

OCTOBER 2018

Defusing the South China Sea Disputes

A REGIONAL BLUEPRINT

A Report of the
CSIS EXPERT WORKING GROUP ON THE SOUTH CHINA SEA

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Prominent experts from China also participated in the working group and provided valuable input, though ultimately none were comfortable being listed as members.

Introduction

The CSIS Expert Working Group on the South China Sea brings together prominent experts on maritime law, international relations, and the marine environment from China, Southeast Asia, and beyond. The members seek consensus on realistic, actionable steps that claimants and interested parties could take to boost cooperation and manage tensions at sea. The group meets regularly to discuss issues that it considers necessary for the successful management of the South China Sea disputes and produces blueprints for a path forward on each.

The working group includes a diverse set of experts from claimant states and interested countries, including the United States. It is chaired by Gregory Poling, director of the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies (CSIS). All members take part in their personal capacities, not as representatives of their home institutions. They are invited to join the group based on their subject matter expertise and willingness to reach creative compromises.

Members of the group gathered three times between July 2017 and July 2018 to produce the blueprints gathered in this report. The members believe these three proposed agreements add up to a robust model for managing the South China Sea disputes, one which would be both legally and politically feasible for all parties. They are:

1. A Blueprint for a South China Sea Code of Conduct
2. A Blueprint for Fisheries Management and Environmental Cooperation in the South China Sea
3. A Blueprint for Cooperation on Oil and Gas Production in the South China Sea

Each of the blueprints is preceded by introductory text explaining why it is necessary for the successful management of tensions in the South China Sea, how it might function in practice, and why the group considers it legally and politically feasible for all parties involved.

A Blueprint for a South China Sea Code of Conduct

The members of the Association of Southeast Asian Nations (ASEAN) and China have been engaged in discussions on a potential code of conduct (COC) to manage the South China Sea maritime and territorial disputes for over two decades. ASEAN issued its first statement on the disputes in 1992 and endorsed the idea of a COC in 1996. After two years of inconclusive negotiations, China and ASEAN settled for a nonbinding Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002. In 2005 the first draft of guidelines to implement the DOC was drawn up, but not adopted until 2011. Despite these efforts, South China Sea tensions lingered throughout the 2000s and have escalated steadily since 2009, underscoring the need for a more robust agreement to manage the disputes.

Since late 2016, consultations between China and ASEAN on a potential COC have gained new momentum. In August 2017 the parties adopted a bare-bones [framework](#) for the COC, and on August 2, 2018, Singapore's Foreign Minister Vivian Balakrishnan announced that the sides had reached agreement on a single draft negotiating text for the COC. Leaked [details of the text](#) show that significant hurdles remain, especially over the most sensitive issues like the agreement's geographic scope, potential dispute settlement mechanisms, and details of resource exploration and development. While the history of the DOC and COC negotiations has bred understandable skepticism, the agreement on a single negotiating draft is an important procedural step. For the first time in many years, an effective diplomatic mechanism to manage the South China Sea disputes seems possible. But to achieve that goal, all parties will need to show a great deal of creativity and political will.

