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Regional Cooperation for Protection of the Marine Environment in Southeast Asia: A Brief History

Purpose of this paper

This paper has been prepared as a background document for participants to the CIL International Conference on Regional Cooperation for the Marine Environment that will be held in Singapore on 15-16 January 2019. It provides an overview of regional cooperative mechanisms established in Southeast Asia to handle different aspects of the protection and management of the marine environment. Context to this overview of regional mechanisms is provided by a summary of relevant international legal obligations from the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and the development of the Regional Seas Programme (RSP).

This paper is a working reference document and will be revised as CIL research work on regional institutions, mechanisms, laws, arrangements and practices with respect to the marine environment progresses. It is a first step towards a line of enquiry concerning the extent to which regional bodies can contribute to better protection and sustainable use of the marine environment through the implementation of marine environmental law in an 'ASEAN way'. Regional bodies are being studied with the aim of eventually identifying which international rules they may be implementing.

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1. Background and history

1.1. Origin of the Regional Seas Programme (RSP)

Regional cooperation in marine matters has a history extending back beyond the 1982 adoption of the UNCLOS. Following the 1972 United Nations Conference on the Human Environment, entailing the Stockholm Declaration,¹ the UN General Assembly established the United Nations Environment Programme (UNEP, now UN Environment) through UN GA Res. 2997 (XXVII). It was invited *inter alia* to make efforts towards the implementation of environmental programmes ‘in view of the particular need for the rapid development for regional cooperation’². UNEP adopted oceans as a relevant area for international and regional cooperation and went on to establish the RSP in 1974.³ At this time, the Third United Nations Conference on the Law of the Sea negotiations were beginning, and a proposal had already been made to the Seabed Committee⁴ in 1973 to include a cooperation obligation relating to the prevention of pollution.⁵ This eventually became the Art. 197 UNCLOS general obligation relating to cooperation for the protection and preservation of the marine environment, discussed below. The UNEP Programme was not, therefore, directly related to this general obligation, but can be seen as part of a movement towards environmental cooperation emerging concurrently.

The RSP is one of UNEP’s most significant achievements since its inception. The RSPs launched under the programme began with the Mediterranean RSP in 1975. Of the early RSPs, the Caribbean and Mediterranean agreements are often referred to as the most successful.⁶ There are currently 18 RSPs globally. Seven are administered by UNEP, while others are administered in cooperation with *inter alia* the United Nations Development Programme, the Global Environment Facility, and the European Union; others are independent. The Regional Seas Programme describes itself as ‘the world’s only legal framework for protecting the oceans and seas at the regional level.’⁷ Most RSPs -those adopted under the original UNEP Programme and others- contain a legally binding core and a more flexible action plan. This provides for a firm legal basis of obligations along with a more flexible policy instrument that is adaptable to the needs of the region. In Southeast Asia, in 1983 the Action Plan for the Protection and Development of the Marine Environment and Coastal Areas of the East Asian Seas Region (the East Asian Seas Action Plan) set up the Coordinating Body of the Seas of East Asia (COBSEA). It will be discussed in detail below.

¹ UN Doc A/CONF.48/14/Rev 1.

² *Ibid.*, para. 4.

³ See further B. Baker and A Share, Regional Seas, Environmental Protection, MPEPIL, available at: opil.ouplaw.com.

⁴ The Seabed Committee was a committee set up by the UN General Assembly in 1967. Its multi-volume report formed the basis of the substantive work at UNCLOS III.

⁵ Seabed Committee, Note by the Chairman of Working Group 2 Addressed to the Chairman of Sub-Committee III, UN Doc. A/AC.138/SC.III/L.52 (1973), Annex I. See Tim Stephens, Article 197, in Proelss (ed.), The United Nations Convention on the Law of the Sea: A Commentary (2017), 1330.

⁶ Baker/Share (note 3), para. 5.

⁷ See <https://www.unenvironment.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/why-does-working-regional-seas-matter>.

1.2. UNCLOS provisions with particular relevance to the Regional Seas Programme

First, however, it is useful to lay out the international legal framework regarding the protection and preservation of the marine environment and regional cooperation with regard thereto. The UNCLOS is a treaty with near universal membership, and many of its provisions have also achieved the status of customary international law. In addition, with regard to Southeast Asia, all states in the region are parties to the UNCLOS with the sole exception of Cambodia.

Part XII of the UNCLOS contains the substantive and framework provisions relating to the protection and preservation of the marine environment. The Art. 192 general environmental protection obligation reads:

States have the obligation to protect and preserve the marine environment.

This provision is intrinsically related to Art. 193, which lays out:

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

This provision ensures that, in all resource related uses of the oceans, states are under the specific obligation to act in accordance with their general duty to protect and preserve the marine environment. Art. 194 then lays out an obligation on states to take all measures that are “necessary to prevent, reduce and control pollution of the marine environment from any source” (Art. 194 (1)) and all necessary measures to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States...” (Art. 194 (2)). These measures include “those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life” (Art. 194 (5)).

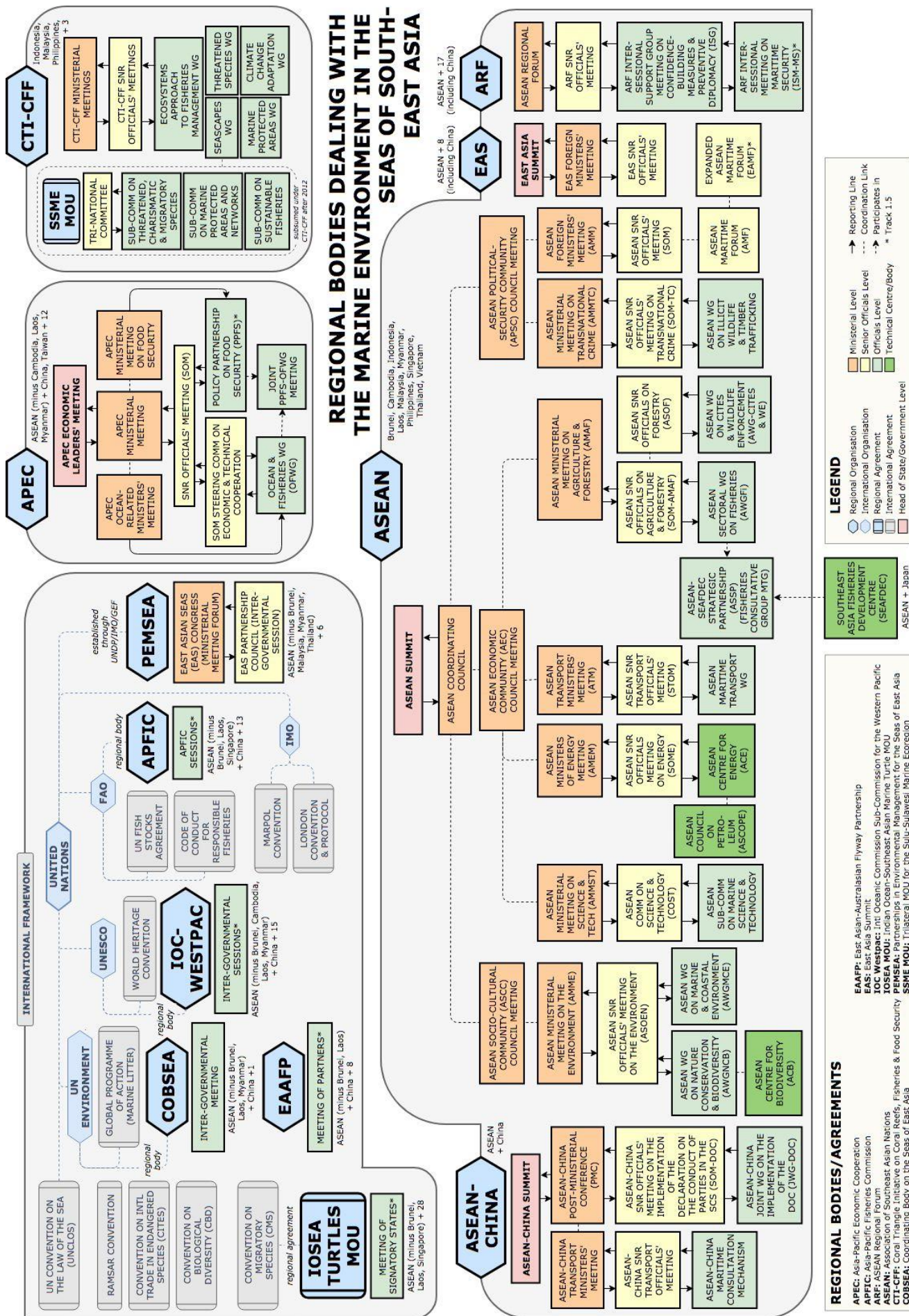
“Pollution of the marine environment” is defined in Art. 1 (4) of UNCLOS as:

