” (南沙群岛) encompasses approximately 40 islands and 150 low-tide elevations.xxxv

- CCG Regulation #3’s potential to *escalate regional tensions, infringe on coastal state sovereign rights, and impede high-seas freedoms* guaranteed to all nations make it *a matter of significant international concern.*
- For example, the regulation could be used as pretext to enable the PRC to increase *pressure on Japan*
relation to the Senkaku Islands; to deny Vietnamese or Malaysian sovereign rights in the EEZ; or to enforce the PRC’s newly enacted excessive straight baseline claims in the Gulf of Tonkin.xxxvii

- The regulation’s ambiguous and broad language (e.g., “endangering national security and interests”) provide a veil of flexibility for the CCG to detain foreign vessels and persons engaged in lawful activities beyond the territorial sea of any state.xxxviii
- The failure to exempt warships and other sovereign immune vessels from the regulation’s scope leaves open the possibility of enforcement against any nation’s public vessels in a manner contrary to the doctrine of sovereign immunity under international law.
- The circumstances when force may be used under the 2021 CCG Law are left vague in the new regulation, and thus will continue to fuel uncertainty and risk of miscalculation during maritime interactions.

- The regulation’s vague language on fisheries enforcement in “important fishery waters” coupled with the PRC’s recent announcement of its annual fishing moratorium across the South China Sea increases uncertainty for coastal states that rely on fisheries rights for economic sustenance.xxxix

- Like all nations, the PRC enjoys freedoms of navigation, overflight, and other internationally lawful uses of the sea in waters beyond the territorial sea of any state, but such freedoms must be exercised with due regard for the rights of other states.xli
- CCG Regulation #3 is the latest example of PRC’s increasingly assertive behavior in the South China Sea.xlii

**PROPOSED COUNTER-LAWFARE APPROACH**

**This section offers a summary of suggested language and key points for incorporation into communication strategies**

- **CCG Regulation #3 raises significant legal concerns.** Enforcement would be highly escalatory and detrimental to regional peace and security.
- **CCG regulation #3 exemplifies the PRC’s use of domestic law as an instrument** to assert excessive maritime claims that were unanimously rejected in the legally binding determination of the 2016 Arbitral Tribunal.
- The PRC’s use of ambiguous and undefined language in CCG Regulation #3 affords flexibility for excessive enforcement of Chinese domestic law in conflict with high-seas freedoms enshrined in international law.
- The PRC’s legally baseless dashed-line claim renders CCG Regulation #3 inconsistent on its face with customary international law reflected in UNCLOS.xlii
- The PRC’s sweeping maritime and territorial claims across the South China Sea provide pretext for excessive enforcement of CCG Regulation #3 on the high seas and in foreign EEZs where all nations enjoy freedoms of navigation, overflight, and other lawful uses of the sea.
- The international community should expose and oppose any efforts by the PRC to unlawfully enforce domestic jurisdiction under the guise of CCG Regulation #3.
- **Upholding international law and the rules-based international order** is an enduring interest for the international community and one that is vital to peace, security, and prosperity throughout the region.
- Consistent with U.S. policy, **USINDOPACOM unequivocally rejects the PRC’s sweeping and unlawful maritime claims** in the South China Sea, as determined by the Arbitral Tribunal’s legally binding decision in July 2016.
- The PRC’s disregard of the 2016 Arbitral Tribunal award and customary international law reflected in UNCLOS threatens the rule of law across the region.
- The United States has urged the PRC – and all claimants – to comport their maritime claims with international law as reflected in UNCLOS.xliii
- **The PRC continues to undermine international law and the rules-based international order**, as exemplified by its coercion and intimidation in the South China Sea.
- USINDOPACOM supports and defends a free and open Indo-Pacific underpinned by peace, stability, and freedom of the seas in accordance with international law.
An English translation of the CCG Law is available at: https://www.airuniversity.af.edu/Portals/10/CASI/documents/Translations/2021-02-11 China_Coast_Guard_Law_FINAL_English_Changes from draft.pdf?ver=vrjiG3SydQsmid0NF6uTA=


Michael Punongbayan, China Coast Guard empowered to detain South China ‘trespassers’, The Philippine Star, 18 May 2024, https://www.philstar.com/headlines/2024/05/18/2356034/china-coast-guard-empowered-detain-south-china-trespassers


China’s Coast Guard Regulations on Administrative Law Enforcement Procedures for Coast Guard Agencies, https://ccg.gov.cn/mhenu/.

China’s Coast Guard Regulations on Administrative Law Enforcement Procedures for Coast Guard Agencies, https://ccg.gov.cn/mhenu/.

See generally id.


See generally id.


See USINDOPACOM TACAID on the PRC’s excessive straight baselines in the Gulf of Tonkin, available at https://www.pacom.mil/Contact/Directory/10/106-Staff-Judge-Advocate/.

See generally id.


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