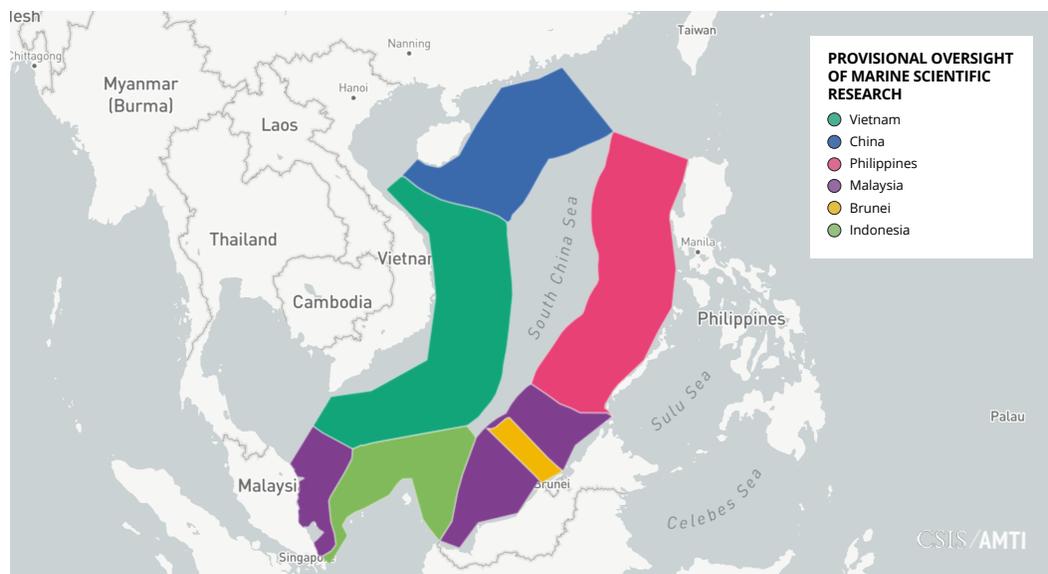
An ASEAN-China COC should be a critical component of a regime for managing the disputes, but its limitations need to be recognized. First, a settlement of disputes is not a realistic goal for the time being. The COC process is rightly focused on managing the tension surrounding the disputes and removing the triggers for conflict; it is not a dispute resolution mechanism. This is because a final resolution of sovereignty claims and delimitation of maritime boundaries according to international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS), could be many years away. To this end, all sides need to emphasize that engaging in the COC process and reaching agreement on its content will be without prejudice to the final settlement of claims and have no impact on the parties' current legal positions toward the disputes.

Second, because the COC process includes not just the claimants but all ASEAN members, it is the wrong vehicle to negotiate the details of resource management in areas of overlapping claims to waters and seabed, which is a necessary component for effectively managing the disputes. An ASEAN-China COC can articulate and clarify aspects of the international rules-based order as applied to the South China Sea and establish important rules and processes for managing tensions pending the eventual settlement of disputes. To be truly effective, however, it must lead to additional multilateral negotiations among the claimants alone on fisheries management, environmental cooperation, and oil and gas development—all important potential triggers for conflict in which the non-claimant ASEAN members have no direct stake.

Reaching agreements that are both effective and acceptable to all parties will require framing necessary compromises so that the South China Sea claimants can adjust their positions without violating domestic or international law. Finding those mutually-agreeable compromises will be difficult but not impossible if all sides are committed to the project. An ASEAN-China COC should be the first step in that process.

As such, China and the ASEAN member-states should:

1. Agree to uphold the freedom of navigation in and overflight above the South China Sea as provided for by universally recognized principles of international law, including UNCLOS.
2. Commit to resolve disputes by peaceful means and manage any disagreements related to jurisdiction over water, seabed, and airspace without resorting to the threat or use of force, and to exercise self-restraint and due regard to the rights of other parties in the conduct of their activities in the South China Sea.
3. Refrain from occupying, inhabiting, or constructing facilities on currently uninhabited features.
4. Undertake to improve the safety of navigation, communication, and search and rescue in the South China Sea, as follows:
 - a. Agree to commence negotiations on a code governing protocols for communication between naval and law enforcement vessels that encounter each other at sea to reduce the chance of incidents and de-escalate those that occur. This could involve either the negotiation of a wholly new agreement based on international best practices or the extension of the Code for Unplanned Encounters at Sea (CUES), which governs communication protocols between naval vessels, to cover encounters among law enforcement ships and between law enforcement and naval vessels.
 - b. Establish a program under the ASEAN-China Maritime Cooperation Fund to train regional fishers in good seamanship and the International Regulations for Preventing Collisions at Sea (COLREGS) and promote the equipment of fishing vessels with modern radio equipment and automatic identification system (AIS) transceivers.
 - c. Pursue the establishment of mechanisms for the avoidance, rapid de-escalation, and management of incidents involving the parties' nationals, vessels, or aircraft to avoid aggravating the disputes. Such mechanisms may include hotlines between relevant ministries, technical working or eminent persons groups to minimize triggers of conflict, and a South China Sea passage guide to be distributed widely.
 - d. Encourage joint training and exercise activities among regional maritime law enforcement agencies to promote best practices and minimize the risk of incidents at sea, and work with the Heads of the Asian Coast Guard Agencies Meeting to develop a set of principles governing the operation of maritime law enforcement agencies in the South China Sea.
 - e. Establish a dialogue mechanism to explore provisional and practical cooperation in search and rescue regardless of potential gaps or overlap between claimed Maritime Search and Rescue Regions or Aeronautical Search and Rescue Regions,



