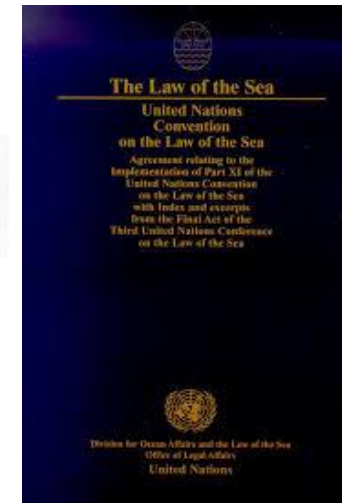


Identifying Marine Sensitive Areas in the SCS under International Law



Convention on
Biological Diversity



**CORAL TRIANGLE
INITIATIVE**
ON CORAL REEFS, FISHERIES
AND FOOD SECURITY

The 3rd Int'l Workshop on Maritime Cooperation and Policy Harmonisation

Xiamen, 4 November 2022

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CIL

CENTRE FOR INTERNATIONAL LAW
National University of Singapore

Outline



The central question

Part 1: The global legal landscape

Part 2: The regional legal landscape

Part 3: Scientific and technical criteria developed under international law to identify sensitive marine areas (at international and regional levels)

Part 4: Application in the SCS

Part 5: What does this mean?

A proposal

The central question

To what extent does international law guide and can further guide the identification of sensitive marine areas in the SCS, and therefore also guide the protection of these areas?

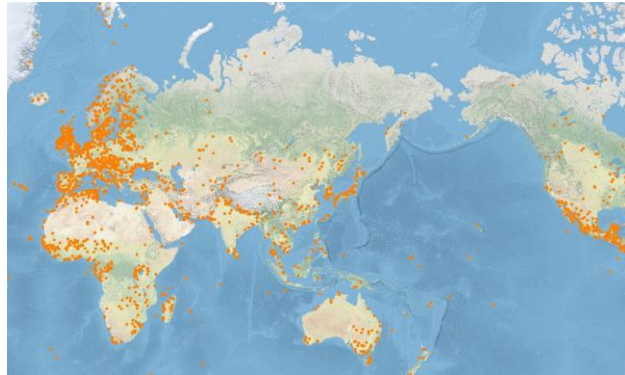
How are technical and scientific criteria and/or guidance developed in this context to bridge the gap between law and science and implement international law?

What is the status of these criteria?

Part 1 – The Global Legal Landscape 1/2



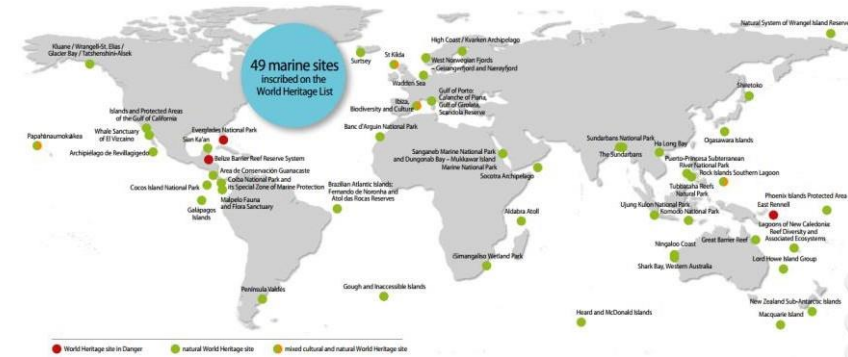
1971 Wetlands of International Importance



- **169** State Parties
- 2,289 sites globally, 40%+ are marine and coastal
- 319 sites in Asia; 44 are coastal and marine



1972 World Heritage Convention



- **193** State Parties
- 1,073 sites globally, 49 are marine and coastal
- 22 marine and coastal sites in APAC



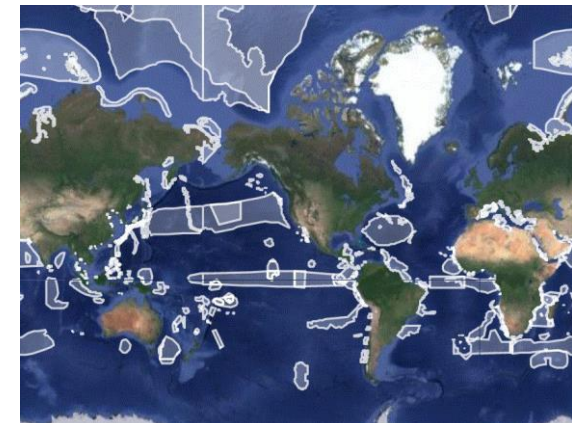
1979 Convention on Migratory Species

- **126** State Parties to the main instruments
- Other parties to species-specific instruments
- 647 species listed
- 55 marine migratory species in SCS



