

# 南京海事法院海事审判报告

Report on Trials of Nanjing Maritime Court of PRC

(2019.12–2020.11)



中华人民共和国南京海事法院  
Nanjing Maritime Court of PRC

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# CONTENTS

## 南京海事法院海事审判报告

(2019年12月-2020年11月)

特别说明：本报告以中英两种文字发布，以中文文本为准

### 目 录

前 言	001
<b>一、基本情况</b>	001
(一) 总体概况	001
(二) 案件构成	002
(三) 司法公开情况	003
<b>二、工作亮点</b>	004
(一) 服务大局前瞻化	004
(二) 执法办案精品化	004
(三) 制度构建体系化	005
(四) 诉讼服务信息化	006
(五) 队伍建设专业化	007
<b>三、典型案例</b>	008
案例一： BOA BARGES AS 诉南京奕淳船舶制造有限公司国际船舶建造合同纠纷案	008
案例二： 张某某诉南京市建邺区人民政府等行政处罚系列纠纷案	010
案例三： 江苏靖江农村商业银行股份有限公司东兴支行诉胡某某等金融借款合同及船舶抵押合同纠纷案	012
案例四： 中储粮油脂有限公司申请扣押“凯利 (KELLY)” 轮案	014
案例五： 秦某某诉苏某某海上人身损害责任纠纷案	016



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Special Statement: This report is announced in Chinese and English, and the Chinese Version shall prevail.

## TABLE OF CONTENTS

<b>Preface</b> .....	019
<b>I. General Information</b> .....	019
(1) General Performance.....	019
(2) Case Classification.....	020
(3) The Openness of the Justice System.....	022
<b>II. Highlights of Activities</b> .....	022
(1) Prospective Systematic Planning.....	022
(2) Refining the Trial Process.....	024
(3) Systematic Formulation of Rules and Regulations.....	025
(4) Additional Informationalized Litigation Services.....	026
(5) Building a Professional Team.....	028
<b>III. Typical Cases</b> .....	029
Case 1:BOA BARGES AS vs. Nanjing Yichun Shipbuilding Co., Ltd. Dispute over International Shipbuilding Contract.....	029
Case 2:Zhang vs. the People's Government of Jianye District, Nanjing, Disputes over Administrative Punishment.....	032
Case 3:Dongxing Branch of Jiangsu Jingjiang Rural Commercial Bank Co., Ltd. vs. Hu et al. Dispute over Financial Loan Contract and Ship Mortgage Contract.....	035
Case 4:Case of China Grain Storage Oil Co., Ltd.'s Application to Detain the KELLY Ship.....	038
Case 5:Qin vs. Su: A Dispute over Maritime Personal Injury Liabilities..	041

## 前言

作为全国第11家海事法院，南京海事法院于2019年12月4日正式履职。一年来，南京海事法院坚持以习近平新时代中国特色社会主义思想为指导，认真贯彻党的十九大和十九届二中、三中、四中、五中全会精神，紧紧围绕“努力打造全国一流乃至在国际上有影响力的海事法院”目标，坚持政治建设统领、坚持审判精品战略、坚持系统谋划推进，充分发挥海事审判职能作用，服务保障海洋强国等国家战略实施和“强富美高”新江苏建设再出发，各项工作实现良好开局，受到最高人民法院周强院长、江苏省委娄勤俭书记批示肯定。“南京海事法院立足区位优势，积极服务海洋经济发展”写入2020年最高人民法院工作报告。

## 一、基本情况

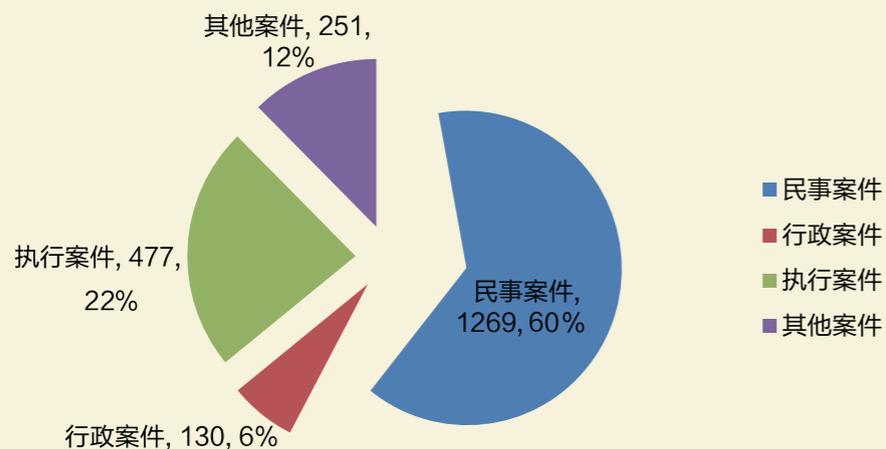
### (一) 总体概况

截至2020年11月，全院受理各类案件2127件，结案1312件。收、结案数分别位列全国海事法院第7位、第9位。受理案件的类型涉及《最高人民法院关于海事法院受理案件范围的规定》确定的六大类共108种案件类型中的94种。法定正常审限内结案率88.06%，一审服判息诉率96.23%，民事案件调解撤诉率63.88%。民事案件、行政案件、执行案件收案数分别位列全国海事法院第8位、第1位、第11位。立案标的总金额70.66亿元，其中审判类案件标的金额



50.02 亿元，执行类案件标的金额 20.64 亿元。

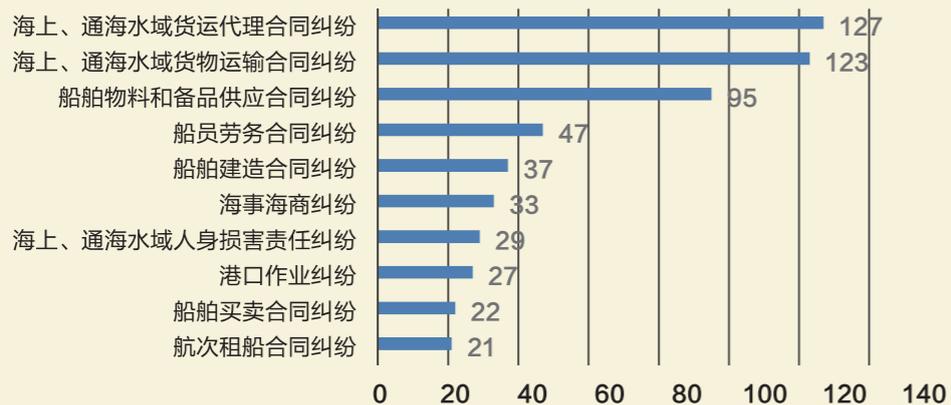
各类案件受理数占比图



### (二) 案件构成

1. 民事案件：受理 1269 件，审结 693 件。其中，收案数量排名前三的案由分别是：海上、通海水域货运代理合同纠纷（127 件），海上、通海水域货物运输合同纠纷（123 件），船舶物料和备品供应合同纠纷（95 件）。收案数量排名前十的案件共计 561 件，具体案由分布如下：

新收案件数量排名前十的案由



2. 行政案件：受理 130 件，审结 45 件。收案数量排名前三的案由分别是海洋资源行政强制（64 件）、水上交通运输行政赔偿（19 件）、海洋资源行政许可（10 件）。

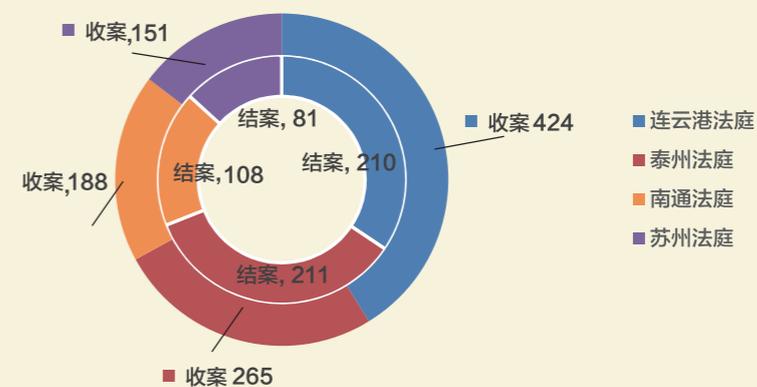
3. 执行案件：受理 477 件，执结 361 件。

4. 扣押船舶情况：扣押船舶 112 艘，其中外国籍、港澳台船舶 5 艘。

5. 涉外涉港澳台案件情况：受理 100 件，占全院民事案件的 7.88%，案件标的金额 4.43 亿元，涉及英国、法国、德国、韩国、印度、新加坡、希腊、巴西等 30 多个国家和地区。

6. 派出法庭收结案情况：连云港、南通、泰州、苏州四个派出法庭受理案件 1028 件，占全院受理案件 48.33%；结案 610 件，占全院审结案件 46.49%。其中，连云港法庭受理案件 424 件、南通法庭受理案件 188 件、泰州法庭受理案件 265 件、苏州法庭受理案件 151 件。

