

APPLICATION OF INT'L MARINE LAW TO THE SEAS OF SOUTHEAST ASIA: EX. OF SENSITIVE MARINE AREAS

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CENTRE FOR INTERNATIONAL LAW
National University of Singapore



Legal and Institutional Mechanisms to manage the Marine Environment in the Seas of East Asia: Status and Way Forward



Track 4: Governance and Partnership, Session 5

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Outline

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Part 3 – Other Threatened and Endangered Species

Part 4 – Fisheries Refugia developed under the auspices of SEAFDEC

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Conclusion

- **10 regional seas established under the auspices of UNEP have a framework conventions; many also have protocol to regulate specific activities as well as governing bodies to oversee and coordinate**
- **There are also 5 independent programmes: Arctic, Antarctic, Baltic Sea, Caspian Sea, Northeast Atlantic**
- **Three programmes established by UN Environment (UNEP) have remained at the stage of action plans and State recommendations:**
 - **Northwest Pacific (North Asia),**
 - **the East Asian Seas; and,**
 - **the South Asian Seas**

However,

- **The first layer of regional legal framework is international**
- **20+ international treaties and agreements (without counting regional declarations)**
- **They cover most aspects of the marine environment:**
 - **Overall (UNCLOS)**
 - **Shipping: safety, oil pollution, solid and liquid waste (incl. garbage and sewage), toxic substances (noxious substances and anti-fouling paint), air pollution, invasive species**
 - **Fisheries and Trade of endangered species**
 - **Conservation: wetlands of international importance, world natural and cultural heritage, biodiversity, listed migratory species,**
 - **etc.**

Status of adoption of the instruments developed to establish sensitive areas in Southeast Asia

<u>Source Instrument</u>	<u>Sensitive Area Instrument</u>	<u>Brunei</u>	<u>Cambodia</u>	<u>China</u>	<u>Indonesia</u>	<u>Malaysia</u>	<u>Philippines</u>	<u>Singapore</u>	<u>Thailand</u>	<u>Vietnam</u>
<i>Convention on Biological Diversity</i>	EBSA									
<i>Ramsar Convention</i>	Ramsar Wetland									
<i>World Heritage Convention</i>	Area of Outstanding Universal Value									
<i>Convention on Migratory Species</i>	IOSEA Marine Turtles Network of Sites of Importance¹									
<i>Independent Cooperative Framework for Action under the 2002 World Summit on Sustainable Development</i>	East-Asian Australasian Flyway Partnership (EAAFP)²									
<i>ASEAN Declaration on Heritage Parks and reserves</i>	ASEAN Criteria for Marine Heritage Areas			Not a member						
<i>Convention on the IMO and subsequent IMO conventions</i>	PSSAs									
<i>FAO Code of Conduct for Responsible Fisheries</i>	Fisheries Refugia / SEAFDEC-ASEAN Guidelines			Not a member						
<i>UNCLOS</i>	Art. 194(5)									

As of 30 January 2018

Part 1 – Sensitive Marine Areas in SEA under Int'l Law

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- Map represents all the marine areas identified as 'sensitive' under different international and regional instruments
- MPAs identified unilaterally outside the context of intergovernmental meetings are not included
- All areas have been proposed, identified and or acknowledged by intergovernmental meetings
- They can support the implementation of UNCLOS Art 194(5) but are not sufficient to discharge States of their obligation under this provision
- Few areas identified in the SCS
- No sensitive areas or Marine Managed Areas areas in the 'disputed area'
- Only transboundary areas are located in the Sulu-Sulawesi sea

Part 1 – Sensitive Marine Areas in SEA under Int’l Law

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At International Level:

- **Ecologically or Biologically Sensitive Sea Areas (EBSAs) under the CBD (light blue)**
- **Areas of Outstanding Universal Value (OUV) under the World Heritage Convention (dark blue)**
- **Ramsar Wetland Sites of International Importance under the Ramsar Convention (Green)**
- **Particularly Sensitive Sea Areas (PSSAs) under the IMO (purple crossed lines)**