the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities

The Art. 197 environmental protection cooperation obligation reads:

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

This provision provides a legal obligation to cooperate -as appropriate, regionally -in formulating and elaborating rules, standards, practices and procedures with regard to marine environmental protection-provided they are in line with the other rules laid out in the UNCLOS. This includes the proviso ‘taking into account characteristic regional features’, which demonstrates a flexibility in the international legal



framework that allows regional arrangements to take into account regional particularities. This obligation is one of conduct, rather than result. The extensive engagement of coastal states in RSPs demonstrates that such cooperation is relatively widespread.

There is a large number of bodies engaged in cooperative efforts with regard to marine issues that touch in some way on environmental protection. Figure 1 aims to give an overview of (most of) these bodies with regard to Southeast Asia (it is currently under review. An updated version will be available for download on CIL website from end of January 2019). The following sections will then go on to discuss a select few of them in greater detail.

2. UN-related institutions and programmes

2.1 COBSEA and the UNEP/GEF SCS Project

The Coordinating Body of the Seas of East Asia (COBSEA), established by the 1981 East Asian Seas Action Plan,⁸ ‘stimulated by concerns on the effects and sources of marine pollution’, has ‘steered a unique course’.⁹ Unlike the RSPs established in other regions, it does not contain a legally binding core. Rather than have its basis in a regional treaty or convention, it promotes compliance with existing environmental treaties ‘based on member countries’ goodwill.’¹⁰ This unique set up is reflected in the regional preference for non-interference and consensus-building, rather than majority rule, in the development of cooperative endeavours and achievement of shared goals (the “ASEAN way”¹¹).

The authority to determine the content of the East Asian Seas Action Plan, to review its progress and to approve its programme of implementation is vested in the regular, periodic meetings of governments forming COBSEA.¹² COBSEA originally had 5 members: Indonesia, Malaysia, Philippines, Singapore and Thailand. It was expanded in 1994 to include Australia, Cambodia, the People’s Republic of China, the Republic of Korea, and Vietnam. Australia has since left. It thus currently enjoys participation by all South China Sea and Gulf of Thailand coastal States. Its secretariat is based in Bangkok, Thailand.

The three original aims of 1981 East Asian Seas Action Plan were:

- 1- Assessment of the state of the marine environment;
- 2- Management of those marine and coastal development activities which may have an impact on environmental quality or on the protection and use of renewable marine resources on a sustainable basis;
- 3- Development of suitable coordinating measures for the successful implementation of the action plan.

⁸ 1981 Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region, UNEP Regional Seas Reports and Studies No24, UNEP 1983. Available https://www.cobsea.org/documents/action_plan/ActionPlan1983.pdf.

⁹ <https://www.cobsea.org/aboutcobsea/background.html>.

¹⁰ Ibid.

¹¹ See Hiro Katsumata, ‘Reconstruction of Diplomatic Norms in Southeast Asia: The Case for Strict Adherence to the “ASEAN Way”’ (2003) 25 Contemporary Southeast Asia: A Journal of International and Strategic Affairs 104, 104-121. For further detail on ASEAN, see below section 3.

¹²

Implementation of the East Asian Seas Action Plan is guided by strategic directions adopted by the COBSEA Intergovernmental Meeting.¹³

The 1981 East Asian Seas Action Plan was revised in 1994, in line with the revision of COBSEA's Long-Term Strategy which had to take into consideration Chapter 17 of Agenda 21. The last Action Plan sets out a series of steps to be undertaken for environmental assessment and management including a regional database, long-term monitoring, environmental impact assessment, rehabilitation of vital ecosystems and restoration of ecologically or economically important species and communities. It also highlights that for ASEAN countries, the existing ASEAN Senior Officials on Environment and their representatives would also function as the government representatives in the COBSEA meetings.¹⁴

The “New Strategic Direction for COBSEA (2008-2012)” focused on: information management; national capacity building; strategic and emerging issues; and regional cooperation, ‘emphasizing, in particular, land-based sources of marine pollution, sustainable management of critical habitat, related spatial planning including to build climate change resilience, as well as assessment and knowledge management.’

Notable achievements include:

- development of a State of the Marine Environment Report,
- adoption of a Regional Action Plan on Marine Litter,
- implementation of a regional project on coastal and marine spatial planning,
- development of two UN Environment GEF projects for implementation of the Strategic Action Programme for the South China Sea, and
- implementation of sub-regional projects addressing coastal erosion, environmental sustainability in the dive tourism industry, and participation in natural resource governance on small islands.¹⁵

Since April 2018, COBSEA has been working towards the COBSEA Strategic Directions 2018-2022. This has the purpose of guiding participating countries towards development and protection of the marine environment and coastal areas of East Asian Seas, leveraging COBSEA as an intergovernmental policy mechanism towards planning, implementation and tracking of delivery of ocean-related Sustainable Development Goals.¹⁶ These new strategic directions are divided into three categories: Land-based marine pollution, marine and coastal planning and management; as well as an over-arching governance theme.

COBSEA has also been associated with the Global Environment Fund (GEF)¹⁷/UNEP South China Sea Project, “Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand”. It

¹³ COBSEA 2018. COBSEA Strategic Directions 2018-2022. Secretariat of the Coordinating Body on the Seas of East Asia (COBSEA) and United Nations Environment Programme, Bangkok., 5. Available <https://www.cobsea.org/aboutcobsea/COBSEA%20Strategic%20Directions%202018-2022.pdf>.

¹⁴ 1994 Action Plan for the Protection and Sustainable Development of the Marine and Coastal Areas of the East Asian Region. Available https://www.cobsea.org/documents/action_plan/ActionPlan1994.pdf

¹⁵ Ibid., 6.

¹⁶ Ibid., 7.