派出法庭收、结案情况



### (三) 司法公开情况

通过中国裁判文书网上传裁判文书 943 篇，裁判文书上网率 71.88%。依托中国庭审公开网直播庭审 72 场，总观看人数达 47515 人次。依托中国审判流程信息公开网有效公开 1304 件案件审判流程



信息，有效公开率 98.79%。

## 二、工作亮点

### (一) 服务大局前瞻化

开展前瞻性调研，准确把握海事司法服务保障海洋强国、长江经济带发展、长三角区域一体化发展、共建“一带一路”等国家战略的着力点和结合点，以高质量海事司法护航高质量发展。出台《关于发挥海事审判职能作用为推动“强富美高”新江苏建设再出发提供司法服务和保障的意见》，明确海事审判工作 4 项主要任务、8 大重点领域和 10 项保障机制。建立涉“一带一路”案件定期分析通报制度，开展涉自贸区、大运河文化带建设、海洋生态环境保护等海事海商案件专题调研，推出深入优化营商环境十项措施，积极营造法治化、国际化、便利化营商环境。依法审结 38 起涉长江“三无”船舶海事行政案件，通过示范庭审推动行政争议实质性化解，支持长江“三无”船舶清零行动，交出长江大保护海事司法答卷。提出海事司法服务疫情防控 15 项举措、推出 14 期“海事法官释海法”专题分析文章，组织编写并向企业发送《航运、港口、物流、造船等行业法律风险提示手册》1000 余份，助力企业纾困解难，精准服务“六稳”“六保”。

### (二) 执法办案精品化

立足海事审判国际性、专业性强的特点，大力实施审判精品战略，公正高效审理案件。制定《关于实施海事审判精品战略打造精品案



件的意见》，建立咨询专家库，推荐专家担任人民陪审员，精心审理具有规则确立和宣示意义的重大疑难复杂案件，推出一批精品案件。制定海事证据保全、海事仲裁司法审查等 12 个审理程序指南，编写海上货物运输无单放货、海上货运代理纠纷等常见案件审理指南，规范司法行为，统一裁判尺度。履职初期，克服扣押外轮经验欠缺等困难，积极协调相关海事、边防部门顺利办理首起外籍船舶“凯利 (KELLY)”轮扣押保全案件，初步形成诉前扣押船舶的流程规范；妥善处理一起兼具涉外、涉疫、涉汛多重敏感因素的船舶扣押案件，有效化解“新猎户座 (NEW ORION)”轮扣押期间面临的疫情、汛情风险，平等保护中外当事人合法权益；高效审结一起外国当事人主动选择南京海事法院管辖的国际船舶建造合同纠纷案件，以专业的司法能力赢得国际社会对中国海事司法的信任。全国人大代表视察江苏法院时，对南京海事法院突出专业特色、打造精品案件、服务海洋经济发展等工作给予充分肯定。

### (三) 制度构建体系化

坚持制度清单先行，加快建章立制，确保制度的系统性、协同性和可操作性。编制《南京海事法院发展规划纲要 (2021-2025)》，出台 60 余项规章制度，涵盖审判执行、队伍管理、机关党建和司法政务各个方面。完善海事审判权运行机制，出台一整套审判管理文件，明确审判人员权力责任清单、院庭长审判监督职责、审委会、专业法官会议工作规则，全面落实司法责任制。构建派出法庭与驻地党委、政府、地方法院之间沟通联络机制，更好发挥派出法庭依法服务大局、公正为民司法、培养锻炼干部、参与社会治理的前沿阵地作用。



与江苏省交通运输厅、江苏海事局、连云港海事局共同签署《江苏海事行政执法与司法战略合作备忘录》，积极探索江苏海事行政执法与司法协作新模式，该创新举措成功入选江苏法院司法改革案例。与大连海事大学、南京信息工程大学建立战略合作关系，在人才联合培养、学术平台共建、人员交流互动等方面开展务实深入合作。推动设立江苏省法学会海商法学研究会，汇聚省内海事海商法律研究力量，不断丰富海事司法理论与实践创新，以同步线上直播方式成功举办首次年会，在线人数达 2.5 万，取得较好社会反响。聘任人大代表、政协委员和有关专家担任特约监督员，定期安排旁听庭审、视察调研等活动，当庭宣判的一起行政机关负责人出庭应诉的海事行政案件，获旁听人大代表、政协委员高度肯定。

#### （四）诉讼服务信息化

充分运用江苏智慧法院建设成果，推进一站式多元解纷和诉讼服务体系，实现智服、智审、智执、智管。优化网上诉讼服务，全面实现跨域立案、电子送达、网上缴费、在线阅卷等便民服务，在南京长江国际航运物流服务中心、海事法治广场配置设施，提供 24 小时自助诉讼服务。按照新基建标准高起点谋划南京法治园区审判楼和派出法庭基础设施建设，一体推进院本部和派出法庭信息化建设，建成法官远程会议系统、互联网法庭，开发船舶在线查控系统，实现执行指挥中心 854 模式迭代升级。制定《南京海事法院互联网庭审操作规范》，疫情期间，通过互联网办案方式审结案件 154 件，做到“审判执行不停摆，公平正义不止步”。在南京、苏州、连云港分别设立水上交通事故、港口、涉渔纠纷一站式解纷中心，在四



个派出法庭辖区设立巡回审判点和诉源治理审务工作站，聘任 6 个特邀调解组织和 89 名特邀调解员，初步形成以“一站式”建设为龙头，以海事纠纷一站式解纷中心为重点，以审务工作站、巡回审判点为支撑，以人民调解员、特邀调解员、协助执行员为网格的海事纠纷多元化解格局，满足人民群众多元司法需求。开设全省法院第一家中英文网站，首次发布中英双语海事审判报告，搭建微信、微博、今日头条等网络信息平台，累计对外发布信息 800 余条，阅读量总量达 45 万余人次，15 篇报道被《人民法院报》《新华日报》《江苏法制报》等主流媒体推介。

#### （五）队伍建设专业化

按照革命化、正规化、专业化、职业化队伍建设要求，秉持“后发先至，首任担当”工作理念，努力打造政治过硬、业务精良、具有国际视野的高素质海事审判队伍。始终把党的政治建设摆在首位，不断加强思想理论武装，落实重大事项请示报告制度。成立机关党委、机关纪委和工青妇组织，推进党建与审判业务深度融合，建立廉政档案，加强警示教育，压实“两个责任”。聚焦懂法律、懂外语、懂海洋、懂贸易、懂航运复合型海事审判人才培养目标，每月举办“海事大讲堂”，组织干警登船实习，开展海上安全技能培训，提升干警专业素养。组建青年翻译小组，定期开展翻译培训、学术交流活动。组建 10 个专业审判团队，对专业性较强的案件集聚力量开展深入研讨。推出“七个一”目标考核机制，建立调研人才库，营造“勤于研究问题、善于总结经验、勇于推出成果”的良好氛围。一年来，全院干警获省级重点调研课题立项 1 件，撰写的 21 篇论文在《人民



司法》《法律适用》等期刊发表或在全国、省级会议上获奖。先后参加“第二十八届全国海事审判研讨会”“最高人民法院海洋生态环境司法保护专项调研座谈会”“中国海商法协会年会”等会议，并作主题发言 10 余次。

### 三、典型案例

#### 案例一：BOA BARGES AS 诉南京奕淳船舶制造有限公司国际船舶建造合同纠纷案

##### 【基本案情】

2007 年 4 月 18 日，挪威籍船东 BOA OFFSHORE AS 向南京奕淳船舶制造有限公司（以下简称南京奕淳公司）订购船舶并签订三份总价款近 5000 万美元的《半潜重型甲板货驳造船合同》，合同约定发生争议后应在伦敦进行仲裁并受英国法律管辖。2010 年 5 月 17 日，挪威籍船东 BOA BARGES AS 作为新买方，承继原三份合同权利义务。后因合同履行发生争议，双方决定于 2015 年 12 月 8 日终止合同，但对合同终止后的一系列相关问题并未达成一致。到 2020 年初，双方争议不断增大，无法自行协商解决，要解决纠纷只能根据合同约定向伦敦国际仲裁院申请仲裁。

2020 年 2 月，突如其来的新冠肺炎疫情对国际仲裁活动产生了较大影响，特别是随着海外疫情形势日益严峻，不少欧洲国家采取入境限制等防控措施。基于多种因素考虑，双方于 5 月 16 日签订《补充协议》，约定将合同争议解决方式变更为提交南京海事法院裁决并适用中国法律。6 月 11 日，原告 BOA BARGES AS 委托律师到南



京海事法院提起诉讼，请求判令被告南京奕淳公司返还预付款及相应利息。

##### 【裁判结果】

在案件受理阶段，经审查发现，原告代理律师授权委托书应当经挪威公证机关证明及中华人民共和国驻挪威大使馆认证，但因疫情影响未能向法院提交公证认证文书。鉴于疫情对公证认证的实际影响及该案其他相关立案材料规范齐全，且原告代理律师承诺将于案件开庭审理前补齐公证认证文书，南京海事法院决定对该案先行立案，允许代理律师迟延提交授权手续。案件审理过程中，为减少疫情期间人员流动和聚集带来的风险，承办法官在认真审查涉案证据材料的基础上，通过互联网办案方式促成当事人达成调解协议，用时 27 天审结此案。