keeping in mind that safety of life at sea is a paramount and common interest of all parties.

5. Explore avenues for cooperation on transnational crime, encompassing but not limited to piracy and armed robbery at sea, drugs and arms smuggling, human trafficking, and fisheries crime.
6. Cooperate on marine scientific research, as follows:
 - a. Permission should be sought from each South China Sea coastal state for marine scientific research within 200 nautical miles of their coastlines, pending the eventual delimitation of maritime claims. In areas of overlap, unless a previous bilateral agreement has been reached, a median line will be used to determine which state has the provisional right to grant permission for marine scientific research. This arrangement is detailed in the map above.
 - b. Agree that the provisional right of states to grant permission for marine scientific research, as well as the undertaking of such projects, will have no impact on territorial claims or the eventual delimitation of maritime boundaries and cannot be construed as recognition of the claims of others.
 - c. Grant permission for marine scientific research within these provisional zones under normal circumstances. Claimants may withhold permission in those cases allowed by Article 246(5) of UNCLOS, including for projects that affect exploration or exploitation of resources, employ explosives or environmentally harmful substances, or involve the construction or operation of artificial structures.
 - d. Coordinate joint marine scientific research cruises throughout the South China Sea with experts from all claimants invited to participate.
 - e. Each claimant should facilitate visits by experts from other claimant nations to conduct research on islands and reefs that it occupies, with due regard giv-

en to the need to restrict access to sensitive military sites. Claimants should agree that research trips will be organized without prejudice to the outstanding claims of other parties and that participation will not imply recognition on the part of individual researchers or governments of the claims of the org

- f. Host regular scientific workshops supported by all neighboring governments with participation of experts from across the region and beyond.
 - g. Invest, both as individual governments and as a group, in programs to raise public awareness of the importance of and threats to the marine environment and fisheries as common, renewable resources.
 - h. Cooperate on marine archaeology and encourage joint conferences and historical research to broaden public understanding of the South China Sea as a shared space and resource used for millennia by peoples from across the region and beyond.
7. Endorse the immediate commencement of negotiations on environmental conservation and protection, fisheries management, oil and gas development, and other marine economic development efforts in the South China Sea among the affected parties.
8. Agree that in the case of a dispute over the interpretation or implementation of this agreement, either party may request the establishment of a commission of mediation, inquiry, or conciliation according to the following procedures:
- a. Each party to this agreement will name up to four experts in maritime affairs to be registered on a list to serve as potential members of a commission of mediation, inquiry, or conciliation. If a party has fewer than four experts registered to the list at any time, it may name additional experts to fill its quota.
 - b. A party to a dispute may request the establishment of a commission once it is satisfied that direct negotiations cannot resolve the issue. Participation in the process of mediation, inquiry, or conciliation will then be compulsory for all parties to the dispute.
 - c. Each party to the dispute will appoint two experts from the standing list of potential members to serve on the commission. A party may not appoint one of the experts that it named to the list.
 - d. Once all parties to the dispute have made their selections, those appointed commissioners will elect another expert from the list to serve as the chairperson of the commission. That chairperson may not be selected from among those experts named to the list by one of the disputing parties.
 - e. The commission will determine its own procedure for investigating and mediating the dispute, unless the parties to the dispute have already agreed to a procedure.
 - f. The commission will issue a decision outlining its conclusions on all questions of fact or law relevant to the dispute and make its recommendations for a settlement between the parties.
9. Invite outside states, international organizations, and other relevant parties to endorse this agreement.

