

Fisheries Cooperation: Lessons for South China Sea

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Outline

- Conditions for UNCLOS duty and obligation to cooperate
- Factors that enhance likelihood of entering fisheries cooperation agreements in East Asia
- Lessons
 - Anchors and drivers of fisheries agreements (FA)
 - Negotiation period and duration
- Outlook for South China Sea (SCS)

Conditions for UNCLOS duty and obligation to cooperate

- Provisional arrangements of a practical nature pending delimitation
- Conservation and management of straddling or highly migratory fisheries stocks thru bilateral fisheries agreements or thru subregional or regional fisheries management organizations (RFMOs)
- States bordering enclosed or semi-enclosed sea

Provisional arrangement

- Art 74, Part V (EEZ – relevant for fisheries) – *“States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation”*
- Art 83 (3), Part V (CS – relevant for O&G) – *“Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”*

Straddling & highly migratory fisheries stocks

- Art 63 (1), Part V - *“where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.”*
- Art 63 (2), Part V – *“where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.”*

Straddling & highly migratory fisheries stocks

- Art 64 (1) Part V - *“the coastal State and other States whose nationals fish in the region for the highly migratory species ... shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.”*

Fisheries Management Organizations

- Agreement for the Implementation of the Provisions of the 1982 UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks was adopted and came into force in December 21, 2001
- Established RFMOs as the *“primary vehicle for cooperation between coastal States and high seas fishing States in the conservation and management of straddling fish stocks and highly migratory fish stocks”*
- No RFMO in seas of East Asia e.g. SCS, unlike say Mediterranean or Black Sea

Enclosed or semi-enclosed seas

- “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”
- E.g. Yellow Sea, East China Sea (ECS) and South China Sea (SCS)

Factors that enhance likelihood of entering fisheries agreements in East Asia

- High fish consumption (i.e. East Asia avg. 30-60 kgs/yr per capita)
- Major distant fishing states – e.g. PRC, JP, ROK, TW, PH
- High fisheries trade - export & import (except for PRC, NEA are net fish importers; SEA are still surplus producers)
- High membership in RFMOs e.g. WCPFC
- Existence of bilateral fisheries agreements