¹⁷ The GEF has three implementing agencies: the United Nations Development Programme (UNDP), UNEP and the World Bank.

was funded by the GEF and implemented by UNEP, in partnership with Cambodia, China, Indonesia, Malaysia, Philippines, Thailand, and Vietnam.¹⁸ Planning commenced in 1996 and the project became fully operational from February 2002 to January 2009.¹⁹ The conclusions of the initial Transboundary Diagnosis Analysis²⁰ were followed up on with four project components:

- 1) Habitat degradation and loss focused on four priority habitats: mangroves, non-oceanic coral reefs, seagrasses and wetlands;
- 2) Over-exploitation of fisheries in the Gulf of Thailand; this component did not involve China and extended to the SCS. It resulted in the identification of commercially important transboundary fish species and their *refugia*. The Southeast Asia Fisheries Development Centre (SEAFDEC) which has been associated to the work of the SCS Project became the executing agency of the outcome of the SCS Project with respect to fisheries;²¹
- 3) Land-based pollution;
- 4) Project-coordination and management.²²

2.2 PEMSEA

Another significant intergovernmental body regarding marine environmental protection in Southeast Asia is the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA). PEMSEA originated in the GEF/UNDP Prevention and Management of Marine Pollution in the East Asian Seas project, with the International Maritime Organization (IMO) as an executing body.²³ It had a regional office hosted in the Philippines. It ran from 1993-1999. The second phase of the project focusing on building intergovernmental, interagency and multisectoral partnerships in environmental management was supported by GEF, with implementation beginning in October 1999. The thrust of the new project was to build partnerships, hence the acronym PEMSEA, to represent the new project initiatives. It was conducted between 1999-2007. It then led to the transformation of PEMSEA into a self-sustaining regional operating mechanism,²⁴ implementing the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA).

PEMSEA has 11 country partners (Cambodia, People's Republic of China, Indonesia, Japan, DPR Korea, Laos, Philippines, Republic of Korea, Singapore, Timor-Leste and Vietnam). Of these, Japan, DPR Korea

¹⁸ Brunei and Singapore did not take part in this project as they were not eligible for GEF funding.

¹⁹ See Sulan Chen (2013) Environmental Cooperation in the South China Sea: Factors, Actors and Mechanisms, *Ocean and Coastal Management* 85: 131-140 and J Michael Bewers and John C Pernetta (2013) Outcomes of the SCS Project and their Applicability to Multilateral Cooperative Initiatives for the Management of Coastal Seas and marine Basins, *Ocean and Coastal Management* 85: 268-275.

²⁰ L Talaue-McManus (2000) Transboundary Diagnosis Analysis for the South China Sea, EAS/RCU, Technical Report Series No 14 UNEP, Bangkok, Thailand. See also the website of the UNEP/GEF SCS Project at http://www.unepscs.org/Project_Background.html.

²¹ Implementation of the SCS Strategic Action Programme (SCS SAP): Status of GEF Project, UNEP/DEPI/COBSEA IGM 22/7, 27-28 April 2015. Available

[http://www.cobsea.org/Events/Implementation%20of%20the%20South%20China%20Sea%20Strategic%20Action%20Programme%20\(SCS%20SAP\)%20-%20Status%20of%20GEF%20Projects.pdf](http://www.cobsea.org/Events/Implementation%20of%20the%20South%20China%20Sea%20Strategic%20Action%20Programme%20(SCS%20SAP)%20-%20Status%20of%20GEF%20Projects.pdf). See also Christopher J Paterson et al (2013) Fisheries

Refugia : a Novel Approach to Integrating Fisheries and Habitat Management in the Context of Small-Scale Fisheries Pressure

²² UNEP Project Document, UNEP/GEF/SCS [Project Document] November 2001. Available

file:///C:/Users/Windows/Downloads/SCS_Project_Document.pdf.

²³ See <https://www.thegef.org/project/prevention-and-management-marine-pollution-east-asian-seas>.

²⁴ See further <http://pemsea.org/about-PEMSEA/history>.

and Timor-Leste are not members of COBSEA. It notably does not include three South China Sea and Gulf of Thailand coastal states (Thailand, Malaysia, Brunei) as members although they can participate to meetings as observers. Thailand has been the subject of PEMSEA projects despite not being a member and Malaysia attends most meetings as an observer.

Furthermore the original SDS-SEA regional marine strategy has been adopted on 12 December 2003 in the Putrajaya Declaration on Regional Cooperation for the Sustainable Development of the Seas of East Asia by Brunei Darussalam, Cambodia, China, DPR Korea, Indonesia, Japan, Malaysia, Philippines, Republic of Korea, Singapore, Thailand and Vietnam.²⁵ It was later revised in 2015. It is non-binding but demonstrates political consensus on a series of issues.²⁶

PEMSEA is renowned for its Integrated Coastal Management (ICM) framework, developed under the leadership of Prof Chua Thia-Eng, as well as its ICM demonstrations sites.²⁷ It also supports numerous community-based projects and has developed a PEMSEA Network of Local Governments (PNLG) for Sustainable Coastal Development.²⁸ Of note, local governments from Malaysia and Thailand are included in this PNLG.

There have also been some instruments adopted under PEMSEA. With regard to pollution, in 2006 Cambodia, Thailand and Vietnam signed the Joint Statement on Partnership in Oil Spill Preparedness and Response in the Gulf of Thailand (GOT Program).²⁹

3. ASEAN, ASEAN bodies and working groups, specialised centres and other related bodies

3.1 ASEAN Bodies and Working Groups

The Association of Southeast Asian Nations (ASEAN) is a regional cooperative intergovernmental organization. It currently has ten member states: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. It was established in 1967 and has had its current make up since 1999. Organised under the ASEAN Summit, the ASEAN Coordinating Council coordinates the three pillars: the ASEAN Socio-Cultural Community (ASCC) Council Meeting; the ASEAN Economic Community (AEC) Council Meeting; and the ASEAN Political-Security Community (APSC) Council Meeting. All three pillars have several bodies involved in issues related to marine environmental protection.³⁰ (see Figure 1)

ASEAN has a coastline of 173,000 km and includes five of the world's top fifteen largest capture fisheries producers, Indonesia (2nd largest producer globally), Viet Nam, the Philippines, Malaysia and Thailand. China is by far the top fish producer.³¹ In 2014, the marine capture fisheries in Southeast Asia was

²⁵ Available <http://www.pemsea.org/sites/default/files/putrajaya-declaration.pdf>

²⁶ PEMSEA (Partnerships in Environmental Management for the Seas of East Asia) (2015) Sustainable Development Strategy for the Seas of East Asia (SDS-SEA), PEMSEA, Quezon City, Philippines. Updated 2015. Available <http://pemsea.org/sites/default/files/SDS-SEA%202015%20FINAL%2002222016%20FULL.pdf>.

²⁷ See PEMSEA's website: <http://www.pemsea.org/>.

²⁸ See <http://pemsea.org/about-pemsea/our-network/local-governments>.

²⁹ See EAS Congress 2006 Bulletin, <http://enb.iisd.org/crs/easc2006/html/ymbvol131num2e.html>.

³⁰ See Figure 1.

³¹ FAO (2018) The State of World Fisheries and Aquaculture 2018. Meeting the SDGs. [9] Available <http://www.fao.org/3/I9540EN/I9540en.pdf>. Of note, capture production includes in-land fisheries capture production.

reported as representing 18.4% of the global capture production.³² In addition, Southeast Asia hosts ‘35% of the world’s mangrove forests, and about 30% of the coral reefs.’³³

Recognising the importance of these resources for the livelihood of the peoples of the ASEAN region, ASEAN leaders have ‘resolved to foster the conservation and sustainable management of coastal and marine ecosystems’, *inter alia* through commitments in the Blueprint for the ASEAN Socio-Cultural Community (ASCC Blueprint) 2025. This Blueprint aims to guide the ASEAN Working Group on the Coastal and Marine Environment (AWGCME).³⁴

AWGCME aims to ensure ASEANs coastal and marine environment are sustainably managed; representative ecosystems, pristine areas, and species are protected; economic activities are sustainably managed; and public awareness of the coastal and marine environment instilled.

