

# **BBNJ Negotiation in the Context of the South China Sea: with a Focus on Area-based Management Practice**

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# Content

- Update of BBNJ Negotiation
- Conceptual ABM
- Legal framework
- Regional/state practice of ABM in the SCS
- Challenges
- Way Forward

# Timeline

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- In **2004**, the General Assembly established the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (the Working Group)
- The Working Group met 9 times between **2006 and 2015**
- Preparatory Committee Established by UNGA resolution 69/292,19 **June 2015**, four times, **twice in 2016 and twice in 2017**
- Report of PrepCom to GA 71, summarized results of four preparatory committee meetings in 2016 and 2017, Adopted on **21 July 2017** with two recommendations
- A/RES/72/249, **24 December 2017**, decided to develop an internationally legally binding instrument (ILBI) **under UNCLOS**
- First session of conference **September 2018** at UN Headquarters in New York
- The second and third sessions will be held in **2019** and the fourth session in the first half of **2020**
- Additional sessions not precluded but require new UNGA decision
- Likely be needed to reach consensus on whole text

# Conceptual area-based management tools

- **Area-based management tools:** package of elements agreed at 2011 UN BBNJ Working Group
  - Marine genetic resources, including questions on the sharing of benefits
  - Measures such as area-based management tools, including marine protected areas, and environmental impact assessments
  - Capacity-building and the transfer of marine technology.
- **Criteria for and identification of areas that may require ABMT**
- **Process of designation of area based management tools**
- **Management measures**
- **Institutional arrangement**

# Models of ABMT

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## Sectoral

- ▶ IMO
  - ▶ Particularly Sensitive Sea Areas (PSSAs), MARPOL Special Seas, routing systems
- ▶ RFMOs
  - ▶ Fisheries closures
  - ▶ Vulnerable Marine Ecosystems (VMEs)
- ▶ ISA
  - ▶ Areas of Particular Environmental Interests
  - ▶ Preservation Reference Areas (PRAs)

EIA/SEA

## Cross-Sectoral

- ▶ Marine Protected Areas (MPAs) (some experiences in ABNJ)
- ▶ Marine Spatial Planning (Little experience)

Most efforts sectoral and/or geographically limited.  
Overarching coordination lacking.

# Legal Framework

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## ❖ 1982 UNCLOS

- Protect and preserve marine environment (Arc. 192)
- Including protecting rare or fragile ecosystems and habitats (Arc. 194.5)

## ❖ 1992 Rio Declaration on Environment and Development

- Anticipatory, integrated and precautionary approaches

## ❖ 2002 WSSD

- Ecosystem approaches by 2010; representative MPA networks by 2012

## ❖ 2010 CBD Aichi target

## ❖ 2012 Rio+20: The Future We want

## ❖ 2015 Sustainable Development Goals: Goal 14 on oceans

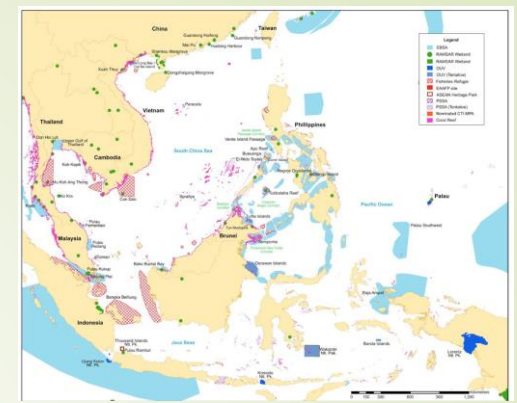


# ABM related Initiatives in the SCS

- Ecosystem-based Management in the Seas of East Asia (PEMSEA)
- Marine Protected Areas in the SCS - MPA network
- The Coral Triangle Initiative
- Community-based management in Vietnam
- Marine Environment Protection
- Fishery
- Area-based conservation
- Fishery conservation and management
- Mangrove
- Wetland

# Sensitive Areas identified in the SCS

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## ➤ International level

- Ecologically or Biologically Sensitive Sea Areas (EBSAs) under the **CBD**
- -Areas of Outstanding Universal Value (OUV) under the **World Heritage Convention**
- -Ramsar wetland sites of international importance under the **Ramsar Convention**
- -Particularly Sensitive Sea Areas (**PSSAs**) under the IMO

## ➤ Regional level

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



# Regional practices in the SCS

## Cross-sectoral approach: MPA

- IUCN defines a protected area as:  
A clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.
- Different styles of protection areas.
- Almost all South China Sea states established a national system of the marine protected areas