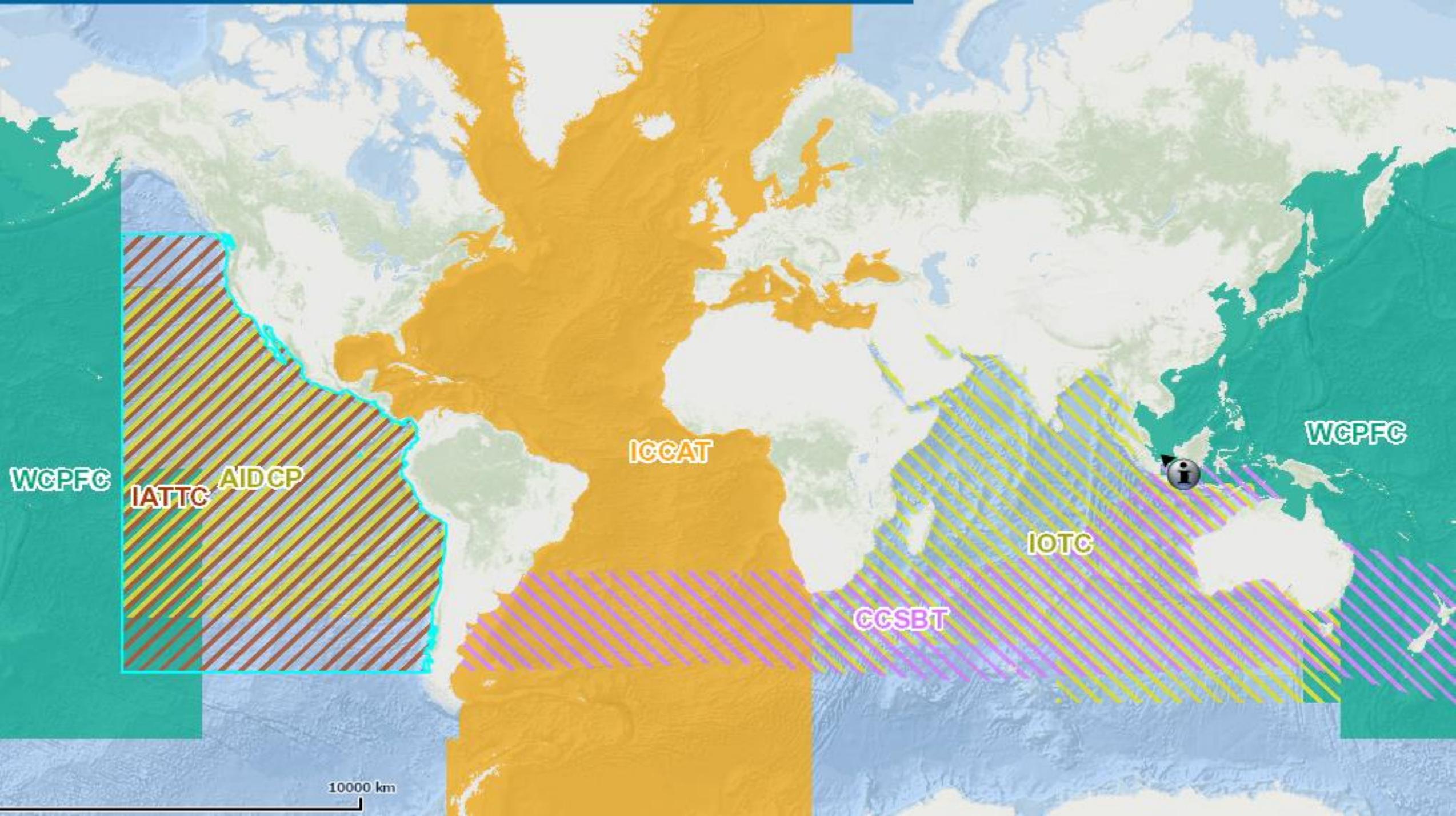
Top ten exporters and importers of fish and fishery products