AWGCME will also function as a consultative forum to promote coordination and collaboration among various relevant ASEAN and other regional marine-related initiatives to ensure a well-coordinated and integrated approach to the conservation and sustainable management of the coastal and marine environment.³⁵

The Blueprint lays out the relevant strategic measures for Conservation and Sustainable Management of Biodiversity and Natural Resources in section C.1 which includes specific references to the coastal and marine environment:

- iii Promote cooperation for the protection, restoration, and sustainable use of coastal and marine environment, respond and deal with the risk of pollution and threats to marine ecosystem and coastal environment, in particular in respect of ecologically sensitive areas;
- iv Adopt good management practices and strengthen policies to address the impact of development projects on coastal and international waters and transboundary environmental issues, including pollution, illegal movement and disposal of hazardous substances and waste, and in doing so, utilise existing regional and international institutions and agreements;
- v Enhance policy and capacity development and best practices to conserve, develop and sustainably manage marine, wetlands, peatlands, biodiversity, and land and water resources;
- vi Promote capacity building in a continuous effort to have sustainable management of ecosystems and natural resources;
- vii Promote cooperation on environmental management towards sustainable use of ecosystems and natural resources through environmental education, community engagement, and public outreach;

³² FAO (2018) and SEAFDEC (2018), *supra* note Fishery Statistical Bulletin of Southeast Asia 2016, SEC/ST/51- Bangkok, Thailand. Available <http://repository.seafdec.org/handle/20.500.12066/1818>; accessed 3 Oct 2018 and data from the Sea around of Us Project, extracted on 3 Oct 2018 from <http://www.seaaroundus.org/data/#/lme/36?chart=catch-chart&dimension=reporting-status&measure=tonnage&limit=20>

³³ <http://environment.asean.org/awgcme/>.

³⁴ ASEAN Socio-Cultural Community Blueprint 2025. Available <https://asean.org/storage/2016/01/ASCC-Blueprint-2025.pdf>

³⁵ Ibid.

- viii Strengthen global and regional partnerships and support the implementation of relevant international agreements and frameworks;
- ix Promote the role of the ASEAN Centre for Biodiversity as the center of excellence in conservation and sustainable use of biodiversity; and
- x Support the full implementation of the Strategic Plan for Biodiversity 2011-2020 and the Aichi Targets.³⁶

These strategic measures are clearly highly relevant for regional cooperation for the protection and preservation of the marine environment. They firmly place ASEAN in a central role for such cooperative efforts, at least between ASEAN member states but also in the wider region (see below on ASEAN+China).

Many other ASEAN working groups under each pillar are relevant to the protection of the marine environment. They include: the ASEAN Sub-Committee on Marine Science and Technology; the ASEAN Maritime Transport Working Group; the ASEAN Working Group on CITES Wildlife Enforcement; and the ASEAN Maritime Forum. The cooperative efforts regarding fisheries under ASEAN, particularly through the SEAFDEC, will be dealt with in the section on fisheries, below.

Despite criticisms on the effectiveness of its mechanism on environmental protection, ASEAN has developed and adopted a number of guidelines for the protection of the marine environment. It adopted criteria for national marine protected areas in 2002 grouped into five categories of social, economic, ecological, regional, and pragmatic criteria.³⁷ In the same year, the ASEAN Environment Ministries also endorsed 17 parameters, which were the fruits of rigorous investigation by ASEAN scientists, to assess marine water quality in the region.³⁸

As early as 1997, all ASEAN member states (with the exception of Cambodia) agreed on a Memorandum of Understanding (MOU) on ASEAN Sea Turtle Conservation and Protection.³⁹ The MOU provides that it comes in force on the date of signature.⁴⁰ Since the document takes the form of an MOU, ratification is not required. This MOU targets specific species of sea turtles and their habitats, both aquatic and terrestrial environments.⁴¹ Several regional institutions are involved in this MOU, with the key actors being the ASEAN Fisheries Working Group (AFWG) and Malaysia as the Coordinator of this MOU.⁴² The parties designated Malaysia as the Coordinator because they regarded Malaysia as the most experienced state in the region on sea turtle conservation. As coordinator, Malaysia is responsible for organizing meeting of the Expert Technical Working Group, which is tasked to prepare an ASEAN program and work plan on sea turtle conservation and protection.⁴³

³⁶ ASCC Blueprint 2025, available <https://asean.org/storage/2016/01/ASCC-Blueprint-2025.pdf>.

³⁷ 2002 ASEAN Criteria for National Marine Protected Areas.

³⁸ ASEAN Marine Water Quality Criteria: Management Guidelines and Monitoring Manual. Available <http://environment.asean.org/wp-content/uploads/2015/07/ASEAN-MarineWaterQualityManagementGuidelinesandMonitoringManual.pdf>.

³⁹ 1997 Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection, signed on 12 September 1997. Available https://asean.org/?static_post=memorandum-of-understanding-on-asean-sea-turtle-conservation-and-protection.

⁴⁰ Ibid., Art. 7 (1).

⁴¹ Ibid., Art. 1.

⁴² Ibid., Arts. 5 (1) and (2).

⁴³ Ibid., Arts. 5 (3) and 6 (3).

Meanwhile, AFWG holds the role to endorse the program and work plan prepared by the Expert Technical Working Group but the approval power is within the Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry (SOM-AMAF).⁴⁴ The SOM-AMAF had endorsed the program and work plan for ASEAN sea turtle conservation and protection during their 20th meeting in 1998.⁴⁵ The parties also cooperate and collaborate with the Southeast Asian Fisheries Development Centre (SEAFDEC) as the ‘competent technical regional organisation on marine issues in the ASEAN region.’⁴⁶ Whether any collaboration project has been completed or still underway in the context of this MOU is subject to further research. Relationship of this ASEAN MOU with the 2001 MOU on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and Southeast Asia (IOSEA Marine Turtle MOU) is also under investigation. Of note, the IOSEA Marine Turtle MOU has been adopted by most ASEAN States.⁴⁷

3.2 ASEAN Centre for Biodiversity

The Blueprint also makes specific reference to the ASEAN Centre for Biodiversity (ACB). The ACB is an intergovernmental centre of excellence that facilitates cooperation and coordination among ASEAN members and with regional and international organizations ‘on the conservation and sustainable use of biological diversity, and the fair and equitable sharing of benefits arising from the use of such natural resources.’⁴⁸ The ACB had its origins in a 1998 project with funding from the European Union. The outcome of the project led the ASEAN member states to establish the ACB in 2005. It is based in Laguna, Philippines. The ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) recommends key areas for the ACB to work on, and AWGNCB Members also act as ACB National Contact Points in their respective countries.

The ACB has five components for the implementation of its projects and programmes: Programme Development and Implementation, Capacity Building, Biodiversity Information Management, Communication and Public Affairs, and Organizational Management and Resource Mobilization. Key ACB programmes include the ASEAN-China Environmental Cooperation Plan II, the ASEAN-Korea Environmental Cooperation Project and the ASEAN-Korea Environmental Cooperation Project.

The ACB also serves as the Secretariat of the ASEAN Heritage Parks (AHPs). In 1984, ASEAN States signed a Declaration on Heritage Parks and Reserves which was reiterated and replaced on 18 December 2003 by the 2003 ASEAN Declaration on Heritage Parks and Reserves.⁴⁹ Its preamble reflects developments in

⁴⁴ Ibid., Art. 5 (3).