# State practice in the SCS

- ▶ China: a system of marine nature reserves and fisheries conservation zone since 1996; in 2000, introduced two additional types of marine zones, special marine protected areas and marine parks; by 2020, 5% under MPA
- ▶ Indonesia: Improving Indonesian Protected Area Management within an integrated Landscape Approach: Sustainable Landscapes Partnership
- ▶ Vietnam : National Biodiversity Strategies and Action Plans
- ▶ The Philippines: Declare the largest MPA; Marine Sanctuary , Marine Reserve, Marine Park ,
- ▶ Malaysia: Marine and Coastal Protected Area Management Effectiveness Evaluation
- ▶ Thailand : 28 MPAs established; Solid legislation framework exists, MPAs effectiveness unknown; Bay of Bengal Large Marine Ecosystem Project

# Regional practices of Sectoral approach: MEP

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*SCS Large Marine Ecosystem*



*The UNEP/GEF Project*



*The “ASEAN Way” of marine environment protection*

*China’s Role*

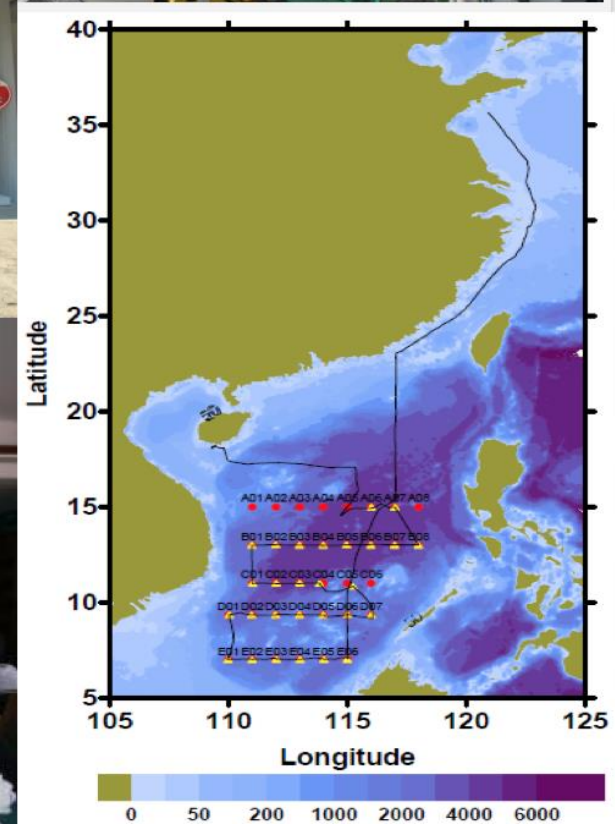
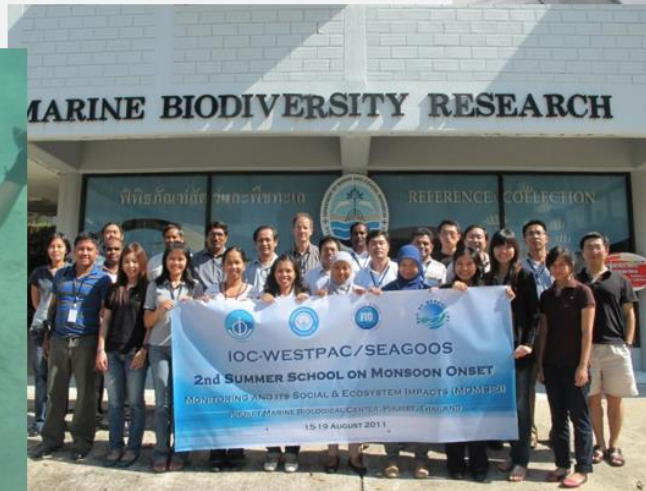
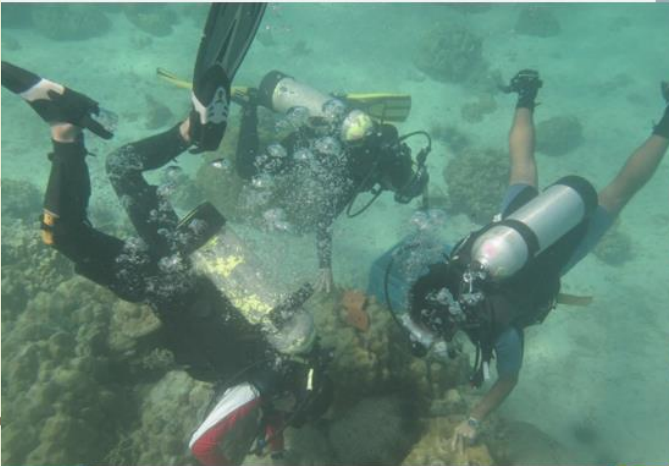
- SCS LME: funded by Global Environment facilities; address critical threats to the coastal and marine environment, promote ecosystem-based management of coastal/marine resources
- UNEP/GEF Project: following the informal workshop group, 1996, first intergovernmental project involving all major SCS littoral states., fully operational in 2002; the first attempt to develop regional coordinated program of actions designed to reverse environmental degradation in the SCS;
- UNEP/East Asia Seas Action Plan: roles of UNEP: intellectual technical input; financial support, institutional support, pros: securing governmental support; cons: not prioritizing the need for SCS;
- ASEAN way: facilitated inclusion of all through an informal diplomacy that limits obligations and protocol, platform to exchange information and enhance trust and confidence; contributed positively to the successful expansion of coordinating body on the seas of East Asia membership, also the main reason that COBSEA has failed to reach a legally binding regional convention; missing opportunity to address some problems in a timely manner. Participants felt it inappropriate or a transgression of other countries' sovereignty by confronting other countries with their problems in implementation or pointing out the delay of activities in other countries.
- China's role: involved in all the project above, with great annual financial contribution to the Trust Fund.