Convention on Biological Diversity

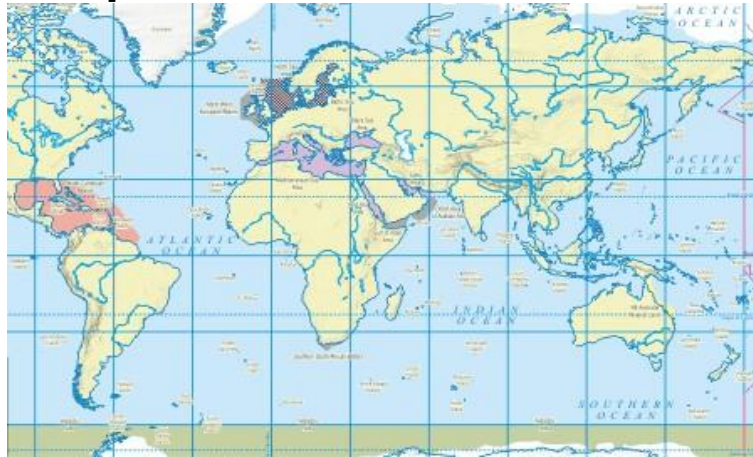
- **196** State Parties
- 279 Ecologically or Biologically Significant Areas



Part 1 – The Global Legal Landscape 2/2*

[* Not exhaustive]

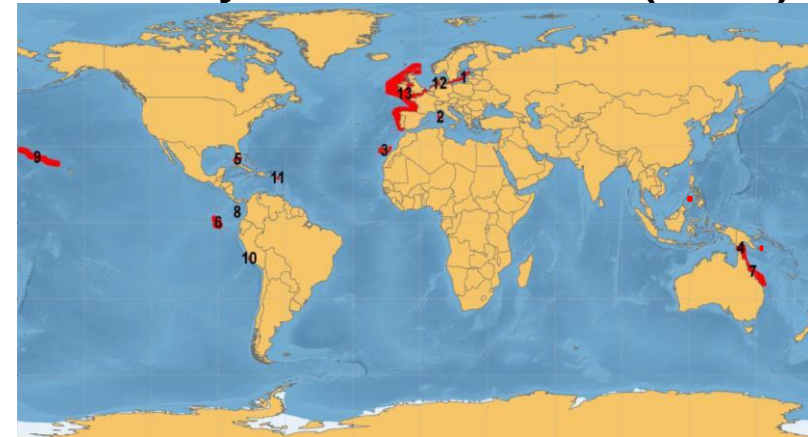
Special areas under MARPOL



- **140/155** State Parties
- Restriction/prohibition of discharge of oil/noxious liquid substances/sewage/garbage



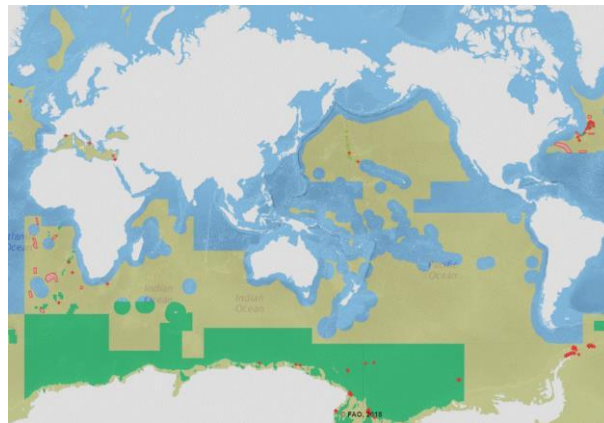
Particularly Sensitive Sea Areas (PSSAs)



- Adopted by MEPC— IMO has **173** member States
- 15 PSSAs; 7 in Indo-Pacific
- Areas to be avoided, no-anchoring, reporting, etc.