A Blueprint for Fisheries Management and Environmental Cooperation in the South China Sea

The South China Sea is one of the world's top five most productive fishing zones, accounting for about **12 percent of global fish catch** in 2015. More than half of the fishing vessels in the world operate in these waters, officially employing around 3.7 million people and likely many more when illegal, unregulated, and unreported fishing is included. But this vital marine ecosystem is seriously threatened by overfishing, which is encouraged by government subsidies, harmful fishing practices, and, in recent years, large-scale clam harvesting and dredging for island construction.



On the left, the relatively healthy but overfished reef flat surrounding Thitu Island; on the right, a reef flat approximately 1.5 nautical miles away destroyed by Chinese clam harvesters. Both photos dated February 2016, courtesy of John McManus.

Total fish stocks in the South China Sea have been depleted by 70-95 percent since the 1950s and catch rates have declined by 66-75 percent over the last 20 years. Giant clam harvesting, dredging, and artificial island building in recent years have severely damaged or destroyed **over 160 square kilometers**, or about 40,000 acres, of coral reefs, which were already declining by 16 percent per decade. The entire South China Sea fishery, which employs millions of people and helps feed hundreds of millions, is now in danger of collapse unless claimants act urgently to arrest the decline.

Article 123 of the United Nations Convention on the Law of the Sea (UNCLOS) mandates that states bordering semi-enclosed seas like the South China Sea are obligated to cooperate in areas that include the protection of the marine environment and management of fish stocks. This is reflective of the deeply interconnected ecologies of semi-enclosed seas, in which currents cycle marine life (and pollution) through the region without regard for national jurisdiction. Moreover, Article 192 of UNCLOS provides a general obligation for states to “protect and preserve the marine environment.” Unlike hydrocarbons, for which exploitation rights are based only upon a state’s entitlement to the continental shelf, the obligation to jointly steward living marine resources makes fisheries management and environmental protection “low-hanging fruit” for cooperation in the South China Sea.

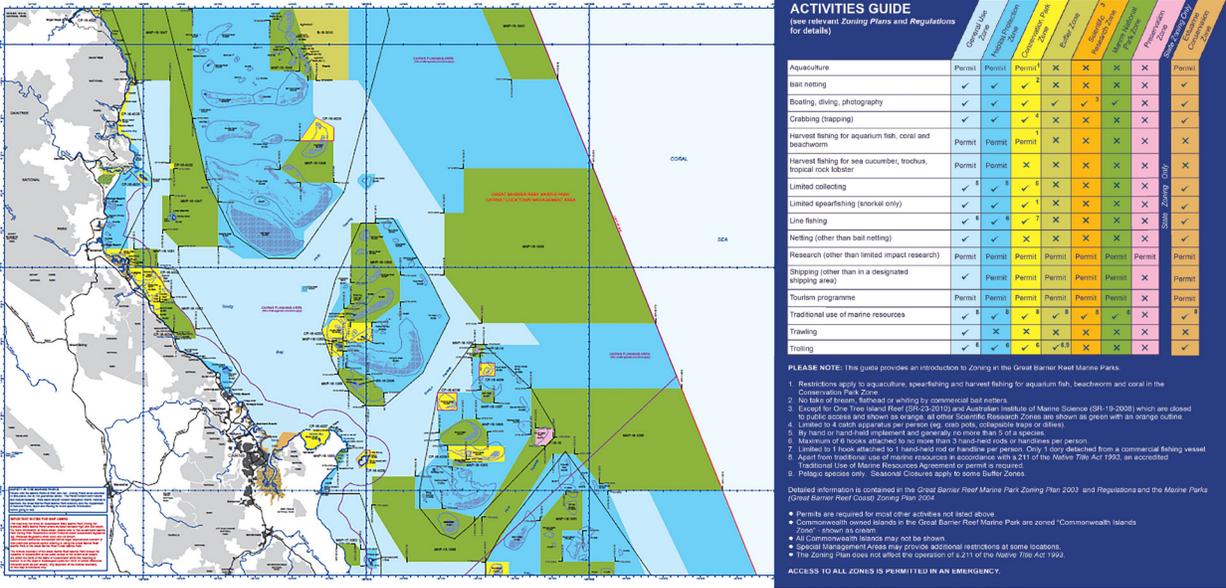
An effective system to manage the fisheries and environment of the South China Sea cannot be based primarily on the overlapping territorial and maritime claims to which the fish pay no attention. Instead it must be built around the entire marine ecosystem, particularly the reef systems on which much marine life depends. With political will, it is entirely possible for nations bordering the South China Sea to cooperatively protect these ecosystems and manage fish stocks without prejudice to their overlapping territorial and maritime claims. For instance, the Philippines, whose government is under a strict constitutional requirement to defend the nation's sovereign rights over its waters and continental shelf, could agree to cooperate on fisheries management in disputed waters under Article 123 of UNCLOS without prejudicing its claims or bestowing legitimacy on the claims of others and therefore without running afoul of its domestic law.