# Need for regional marine environmental cooperation

- Regionalism has not come too far in dealing with international environmental problems.
- Not only for environmental cooperation, but also for achievement of the region's prosperity and peace.
  
- Three functions
  - pooling more efficient use of scarce resources
  - attracting assistance from regional agencies, bilateral aid agencies and other donors;
  - presentation of a unified 'regional front' allowing states to increase their 'leverage'.
  
- To foster regional cooperation on the relatively non-political and non-sensitive problems such as the marine environment, and shelving for the time being the 'sovereignty' issues.



# COOPERATIVE ACTIVITIES





# CHINA-INDONESIA

- **Research Projects**
  - **South China Sea-Indonesia Sea Water Transport/Exchange**
  - **Java Upwelling Variation and its Impact on Seasonal Fish Immigration**
- **30 cruises, 300 trainees, 8 Workshops**

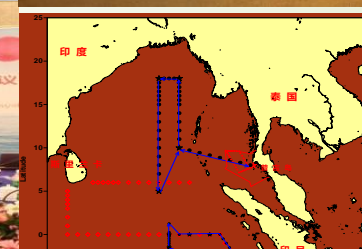
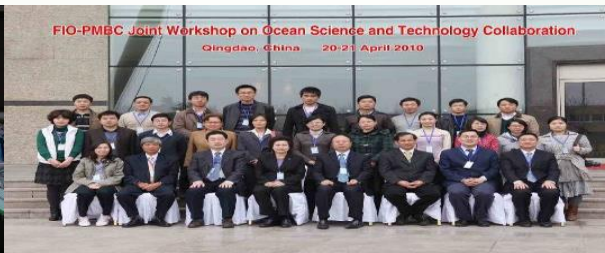




# China-Thailand

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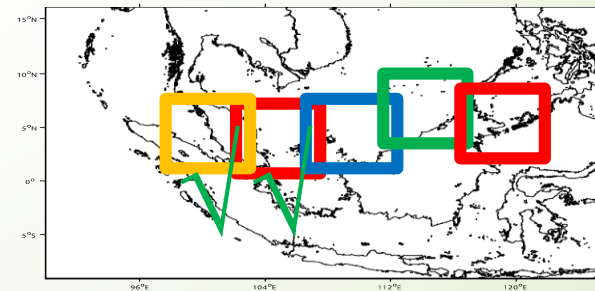
- **Projects**
  - **Monsoon Onset Monitoring over Andaman Sea and its Social Impact Study**
  - **Vulnerability of the Coastal Zones of the Gulf of Thailand**
  - **Geology and Ecology of the Andaman Sea**
- **8 cruises, 170 trainees, 6 Workshops.**