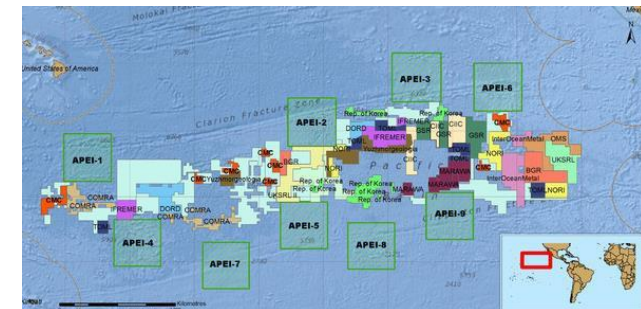
Vulnerable Marine Ecosystems



- UNGA resolution
- **194** Member States (FAO)
- COFI (Committee on Fisheries)
- Coordination w RFMO/As



Areas of Particular Environmental Interest



- **157** Members States to UNCLOS Part XI IA
- Clarion-Clipperton Zone
- On-going study of possible APEIs in Mid-Atlantic

Part 2 – The Regional Legal Landscape



CMS

IOSEA

CMS SHARKS MOU

EAAFP
SAVING MIGRATORY WATERBIRDS

MARINE MAMMAL PROTECTED AREAS TASK FORCE

IUCN **SSC** **WCPA**



SEADEF
Fisheries Refugia



Regional Guidelines for Responsible Fisheries in Southeast Asia

SUPPLEMENTARY GUIDELINES ON CO-MANAGEMENT USING GROUP USER RIGHTS, FISHERY STATISTICS, INDICATORS AND FISHERIES REFUGIA



asean

2003 Declaration on Heritage Parks
2002 Criteria for National MPAs
1997 MoU for the Conservation and Protection of Sea Turtles



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OSPAR



CCAMLR



UN environment programme



CARIBBEAN ENVIRONMENT PROGRAMME



CAR-SPAW-RAC
CARAIBE



UN environment programme



Mediterranean Action Plan
Barcelona Convention



SPA/RAC

Part 3 – Scientific and technical ecological criteria developed under these instruments to identify sensitive marine areas