##### 【典型意义】

江苏是全国造船大省，造船完工量、新承订单量、手持订单量连续多年位居全国首位，各项指标均占全国份额三成以上。南京海事法院受理的船舶类案件数量较多，占民事案件总数的 29.71%。本案是一起国际船舶建造合同纠纷案件，在海外新冠肺炎疫情形势日益严峻的情况下，外国当事人主动将争议解决方式由伦敦仲裁，变更为向南京海事法院起诉并适用中国法律，既是基于对中国建设国际海事司法中心、优化司法环境的信任，也是对南京海事法院服务保障“一带一路”建设，积极打造海事诉讼优选地的充分认可。南京海事法院在疫情期间根据《最高人民法院关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（三）》相关精神要求，允



许外国当事人延期提交相关公证认证文书，并积极运用互联网办案方式促成纠纷快速化解，真正实现了“审判执行不停摆，公平正义不止步”，是平等保护中外当事人合法权益，积极优化法治化、国际化、便利化营商环境的生动实践，充分体现了中国特色社会主义司法制度的优越性。

**【一审案号】** (2020) 苏 72 民初 611 号

**案例二：张某某诉南京市建邺区人民政府等行政处罚系列纠纷案**

**【基本案情】**

2018年5月，南京市建邺区人民政府、南京市交通运输局、南京海事局、南京市公安局水上分局、长江航运公安局南京分局、南京市水务局、南京市农业农村局等7个行政机关成立联合小组，在长江南京段部分水域开展整治“三无”（“无船名船号”“无船舶证书”“无船籍港”）船舶专项行动，将张某某等14人的19条船认定为“三无”船舶，并拖至临时看管区进行没收拆解。得知船舶被没收拆解后，张某某等开始各级信访。2020年6月，张某某等人向南京海事法院提起行政诉讼，要求确认联合小组7个行政机关没收拆解船舶违法，同时提出行政赔偿诉讼，要求行政机关赔偿每条船舶几十万到一百多万不等的损失。

**【裁判结果】**

案件依法受理后，南京海事法院深入了解长江“三无”船舶整治



的背景、进度和前期纠纷处理等情况，梳理相关法律法规和政策规定，并对各省市整治“三无”船舶的主要做法、常见纠纷和司法裁判情况进行分析研判。为依法妥善处理这批系列纠纷案，决定率先安排具有典型性的12起案件开庭审理，并通知被诉行政机关负责人出庭应诉，同时安排另外26起案件当事人旁听庭审。合议庭经过庭审查明了案件事实，认为原告提起诉讼时已经超过法定期限，遂对上述12起案件作出驳回起诉的裁定。庭审后，经过法院耐心释法明理，明晰法律关系，另外26起案件的当事人在充分考虑船舶实际情况和地方政府具体政策的基础上，主动撤回了请求确认行政机关违法的诉讼，并就行政赔偿部分同被诉行政机关达成调解协议，南京海事法院出具调解书予以确认。

**【典型意义】**

海事行政案件是海事法院受理的六大类案件之一。该批涉长江“三无”船舶海事行政案件的依法妥善审结，是南京海事法院深化行政执法与司法衔接处置的成功案例，有力支持了长江“三无”船舶清零行动，交出长江大保护海事司法答卷。“三无”船舶逃避监管，在长江上非法从事载客交通、清舱抽残、采砂捕捞、电焊修理等经营行为，极易造成航道安全隐患和长江水域环境污染。同时，“三无”船舶排查难、处置难、易反弹的问题也比较突出。本案审理中，南京海事法院认真贯彻“共抓大保护，不搞大开发”理念，立足实质性化解行政争议目标，通过组织示范庭审、先行依法驳回张某某起诉的方式，引导此类涉及长江“三无”船舶案件当事人理性维权，为矛盾纠纷化解奠定了坚实基础，保障了长江大保护相关战略部署



落细落实。该批案件的圆满审结，最大限度地维护了民生权益，支持监督海事行政机关依法行政，也为海事行政机关进一步提高行政执法规范化水平提供了指引，充分彰显了海事审判依法促进长江经济带发展和长三角区域一体化发展的职能作用。

**【一审案号】** (2020)苏72行初9号-14号、59-71号，(2020)苏72行赔初3号-21号

### 案例三：江苏靖江农村商业银行股份有限公司东兴支行诉胡某某等金融借款合同及船舶抵押合同纠纷案

#### 【基本案情】

2013年12月3日，胡某某与江苏靖江农村商业银行股份有限公司东兴支行（以下简称靖江农商行东兴支行）签订借款合同，约定胡某某向靖江农商行东兴支行借款2800万元。同日，泰州市金泰船务有限公司（以下简称金泰公司）、张某某、张某、吴某某、茅某某与靖江农商行东兴支行签订保证合同，约定金泰公司、张某某、张某、吴某某、茅某某对上述合同项下的全部债务本金、利息、逾期利息、罚息、复利、损害赔偿金、实现债权的费用和实现债权的其他一切费用提供连带责任保证。胡某某、金泰公司与靖江农商行东兴支行签订抵押合同，约定胡某某、金泰公司所有的“金泰528”散装货船为上述借款提供抵押担保，担保金额为2800万元，担保范围为主合同项下的债务本金、利息、逾期利息、罚息、复利、损害赔偿金、实现债权的费用和实现债权的其他一切费用。还款期限届满后，胡某某尚结欠本金2693万元未能按约归还，靖江农商行东兴支行因此诉至南京



海事法院，请求判令胡某某立即归还借款本金2693万元及至还款之日止的利息，金泰公司、张某某、张某、吴某某、茅某某承担连带清偿责任；靖江农商行东兴支行就上述债务对胡某某、金泰公司设定抵押的“金泰528”散货船拍卖、变卖、折价后所得的价款享有优先受偿权。

#### 【裁判结果】

南京海事法院经审理认为，2019年11月8日最高人民法院印发的《全国法院民商事审判工作会议纪要》第58条规定，在不动产担保物权的担保范围认定中，对于因地区登记系统设置及登记规则造成合同约定的担保范围与登记不一致的，人民法院以合同约定认定担保物权的担保范围，是符合实际的妥当选择。在我省船舶抵押登记机关的实践中，登记系统未设置“担保范围”栏目，一般仅有“债权数额”的表述，且只能填写固定数字，登记机关囿于技术条件通常只将主债权金额登记于其上。本案中，登记机关在“金泰528”散货船的抵押情况中记载债权数额2800万元，该记载只是表明主债权的金额，而并未将船舶抵押的担保范围限定为2800万元。本案案涉抵押物“金泰528”散货船作为特殊动产，因船舶抵押登记机关的登记系统设置导致登记的担保范围与合同约定不一致，可以参照会议纪要精神，以合同约定认定抵押担保范围包含主债权及利息、罚息等其他费用，而不能简单地将登记的债权数额2800万元认定为船舶抵押的担保范围。遂判决：被告胡某某偿付原告靖江农商行东兴支行欠款本金2693万元及相应利息；被告金泰公司、张某某、张某、吴某某、茅某某对上述债务承担连带清偿责任；原告靖江农商



行东兴支行就“金泰 528”散货船拍卖、变卖、折价后所得价款享有优先受偿权。一审宣判后，双方当事人均未上诉。

### 【典型意义】

关于船舶抵押的担保范围是以抵押登记的债权数额为准，还是应以合同约定的担保范围为准，实践中存在争议。本案典型意义在于确立了船舶抵押担保范围的认定规则，即当合同约定的船舶抵押担保范围同抵押登记不一致的，应以合同约定为准。当前，我国部分地区船舶抵押登记机关囿于技术条件通常只将主债权金额登记于船舶抵押权证书上，导致船舶抵押担保债权范围是否及于利息、罚息等其他费用产生争议。本案审理过程中没有简单地将“债权数额”等同于“担保范围”，而是在分析现行法律规定基础上，参照《全国法院民商事审判工作会议纪要》中不动产物权的担保范围认定规则，认定船舶抵押担保范围应以当事人的合同约定为依据，为人民法院认定船舶抵押担保范围提供了有针对性的裁判指引，同时也能促进海事部门进一步完善船舶抵押登记制度，有利于规范船舶融资秩序，保障航运金融安全和航运业健康发展。

### 【一审案号】 (2020) 苏 72 民初 19 号

案例四：中储粮油脂有限公司申请扣押“凯利 (KELLY)”轮案

### 【基本案情】

“凯利 (KELLY)”轮系载重 8 万吨的马绍尔群岛籍货轮，2019 年 8 月，该轮自美国路易斯安那州里塞弗港承运黄大豆到达大丰港、



镇江港，经检验货物严重受损。2019 年 12 月 25 日，该批货物收货人中储粮油脂有限公司遂以货物受损严重为由向南京海事法院申请扣押停泊于镇江港的“凯利 (KELLY)”轮，并要求船方提供 400 万美元担保。