The international legal obligation to cooperate on fisheries management and the environment is matched by practical necessity. Communities all around the South China Sea are highly dependent on fish stocks for both food security and local livelihoods. Yet the region has seen catch rates plummet in recent years thanks to a combination of overfishing and willful environmental destruction. In the South China Sea, fish may spawn in one nation's exclusive economic zone (EEZ), live as juveniles in another's, and spend most of their adult lives in a third. Overfishing or environmental destruction at any point in the chain affects all those who live around the sea. The entire South China Sea is teetering on the edge of a fisheries collapse, and the only way to avoid it is through multilateral cooperation in disputed waters.

Frequently discussed options for the protection of South China Sea fish stocks include the creation of a new regional fisheries management organization (RFMO) or the expansion of an existing body. But considering the pressing nature of the threat, the complexity involved in establishing an RFMO, and the mixed track record of current organizations, a more practical option would be for claimants to negotiate a mechanism to monitor stocks, establish catch limits and protection zones, and enforce those regulations without the full bureaucracy of an RFMO. Such an arrangement could, over time, evolve into a more robust and institutionalized organization.

To that end, claimants and littoral states should agree to:

1. Establish a Fishery and Environmental Management Area in the South China Sea with implementation and enforcement drawing from successful precedents including the **Great Barrier Reef Marine Park** and the OSPAR Convention. The management area will constitute a series of distinct ecosystem-based fisheries zones covering the reefs that are vital to regional fish stocks, including the Paracel Islands, Spratly Islands, Scarborough Shoal, and Luconia Shoals, as well as the waters between, in which pelagic species are fished. It will function according to the following procedures:
 - a. The management area will not necessitate a complete ban on fishing. Instead it will consist of a patchwork of tailored fisheries zones. These might include no-catch zones to allow dangerously depleted fisheries to replenish, zones where only certain types of fishing will be restricted, and zones with no restrictions at all. See the map on the next page for an example of this type of scheme as applied to the Great Barrier Reef.