⁴⁵ The 20th Meeting of the ASEAN Ministers on Agriculture and Forestry, September 17-18, 1998, available at <https://asean.org/?static_post=the-20th-meeting-of-the-asean-ministers-on-agriculture-and-forestry-amaf-ha-noi-viet-nam-17-18-september-1998>.

⁴⁶ Ibid., Art. 5 (4).

⁴⁷ MOU on the Conservation and Management of marine Turtles and their Habitats of the Indian Ocean and Southeast Asia, 23 June 2001. Available at <https://www.cms.int/iosea-turtles/en>

⁴⁸ See <https://aseanbiodiversity.org/about-acb/>.

⁴⁹ 2003 ASEAN Declaration on Heritage Parks and Reserves, signed on 18 December 2003. Available <http://asean.org/asean-declaration-on-heritage-parks-2/>; accessed 2 Mar 2018; on the history of the 1984 Declaration, see HD Vu (2013) Towards a Network of marine Protected Areas in the South China Sea: Legal and Political Perspective, Dalhousie University [204-205]. Available <https://dalspace.library.dal.ca/bitstream/handle/10222/31425/Vu-Hai%20Dang-JSD-Law-July-2013.pdf?sequence=1>; accessed 2 Mar 2018. The 2003 Declaration includes Cambodia, Lao PDR, Myanmar and Vietnam which were not members of the ASEAN in 1984. Six ASEAN Member States signed the 1984 Declaration: Brunei Darussalam, Indonesia, Malaysia, the

international marine environmental law and policy since the 1984 Declaration, especially with respect to the conservation of biodiversity by mentioning the targets of reducing losses in biodiversity that were set by the 2002 World Summit on Sustainable Development as well as in situ conservation provisions in the Convention on Biological Diversity. It also refers to the ‘uniqueness, diversity and outstanding values of certain national protected areas of ASEAN member countries’ using the language of the World Heritage Convention on areas of Outstanding Universal Value. It further recognizes that ‘conservation areas should be managed to maintain ecological processes and life support systems, preserve genetic diversity, ensure sustainable utilization of species and ecosystems; and maintain wilderness that represent scenic, cultural, educational, research, recreational and tourism values. To this extent, the 2003 Declaration can be seen as integrating new rules of international law.

In this 2003 Declaration, ASEAN States designated 26 ASEAN Heritage Parks listed in Appendix I to the Declaration.⁵⁰ New sites have since been added to the list on the basis of 2002 ASEAN Criteria for Marine Heritage Areas⁵¹ and another set of general criteria developed by the ASEAN Senior Officials on the Environment. Nomination of new sites follows a review by all Member States.⁵² In evaluating new AHP applications, the ACB works closely with the AWGNCB for terrestrial parks and AWGCME for marine parks. After the ACB receives AHP nominations from the ASEAN member states, it forwards the nomination documents to the corresponding working groups who would then make recommendations for consideration by the ASEAN Senior Officials on the Environment (ASOEN) and the ASEAN Secretariat.⁵³

In managing the AHP, the ACB receives guidance from the AWGNCB, which promotes regional coordination in the implementation of conventions and activities related to biodiversity conservation (see Figure 1). As the AHP Secretariat, the ACB conducts various activities, including evaluating new AHP applications, training and capacity building, and organizing AHP conferences.⁵⁴

The Heritage Park Declaration provides a mechanism to select, among existing protected areas, those which may be granted an ASEAN status. It must be noted that the Declaration appears to have been conceived as a cooperation mechanism rather than a means to create a comprehensive regional network to protect biodiversity in Southeast Asia.⁵⁵

Philippines, Singapore and Thailand. ASEAN Centre for Biodiversity (2010) The ASEAN Heritage Parks. A Journey to the Natural Wonders of Southeast Asia. Los Banos, Laguna, Philippines [1]

⁵⁰ 2003 ASEAN Declaration on Heritage Parks and Reserves, *supra* note 49

⁵¹ 2002 ASEAN Criteria for Marine Heritage Areas, Ventiane 20 November 2002. Available <http://www.asean.org/uploads/archive/cme/ASEAN%20Criteria%20for%20Marine%20Heritage%20Areas.pdf> ; accessed 2 Mar 2018

⁵² Table based on ASEAN Criteria for Marine Heritage Areas and ASEAN Heritage Park Factsheet. Available http://www.nas.gov.sg/archivesonline/data/pdfdoc/20111026002/factsheet-asean_heritage_parks.pdf; accessed 22 Jan 2018. See also ASEAN Centre for Biodiversity (2010) The ASEAN Heritage Parks. A Journey to the Natural Wonders of Southeast Asia. Los Banos, Laguna, Philippines [2-3]

⁵³ See ASEAN Centre for Biodiversity, The ASEAN Heritage Parks: A Journey to the Natural Wonders of Southeast Asia (Laguna: ASEAN Centre for Biodiversity, 2010), pp. 4.

⁵⁴ *Ibid.*

⁵⁵ ASEAN Heritage Parks and Reserves (1988) Japan International Cooperation Agency and United Nations Environment Programme [4]

3.3 ASEAN Centre for Energy

The ASEAN Centre for Energy (ACE) is also engaged in regional cooperation for issues relevant to marine environmental protection, such as work on green house gas (GHG) emissions. The ACE was established in 1999 and is an independent intergovernmental organisation within the ASEAN structure. ACE is based in Jakarta, Indonesia. It aims to represent member states interests in the energy sector through its roles as: an energy **think tank, catalyst** to unify and strengthen ASEAN energy cooperation and integration by implementing relevant capacity building programmes, and the ASEAN energy **data centre and knowledge hub** to provide a knowledge repository.⁵⁶

The cooperative efforts of the ACE include: the ASEAN+3 (China, Japan, Korea) Mitigation Cooperation Programme, aimed at *inter alia* strengthening cooperation in GHG mitigation, capacity building and info sharing on GHG mitigation.

3.4 ASEAN+

With regard to the ASEAN+China, there are also a series of cooperative efforts with regard to protection of the marine environment. The ASEAN-China Dialogue Relations began in 1991 and China was accorded full Dialogue Partner status in 1996. This was further elevated by the signing of the Joint Declaration of the Heads of State/Government on Strategic Partnership for Peace and Prosperity at the 7th ASEAN-China Summit in October 2003.⁵⁷ There is now an ASEAN-China Centre in Beijing, which is a centre to promote ASEAN-China cooperation in trade, investment, tourism, education, and culture. Under the Socio-Cultural Cooperation, cooperation in environmental matters is guided by the ASEAN-China Environmental Protection Cooperation Strategy papers.

The Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2016-2020), under the ongoing efforts relating to the Declaration on the Conduct of Parties in the South China Sea (DOC) and towards a Code of Conduct in the South China Sea (COC), lays out the aim to:

Promote joint cooperation and dialogue in areas such as marine scientific research, protection of the marine environment, safety of navigation and communication at sea, search and rescue operation, humane treatment of all persons in danger or distress, fight against transnational.⁵⁸

Section 3.6 of the Plan of Action relates directly to the environment. It contains a series of aims regarding cooperation in a range of environmental matters.⁵⁹ They include cooperation in environmental technology, data and information sharing, capacity building, and joint study/research, among others.

⁵⁶ See <http://www.aseanenergy.org/about-ace/introduction/>.

⁵⁷ See Overview of ASEAN-China Dialogue Relations, ASEAN Secretariat Information Paper (2018).

⁵⁸ <https://www.asean.org/storage/images/2015/November/27th-summit/ASEAN-China%20POA%202016-2020.pdf>.

⁵⁹ See Plan of Action s. 3.6.1 et seq.