### 【执行过程】

本案处理过程中，南京海事法院在对申请人的主体资格、基本证据及提供担保情况进行严格审查后，认为该案符合海事请求保全条件，遂立即制作了扣押船舶裁定书和扣船命令，并决定当日即对该船舶实施扣押。在综合考虑船舶所在港口环境、当日天气情况及时值西方传统圣诞节等多方面因素的前提下，制定了详细的船舶扣押工作预案，并从全院抽调具有扣押船舶经验、英语水平较高的干警参与此次扣船工作。2019 年 12 月 25 日下午，执行干警抵达镇江，及时向镇江海事局、镇江边防检查站送达了协助执行扣押船舶通知书等材料，海事局和边防站立即协助办理了涉案船舶禁止离港及登船手续。执行干警顺利登船，依法对船长下达扣押船舶命令，查扣船舶证书，并责令被申请人提供担保。船长向法官说明船舶营运状况和船舶权属情况后，签收了扣押船舶法律文书，并对南京海事法院的规范执法表示认同。船舶扣押 9 日后，申请人以被申请人已提供担保为由申请解除船舶扣押，南京海事法院遂依法作出裁定并解除扣押。

### 【典型意义】

扣押、拍卖船舶是专属于海事法院的一项司法职能。诉前扣押船舶是海事法院特有的保全形式，能够有效敦促被申请人快速履行法



律义务，促进海事矛盾纠纷快速化解。履职以来，南京海事法院已依法扣押各类船舶 112 艘，其中外国籍、港澳台船舶 5 艘。本案是南京海事法院受理的第一起申请扣押外轮案件，具有对内拓荒开路、规范工作流程，对外保障申请人权益、维护司法权威的重要意义。一是建立诉前扣船的评议制度。在诉前扣押船舶申请立案前，法官对当事人提供的材料、担保以及有争议的问题进行研究评议，促使当事人及时提供完整、规范的材料，保证船舶查扣工作的顺利、高效。二是规范诉前扣船法律文书样式。依据最高人民法院诉前财产保全民事裁定书样式，针对海事法院诉前扣船工作实际情况和特殊要求，在学习借鉴其他海事法院经验做法基础上，确定了我院诉前扣船案件的法律文书样式和内容，为后续案件审理工作打下良好基础。三是建立与各海事职能部门协同联动工作机制。本案中，南京海事法院充分借助平台网络等通讯手段，即时与海事、边防等部门对接办理扣船、登船手续、协调停靠码头调度等，切实提高扣押船舶实施效率，平等保护当事人的合法权益。

**【执行案号】** (2019) 苏 72 财保 2 号、(2019) 苏 72 证保 1 号

#### 案例五：秦某某诉苏某某海上人身损害责任纠纷案

#### **【基本案情】**

秦某某在苏某某的渔船上提供劳务，在出海捕捞期间使用缆绳将船体固定过程中右脚被船上缆绳所伤，受伤后当即被送回港，先是在青岛当地医院救治，伤情稳定后转院回到连云港市赣榆区的医院继续治疗，但最终落下残疾，经鉴定构成九级伤残，对今后的生活和劳动收入产生不利的影 响。在秦某某住院期间，苏某某家人一直



陪伴左右，并支付了 18 万余元的医疗费用，双方后因秦某某应予获得的伤残赔偿、护理费、务工费等赔偿数额无法达成一致，引发纠纷。后秦某某诉至南京海事法院，请求判令苏某某赔偿其在提供劳务过程中发生事故造成的各项损失共计 307830.64 元。

#### **【裁判结果】**

南京海事法院及时开庭审理本案，通过组织双方举证质证，查明了基本案情，但涉及伤残赔偿、护理费等费用时，因双方当事人对受伤者本人有无过错、受伤者的平均收入、护理费用等争执不休，导致法庭调查难以深入进行。主审法官及时宣布休庭并作出庭审小结，对相关事实证据、是非责任进行了分析。主审法官认为，苏某某家人在秦某某受伤后一直陪护左右，并支付 18 万余元的医疗费用，表明苏某某遵守了当地船东对受伤船员的处理习惯，本案具备按当地渔民认可的规则解决争议的基本条件。经过庭审特别是主审法官作出庭审小结后，当事人的心理预期更加现实，有可能促成双方调解。鉴于庭审刚结束，双方情绪对立，不适合立即进行调解，遂向当事人宣布调解时间、地点，将本案委托给南京海事法院涉渔矛盾一站式解纷中心的特邀调解员调解。该特邀调解员长期在当地渔村生活，具有渔业生产专业知识和丰富的处理涉渔纠纷的经验。经特邀调解员调解，双方顺利达成协议，苏某某赔偿秦某某残疾赔偿金、精神抚慰金、后续治疗费等法律规定范围内的全部赔偿费用 164000 元，分三期付清，法院以出具调解书的形式予以确认。

#### **【典型意义】**

江苏沿海涉渔纠纷大多发生在传统渔港、渔业村镇，是典型的涉



民生案件，多数情况下有一方当事人是急需救助、因伤因病导致生活困难的群体。南京海事法院高度重视涉渔纠纷的矛盾化解，坚持把非诉讼纠纷解决机制挺在前面，在渔业专业村——连云港市赣榆区青口镇下口村设立了涉渔矛盾一站式解纷中心，由一名海事特邀调解员祁洪桂常驻中心负责调解工作，为渔民提供便捷、高效、低成本的海事司法服务。目前，对于渔民海上人身损害责任纠纷虽然有相对成熟的法学理论指导和比较全面的法律适用依据，但诉辩双方在关系到赔偿数额的诸多事实上往往争议较大，证人证言多，关键书证少，导致法院查明事实的任务重，纠纷处理耗时冗长，不利于受损群众及时获得救济。本案主审法官在梳理分析诉辩双方证据的基础上作出庭审小结，使得当事人对庭审走向有了一定的心理预期，再把案件交由对渔业生产渔民生活比较熟悉，又具有丰富调解经验的特邀调解员调解，避免在事实查明上耗费过多精力和时间，充分发挥特邀调解员委托调解、协助调解的特殊作用，收到事半功倍的效果，有利于涉民生类案件及时高效的解决。本案的调解解决，是南京海事法院坚持司法为民，推进具有海事特色的一站式多元解纷和诉讼服务体系建设的体现，更好满足人民群众多元司法需求的具体体现。

**【一审案号】** (2020) 苏 72 民初 231 号



## Preface

As the 11<sup>th</sup> maritime court in China, Nanjing Maritime Court officially started operating on December 4, 2019. In its first year, under the guidance of Xi Jinping thoughts on Socialism with Chinese Characteristics in a New Era, Nanjing Maritime Court (hereinafter referred to as “the Court”) implements the guiding principles of the 19<sup>th</sup> National Congress of the Communist Party of China and the Second, the Third, the Fourth and the Fifth Plenary Sessions of the 19<sup>th</sup> CPC Central Committee. Focused on “building a first-class maritime court with its influence spreading across the country and even across the globe”, the Court always put political building as the overarching principle, made unremitting efforts to refine the trial process and make systematic plans and progress, and leveraged the role of the maritime trial to support national strategies such as the building of a powerful maritime country as well as the re-start of the construction of new Jiangsu Province featuring a strong economy, wealthy people, beautiful environment, and a high degree of social civilization. With a promising beginning in various efforts, the Court was recognized by Zhou Qiang, President of the Supreme People's Court of China, and Lou Qinjian, Secretary of the CPC Committee of Jiangsu Province. The Work Report of the Supreme People's Court of China (2020) also mentions, “Based on its geographical advantages, Nanjing Maritime Court actively supports the development of the marine economy.”

## I. General Information

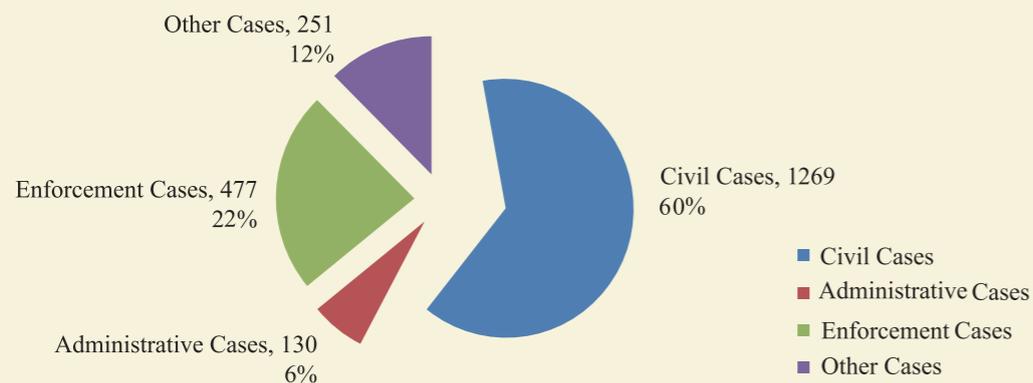
### (1) General Performance

As of November 2020, the Court has accepted 2,127 cases of various



types and closed 1,312 cases, ranking 7<sup>th</sup> and 9<sup>th</sup> respectively among maritime courts in China concerning the number of accepted and closed cases. There are 94 types of cases among all 108 types in six categories determined by the Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts, 88.06% cases were closed within the time limit for trial, 96.23% cases were settled without appeal in the first trial and 63.88% civil cases were withdrawn after meditation. Moreover, it accepted the 8<sup>th</sup> highest number of civil cases, the highest number of administrative cases, and the 11<sup>th</sup> highest number of enforcement cases among maritime courts in China. The subject matter of all actions valued RMB 7.066 billion, of which RMB 5.002 billion came from trial cases and RMB 2.064 billion came from enforcement cases.