# China-Malaysia

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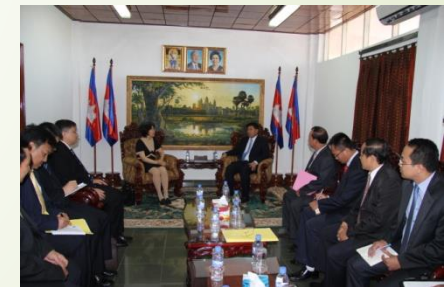
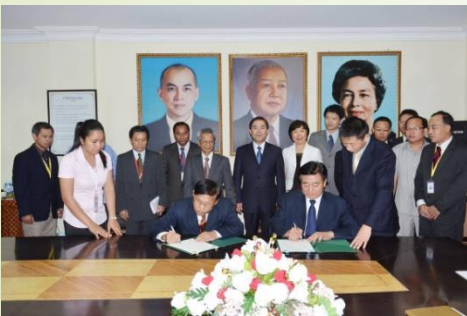
- FIO-UKM LOI for Collaboration, in 2009
- Research Projects
  - Operational Ocean Forecasting System
  - Sources-Sink Process in the Southern Part of SCS
- 3 cruises, 80 trainees, 2 workshops



# China-Cambodia

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- China-Cambodia Workshop on Marine Affairs Cooperation (Qingdao, 2012)
- Priorities on marine science cooperation between China-Cambodia (2014~2017)
  - Coastal vulnerability and coastal management
  - Marine biodiversity and MPA
  - Marine governance





## China-Myanmar

- Proposal:
  - MOMSEI
  - OFS
  - Estuary dynamics and upwelling

## China-Brunei

Exchange and cooperation on Oil spill monitoring and evaluating

## China-Vietnam

Cooperation on Marine environment management in Beibu Bay (Tonkin Gulf) in 2013

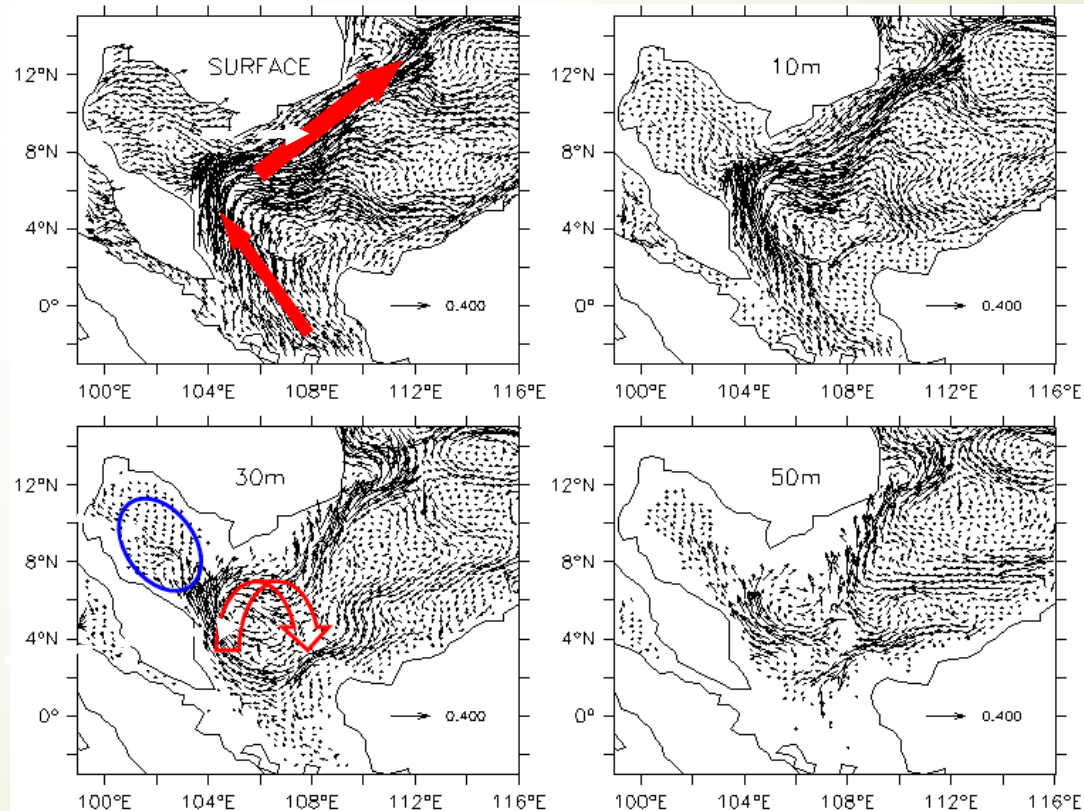


Ocean Forecast Demonstration System in the Southeast Asian Seas started in 2010

coastal current

current in Gulf of Thailand

subsurface eddy



# 1<sup>st</sup> ASEAN-China Workshop on Marine Science and Technology Cooperation



- ① Ocean/climate change
- ② Ocean forecasting system/observation
- ③ Marine environment/biodiversity
- ④ Marine records on environment/climate
- ⑤ Change
- ⑥ Ocean economy and marine policy.