The Plan also makes specific reference to the ASEAN-China Strategy on Environmental Cooperation 2016-2020.⁶⁰ This strategy is a continuation of ASEAN-China Environmental Cooperation beginning in 2009.⁶¹ The principles guiding these cooperative efforts are:

- (a) taking coordinated and integrated steps to address global and regional environmental issues by taking into account obligations under multilateral environmental agreements (MEAs) [to which countries are parties to], as well as national circumstances and development status;
- (b) conducting cooperation and dialogue on an equal position within the mandate and responsibilities of environmental authorities; and cooperation is based on the principles of mutual benefits, consultation and consensus.⁶²

The areas of cooperation include: policy dialogue and exchange, environmental data and information management, environmental impact assessment, biodiversity and ecological conservation, promoting environmental industry and technology for green development, environmentally sustainable cities, environmental education and public awareness, institutional and human capacity building, and joint research.⁶³ Several of these areas of cooperation are directly relevant for the protection and preservation of the marine environment.

In addition, in 2017 China and the ASEAN member states issues the Declaration for a Decade of Coastal and Marine Environmental Protection in the South China Sea (2017-2027).⁶⁴

Regarding efforts both within ASEAN and in the context of ASEAN+ other regional actors, there is a clear demonstration of political will but no legally binding commitments. The plans, strategies etc have an aspirational character. It is also difficult to ascertain the level of coordination between ASEAN bodies engaged in issues of marine environmental protection and between the various ASEAN+ arrangements and the ASEAN bodies.

3.5 ASEAN Council on Petroleum (ASCOPE)

The ASEAN Council on Petroleum (ASCOPE), with the heads of the national oil company of each member state as council members, is an 'instrument for regional cooperation from member countries of ASEAN'⁶⁵ founded in 1975. It is not an intergovernmental meeting. It is made up of seven Business and Development Working Committees, including the 'Health, Safety & Environment' (HSSE). The Committees have the role and/or function *inter alia* to: Plan, identify, evaluate and recommend to the National Committee areas of cooperation and new business opportunities/projects for Member Countries' consideration.⁶⁶

⁶⁰ See <http://environment.asean.org/wp-content/uploads/2017/02/ASEAN-China-Strategy-on-Environmental-Cooperation-2016-2020.pdf>.

⁶¹ For a complete review of ASEAN-China Environmental Cooperation, see Strategy s. 2.1-2.9.

⁶² Strategy s. 3.2.

⁶³ Strategy s. 4.1-4.9.

⁶⁴ <https://asean.org/storage/2017/11/Declaration-for-a-Decade-of-Coastal-and-Marine-Environmental-Protection-in-the-South-China-Sea-2017-2027.pdf>.

⁶⁵ Declaration for the Establishment of the ASEAN Council on Petroleum (ASCOPE), ASEAN Economic Bulletin 6(2) (1989).

⁶⁶ See <http://www.ascopes.org/About/AboutBDC>.

4. Coral Triangle Initiative and the Sulu-Sulawesi Marine Ecoregion

At governmental level, the Coral Triangle Initiative designates broadly the commitments of six governments in the Coral Triangle (Indonesia, Malaysia, Papua New Guinea, Philippines, Solomon Islands and Timor-Leste) to engage in cooperative action to address threats to coral reefs, fisheries and food security (CTI-CFF).⁶⁷ The initial commitment was the Leaders Declaration on Coral Reefs, Fisheries and Food Security of 15 May 2009 in Manado.⁶⁸ Subsequent agreements include the 2011 Agreement on the Establishment of the Regional Secretariat of the CTI-CFF.⁶⁹

However, prior to the development of the CTI-CFF, three of the CTI governments (Indonesia, Malaysia and Philippines) entered into a Memorandum of Understanding on 13 February 2004 to ensure effective protection and sustainable development of the Sulu Sulawesi Marine Eco-region (SSME MOU). Its objectives include the establishment 'of management strategies and coordinated institutions for effective ecoregional conservation' and of a 'functional integrated network of priority conservation areas to ensure ecological integrity'. The conclusion of this 2004 SSME MOU, which is presented as a highlight of CBD COP 7, led to the creation of the Tri-National Committee for the SSME and subsequently, in 2006, to the creation of three Sub-Committees on:

- (1) Threatened, Charismatic and Migratory Species;
- (2) Sustainable Fisheries; and
- (3) Marine Protected Areas (MPAs) and Networks.

The CTI-CFF and the SSME MOU are independent for one another although they share some members, partners, data, and sometime refer to one another. Meetings for the creation and management of each are also held separately. However, work under the SSME MOU is seen as a contribution towards the targets of the CTI-CFF for the SSME, a priority seascape of the CTI.⁷⁰

The CTI-CFF Regional Plan of Action (CTI RPOA) contains 5 goals: strengthening the management of seascapes; promoting an ecosystem approach to fisheries management; establishing and improving effective management of marine protected areas; improving coastal community resilience to climate

⁶⁷ They main to work together 'to sustain extraordinary marine and coastal resources by addressing crucial issues such as food security, climate change and marine biodiversity.' See <http://www.coraltriangleinitiative.org/about>.

⁶⁸ Available

http://www.coraltriangleinitiative.org/sites/default/files/resources/Leader%20Declaration%20coral%20triangle%20initiative_0.pdf; accessed 31 Jul 2018. For further details of the meetings which preceded this declaration, see the summary of the CTI Secretariat at <https://www.thegef.org/news/coral-triangle-initiative-coral-reefs-cti-fisheries-and-food-security>; accessed 31 Jul 2018

⁶⁹ Agreement on the Establishment of the Regional Secretariat of the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (CTI-CFF), CTI-CFF Rules of Procedure, Staff Regulations and Finance Regulations, CTI-CFF Regional Secretariat, 2016. Available

http://www.coraltriangleinitiative.org/sites/default/files/resources/The%20Agreement%20on%20The%20Establishment%20of%20RS%20CTI-CFF_Newest_2017_compressed.pdf; accessed 31 Jul 2018.

⁷⁰ See Action Plan of the Sub-Committee on Marine Protected Areas and Networks of the Sulu-Sulawesi Marine Ecoregion, 2009, Sub-Committee on the Sulu-Sulawesi Marine Ecoregion, Manila, Philippines; and Action Plan of the Sub-Committee on Threatened, Charismatic and Migratory Species of the Sulu-Sulawesi Marine Ecoregion, 2009, Sub-Committee on the Sulu-Sulawesi Marine Ecoregion, Manila, Philippines. Available <https://www.adb.org/sites/default/files/publication/29160/ssme-action-plans.pdf>; accessed 31 Jul 2018. On the non-governmental origin of the SSME MOU, see Miclat EFB et al (2006) Planning across boundaries for the conservation of the Sulu-Sulawesi Marine Ecoregion, *Ocean and Coastal Management* 49: 597-609.

change; and protecting threatened species.⁷¹ It has 5 technical working groups mirroring these goals. The CTI-CFF aims to set up a ‘fully functioning and effectively managed region-wide’ Coral Triangle Marine Protected Area System. What may be instructive for other cooperative efforts is the fact that the CTI-CFF also has governance working groups, including the Coordination Mechanism Working Group. The CTI RPOA describes that:

the successful implementation of the CTI Plan of Action – with its wide ranging and ambitious scope – will require a set of well-structured and highly effective coordination mechanisms across multiple levels of organization. In addition, it will require a large and diverse group of implementation partners from within and outside the region including local governments, local communities, NGOs, major funding institutions, multilateral and bilateral organizations, private sectors companies and others.⁷²

This recognition of the importance of coordination inside the organization and with the diverse funding and implementation partners demonstrates an awareness of the challenges faced by regional cooperative efforts. The CTI-CFF is a more tailored regional effort than many of the others discussed above with more limited participation. This may be instructive for any future issue-based cooperation in Southeast Asia, for example on marine litter and land-based pollution.