*The Proportion of Each Category*



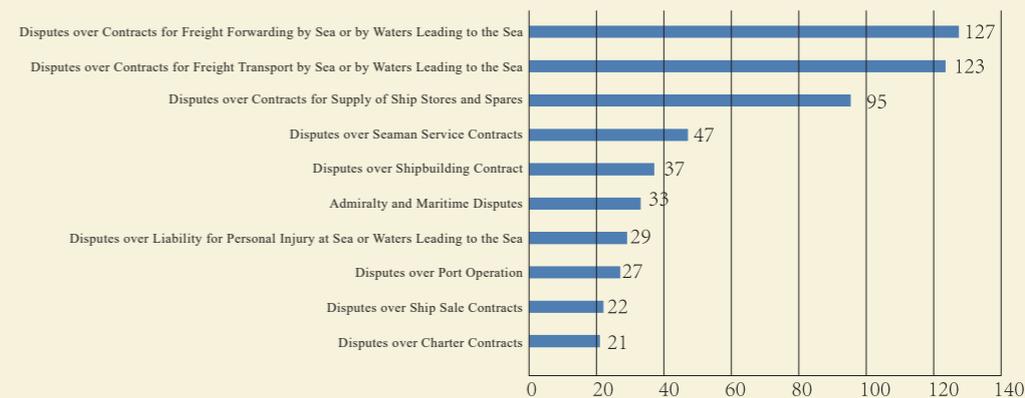
**(2) Case Classification**

**1. Civil Cases:** As for the civil cases, 1,269 cases were accepted, and 693 cases were closed. The top three in the ranking of subcategories with the most accepted cases are listed below: disputes over contracts for freight forwarding by sea or by waters leading to the sea (127 cases), disputes over contracts for freight transport by sea or by waters leading to the sea (123 cases), and disputes over contracts for the supply of ship



stores and spares (95 cases). There are a total of 561 cases in the top ten subcategories with the exact number of cases in each subcategory shown below.

*Top Ten in the Ranking of Subcategories with the Most Accepted Cases*



**2. Administrative Cases:** As for administrative cases, 130 cases were accepted and 45 cases were closed. The top three in the ranking of subcategories with the most accepted cases are listed below: administrative compulsion on marine resources (64 cases), administrative penalty on water transportation (19 cases) and administrative license on marine resources (10 cases).

**3. Enforcement Cases:** As for enforcement cases, 477 cases were accepted and 361 cases were closed.

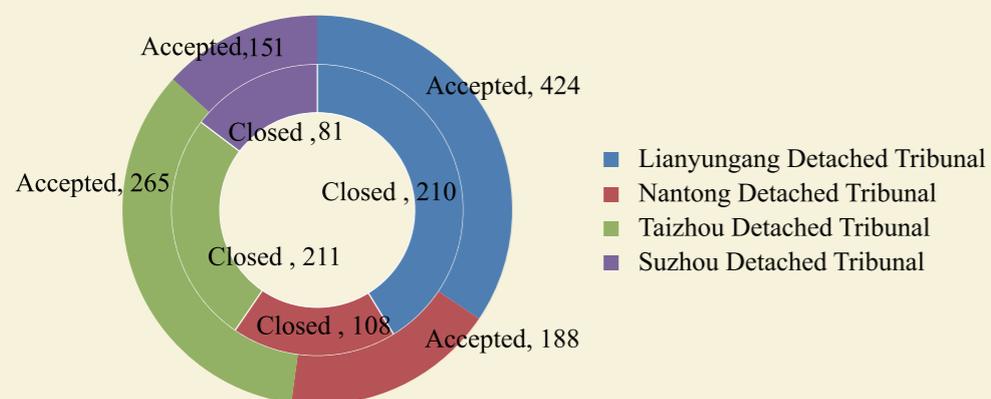
**4. Seizure of Ships:** 112 ships were seized, of which 5 were from foreign countries, Hongkong, Macau, and Taiwan.

**5. Cases involving foreign, Hong Kong, Macau, and Taiwan elements:** 100 cases were accepted and accounted for 7.88% of the total accepted civil cases by the Court; the subject matter of these actions valued for RMB 443 million and involved the elements of more than 30 countries and regions such as the United Kingdom, France, Germany, South Korea, India, Singapore, Greece, and Brazil.

**6. Cases of Detached Tribunals:** Four detached tribunals in

Lianyungang, Nantong, Taizhou, and Suzhou accepted 1028 cases, accounting for 48.33% of the cases accepted by the Court; closed 610 cases, accounting for 46.49% of the cases closed by the Court. Among them, Lianyungang Detached Tribunal accepted 424 cases, Nantong Detached Tribunal accepted 188 cases, Taizhou Detached Tribunal accepted 265 cases, and Suzhou Detached Tribunal accepted 151 cases.

*Four detached tribunals General Review*



### **(3) The Openness of the Justice System**

943 judgments which account for 71.88% of the total closed cases were uploaded through China Judgments Online. 72 trials were broadcasted live on China Court Trial Live Broadcast Online with a total of 47,515 viewers. 1,304 cases which account for 98.79% of the total went through effective judicial process and information disclosure on China Judicial Process Information Online.

## **II. Highlights of Activities**

### **(1) Prospective Systematic Planning**

The Court carried out prospective research to reach the targets and prioritized leverage of maritime justice in supporting national

strategies such as the building of a powerful maritime country, the development of the Yangtze River Economic Belt, the integrated regional development of the Yangtze River Delta, as well as the Belt and Road Initiative, in order to promote economic and social development with high-quality maritime judicial service; promulgated the Opinions on Fully Leveraging the Role of Maritime Trial to Provide Judicial Services and Guarantees for the Re-start of the Construction of New Jiangsu Province Featuring Strong Economy, Wealthy People, Beautiful Environment and a High Degree of Social Civilization, which clarifies 4 main tasks, 8 key fields and 10 guarantee mechanisms for maritime justice; established a regular analysis and notification system for cases involving the Belt and Road Initiative, conducted special investigations on admiralty and maritime cases involving the Free Trade Zone, the construction of the Grand Canal Cultural Belt, and marine ecological environment protection, and introduced 10 measures to make business environment more international, facilitating and making it compatible with the rule of law; closed 38 maritime administrative cases involving unlicensed ships on the Yangtze River in accordance with the law, promoted substantive progress in resolving administrative disputes through demonstrative court trials, and supported the elimination of unlicensed ships on the Yangtze River—all these judicial efforts led to a better protection of the Yangtze River; proposed 15 measures on maritime justice for pandemic prevention, published 14 issues of articles on the “interpretation of maritime laws by maritime judges”, organized the preparation and distribution of more than 1,000 copies of the Manual on Legal Risk Avoidance in the Shipping, Port, Logistics, Shipbuilding and Other Industries, provided relief to companies in difficulties and



worked to ensure stability in employment, financial operations, foreign trade, foreign investment, domestic investment, and expectations as well as security in job, basic human needs, operations of market entities, food and energy security, stable industrial and supply chains, and the normal functioning of primary-level governments.

## ***(2) Refining the Trial Process***

Given that maritime jurisdiction is internationally involved and requires professionalism, the Court made vigorous efforts to refine its trial process and guaranteed fair and efficient trial of cases. It formulated the Opinions on Refining the Maritime Trial Process and Selecting a Collection of Well-tried Cases, set up a group of consulting experts, recommended experts to serve as the jurors, carefully paid attention to complex and troublesome major cases with significance for rulemaking and demonstration, and presented a batch of well-tried cases; formulated 12 guidelines for collecting maritime evidence, judicial review of maritime arbitration and other trial procedures and prepared trial guidelines for typical cases such as cargo delivery by sea without a bill of lading and disputes over freight forwarding by sea to standardize judicial behaviors and unify judgment standards. In the early stage of its establishment, the Court overcame a series of difficulties such as lack of experience in the seizure of foreign ships, and actively coordinated with maritime and defense departments to its first foreign ship seizure case—the seizure of “KELLY”, and developed its initial procedure for the seizure of ships; properly handled a ship seizure case involving multiple sensitive factors such as foreign affairs, the pandemic, floods and effectively mitigated pandemic and flood risks faced by the ship "New Orion" during its



seizure, and protected the legitimate rights and interests of both Chinese and foreign litigants; effectively closed an international case involving disputes over a shipbuilding contract that was actively handed by the foreign litigant to Nanjing Maritime Court and won the trust of the international community in China's maritime justice with professionalism. During the tour of inspection to courts in Jiangsu, a deputy to National People's Congress fully recognized Nanjing Maritime Court for its professionalism, as well as its efforts to refine the maritime trial process and support the development of the marine economy.