C1 - Uniqueness or rarity

C2 - Special importance for life history of species

C3 - Threatened or endangered or declining species or habitats

C4 - Vulnerability, fragility, sensitivity, slow recovery

C5 - Biological productivity

C6 - Biological diversity

C7 - Naturalness

C8 - Representativity

C9 - Connectivity

C10 - Refugia or site resistance or resilience

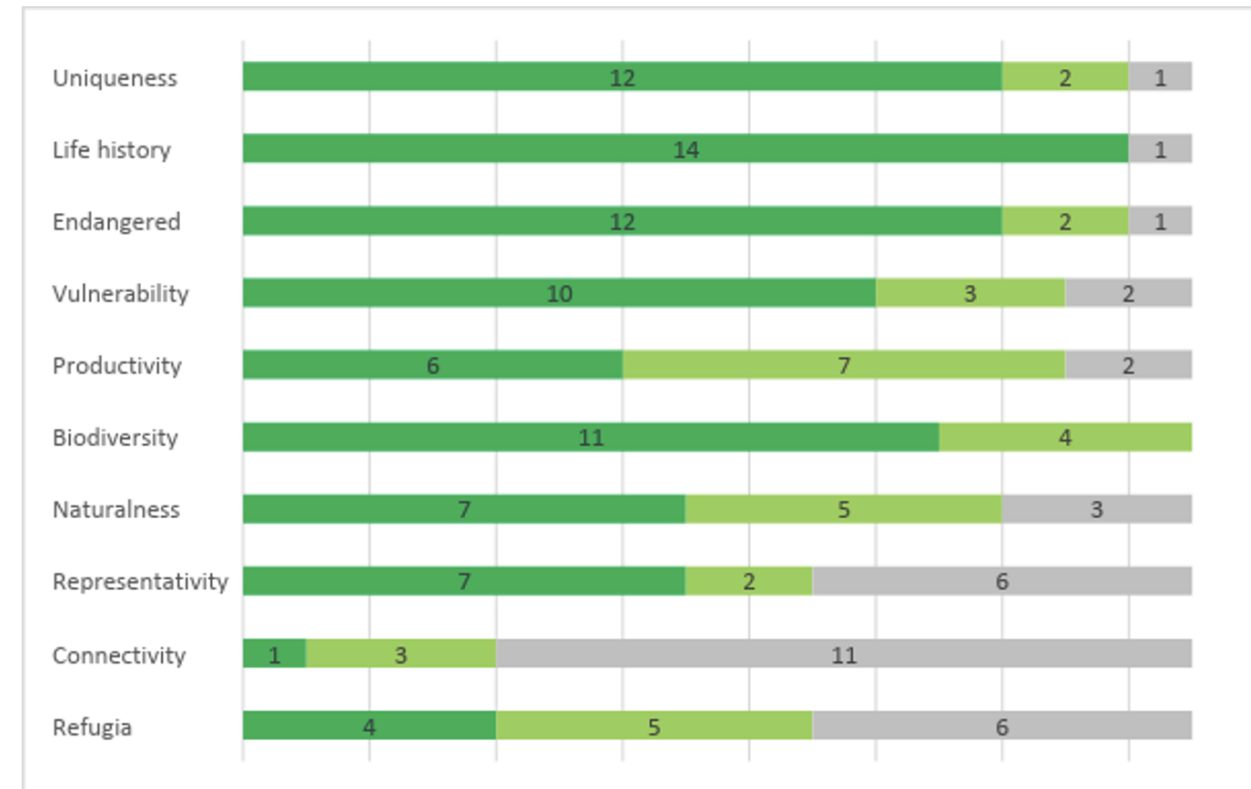


Figure 3.1: Use of the ecological criteria in different instruments

Part 4 – Application in the SCS

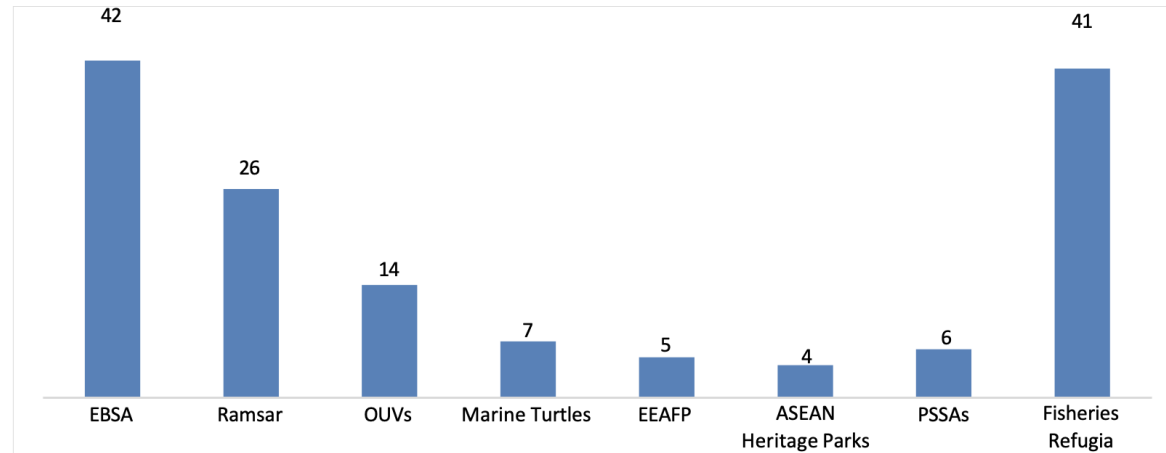
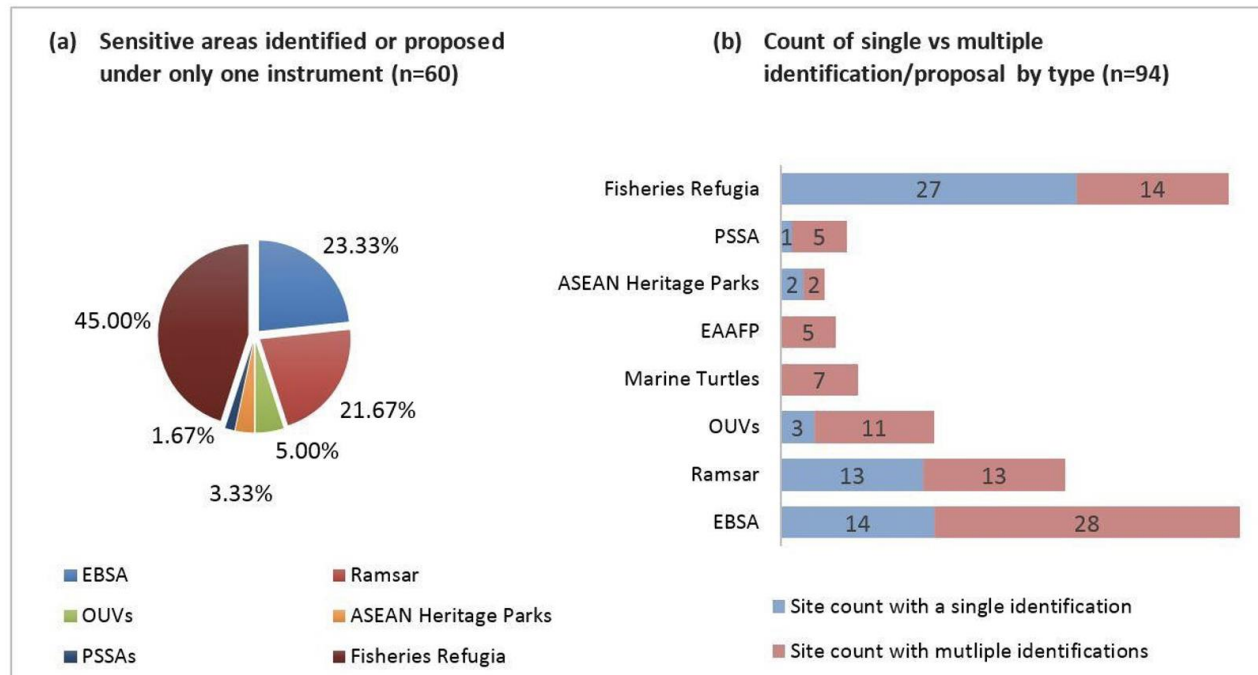