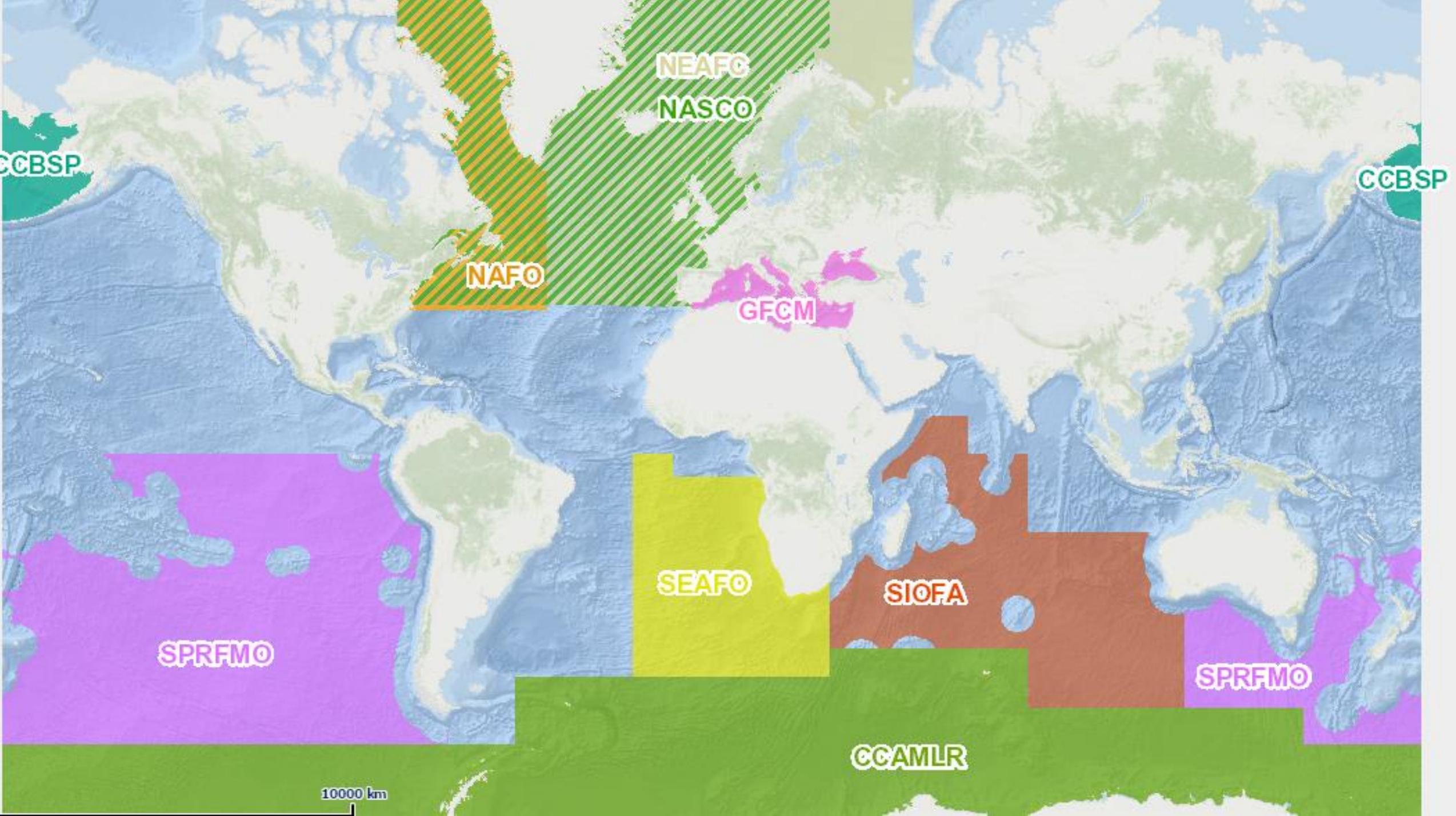
	2002	2012
	<i>(US\$ millions)</i>	
EXPORTERS		
China	4 485	18 228
Norway	3 569	8 912
Thailand	3 698	8 079
Viet Nam	2 037	6 278
United States of America	3 260	5 753
Chile	1 867	4 386
Canada	3 044	4 213
Denmark	2 872	4 139
Spain	1 889	3 927
Netherlands	1 803	3 874
TOP TEN SUBTOTAL	28 525	67 788
REST OF WORLD TOTAL	29 776	61 319
WORLD TOTAL	58 301	129 107

IMPORTERS

Japan	13 646	17 991
United States of America	10 634	17 561
China	2 198	7 441
Spain	3 853	6 428
France	3 207	6 064
Italy	2 906	5 562
Germany	2 420	5 305
United Kingdom	2 328	4 244
Republic of Korea	1 874	3 739
China, Hong Kong SAR	1 766	3 664
TOP TEN SUBTOTAL	44 830	77 998
REST OF WORLD TOTAL	17 323	51 390
WORLD TOTAL	62 153	129 388

Note: APR refers to the average annual percentage growth rate for 2002–2012.