## ***(3) Systematic Formulation of Rules and Regulations***

The Court gave priority to rules and regulations, accelerating their formulation and ensuring they remain systematic, coordinative, and operable. The Court prepared the Development Plan for Nanjing Maritime Court (2021-2025), and issued more than 60 rules and regulations, covering case trial, team management, Party building, and judicial affairs; improved the operating mechanism of maritime jurisdiction, issued a complete set of trial management documents to clarify jurisdictions and responsibilities of judges, the responsibility of trial supervision of the Court's president, vice president, and division chief judges, and the working rules of the adjudication committee and the presiding judges' meeting, and fully implemented the judicial responsibility system. The Court further developed a communication mechanism between detached courts and local CPC committees, governments, and local courts, and better leveraged the role of detached courts in serving the overall interests in accordance with the law, ensuring justice is served, training officials, and



improving social governance. Moreover, it co-signed the Memorandum on the Strategic Cooperation in the Administrative Enforcement of the Maritime Law and Maritime Justice in Jiangsu Province with the Department of Transportation of Jiangsu Province, Jiangsu Maritime Safety Administration and Lianyungang Maritime Safety Administration to actively explore a new cooperation model for the administrative enforcement of the maritime law and maritime justice in Jiangsu, an innovative measure which was successfully selected as one of the representative cases of judicial reform in courts of Jiangsu; established strategic partnerships with Dalian Maritime University and Nanjing University of Information Science and Technology, carrying out pragmatic and in-depth cooperation in talent training, academic platform construction, and personnel exchanges and interactions; promoted the establishment of the Maritime Litigation Research Society, Jiangsu Law Society to bring together experts on the admiralty and maritime laws in the province and make constant theoretical and practical innovation on maritime justice, and successfully held its first annual meeting through live streaming with a total of 25,000 viewers and positive social repercussions. Besides, the Court appointed deputies to NPC, CPPCC members, and maritime experts as special supervisors, and regularly arranged activities such as court hearings, inspections, and investigations. During the trial of a maritime administrative case in which the administrative officer appeared in court, deputies to NPC and CPPCC members as hearers spoke highly of the judgment of the court.

#### ***(4) Additional Informationalized Litigation Services***

The Court made full leverage of the achievements from the construction of smart courts in Jiangsu to promote the construction of



a one-stop multi-component dispute resolution and litigation service system and enable smart service, smart trial, smart enforcement, and smart management; optimized online litigation services to enable cross-domain case filing, electronic delivery, online payment, and online case review and installed self-service facilities in Nanjing Yangtze River International Shipping & Logistics Center and Maritime Rule of Law Square to provide litigation services day and night. It further developed construction planning for the trial building in the Nanjing Rule of Law Park and infrastructure of detached courts, integrated the information system of the Court's headquarters and detached courts, established a remote conference system for judges and an online court, developed an online ship inspection and control system, and improved the 854 operation model of the executive command center by formulating the Online Trial Norms of Nanjing Maritime Court and closed 154 cases on the Internet during the COVID-19 pandemic to guarantee continued case trial and administration of justice. Moreover, it set up one-stop dispute resolution centers for disputes over marine accidents, port disputes, and fishery disputes in Nanjing, Suzhou, and Lianyungang as well as circuit trial courts and trial work stations for dispute resolution at the source in the four detached courts, and specially invited six mediation organizations and 89 mediators. Based on these efforts, a maritime dispute resolution network was shaped to provide various needed judicial services to people. Besides, it became the first court in Jiangsu to develop a bilingual website (Chinese and English) where it released its first bilingual maritime report on trials. It also created accounts on online platforms such as WeChat, Weibo, and Toutiao where it published more than 800 posts, with 450,000 reads and 15 news reports shared by People's Court Daily, Xinhua



Daily, Jiangsu Legal Daily, and some other mainstream media.

### ***(5) Building a Professional Team***

The Court strived to build a politically solid and professionally competent maritime trial team with an international perspective by adhering to the requirements of constant reform, regularized operation, specialization and professionalism and giving priority to self-betterment and the sense of responsibility; always putting the Party's political building first, continued to guide itself with theory and put into practice the requesting and reporting system for major affairs; established its own CPC committee, commission for disciplinary inspection, labor union, youth league, and women's federation to promote the solid integration of Party building and trial work, prepared personal archives for court personnel and warned them with negative cases, and put into action the responsibility of its CPC committee and the supervision responsibility of its commission for disciplinary inspection. Moreover, it focused on equipping maritime judges with knowledge about the law, foreign languages, maritime affairs, trade, and shipping, as well as held the "lectures on maritime affairs" every month, and organized judicial officers to train sea safety skills on ships in order to improve their professionalism; it further built a translation team of young staffers to regularly conduct translation training and academic exchanges; set up 10 professional teams of judges and pooled efforts to conduct in-depth discussions on professional cases; introduced an assessment mechanism based on seven objectives, established a pool of researchers, and encouraged them to "delve deep into research problems, summarize their experiences, and present their findings." In the past year, the judicial



officers of the Court have undertaken one province-level key research project and wrote 21 papers, which were either published in journals such as People's Judicature and Journal of Law Application or won awards in the state- and province-level conferences. It participated in a series of conferences, including the 28<sup>th</sup> National Maritime Trial Seminar, the Special Symposium of the Supreme People's Court on Judicial Protection of Marine Ecological Environment, and the Annual Meeting of the China Maritime Law Association, and delivered more than 10 keynote speeches.

### **III. Typical Cases**

#### ***Case 1: BOA BARGES AS vs. Nanjing Yichun Shipbuilding Co., Ltd. Dispute over International Shipbuilding Contract***

##### ***[Case Details]***

On April 18, 2007, Norwegian ship owner BOA OFFSHORE AS, ordered ships from Nanjing Yichun Shipbuilding Co., Ltd. (hereinafter referred to as "Nanjing Yichun Company") and signed three Semi-Submersible Heavy-duty Deck Barge Contracts with a total price of nearly US\$50 million. The contracts agreed that disputes shall be arbitrated in London and governed by English law. On May 17, 2010, Norwegian ship owner BOA BARGES AS, as the new purchaser, assumed the rights and obligations of the original three contracts. With the occurrence of the dispute over the contract performance, both parties decided to terminate the Contract on December 8, 2015, but failed to reach an agreement on a series of issues after the termination of the contract. By the beginning of 2020, the dispute cannot be solved



by negotiation due to its escalation. Thus, both parties shall apply to the London Court of International Arbitration for arbitration in accordance with the relevant contract to solve the dispute.

The sudden outbreak of COVID-19 in February 2020 has a great impact on international arbitration. Especially with the increasingly severe situation of global epidemic, many European countries adopt entry restrictions and other prevention and control measures. Based on various factors, both parties signed the Supplementary Agreement on May 16, which agreed to submit the dispute to Nanjing Maritime Court for adjudication and apply Chinese laws. On June 11, the plaintiff BOA BARGES AS entrusted lawyers with a lawsuit to Nanjing Maritime Court, requesting the defendant Nanjing Yichun Company to return the advance payment and the accrued interest.

### **[Verdict]**

At the acceptance of this case, it was found through examination that the power of attorney of the plaintiff's attorney shall be notarized by the Norwegian notary office and authenticated by the embassy of the People's Republic of China in Norway. However, due to the influence of the pandemic situation, the plaintiff failed to submit the authenticated notarial documents to the court. In view of the actual impact of the pandemic on notarization and authentication and the complete specifications of other relevant filing materials of the case, and the plaintiff's attorney promised to complete the authenticated notarial documents before the trial, Nanjing Maritime Court decided to file the case first, allowing the attorney to delay submitting and authorization procedures. In the process of trial, in order to reduce the risks brought about by the flow and gathering of people during the



pandemic, the judge in charge, on the basis of carefully examining the evidence materials involved in the case, facilitated the parties to reach a mediation agreement by handling the case through the Internet, and concluded the case in 27 days.

### **[Significance]**

Jiangsu is a major shipbuilding province in China, with shipbuilding completion, order placement and existing orders ranking first in China for consecutive years, and all indicators accounting for more than 30% of the national total. There are a large number of ship cases accepted by Nanjing Maritime Court, accounting for 29.71% of the total number of civil cases. This case is an international ship construction contract dispute. Against the backdrop of the increasingly severe global COVID-19 epidemic, the foreign party took the initiative to alter the dispute resolution method from arbitration in London to filing a lawsuit to Nanjing Maritime Court and applying Chinese law, which is not only based on the trust in China's efforts to build the International Maritime judicial center and optimize the judicial environment, but also fully recognized the Nanjing Maritime Court's service to ensure the construction of "the Belt and Road Initiative" and actively build a preferred place for maritime litigation. During the COVID-19 epidemic, Nanjing Maritime Court allows foreign parties to postpone the submission of relevant notarization and authentication documents according to the relevant guidelines of the Guiding Opinions of the Supreme People's Court on Several Issues Concerning the Proper Trial of Civil Cases Involving COVID-19, and actively used the Internet in handling cases to promote the resolution of disputes in a timely manner, which truly realized the vision of normal trial and



execution without halt the justice during COVID-19 epidemic. It is a great practice of equally protecting the legitimate rights and interests of Chinese and foreign parties, actively optimizing the rule of law, internationalization and facilitating the business environment, which fully embodies the advantages of the socialist judicial system with Chinese characteristics.