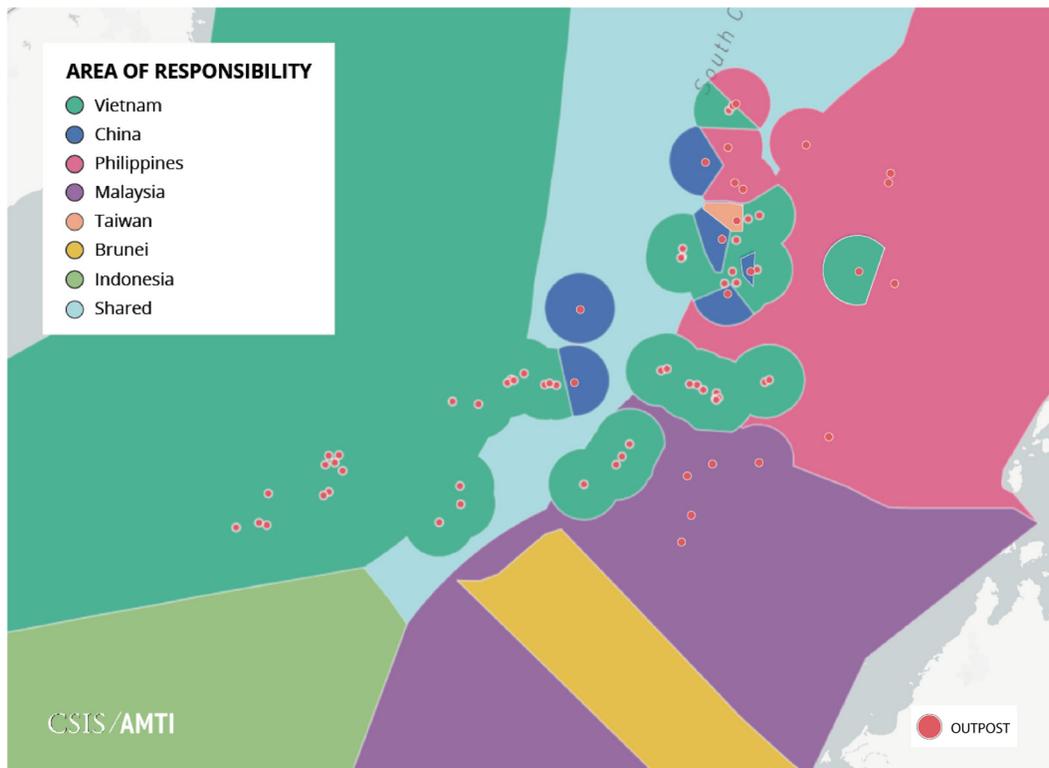
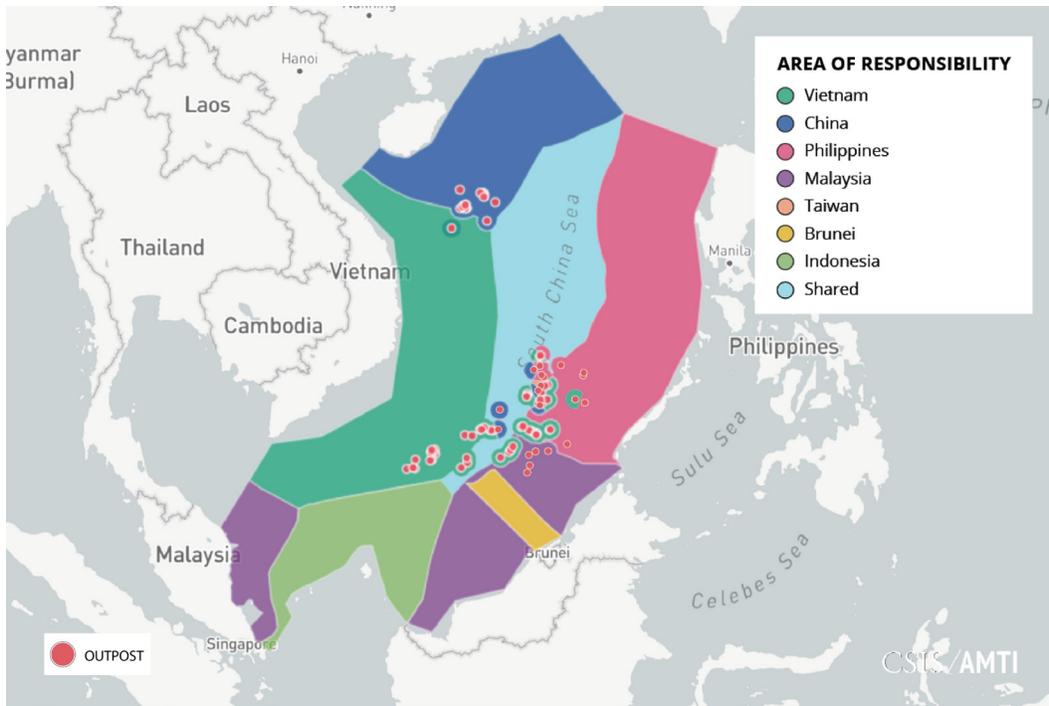


A map of marine park zoning in the Great Barrier Reef as an example of similar potential zoning in the South China Sea.