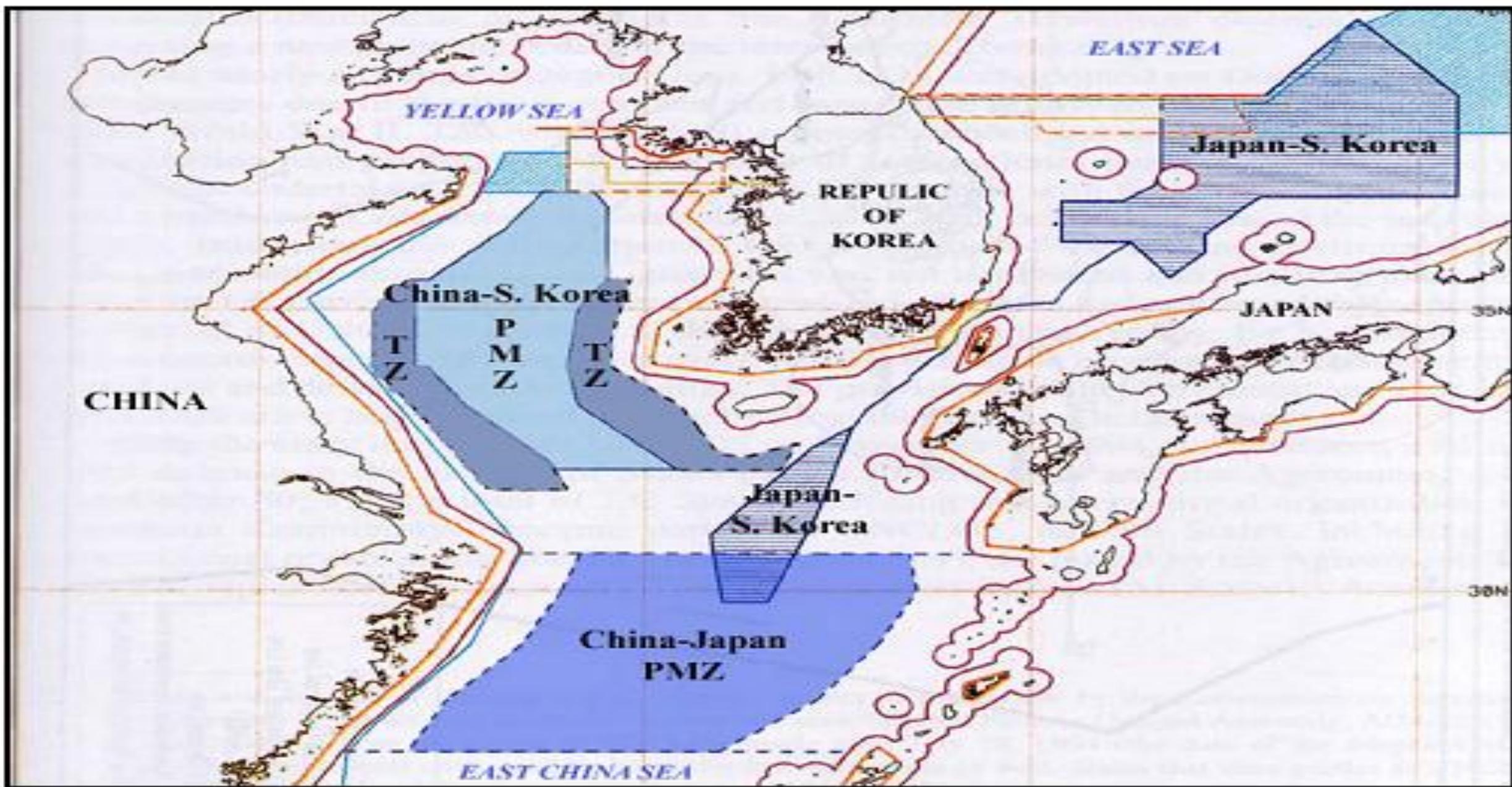
	WCPFC	IOTC	ICCAT	IATTC	CCSBT
PRC	P	P	P	P	NP
JP	P	P	P	P	P
ROK	P	P	P	P	P
TW	P	NP	(CNP)	P	P
VN	(CNP)	NP	NP	NP	NP
TH	(CNP)	P	NP	NP	NP
ID	P	P	NP	CNP	P
MY	NP	P	NP	NP	NP
PH	P	P	P	NP	CNP