**[First-instance Trial, Case Number]** (2020) Jiangsu72,Civil Case First Instance No.611

***Case 2:Zhang vs. the People's Government of Jianye District,  
Nanjing, Disputes over Administrative Punishment***

***[Case Details]***

In May 2018, seven administrative agencies including the People's Government of Jianye District, Nanjing, Nanjing Transportation Bureau, Nanjing Maritime Safety Administration, the Water Branch of Nanjing Public Security Bureau, the Nanjing Branch of Yangtze River Shipping Public Security Bureau, Nanjing Water Affairs Bureau, and Nanjing Agriculture and Rural Bureau set up a joint team to carry out special actions to rectify the “Three Withouts” (“without name and number”, “without ship certificate” and “without registry port”) ships in some waters of the Nanjing section of the Yangtze River, identifying 19 vessels owned by 14 persons, including Zhang, as “Three Withouts” vessels, and towing them to the temporary detention area for confiscation and dismantlement. After learning that the vessels have been confiscated and dismantled, Zhang et al. started seeking help from government authorities at all levels in the forms of letters and visits. In June 2020, Zhang et al. filed an administrative lawsuit



with Nanjing Maritime Court, demanding confirmation that the seven administrative organs of the joint team confiscated and dismantled ships illegally, and filed an administrative compensation lawsuit, requiring that the administrative organs to compensate each ship for losses ranging from several hundred thousand yuan to more than one million yuan.

***[Verdict]***

After the case has been accepted according to law, Nanjing Maritime Court acquired a deep understanding of the background, progress and early situation about dispute handling of the rectification of the “Three Withouts” ships in the Yangtze River, combed the relevant laws, regulations and policies, analyzed and researched the practices, common disputes and judicial decisions of the rectification of the “Three Withouts” ships in various provinces and cities. In order to properly handle the discussed disputes according to law, Nanjing Maritime Court decided to take the lead in arranging 12 typical cases for trial, and notify the person in charge of the sued administrative organ to appear in court to respond to the lawsuit, and arrange the parties in other 26 cases to attend the trial. After finding out the facts of the cases in trial, the collegial panel rejected the litigations of the above 12 cases on the grounds that the cases exceeded the time limit for litigation. After the trial, the court patiently explained the applied laws and regulations and clarified the legal relationship. On the basis of fully considering the actual situation of the ships and the specific policies of the local government, the parties in other 26 cases voluntarily withdrew the lawsuits requesting confirmation of the administrative organ’s illegality, and reached a mediation



agreement with the sued administrative organs on the administrative compensation, which was confirmed by the Nanjing Maritime Court.

### **[Significance]**

Maritime administrative cases are one of the six categories of cases accepted by maritime courts. The discussed disputes over maritime administration involving the “Three Withouts” ships on the Yangtze River were properly concluded according to law, which is a successful practice for Nanjing Maritime Court to deepen the connection between administrative law enforcement and judicial disposal. It strongly supports the zero clearing of “Three Withouts” ships on the Yangtze River and demonstrates the maritime judicial protection of the Yangtze River. “Three Withouts” ships evade supervision and illegally engage in passenger traffic, cabin cleaning, sand excavation & fishing, electric welding repair and other business activities on the Yangtze River, which easily causes potential safety hazards of waterways and environmental pollution on the Yangtze River waters. Additionally, it is hard to investigate and handle the “Three Withouts” ships, and these situations turn to occur repeatedly. In the trial of this case, Nanjing Maritime Court conscientiously implemented the concept of “joint efforts rather than mass development”, based on the objective of resolving administrative disputes substantively, and guided the parties to such cases involving the “Three Withouts” ships of the Yangtze River to defend their rights rationally by organizing demonstration trial and rejecting Zhang’s lawsuit in advance according to law, thus laying a solid foundation for resolving contradictions and disputes and ensuring the detailed implementation of the relevant strategic arrangements for the protection of the Yangtze River. The successful



conclusion of these disputes safeguard the rights and interests of people’s livelihood to the utmost extent, support and supervise the law-based administration of maritime administrative organs, and provided guidance for the maritime administrative organs to further improve the standardization of administrative law enforcement, which fully demonstrates the functional role of maritime trials in accordance with the law in promoting the development of the Yangtze River Economic Belt and regional integration in the Yangtze River Delta.

**[First-instance Trial, Case Number]** (2020) Jiangsu 72, Administrative Case First Instance No.9-14, No.59-71, (2020) Jiangsu 72, Administrative Compensation Case First Instance No.3-21

### **Case 3: Dongxing Branch of Jiangsu Jingjiang Rural Commercial Bank Co., Ltd. vs. Hu et al. Dispute over Financial Loan Contract and Ship Mortgage Contract**

#### **[Case Details]**

On December 3, 2013, Hu signed a loan contract with Dongxing Branch of Jingjiang Rural Commercial Bank Co., Ltd. (hereinafter referred to as “the Bank”), stipulating that Hu applied a loan of 28 million yuan from the Bank. On the same day, Taizhou Jintai Shipping Co., Ltd. (hereinafter referred to as “Jintai Company”), XX Zhang, X Zhang, Wu, and Mao signed a guarantee contract with the Bank, stipulating that Jintai Company, XX Zhang, X Zhang, Wu, and Mao shall provide joint liability guarantee for all principal, interest, overdue interest, penalty interest, compound interest, damages, expenses for realizing creditor’s rights and all other expenses for realizing creditor’s rights under the above contract. Hu and Jintai



Company signed a mortgage contract with the Bank, stipulating that all “Jintai 528” bulk carriers of Hu and Jintai Company provide mortgage guarantee for the above loan, with the guarantee amount of 28 million yuan, and the scope of guarantee covers the principal, interest, overdue interest, penalty interest, compound interest, damages, expenses for realizing creditor’s rights and all other expenses for realizing creditor’s rights under the master contract. After the expiration of the repayment period, Hu still owed a principal of 26.93 million yuan and failed to return it according to the contract. The Bank appealed to Nanjing Maritime Court, requesting that Hu immediately repay the loan principal of 26.93 million yuan and the interest until the date of repayment. Jintai Company, XX Zhang, X Zhang, Wu and Mao shall bear joint and several liability. The Bank has the priority to be compensated for the price obtained from auction, sale and discount of “Jintai 528” bulk carriers mortgaged by Hu and Jintai Company for the above debts.

### ***[Verdict]***

Nanjing Maritime Court held upon trial that, according to Article 58 of the Minutes of Civil and Commercial Trial Work of National Courts issued by the Supreme People’s Court on November 8, 2019, in the confirmation of the scope of guarantee for real estate security, if the scope of guarantee agreed in the contract is inconsistent with the registration due to the setting of regional registration system and registration rules, it is an appropriate choice for the People’s Court to confirm the scope of guarantee for real estate security by contract. In the practice of Jiangsu’s ship mortgage registration authority, the registration system does not set the column of “guarantee scope”, and



generally only has the expression of “amount of creditor’s rights”, and only a fixed number can be filled in. Due to the technical conditions, the registration authority usually only registers the amount of principal creditor’s rights in it. In this case, the registration authority recorded the amount of creditor's rights of 28 million yuan in the mortgage of “Jintai 528” bulk carriers, which only indicated the amount of principal creditor’s rights, but did not limit the guarantee scope of ship mortgage to 28 million yuan. In this case, the mortgage of “Jintai 528” bulk carrier involved in this case, as a special movable property, is inconsistent with the contract agreement due to the setting of the registration system of the ship mortgage registration authority. Therefore, the scope of mortgage guarantee may be determined as covering the principal creditor’s rights, interest, penalty interest and other expenses by reference to the spirit of meeting minutes, instead of simply confirming the registered creditor’s rights amount of 28 million yuan as the guarantee scope of ship mortgage. Therefore, the defendant, Hu, repaid the plaintiff, the Bank, the loan principal of 26.93 million yuan and accrued interest, and the defendants, Jintai Company, XX Zhang, X Zhang, Wu and Mao bore joint and several liabilities for liquidation. The plaintiff, the Bank, was given the priority of compensation for the proceeds from the auction, sale and discount of “Jintai 528” bulk carrier. After the judgement of the first instance was pronounced, neither party lodges an appeal.

### ***[Significance]***

There are disputes in practice as to whether the guarantee scope of ship mortgage shall be based on the amount of creditor’s rights registered in mortgage or the guarantee scope agreed in contract. The



typical significance of this case lies in the establishment of the rules for the determination of the scope of creditor's rights guaranteed by ship mortgage, that is, if the scope of ship mortgage secured as agreed in the contract is inconsistent with that of the mortgage registration, the contract shall prevail. At present, due to the technical conditions, the ship mortgage registration authorities in some areas of China usually only register the amount of the principal creditor's rights on the ship mortgage certificate, which leads to disputes over whether the scope of the creditor's rights guaranteed by ship mortgage cover interest, penalty interest and other expenses. In the trial process of this case, instead of simply equating "the amount of creditor's rights" with "the scope of guarantee", based on the analysis of the current legal provisions and referring to the rules for determining the scope of guarantee of real property rights in the Minutes of Civil and Commercial Trial Work of National Courts, it is determined that the scope of ship mortgage should be based on the contractual agreement of the parties, which provides targeted referee guidance for the people's court to determine the scope of creditor's rights guaranteed by ship mortgage, and can also promote the maritime department to further improve the ship mortgage registration system, which is conducive to standardizing the ship financing order and ensuring ship financing safety and the health of the whole shipping industry.