- ◆ Organizer: SOA, MMAF, MFA
- ◆ 10+1, 79
- ◆ Bali, Indonesia, in November 2013





# ARF Workshop on Regional Cooperation on Offshore Oil Spill

◆ **Maritime Security Workshop on Marine Environmental Protection Cooperation: *Preparedness and Response to Pollution Incidents Involving Hazardous and Noxious Substances***

Honolulu Hawaii, 4-5 March 2014

◆ **ARF Seminar on the Regional Cooperation on Offshore Oil Spill**

Qingdao Shandong, China 27-27 March, 2014





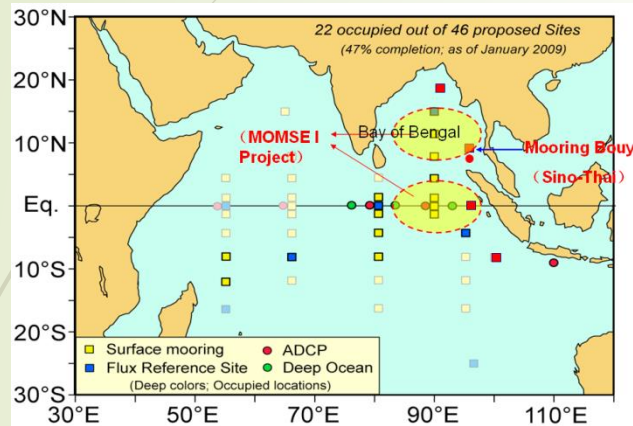
United Nations  
Educational, Scientific and  
Cultural Organization



IOC Sub-Commission for the  
Western Pacific  
(WESTPAC)

# IOC/WESTPAC-MOMSEI

## Monsoon Onset Monitoring and its Social and Ecosystem Impact



### Objectives

- i) understanding and forecasting of Asia monsoon and its multi-scale variability at a regional scale through developing and carrying out air-sea observations,
- ii) analyzing the preconditioning role of ocean in the monsoon onset since the Asian Summer Monsoon onsets firstly take place.

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The Intergovernmental Oceanographic Commission of UNESCO established its Sub-Commission for the Western Pacific (WESTPAC) in 1989 with main task to develop, coordinate and implement regionally specific marine scientific research, ocean observations and services based on priority interests of the Member States and to implement the IOC global programmes and

# Challenges

## In ABNJ

- ✓ Technical challenges: limited scientific information and limited observing programs
- ✓ Governance challenges: absence of overarching governance principles,, limitation on the ability and potential effectiveness of ABMT; limitation on the objectives of the potential measures; geographic and thematic gaps in sectoral governance or competence undermining the use of ABMTs
- ✓ Lack of a supportive legal and political framework;
- ✓ Lack of an effective system of compliance and enforcement;
- ✓ No involvement of all relevant stakeholders;
- ✓ the best available knowledge not in use;
- ✓ Lack of a sustainable financing mechanism for maintaining the MPA network;
- ✓ Lack of a social network of MPAs;
- ✓ Diversity of the SCS states which are very different in many aspects;
- ✓ Possible strong resistance from existing users of the seas.



## Scenario

A group of countries have agreed to declare nine Marine Protected Areas (MPA) in the Atlantic Ocean in Areas Beyond National Jurisdiction (ABNJ)/ the high seas in order to protect marine biodiversity. In this area, submarine cables, fishing, navigation, and exploration and exploitation of marine genetic resources will be restricted by requiring practices that these countries agree will minimize impacts based on the precautionary principle. Are these MPA's in the ABNJ consistent with UNCLOS? Can the precautionary principle, not found in UNCLOS, be used to restrict or regulate express high seas freedoms (submarine cables, navigation, fishing) or activities not specifically addressed in UNCLOS (e.g., marine genetic resources)?

# More...(South China Sea)

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- ✓ Political concerns and mutual trust affect the marine cooperation even in the area of low sensitivity.
- Some cooperation activities are limited into workshops and mutual visits, concrete cooperative projects and joint cruises needs to be developed.
- Environmental interdependence is both a source of conflict and a potential for international cooperation
- Technical and governance challenges in respective state practice

# Way Forward

- Global trend
- Regional framework
- Political will
- Timing



Thank you