Figure 4.2: Sensitive Areas identified and under consideration under an international or regional instrument in Southeast Asia. [Some areas are identified under several instruments and can therefore be included several times.]



Part 4 – Application in the SCS

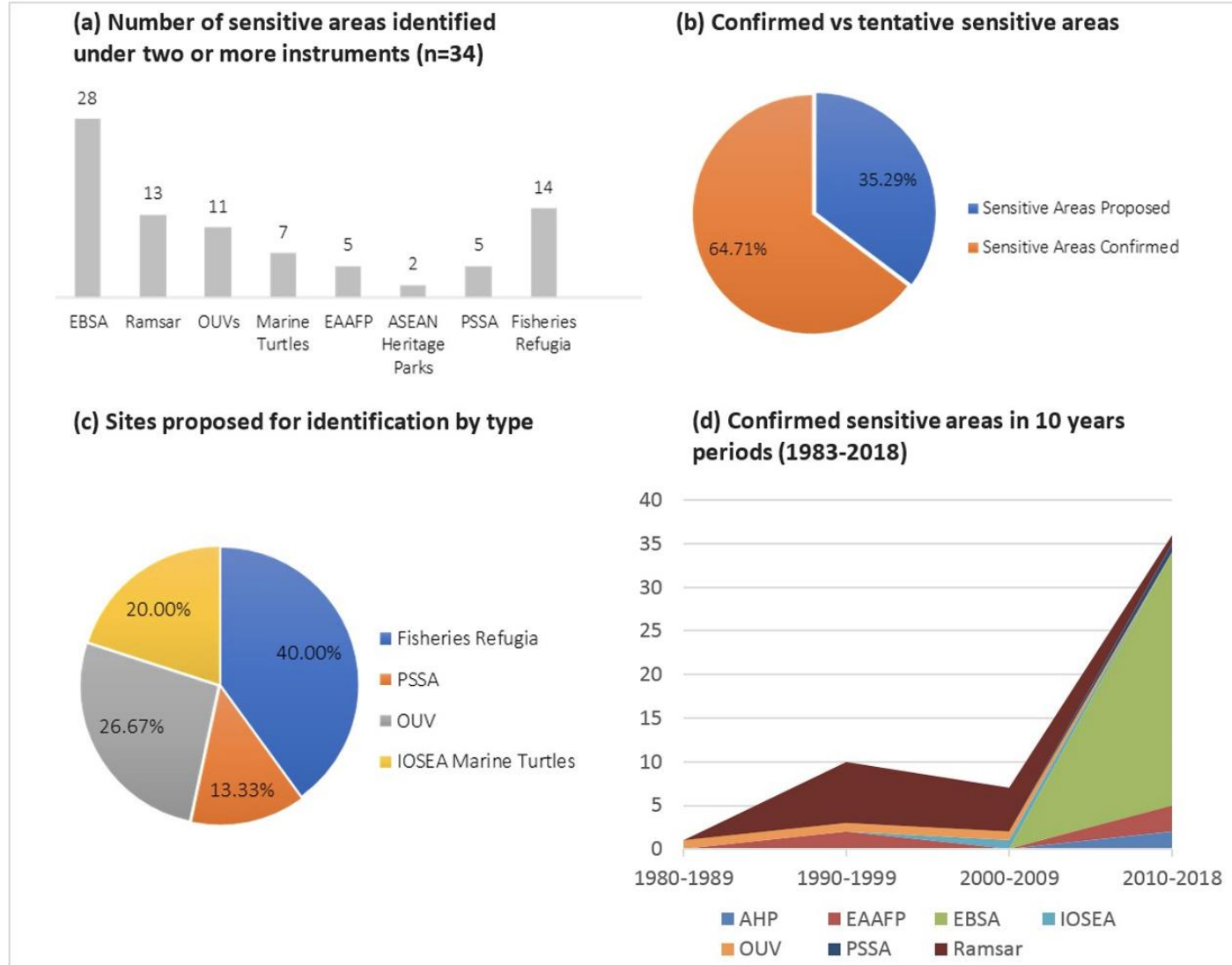
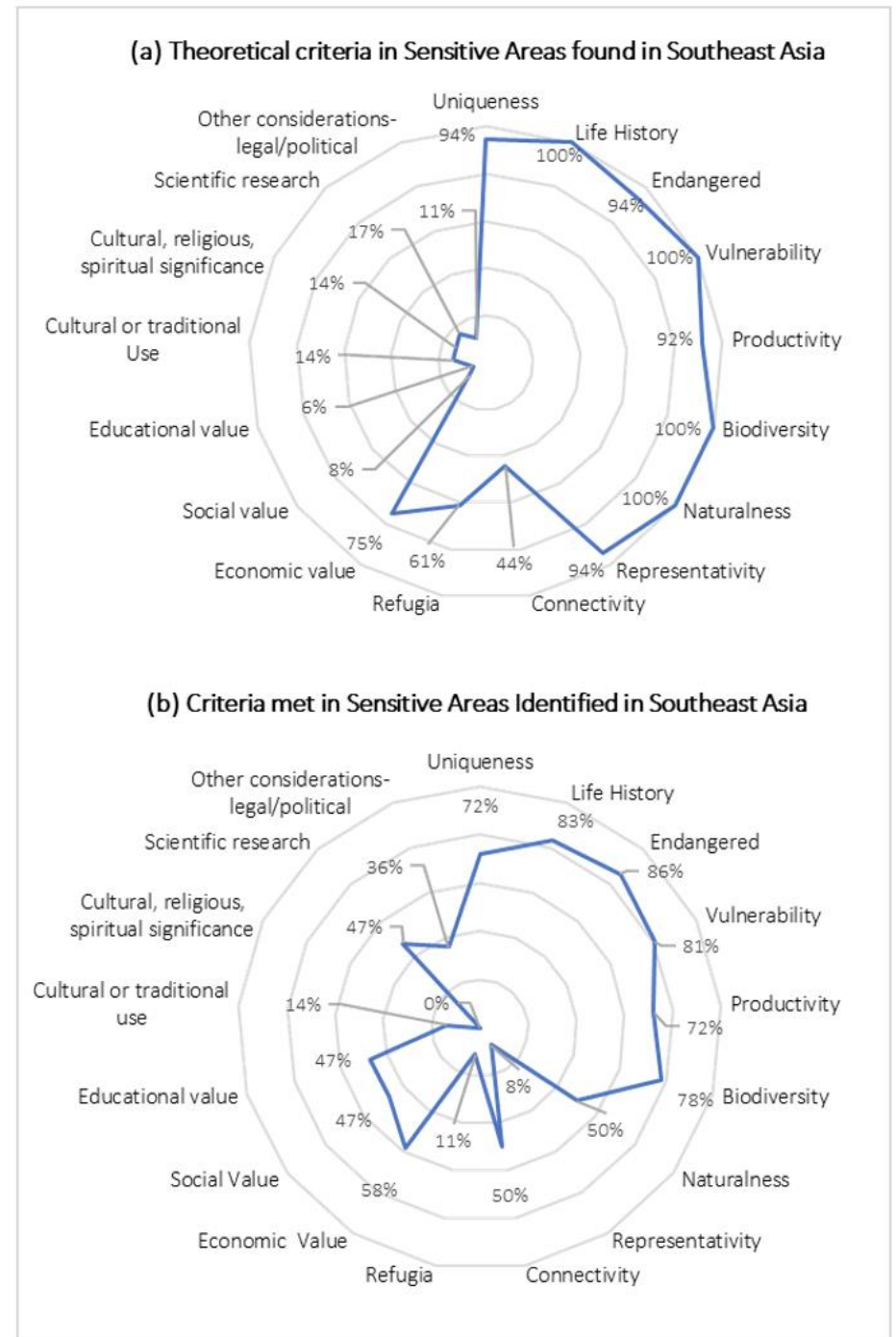