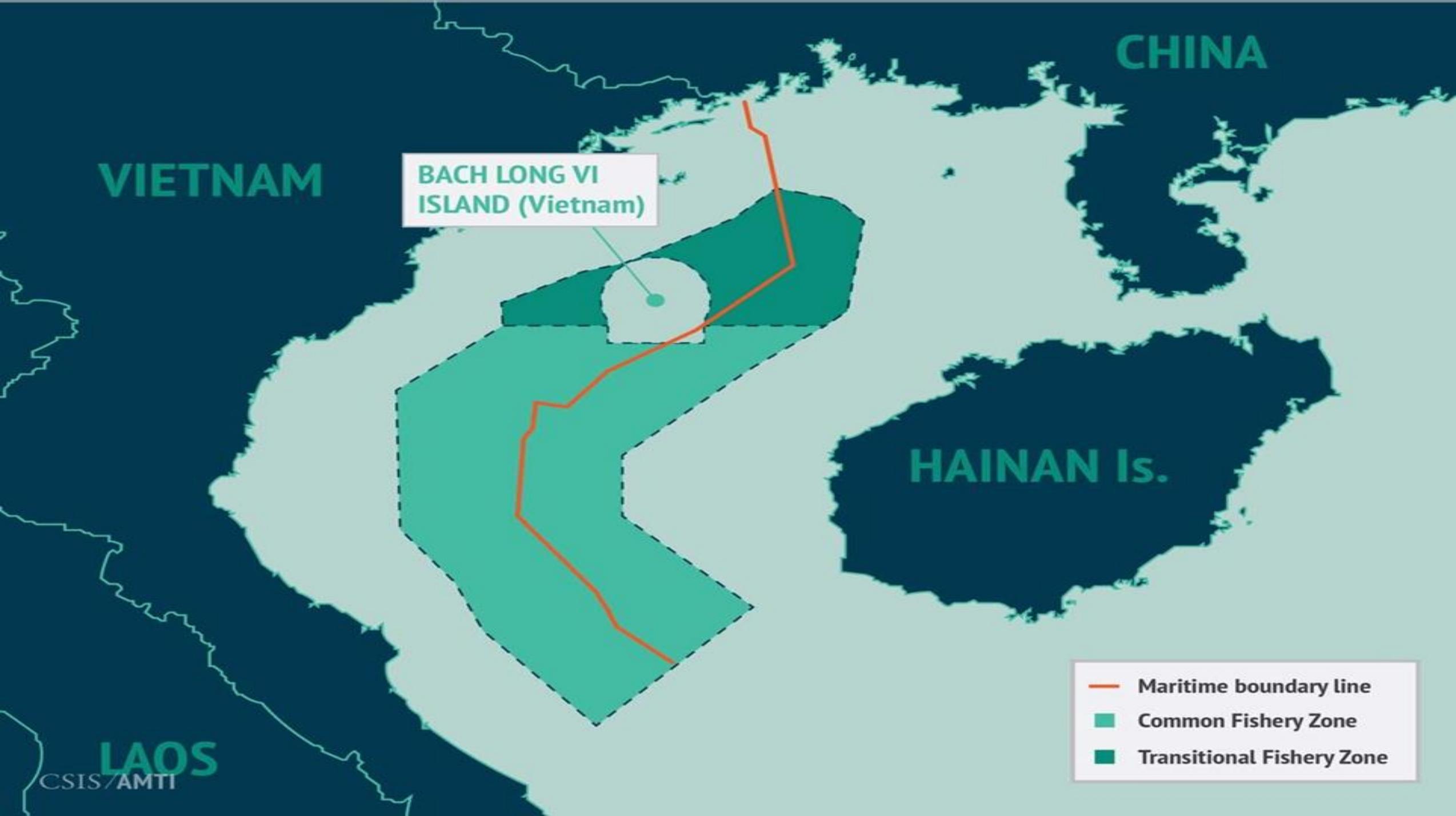
Fisheries Agreements (FAs) in East Asia

- PRC – JP (1997), ROK (1998), VN (2000)
- JP – ROK (1965, 1998, 2013, 2014); TW (2013),
- ROK – JP (1965, 1998, 2013, 2014), PRC (1998)
- TW – JP (2013), PH (2015; more on MARLEN)
- VN – PRC (1957, 1963, 1961 expired in 1979, 2000)
- ID – PH (2000; exp 2006); MY (2012; MARLEN MoU); negotiating with TH
- PH – ID (2000; exp 2006), TW (2015; more on MARLEN)