The CTI-CFF also relies on non-governmental partners (especially International Organisations (IOs) and Non-Governmental Organisations (NGOs) for funding, technical expertise and as implementing agencies. These include the Global Environment Facility (GEF), the Asian Development Bank (ADB), The Food and Drug Administration (FAO), The Nature Conservancy (TNC), and the World Wildlife Fund (WWF).⁷³

5. Fisheries cooperation

Several regional bodies are designed to foster fisheries cooperation in Southeast Asia. These include in particular the Asia-Pacific Fishery Commission (APFIC) and the Southeast Asian Fisheries Development Center (SEAFDEC), in association with ASEAN.

5.1 APFIC

The APFIC was founded by the Fisheries Committee of the UN Food and Agriculture Organization (FAO) in 1948. APFIC has a wide membership including the majority of states in the region.⁷⁴ Its functions and responsibilities include *inter alia* to conserve and manage resources and protect resources from pollution.⁷⁵

⁷¹ Ibid.

⁷² CTI RPOA Section IV

⁷³ See <https://www.thegef.org/news/coral-triangle-initiative-coral-reefs-cti-fisheries-and-food-security> ; accessed 31 Jul 2018

⁷⁴ In Southeast Asia, Brunei Darussalam and Singapore are the only States that are not a member of APFIC. Current members are: Australia, Bangladesh, Cambodia, China, France, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, Philippines, Republic of Korea, Sri Lanka, Timor-Leste, Thailand, United Kingdom, United States of America, Vietnam. See <http://www.fao.org/apfic/background/about-asia-pacific-fishery-commission/membership/en/>.

⁷⁵ APFIC Agreement, Article IV.

5.2 SEAFDEC and the ASEAN Working Group on Fisheries

The SEAFDEC is an autonomous intergovernmental body. It was established in 1967 ‘with the mandate of developing and managing the potential of fisheries in the region.’⁷⁶ The mission of SEAFDEC considered and adopted by the Special Meeting of the SEAFDEC Council 2017 is ‘To promote and facilitate concerted actions among the Member Countries to ensure the sustainability of fisheries and aquaculture in Southeast Asia.’⁷⁷ It has 11 members, Brunei Darussalam, Cambodia, Indonesia, Japan, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam, but notably does not include China. The main office is located in Bangkok and hosts SEAFDEC Secretariat. Other regional offices host different activities of SEAFDEC:

- Training Department is in Samut Prakan, Thailand,
- Marine Fisheries Research Department in Singapore,
- Aquaculture Department in the Philippines,
- Marine Fishery Resources Development and Management Department in Malaysia; and,
- Inland Fishery Resources Development and Management Department in Indonesia.

SEAFDEC is in institutional partnership with ASEAN through the ASEAN-SEAFDEC Strategic Partnership. Within ASEAN there also exists the ASEAN Sectoral Working Group on Fisheries (AWGFi). Several fisheries policy frameworks have been adopted by ASEAN member states, namely: the Regional Code of Conducts on Responsible Fisheries (RCCRF); the Resolution and Plan of Action on Sustainable Fisheries for Food Security for the ASEAN Region adopted in 2001; the Resolution and Plan of Action on Sustainable Fisheries for Food Security for the ASEAN region Towards 2020.⁷⁸ In addition, ASEAN is currently developing a Common Fisheries Policy (ASEAN CFP), also in cooperation with SEAFDEC.⁷⁹ The CFP is being developed ‘in order to strengthen collective efforts for sustainable and responsible fisheries and food security in the ASEAN region.’⁸⁰

5.3 Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region (RPOA-IUU)

The RPOA-IUU includes Australia, Papua New Guinea and Timor-Leste in addition to ASEAN States. The RPOA-IUU appears to have been initiated by bilateral discussions between Australia and Indonesia involving Australia’s concerns over IUU fishing by Indonesian vessels in Australian waters.⁸¹ However, it transformed into a multilateral coalition among the Ministers of Fisheries of 10 states in 2007: most

⁷⁶ Hounghzhou Zhang, Fisheries Cooperation in the South China Sea: Evaluating the Options, *Marine Policy* 89 (2018), 67-76, 68.

⁷⁷ See <http://www.seafdec.org/about/>.

⁷⁸ See Directive on Development of the Common Fisheries Policy for ASEAN, WP06.2 (2017), Annex 1.

⁷⁹ See <http://www.seafdec.org/seafdec-joins-discussion-development-asean-common-fisheries-policy/>.

⁸⁰ See Directive on Development of CFP.

⁸¹ Meryl J. Williams, “Will New Multilateral Arrangements Help Southeast Asian States Solve Illegal Fishing,” *Contemporary Southeast Asia* Vol. 35(2), (2013), pp. 270.

ASEAN States (not Cambodia, Lao and Myanmar), Australia, Papua New Guinea and Timor Leste.⁸² Of note, China does not appear to be taking part in this initiative.

The RPOA-IUU aims ‘to enhance and strengthen the overall level of fisheries management in the region, in order to sustain fisheries resources and the marine environment, and to optimise the benefit of adopting responsible fishing practices’.⁸³ Indonesia acts as the Secretariat for the IPOA-IUU. A Coordination Committee, which is composed of officials from each participating country, is responsible to review the effective implementation of the RPOA-IUU.⁸⁴ This Committee meets annually to provide advice and direction on coordination and implementation.⁸⁵

The Coordination Committee reports to Fisheries Ministers on the progress of implementation and any additional measures required for implementation.⁸⁶ It also maintains communication with the FAO, and relevant international and regional bodies.⁸⁷

In addition to a Coordination Committee, the RPOA-IUU also has three sub-regional focus areas for:

- (1) Southern and Eastern Area of the South China Sea (SESCS) and Sulu-Sulawesi Seas (SSS);
- (2) Gulf of Thailand (GoT); and
- (3) Arafura-Timor Seas.⁸⁸

There are also a number of bilateral agreements in the region. For example, the China-Vietnam Gulf of Tonkin Fishery Agreement of 2000 or the 2004 China-Philippines Memorandum of Understanding on Fisheries Cooperation.

Finally, other relevant fisheries management organizations/arrangements although they apply primarily on the western side of the seas of Southeast Asia include the Western and Central Pacific Fisheries Commission,⁸⁹ the Indian Ocean Tuna Commission⁹⁰ and the Commission for the Conservation of Southern Bluefin Tuna.⁹¹

6. Asia Pacific intergovernmental bodies and arrangements

6.1 Asia-Pacific Economic Cooperation

Looking beyond Southeast Asia, the Asia-Pacific Economic Cooperation (APEC) began as an informal ministerial-level dialogue in 1989. Over time it has undergone some limited formalisation and institutionalisation,⁹² but continues to exist as a multilateral trade and economic dialogue forum that does not create binding commitments or treaty obligations. However, guidelines can be developed by

⁸² Joint Ministerial Statement, Regional Ministerial Meeting on Promoting Responsible Fishing Practices including Combating IUU Fishing in the Region, 4 May 2007, available at <<http://www.rpoaiuu.org/joint-ministerial-statement/>>.

⁸³ Regional Plan of Action to Promote Responsible Fishing Practices including Combating IUU Fishing in the Region, Appendix D, para. 3. Available <http://www.fao.org/docrep/010/ah998e/AH998E18.htm>.