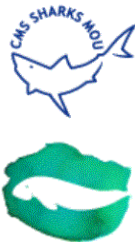


Part 1 – Sensitive Marine Areas in SEA under Int'l Law

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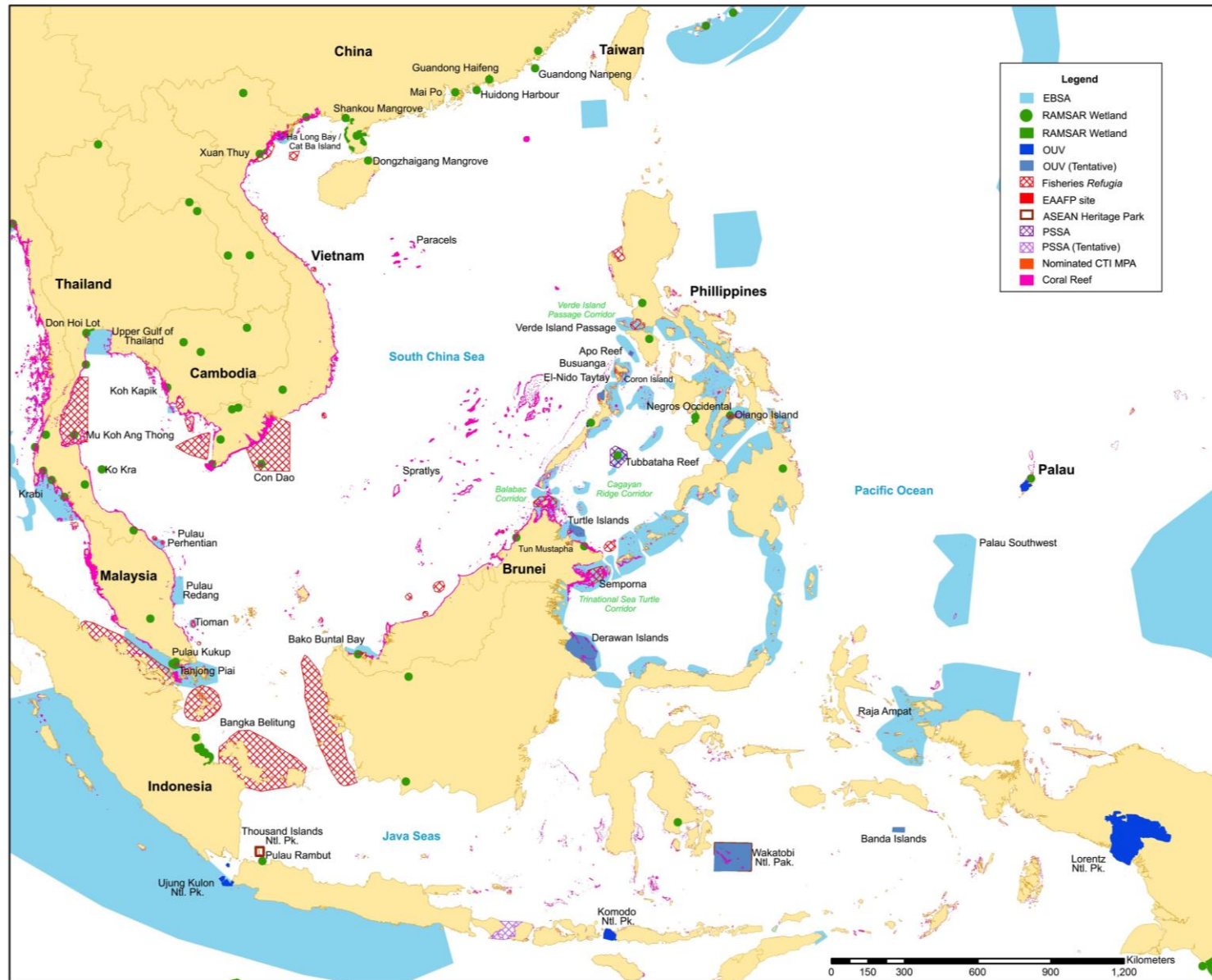
At Regional Level:

- Fisheries Refugia overseen by SEAFDEC (red crossed lines)
- ASEAN Heritage Parks
- Nominated MPAs for the Coral Triangle MPA System (CTMPAS)
- Sites in the IOSEA Marine Turtle Network
- Nominated sites in the East- Asia Australasia Flyway Partnership (EAAFP) (no legal instrument but partnership between governmental bodies)



Part 1 – Sensitive Marine Areas in SEA under Int'l Law

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- **2001 MOU on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia (IOSEA Marine Turtles MOU) have all SCS littoral States except Brunei, China and Singapore**
- **Parties to the IOSEA Marine Turtle MOU have adopted the IOSEA Network of Sites of Importance for Marine Turtles based on evaluation criteria**
- **Sites of importance include migratory corridors, nesting beaches, inter-nesting and feeding areas for green sea turtles, hawksbill, leatherback, loggerhead and olive ridley sea turtles**
- **These can support implementation of UNCLOS Article 194(5)**
- **One site designated in SEA at this stage (Tawi Tawi, Philippines)**
- **Numerous sites in the SCS and Sulu-Sulawesi are being considered**

- IOSEA Marine Turtle MOU has its own website where Meetings of the Signatories (MOS or SS) can be found
(<https://www.cms.int/iosea-turtles/en/about/iosea-organizational-structure>)
- MOS is the decision-making body of the MOU. No online publication of SS8 expected to take place in 2017-2018
- The Advisory Committee provides scientific, technical and legal advice to the Signatories
- The IOSEA Marine Turtle MOU also has a Secretariat – the coordinating body of the MOU
- Of note, an MOU on ASEAN Sea Turtle Conservation and Protection was signed in 1997 to promote the protection, conservation, replenishing and recovery of sea turtles and of the habitats based on the best available scientific evidence
- Could other similar MOUs/bodies be formed to study and manage other threatened and endangered (adequate groups of) species?

Part 3 – Other threatened and endangered species

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Common Family Name	Common Name	Scientific Name	Appendix I	Appendix II	Agreement or MoU
Whale	Sei Whale	<i>Balaenoptera borealis</i>	X	X	ACCOBAMS and Pacific Islands Cetaceans
Whale	Blue Whale	<i>Balaenoptera musculus</i>	X	-	ACCOBAMS and Pacific Islands Cetaceans
Whale	Fin Whale	<i>Balaenoptera physalus</i>	X	X	ACCOBAMS and Pacific Islands Cetaceans
Whale	Humpback Whale	<i>Megaptera novaeangliae</i>	X	-	ACCOBAMS and Pacific Islands Cetaceans
Whale	Sperm Whale	<i>Physeter macrocephalus</i>	X	X	-
Dolphins	Irrawaddy Dolphin	<i>Orcaella brevirostris</i>	X	X	Pacific Islands Cetaceans
Sea turtles	Green turtle	<i>Chelonia mydas</i>	X	X	IOSEA Marine Turtles and Atlantic Turtles
Sea turtles	Loggerhead turtle	<i>Caretta caretta</i>	X	X	IOSEA Marine Turtles and Atlantic Turtles
Sea turtles	Hawksbill turtle	<i>Eretmochelys imbricata</i>	X	X	IOSEA Marine Turtles and Atlantic Turtles
Sea turtles	Olive Ridley turtle	<i>Dermochelys olivacea</i>	X	X	IOSEA Marine Turtles and Atlantic Turtles
Sea turtles	Leatherback turtle	<i>Dermochelys coriacea</i>	X	X	IOSEA Marine Turtles and Atlantic Turtles
Shark	Great white shark	<i>Carcharodon carcharias</i>	X	X	Shark MOU (2010)
Shark	Basking shark	<i>Cetorhinus maximus</i>	X	X	Shark MOU (2010)
Manta ray	Narrow sawfish	<i>Anoxypristis cuspidata</i>	X	X	Sharks (2016)
Manta ray	Dwarf sawfish	<i>Pristis clavata</i>	X	X	Sharks (2016)
Manta ray	Green sawfish	<i>Pristis zijsron</i>	X	X	Sharks (2016)
Manta ray	Large-tooth sawfish	<i>Pristis pristis</i>	X	X	Sharks (2016)
Manta ray	Reef manta ray	<i>Manta alfredi</i>	X	X	Sharks (2016)
Manta ray	Giant manta ray	<i>Manta birostris</i>	X	X	Sharks (2016)
Manta ray	Japanese devil ray	<i>Mobula japanica</i>	X	X	Sharks (2016)
Manta ray	Bentfin devil ray	<i>Mobula thurstoni</i>	X	X	Sharks (2016)
Manta ray	Sickle fin devil ray	<i>Mobula tarapacana</i>	X	X	Sharks (2016)
Manta ray	Longhorned pigmy devil ray	<i>Mobula eregoodootenkee</i>	X	X	Sharks (2016)
Manta ray	Shortfin devil ray	<i>Mobula kuhlii</i>	X	X	Sharks (2016)