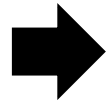
Figure 4.5: (a) Sensitive areas subject to two or more identifications under international instruments, (b) Tentative and confirmed identifications of sensitive areas, (c) Tentative identifications of sensitive areas subject to overlapping identifications by type, and (d) Confirmed sensitive areas by date.



Part 5 – What does this mean?

1. The scientific criteria have been legally adopted and their application endorsed
2. They are comprehensive, mutually-reinforcing and self-supporting
3. They show consistent State practice
4. They provided a basis for the implementation of Article 192 and 194.5 in the SCS
5. The criteria operate as a screening tool for sensitive marine areas, they do not direct which management measures should be adopted
6. A joint effort towards the identification of such areas could progress the discussion and provide useful information for the code of conduct

A proposal : Start with the low-hanging fruits: identifying critical habitats for endangered species



Higher Taxa category	Common Family Name	Common Name	Scientific Name	App I	App II	CI
Whales / Cetacean	Cetacea	Cetacea	Cetacea spp.			X
	Baleen Whale	Sei Whale	<i>Balaenoptera borealis</i>	X		
	Baleen Whale	Bryde's whale	<i>Balaenoptera edeni</i>	X		
	Baleen Whale	Blue Whale	<i>Balaenoptera musculus</i>	X		
	Baleen Whale	Omura's whale	<i>Balaenoptera omurai</i>	X		
	Baleen Whale	Fin Whale	<i>Balaenoptera physalus</i>	X		
	Toothed Whale	Humpback Whale	<i>Megaptera novaeangliae</i>	X		
	Toothed Whale	Killer whale	<i>Orcinus orca</i>		X	
	Toothed Whale	Sperm Whale ^a	<i>Physeter macrocephalus</i>		X	
	Dolphins	Irrawaddy Dolphin ^b	<i>Orcaella brevirostris</i>		X	
	Dolphin	Indo-Pacific humpback dolphin	<i>Sousa chinensis</i>		X	