⁸⁴ *Ibid.*, para. 13.

⁸⁵ RPOA-IUU Meeting Document. Available at <http://www.rpoaiuu.org/meeting-document/>.

⁸⁶ RPOA-IUU Organizational Structure. Available at <http://www.rpoaiuu.org/organizational-structure/>.

⁸⁷ *Ibid.*

⁸⁸ RPOA-IUU Meeting Document. Available at <http://www.rpoaiuu.org/meeting-document/>.

⁸⁹ <https://www.wcpfc.int/home>.

⁹⁰ <http://www.iotc.org/>.

⁹¹ <https://www.ccsbt.org/>.

⁹² For detail, see <https://www.apec.org/About-Us/About-APEC/History>.

working groups such as the on-going effort to develop marine debris management guidelines or a manual for the APEC Region. There are currently 21 members⁹³ who use APEC as a forum for cooperation, based on consensus through working groups and capacity building projects.

Since 2011, APEC has had an Ocean and Fisheries Working Group, which lists as one of its commitments: Ensuring the conservation and sustainable use of marine resources as well as protection of marine ecosystems needed to support fisheries and aquaculture.⁹⁴ In 2014, the Ocean and Fisheries agenda of APEC was adopted to include *inter alia*: Coastal and marine ecosystem conservation and disaster resilience, and Marine science, technology and innovation. In the same year, APEC ministers also adopted a specific annex on Ocean Cooperation in the Asia-Pacific Region.⁹⁵ Although the annex is merely hortatory, not containing any binding obligations, it demonstrates that concerns about marine environmental protection and regional cooperation are also engaging this trade and economic forum. It includes the paragraph:

APEC recognizes the need to conserve and sustain the ocean so that it can continue to meet the needs of the present without damaging the interests of future generations. It is also mindful of increasing challenges both from natural and human factors, such as over-exploitation of resources in the context of increasing human demands, increasing pollution, loss of biodiversity, and the impacts of global climate change and natural disasters. APEC is an important platform for regional economic integration and growth, and a well-placed platform for discussion and cooperation related to the ocean.

APEC Ocean and Fisheries Working Group organises technical workshops on issues of concern. Specific 2018 projects include:

- Assessing the Economic Value of Green Infrastructure in Coastal Ecosystems to Disaster Risk Reduction, Response and Coastal Resilience in the APEC region;
- Developing a Best Practice Global Value Chain Framework on Fisheries Micro, Small, and Medium Enterprises (MSMEs);
- Capacity Building for Marine Debris Prevention and Management in the APEC Region Phase 2 – Implementation of Advanced Marine Debris Management Policies;
- Exchange of Experience to Add Value to Organic Waste from Small-Scale Fisheries and Aquaculture through its Reuse and Conversion into Innovative Products, which Contribute to Enhance Food Security;
- Developing an Action Plan on Illegal, Unreported and Unregulated (IUU) Fishing in APEC;
- Study on the Origin and Distribution of Microplastics in Typical Marine APEC Region.⁹⁶

⁹³ Australia; Brunei Darussalam; Canada; Chile; People's Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; Vietnam.

⁹⁴ <https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Ocean-and-Fisheries>.

⁹⁵ Annex G, see https://www.apec.org/Meeting-Papers/Annual-Ministerial-Meetings/2014/2014_amm/annexg.

⁹⁶ See <https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Ocean-and-Fisheries>

6.2 Tokyo MoU

The Memorandum of Understanding on Port State Control in the Asia-Pacific Region, amended in 2017,⁹⁷ established the Tokyo MoU- an inter-governmental co-operative organization on port state control (PSC). It is not a general environmental protection initiative but rather focuses specifically on port state control and implementation of IMO ship source pollution conventions. It is one of the most active regional port state control organizations in the world. Its mission is:

To promote the effective implementation, and the universal and uniform application, of relevant IMO/ILO instruments on ships operating in the region.⁹⁸

It has 20 member states⁹⁹ and a Secretariat based in Japan.

In implementing the Memorandum

the Authorities will carry out inspections, which will consist of at least a visit on board a ship in order to check the certificates and documents, and furthermore satisfy themselves that the crew and the overall condition of the ship, its equipment, machinery spaces and accommodation, and hygienic conditions on board, meets the provisions of the relevant instruments.¹⁰⁰

The relevant instruments include, inter alia, MARPOL 73/78, the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001, the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992), and the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM 2004).¹⁰¹

The main objective of the Tokyo MOU is to establish an effective port State control regime in the Asia-Pacific region through co-operation of its members and harmonization of their activities, to eliminate sub-standard shipping so as to promote maritime safety, to protect the marine environment and to safeguard working and living conditions on board ships.¹⁰²

Port state control is an additional tool to flag state jurisdiction to help ensure the appropriate implementation of environmental obligations and enforcement in cases of violation, and the Tokyo MoU is thus important in Southeast Asia to aid in the implementation of international obligations.

6.3 Asia-Pacific Heads of Maritime Safety

In the wider Asia-Pacific region, the Asia-Pacific Heads of Maritime Safety forum was established in 1996 'to promote safe, secure shipping and a clean marine environment within the Asia-Pacific region'.¹⁰³ It works to 'identify and coordinate technical cooperation efforts' and improve 'cooperation and exchange

⁹⁷ Available at <http://www.tokyo-mou.org/doc/Memorandum%20rev17.pdf>.

⁹⁸ http://www.tokyo-mou.org/organization/about_tokyo_mou.php.

⁹⁹ Australia, Canada, Chile, China, Fiji, Hong Kong (China), Indonesia, Japan, Republic of Korea, Malaysia, the Marshall Islands, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Thailand, Vanuatu and Viet Nam.

¹⁰⁰ Sec. 3.1 Tokyo MoU.

¹⁰¹ Sec. 2.1 Tokyo MoU.

¹⁰² <http://www.tokyo-mou.org/>.

¹⁰³ See <https://www.operations.amsa.gov.au/aphomsa/>.

of information on maritime security, maritime safety, marine environment protection and safety of people at sea.’¹⁰⁴ All Pacific Rim states are eligible to join; there are currently 26 member states. Although many Southeast Asian states are members, Thailand, Malaysia and Brunei are not. It is a broader cooperative dialogue forum with 4 pillars: Regional Cooperation, Protecting the Marine Environment, Safety at Sea including Seafarer Welfare, Maritime Incident Response. The APHoMSA Strategy 2014-2020 sets out goals for pillar 1, regional cooperation, as:

- Develop a regional voice on matters of mutual interest.
- Promote a coordinated approach to technical cooperation activities in the Asia-Pacific region.
- Facilitate regional cooperation on matters of mutual interest to the Asia-Pacific region.¹⁰⁵

The goals for pillar 2, protecting the marine environment, are:

- Improve the safety of shipping in the Asia-Pacific region.
- Ensure the living and working conditions of seafarers operating in the Asia-Pacific region meets international standards and community expectations.¹⁰⁶

The members participate in the correspondence group on implementation of IMO Conventions and IMO Member State Audit Scheme, led by China.¹⁰⁷

¹⁰⁴ Ibid.

¹⁰⁵ APHoMSA Strategy 2014-2020, available at: https://www.operations.amsa.gov.au/aphomsa/Strategy%202014-2020_FINAL.pdf

¹⁰⁶ Ibid.

¹⁰⁷ APHoMSA 18th Session Outcome Statement, para. 9, available at: <https://www.operations.amsa.gov.au/aphomsa/documents/18th-Session-of-APHoMSA-Outcome-Statement.pdf>.