Extract of CMS

- Does not include Appendix II species (55 CMS-listed species have a geographic range which includes the SCS)
- Nor CITES listed-species
- Other ecosystems, species and their habitats that may qualify as under UNCLOS article 194(5) although they are not listed in an international instrument
- All items on IUCN Red-list may not qualify (not international law)

- **Southeast Asian Fisheries Development Centre (SEAFDEC) is an inter-government body created in 1967 to foster cooperation between governmental agencies responsible for fisheries in SEA**
- **ASEAN and SEAFDEC's collaboration started in 1998**
- **ASEAN-SEAFDEC 2001 Resolution and Plan of Action on Sustainable Fisheries for Food Security**
- **2003 ASEAN-SEAFDEC Guidelines for Responsible Fisheries Management**
- **Guidelines on Fisheries Refugia developed in the context of the fisheries component of the UNEP-GEF project entitled 'Reversing Environmental Degradation Trends in South China Sea and Gulf of Thailand'**
- **Collaborative effort between UNEP-GEF SCS Project and SEAFDEC, the FAO, the WorldFish Centre and the IUCN**
- **Parallel identification of regionally important transboundary Species and their critical habitat, and development of guidelines for the use of Fisheries Refugia**

<https://fisheries-refugia.org/>

SDG Target 14.5 - By 2020

At least 10% conservation of coastal and marine areas, consistent with national and international law and based on the best available scientific information

Indicator

Coverage of protected areas in relation to marine areas

Means of Implementation

14.c - Implementation of Int'l Law

Progress in ratification and implementation of all Conv.

CBD Art 2

Protected area = a geographically designed area which has been designated or regulated and managed to achieve specific conservation objectives

COP VII (2004) = (...) legislation or other effective means, incl custom, with the effect that it enjoys a higher level of protection than the surroundings

- 'Paper parks' do not meet these definitions - a park's name (sanctuary, reserve, park, etc) cannot determine that it is a protected area
- Park management plan and objectives need to be considered
- Implementation of international law is critical

- **Many treaties and rules of international hard and soft law are applicable to Southeast Asian States despite the absence of a regionally binding instrument for the management of the marine environment regionally**
- **Numerous marine areas have already been identified by inter-governmental meetings within the scope of international marine law**
- **The IOSEA Marine Turtle MOU and the work of SEAFDEC on Fisheries Refugia show that implementation of international instruments can be developed by regional bodies**
- **Strengthening the institutional mandate and powers of some of these bodies could be a path towards implementation of international law in an ASEAN-way, including SDG14 – a policy target**