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# RSIS COMMENTARIES

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## **South China Sea: Limits to commercial fishing by claimants**

By Youna Lyons and Tara Davenport

### **Synopsis**

*China's deployment of its largest factory ship with its fishing fleet in the South China Sea raises questions about limits to commercial fishing in overlapping areas. Intensive fisheries in such claim areas which result in the extinction of certain fish stocks would be contrary to UNCLOS and may impede the conclusion of fisheries co-operation agreements.*

### **Commentary**

The announcement by China in May 2012 that it was deploying its largest factory ship and a fleet of support vessels to join its fishing fleet in the overfished waters of the South China Sea (SCS) raises the question: are there any limits to commercial fishing in overlapping claim areas in the South China Sea?

### **Overfishing a growing concern**

While South East Asian Seas account for 40% of the world's total fish catch, wild fish catches reached their maximum a few years ago and are decreasing. The aquaculture industry quickly grew to compensate for dwindling wild fish stocks and in 2005, represented half of capture fisheries. However, aquaculture brings its own set of environmental stresses to coastal systems. Further, the growth in the aquaculture industry is itself the source of further depletion of fish stocks in the SCS used as feed for this industry. Although information is admittedly patchy available data indicate that many stocks are endangered and that the average catch sizes have also decreased substantially.

The Chinese fishing fleet for the SCS is expected to process up to 2,100 tons of seafood per day thanks to the addition of the new factory ship. At 32,000-tons, the Hainan Baosha 001 is one of the four largest fish processing vessels in the world, holding four processing factories, 14 production lines and 600 workers to process and freeze the fish catch. With support vessels, which include a 20,000 ton oil tanker and two 10,000-ton supply vessels, the factory ship can operate at sea for nine consecutive months.

The deployment of China's factory fishing vessel in the South China Sea raises legitimate questions about the basis of China's claim to fish in the South China Sea. China can only argue that it has some form of historic fishing rights in the South China Sea or that it is fishing in its own EEZ claimed from the Spratly Islands or Paracel Islands, both of which are likely to be challenged by the other Claimants.

## **Obligations of co-operation and mutual restraint**

However, even if China (rightly or wrongly) argues that it is entitled to fish in the EEZ claimed from the Spratlys or Paracels, it must remember that its fishing rights are not unlimited. As a party to the 1982 UN Convention on the Law of the Sea (UNCLOS), it has an obligation to conserve the living resources of the EEZ under Articles 61 and 62, to ensure that they are not over-exploited. In addition, as a State bordering a semi-enclosed sea, it has an obligation under Article 123 to co-operate with other coastal States in the management, conservation, exploration and exploitation of living resources of the sea.

Perhaps an equally important constraint on China's right to fish in certain areas of the South China Sea is the fact that other Claimants have claimed an EEZ from their respective mainland. Any EEZ claimed by China from the Spratlys or Paracels (or on the basis of alleged 'historic rights') will overlap with the EEZs of other Claimants extending from their mainland. Under UNCLOS, States have certain obligations of co-operation and mutual restraint in areas of overlapping maritime claims. This was reinforced by a 2007 international arbitral tribunal decision which found that Articles 74 (3) and 83 (3) of UNCLOS obliged parties to co-operate and negotiate in good faith "provisional arrangements of a practical nature" and to refrain from unilateral activities which could result in a permanent change to the marine environment. Unilateral drilling in overlapping claim areas was therefore found to be inconsistent with UNCLOS.

These obligations of co-operation and mutual restraint should also apply to unilateral exploitation of living resources in overlapping claim areas. Overfishing can result in permanent changes to the marine environment, particularly if it leads to the extinction of certain fish stocks. In the South China Sea, the risk of overfishing and destructive fishing methods resulting in a permanent change to the marine environment is particularly acute. The use of China's factory vessels has the potential to further threaten the already fragile fish stocks in the South China Sea. Further, the fishing techniques used can also have a potentially irreparable effect on the marine environment, particularly bottom trawling. The large proportion of by-catch of non targeted and non-commercial species also generated by large driftnets fixed nets and purse seiners may also have an extensive impact on marine biological diversity.

## **Implications of factory fishing for fisheries co-operation**

It is clear that some form of agreement on fisheries co-operation is needed in the South China Sea to reverse the current trend of depletion of living marine resources and their biological diversity. However, the difference between the fishing capacity of the Claimants makes the reaching of a cooperation agreement particularly challenging. Claimants which rely on smaller fishing vessels and traditional and artisanal fishing methods (notably Vietnam and the Philippines) cannot compete with China's industrial fisheries.

The use of China's factory vessels also reinforces the argument that joint fishing zones between China (and/or Taiwan) and other Claimants may not be a viable solution. Reliable control mechanisms would need to be put in place to balance the respective fishing capabilities of the national fishing fleets involved. Above all, China will need to exercise restraint and good neighbourliness to guard against the depletion of the living resources in the South China Sea and engage in fisheries cooperation with other littoral states for their mutual benefit.

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