**[First-instance Trial, Case Number]** (2020) Jiangsu 72, Civil Case First Instance No.19

#### ***Case 4: Case of China Grain Storage Oil Co., Ltd.'s Application to Detain the KELLY Ship***



#### ***[Case Details]***

In August, 2019, KELLY, a Marshall Islands cargo ship carrying a load of 80,000 tons of soybean from Richelief Port, Louisiana, USA arrived at Dafeng Port and Zhenjiang Port, respectively, and the cargo was found seriously damaged after inspection. On December 25, 2019, the consignee of this batch of goods, China Grain Storage Oil Co., Ltd., applied to Nanjing Maritime Court for detaining the "KELLY", which was anchored in Zhenjiang Port, on the grounds of serious damage to the goods, and requested the shipper to provide a guarantee of US\$4 million.

#### ***[Execution Process]***

In the process of handling this case, Nanjing Maritime Court, after strictly examining the subject qualification, basic evidence and guarantee provided by the applicant, considered that the case met the requirements for maritime claim preservation, and immediately made a ruling on arrest of the ship and an arrest order, and decided to arrest the ship on the same day. On the premise of comprehensively considering many factors such as the port environment where the ship was located, the weather conditions of the day and the arrival of Christmas Day in western world, a detailed plan for ship arrest has been worked out, and a team of police officers with rich experience in ship arrest and good English skill has been organized to perform the ship arrest. In the afternoon of December 25, 2019, the executive police officers arrived in Zhenjiang, and delivered the notice of assisting in the arrest of ships to Zhenjiang Maritime Safety Administration and Zhenjiang Border Inspection Station in time. The Maritime Safety Administration and Border Inspection Station



immediately assisted in handling the procedures of prohibiting the ships involved from leaving the port and boarding the ship. The executive police officers boarded the ship smoothly, issued an order to arrest the ship to the captain in accordance with the law, seized the ship certificate, and ordered the requested party to provide guarantee. After explaining the operation status and ownership of the ship to the judge, the captain signed the legal documents for arresting the ship, and agreed with the standardized law enforcement of Nanjing Maritime Court. Nine days after the arrest of the ship, the applicant applied for lifting the arrest on the grounds that the defendant had provided guarantee, and the Nanjing Maritime Court ruled and lifted the arrest according to law.

### ***[Significance]***

Seizure and auction of ships is a judicial function exclusively vested in maritime courts. Seizure of ships before litigation is a special form of preservation in maritime courts, which can effectively urge the defendant to fulfill his legal obligations in a timely manner and promote the rapid resolution of maritime contradictions and disputes. Since performing their duties, Nanjing Maritime Court has detained all types of ships according to law, amounted to 112, including 5 foreign ships. This is the first case accepted by Nanjing Maritime Court to apply for detaining a foreign ship, which is of great significance to broaden the way for domestic parties, standardize the work flow, protect the rights and interests of the foreign applicants and safeguard the judicial authority. First, establish the appraisal system of arresting ships before litigation. Before applying for the arrest of a ship before litigation, the judge studies and evaluates the materials, guarantees



and controversial issues provided by the parties, prompting the parties to provide complete and standardized materials in time to ensure the smooth and efficient seizure of the ship. Second, standardize the format of legal instructions of arresting ships before litigation. In view of the practice and special requirements of arresting ships before litigation, Nanjing Maritime Court determined the format and content of legal instructions of arresting ships before litigation on the basis the format of civil ruling paper for property preservation before litigation distributed by the Supreme People's Court of China and with the practice of the other maritime courts in consideration. Third, establish a cooperative working mechanism with various maritime functional departments. In this case, Nanjing Maritime Court made full use of communication means such as platform network, and immediately docked with maritime affairs, border defense and other departments to handle the procedures of arresting and boarding ships, and coordinate the dispatching of berthing docks, so as to effectively improve the implementation efficiency of arresting ships and equally protect the legitimate rights and interests of the parties.

***[Execution Case Number]*** (2019) Jiangsu 72,Property Preservation Case No.2, (2019) Jiangsu 72,Evidence Preservation Case No.1

### ***Case 5:Qin vs. Su: A Dispute over Maritime Personal Injury***

#### ***Liabilities***

#### ***[Case Details]***

Qin was rendering service on Su's fishing vessel. When he was trying to moor the vessel during a fishing task on the sea, an injury was inflicted on his right foot by the mooring line. He was immediately



brought back to the port and treated at a local hospital in Qingdao. When his conditions stabilized, he was transferred to a hospital in Ganyu District, Lianyungang City for further treatment, but he ended up with an authenticated Grade-9 disability, which would exert adverse effects on his future life, labor, and income. When Qin was hospitalized, one of Su's family members kept him company all the time and paid over 180,000 yuan for the medical expenses. Afterwards, the two parties failed to agree on the due amount of indemnities for Qin's disability, nursing expenditure, and lost income. Thus, a dispute arose and Qin later filed a lawsuit to Nanjing Maritime Court, requesting the defendant Su to compensate him with a total of 307,830.64 yuan for the miscellaneous losses caused by the accident in the course of his service rendering.

### **[Verdict]**

Nanjing Maritime Court tried the case in a timely manner and ascertained the facts by organizing both parties to present evidence and cross-examine. When it came to fees such as disability compensation and nursing expenditures, the two parties kept arguing whether the injured person was at fault, as well as about his average income and the nursing cost, which made it difficult for the court investigations to proceed, so the presiding judge promptly announced adjournment, summarized the trial, and analyzed the pertinent factual evidence and liabilities. The presiding judge maintained that the sustained accompaniment from defendant Su's family following Qin's injury and the 180,000-yuan payment for medical expenses demonstrated that Su has complied with the local ship owner's norms for handling an injured crew member, and that the rules recognized by the local



fishermen, therefore, should be applied to resolving the dispute. Thanks to the trial, especially the judge's summary, both parties adjusted their expectations into more practical directions, which might well eventually lead to mediation. Given the hostility between the two parties when the trial was concluded, it was inappropriate to conduct mediation immediately. Therefore, the court announced the scheduled time and place for mediation and entrusted it to a special mediator at the one-stop fishery dispute resolution center under Nanjing Maritime Court. The special mediator has lived in the local fishing village for a long time and thus acquires professional knowledge of fishery and rich experience in handling related disputes. The efforts of the special mediator enabled the two parties to reach an agreement: the defendant Su should compensate the plaintiff Qin for his disability, moral damage, follow-up treatment fees, and other legitimate indemnities, totaling 164,000 yuan, to be paid by three installments. The court issued a mediation document confirming this agreement.

### **[Significance]**

In the coastal area of Jiangsu, fishery disputes mostly occurred in traditional fishing ports, villages and townships. They are typical cases concerning people's livelihood. In most cases, one of the parties usually has an urgent need of aid and support, or is led a life troubled by injury or illness. In view of this, Nanjing Maritime Court attaches great importance to the resolution of fishery-related disputes and stays committed to "resolving disputes through a non-litigation mechanism." To this end, a one-stop mediation center for fishery disputes has been established in Xiakou Village, Qingkou Town, Ganyu District, Lianyungang City. A special mediator, Qi Honggui, who is based at the center, provides the fishermen with convenient,



efficient, and low-cost maritime judicial services. Despite the current availability of relatively sound law theories and comprehensive law-based evidence for fishermen's disputes over maritime personal injury liabilities, the two parties often have substantial disagreements to the amount of compensation. This, along with the plethora of witnesses and testimonies as well as the insufficiency of key documentary evidence, poses a great and time-consuming challenge to the court in ascertaining the facts, handling the disputes, and ensuring timely relief for the injured.

The presiding judge of this case made a summary of the trial after combing through the evidence presented by both parties, so as to mentally prepare them for the direction of the trial. Then, the judge entrusted the mediation work to an experienced special mediator, who is acquainted with fishery practices and fishermen's life, to spare much energy and time in the course of fact ascertaining. Giving full play to the special mediator's role has proved to be quite productive and conducive to timely and efficient settlement of cases concerning people's livelihood. The settlement of this case through mediation manifests Nanjing Maritime Court's efforts in upholding people-centered administration of justice, developing its one-stop multi-dispute resolution mechanism and litigation service system with maritime characteristics, and meeting the diverse judicial needs of the people in a better way.

**[First-instance Trial, Case Number]** (2020) Jiangsu 72 Civil Case No. 231





南京海事法院海事审判报告（2019.12-2020.11）

Report on Trials of Nanjing Maritime Court of PRC (2019.12-2020.11)



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