National MPA Laws in the South China Sea: A Comparison and Suggestions for MPA Law Reform in China

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Introduction

The South China Sea (SCS) is a semi-enclosed sea in the Pacific Ocean. It is located between the Strait of Malacca and the Strait of Taiwan,¹ and has an estimated area of about 3,500,000 square kilometers.² The SCS is bordered by China, the territory of Taiwan, Philippines, Brunei, Indonesia, Singapore, Malaysia, Thailand, Cambodia and Viet Nam.² The main economic activities it supports include fisheries, mariculture, oil and gas exploitation, shipping and tourism.³ The SCS has a very valuable marine environment that has been recognized as a global center for biodiversity:⁴ it hosts about 12 percent of the world’s mangrove forests, 34 percent of the world’s coral reefs and millions of hectares of important wetlands such as estuaries, lagoons, inter-tidal mudflats, and peat and non-peat swamps.⁵ It is also an important fishing ground for the

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¹ This article expresses the personal opinion of the author.
³ Although the Gulf of Thailand was not considered part of the SCS by the International Hydrographic Organization at the time, it is seen as belonging to the SCS by more recent authors. For example, see L. Talaue-McManus, Transboundary Diagnostic Analysis for the South China Sea, EAS/RCU Technical Report Series No. 14 (Bangkok: UNEP, 2000), p. 1.
⁵ Talaue-McManus, id.; Wilkinson et al., n. 1 above, p. 18.
regional States that land a catch of six million tonnes per year, accounting for 10 percent of the world's total annual marine production. However, the marine ecosystem of the SCS is facing very serious challenges due to habitat loss and degradation, unsustainable exploitation of marine living resources, and pollution of the aquatic environment.

The SCS is also known for having some of the world's most complicated territorial and maritime boundary disputes. These include disputes over the Paracel islands between China, Taiwan and Viet Nam; the Spratly islands between China, Taiwan, Philippines, Brunei, Malaysia and Viet Nam; and the controversies relating to the Chinese nine-dash line (or U-shape, cow-tongue) claim. Though there have been initiatives to resolve the disputes through legal means, they are not likely to be quickly brought to an end because of

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7 Seventy percent of the region's mangroves, 80 percent of its coral reefs, and 20 to 50 percent of its seagrass beds have been lost or seriously degraded for reasons such as conversion of coastal land, overfishing and destructive fishing practices. See Talaue-McManus, n. 2 above, pp. 6 and 22; Chen, n. 3 above, pp. 119 and 122; Sherman and Hempel, n. 3 above, p. 304; Wilkinson et al., n. 1 above, p. 14; and UNEP, Strategic Action Programme for the South China Sea, UNEP/GEF/SCS Technical Publication No. 16 (Bangkok: UNEP, 2008), pp. 3, 9, 21 and 29.

8 Sherman and Hempel, n. 3 above, p. 302; Wilkinson et al., n. 1 above, p. 40; Talaue-McManus, n. 2 above, p. 40; and Chen, n. 3 above, p. 124.

9 Sherman and Hempel, n. 3 above, p. 303; Wilkinson et al., n. 1 above, p. 31; Chen, n. 3 above, p. 124; and UNEP, Land-based Pollution in the South China Sea, UNEP/GEF/SCS Technical Publications No. 10 (Bangkok: UNEP, 2007), p. 3.


11 This claim was presented officially for the first time before the United Nations in 2009 in a protest note against the joint submission on the outer limits of the continental shelf between Viet Nam and Malaysia. See Note No. CML/18/2009 of the Permanent Mission of the People's Republic of China to the Secretary General of the United Nations, 7 May 2009.

12 In January 2013, the Philippines initiated the United Nations Convention on the Law of the Sea (UNCLOS) arbitral proceeding against China to challenge its nine-dash line claim. See Statement by Secretary of Foreign Affairs Albert del Rosario on the UNCLOS Arbitral