Types of Fisheries Agreements (FAs)

- With or preceded by delimitation e.g. PRC-VN
- Without delimitation e.g. PRC-JP, PRC-ROK, JP-ROK
- Grant of traditional fishing rights in TS, EEZ of other coastal states e.g. ID in AU; JP, ROK, PH, TH in ID
- Agreement on maritime law enforcement e.g. non-use of lethal force, asked to leave but no arrest (MY-ID)





Lessons – anchors & drivers of FA

- Fisheries agreements (FA) can anchor on many relevant UNCLOS provisions and precedent state practice
- Some FAs predate UNCLOS and formal establishment of relations (PRC-JP 1955); Fisheries has been an important issue in normalizing relations (PRC-JP); fisheries cooperation as one takeaway issue in recent Ramos visit
- Higher salience attach to fisheries resources make states open to FA w/out infringing sovereignty – there are many formulas to choose from e.g. ID allows foreigners to fish in its EEZ provided they enter in JVs with local ID fishing cos.
- States that are major fish consumers, traders (import-export) and distant fishers are more likely to engage in FA e.g. NEA
- Traditional fishing rights can facilitate FA; PCA ruling affirmed TF of PRC in BdM – will this lead to FA?

Lessons – anchors & drivers of FA

- Dwindling fisheries stocks compels major fishing states to reduce fishing activities in near coastal waters making them more open to FA; overexploitation will seriously affect traditional & small-scale fishers – a serious domestic issue
- Increased distant waters fishing may intensify conflict in disputed waters w/out S/RFMO e.g. N&W SCS are overfished compared to S&E
- Denying disputant use of envt card (e.g. unilateral fishing ban) to bolster maritime claims raise salience of FA
- Private fishing associations can be used to skirt political challenges (PRC-JP 1955); Strong fisheries interests pressure govts to reach agreement e.g. PH fishing cos. pressure govt to revive/keep FA w/ ID

Lessons – negotiation period & duration

- FAs are incrementally built over time e.g. 2000 PRC-VN FA traces back to 1957 Agreement on Sailboat Fishing
- In NEA, FAs are of shorter duration, but regularly renewed; fishing may continue post agreement expiry based on previous terms, while proposed revisions are being negotiated
- S/RFMOs takes less time to conclude – WCPFC negotiated in 6 yrs & entered into force 4 yrs after; PRC-VN traces back to 1957, PRC-JP to 1955 – easier to discuss fishing in high seas than in overlapping EEZs
- FA accompanied by delimitation have longer durations e.g. PRC-VN (15 yrs) v PRC-ROK (5 yrs)

Outlook for SCS

- Most major E Asian fishing states are members of larger RFMOs and has prior state practice in FA w/ neighbors ; will this experience help bring about S/RFMO in SCS?
- Networks, institutions & habits of cooperation can provide basis for regional FA e.g. case for Mediterranean Sea; can DOC, COC negotiations, ASEAN-PRC forums offer platforms?
- Most FAs in E Asian waters remain bilateral; FA in SCS may take time?
- JD on O&G more difficult to negotiate than FA but mutually exclusive; NEA has more state practice on FA, but SEA has more in terms of O&G JD
- Threat of overexploitation & parity in fishing capacity, activity seem to increase tendency towards FA; PRC & VN > fishing states than PH, MY, ID – makes difficult FA in SCS?
- FAs w/ dispute settlement mechanism have better potentials e.g. 2000 PRC-VN