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Managing Fisheries in Troubled Waters: Can An SCS Body Work?

By Zhang Hongzhou

Synopsis

Notwithstanding all the potential benefits, the setting up of a Regional Fisheries Management Organisation (RFMO) will not be a panacea to the fisheries problems in the South China Sea.

Commentary

THERE IS a view in some circles that the best approach for managing the disputes in the South China Sea is for the claimant parties to set aside the sovereignty disputes to focus on joint development and management of the natural resources. Previous attempts to push forward this approach have focused mostly on joint development of the hydrocarbon resources. However, these attempts have been fraught with difficulty.

In contrast, joint development and management of fishery resources is considered a “better vehicle” for fostering cooperation on both bilateral and regional levels in the South China Sea. On the one hand, fisheries are seen as a more “neutral” area which is capable of stimulating co-operation. On the other hand, fishery conflicts and disputes have been on the rise in the South China Sea.

Trend in Fishery Issues

The absence of a regional governing body or a multilateral agreement to govern fishery issues is considered one of the key contributors to increasing overfishing, IUU fishing, and fishing conflicts in the South China Sea. While lawmakers elsewhere have erected an elaborate network of innovative accords and conservation instruments to manage fish stocks around the world, there is no regional fisheries management organisation (RFMO) that deals with fishery issues in the South China Sea.

Under such circumstances, the establishment of an RFMO in the South China Sea is considered imperative for managing fishery issues. Cooperation through RFMO could reduce the likelihood of states becoming involved in fisheries disputes. The collaborative agreements may also help to abate disputes, particularly territorial disputes among the states in the sea region.

Regional Fisheries Body a Panacea?

Notwithstanding all the potential benefits, the setting up of an RFMO will not be a panacea. A presumption of establishing an RFMO in the South China Sea is that such a regional fisheries body is an effective means of regulating IUU fishing and controlling overfishing. Empirical evidence, however, suggests that an RFMO has a variety of problems, including poor data provision, failure to adopt appropriate conservation measures, and inadequate compliance with management measures.

Given the consensus-based decision-making mechanism in the region, particularly the ASEAN way of diplomacy, regional treaties tend to be negotiated, implemented, and revised according to the rule of consensus. Consequently, regional instruments keep their provisions vague and ambiguous.

The consensus approach can impel “each negotiating body to search for the lowest common denominator” and complicate negotiations; a single nation can resist the development of a common position and demand concessions for the price of achieving consensus. As a result, the design of a regional agreement for implementation would take years, sometimes decades.

This is clearly evidenced by the disappointing content of the ASEAN-initiated Declaration of Conduct (DOC) and prolonged discussion of the related Code of Conduct (COC). The delays inherent in the negotiation and ratification process of regional agreements to protect South China Sea fishery become especially important concerning the rapid rate of technological change within fishing industry.

The Question of Uncertainty

Furthermore, political compromises tend to weaken an RMFO’s ability to control fishing intensity. One way an RMFO can operate is by determining total allowable catch (TAC) for fishery resources in a particular area. This is aimed to stabilise fish stocks to ensure that the current harvest does not trade off future productivity.

Unfortunately, the imposing of TAC limits is subject to a considerable uncertainty. Biologists, ecologists, marine biologists, and other scientists cannot confidently determine when stocks are endangered prior to the destruction of fish stocks. Therefore, the TAC limits are often set with strong political, economic, and social considerations.

Even in Europe, scientists came under pressure to overestimate quotas when interpreting the unpredictability of fish populations to establish a TAC system. In addition, the effectiveness of the RFMO is dependent on the fishery governance capacity of the region.

The sheer size of the South China Sea and magnitude of the fishing industry (based on the number of fishing vessels and fishermen) pose challenges to the establishment of control. According to the Fisheries Management Index that measures a state's fishery governance capacity, all South China Sea countries ranked near the bottom for their standard of research, management, enforcement, socioeconomics, and stock status.

Political Complications

Apart from an RFMO's inability to meet the current and future food security and economic development needs of the regional countries and its difficulties in dealing with overcapacity (excess fishing fleet and fishermen), other factors make it an extremely politically daunting task to reach such an agreement. One is the complications in defining the precise boundary of the water areas to be governed by the RFMO. Another is the problematic issue of Taiwan.

Taiwan is not only a significant global fishing power that possesses one of the largest global fishing fleets; it is also a key claimant party in the South China Sea disputes. It is therefore critical to include Taiwan in the management decisions. This is to ensure that Taiwan complies with fishing regulations adopted by the RFMO.

By virtue of its unique political status, however, incorporating Taiwan has its difficulties. In the context of strained cross-strait ties since Tsai Ing-wen took office, in addition to China's longstanding unyielding stance towards Taiwan's role in the South China Sea negotiations, it will be impossible for China to allow Taiwan to participate in the RFMO as a full member.

Currently, some RFMOs creatively adopted the concept of "fishing entity" to incorporate Taiwan. In the context of the South China Sea, China is not likely to allow Taiwan to participate in RFMOs through the concept of a "fishing entity". It is equally very doubtful that the Tsai Ing-wen administration will participate in the RFMO as a "fishing entity", under the name of Chinese Taipei (or China Taipei).

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