Higher Taxa category	Common Family Name	Common Name	Scientific Name	CITES			CMS*		Higher Taxa category	Common Family Name	Common Name	Scientific Name	CITES			CMS*								
				App I	App II	App III	App I	App II					Agreement or MoU**	App I	App II	App III	App I	App II	Agreement or MoU**					
	Dolphin	Pantropical spotted dolphin	<i>Stenella attenuata</i>	X					Manta ray	Giant manta ray	<i>Manta birostris</i>		X											
	Dolphin	Spinner dolphin	<i>Stenella longirostris</i>	X									X											
	Dolphin	Fraser's dolphin	<i>Lagenorhynchus borei</i>	X						Manta ray	Japanese devil ray	<i>Mobula japonica</i>	X											
	Porpoise	Indo-Pacific Finless porpoise	<i>Neophocaena phocaenoides</i>	X						Manta ray	Bentfin devil ray	<i>Mobula thurstoni</i>	X											
	Dugong	Dugong	<i>Dugong dugon</i>	X						Manta ray	Sickle fin devil ray	<i>Mobula taylorana</i>	X											
	Sea Turtles	Sea turtles	Green turtle	X			X	X		Manta ray	Longhorned pigmy devil ray	<i>Mobula eregodontenkei</i>	X											
	Sea Turtles	Sea turtles	Loggerhead turtle	X			X	X		Manta ray	Shortfin devil ray	<i>Mobula kuhlii</i>	X											
	Sea Turtles	Sea turtles	Hawksbill turtle	X			X	X		Manta ray	Narrow sawfish	<i>Pristidae spp.</i>	X											
	Sea Turtles	Sea turtles	Olive Ridley turtle	X			X	X		Manta ray	Dwarf sawfish	<i>Alopiasidae cuspidata</i>	X											
	Sea Turtles	Sea turtles	Leatherback turtle	X			X	X		Manta ray	Green sawfish	<i>Pristis zijsron</i>	X											
	Sharks and Rays	Shark	Silky shark	X				X		Manta ray	Largetooth sawfish	<i>Pristis pristis</i>	X											
	Sharks and Rays	Shark	Oceanic whitetip shark		X					Wedgefish	Wedgefish	<i>Bhiodon spp.</i>	X											
	Sharks and Rays	Shark	Scalloped hammerhead shark	X				X		Wedgefish	Bottlenose (white-spotted) wedgefish	<i>Brychobatus australis</i>												
	Sharks and Rays	Shark	Great hammerhead shark	X				X		Wedgefish	Giant guitarfish	<i>Glaucosteus typus</i>	X											
	Sharks and Rays	Shark	Smooth hammerhead shark	X				X		Wedgefish	Cluonose guitarfish	<i>Glaucosteus thouin</i>	X											
	Sharks and Rays	Shark	Thresher shark	X				X		Wedgefish	Widenose guitarfish	<i>Glaucosteus obtusus</i>	X											
	Sharks and Rays	Shark	Pelagic thresher shark	X				X		Seabirds	Shore-/seabirds Relict gull	<i>Larus relictus</i>	X											
	Sharks and Rays	Shark	Bigeye thresher shark	X				X		Shore-/seabirds	Eurasian curlew	<i>Numenius arquata</i>												
	Sharks and Rays	Shark	Common thresher shark	X				X		Shore-/seabirds	Far Eastern curlew	<i>Numenius madagascariensis</i>												
	Sharks and Rays	Shark	Basking shark	X				X		Shore-/seabirds	Whimbrel	<i>Numenius phaeopus</i>												
	Sharks and Rays	Shark	Great white shark	X				X		Shore-/seabirds	Nordmann's greenshank	<i>Tringa guttifer</i>	X											
	Sharks and Rays	Shark	Shortfin mako	X				X		Shore-/seabirds	Common greenshank	<i>Tringa ochularia(xviii)*</i>												
	Sharks and Rays	Shark	Longfin Mako	X				X		Shore-/seabirds	Wood sandpiper	<i>Tringa alareola(xix)*</i>												
	Sharks and Rays	Shark	Spiny dogfish					X		Shore-/seabirds	Black-faced spoonbill	<i>Platalea minor(viii)</i>												
	Sharks and Rays	Shark	Whale shark	X				X		Shore-/seabirds	Christmas Island Sanderling	<i>Creagata andrewsi</i>	X											
	Manta ray	Manta ray	<i>Manta spp.</i>	X				X		Shore-/seabirds	Great Knot	<i>Calidris tenuirostris</i>												
	Manta ray	Reef manta ray	<i>Manta alfredi</i>	X				X		Shore-/seabirds	Spoon-billed sandpiper	<i>Calidris pygmaea</i>												
										Shore-/seabirds	Saunders' gull	<i>Saunderisulcus saundersi</i>												
										Shore-/seabirds	Chinese crested tern	<i>Thalasseus bergsteini</i>												

*CMS Range States in the SCS include Brunei, Cambodia, China, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. They are also the littoral states in the SCS (including the GOT).
 ** When a Concerted Action has been adopted for a species, the year of adoption by the COP is mentioned by ^a or ^b after the species names and as indicated below
^a Concerted Action COP 12 (2017)
^b Concerted Action COP 13 (2020)