- b. Involvement by parties in the establishment and enforcement of the management area will be without prejudice to existing territorial and maritime claims and cannot be construed as recognition by any party of the claims of others.
 - c. Determinations of what types of fishing will be banned or allowed in each area should be made based solely on scientific criteria, such as reef health and importance to migratory fish stocks.
 - d. All parties will appoint an agreed-upon number of members to a commission of independent experts and officials from relevant fisheries, maritime, and scientific agencies to establish the layout of the management area and make regular adjustments.
 - e. All claimants and littoral states bordering the South China Sea should be involved in the creation and management of the fisheries zones because all are reliant upon a healthy marine ecosystem in this semi-enclosed sea. This means that Brunei, China, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, and Vietnam should be involved in the scientific research in and mapping of fisheries zones.
 - f. An advisory body on the management of pelagic fish species should be established to include both the South China Sea claimants and Gulf of Thailand littoral countries. The latter need not be involved in the creation of fisheries zones covering reef fish in the South China Sea but should be consulted regarding zones aimed at managing migratory stocks that travel between the two bodies of water.
2. Split enforcement responsibilities between occupiers and flag states, as follows:
- a. Parties will bear responsibility for monitoring and interdiction of ships violating the fishing restrictions set by the multilateral commission within 20

nautical miles of outposts they occupy on disputed features AND in those parts of the management area within 200 nautical miles of their coastlines. In areas of overlapping jurisdiction, the 20-nautical-mile zone around occupied features will take precedence over the 200-nautical-mile zone from the coast. If two coastal zones or two zones from occupied features overlap, a median line will be used to separate the areas of responsibility. These enforcement zones are illustrated in the map on the next page.

- b. Parties may issue fishing licenses for domestic and foreign fishers within their provisional enforcement zones, consistent with the restrictions established by the multilateral commission for the management area.
 - c. These jurisdictional zones do not constitute a judgment about sovereignty over occupied features or their legal status (as islands, rocks, low-tide elevations, or submerged features). They are provisional arrangements, not a recognition of entitlements to territorial seas or EEZs and will not prejudice the future delimitation of maritime boundaries.
 - d. Patrol and interdiction of ships violating the mutually agreed-upon fishing restrictions in parts of the management area beyond these jurisdictional zones may be undertaken by any claimant. This includes all areas farther than 200 nautical miles from coastlines and 20 nautical miles from occupied features. Claimants should seek to coordinate patrols, including with the eventual use of ship-rider agreements, and share maritime domain awareness information in these areas.
 - e. Prosecution of ships from a claimant or South China Sea littoral state that violate fishing restrictions in the management area will be the responsibility of the flag state. The arresting party should arrange to transfer such vessels and their crew in a timely manner. Prosecution of violators from non-party states should be the responsibility of the arresting party.
3. Agree not to use subsidies to encourage fishing within the already overfished South China Sea, as follows:
 - a. Agree to forego geographically-defined subsidies that might encourage fishing within the management area.
 - b. Agree that fishers found to violate the management area's restrictions will lose access to any existing government subsidy and support programs meant to support the fishing industry.
 4. Coordinate efforts to reintroduce giant clams and other threatened species such as sea turtles to depopulated reefs in the South China Sea, as follows:
 - a. Provide funding, coordination, and logistical support for a consortium of universities and research organizations to lead this effort, including those in China and South-east Asia already engaged in raising giant clams in captivity.
 - b. Each claimant will be responsible for planting clams and reintroducing other species on reefs it currently occupies. Eventually, unoccupied reefs should be



repopulated by multinational civilian teams, though in the short- and medium-term priority should be given to reefs near occupied features as they will be much easier to protect from poachers. Such activities will be undertaken without regard to or prejudice for territorial claims.

5. Avoid activities that damage the marine environment or alter the seabed, as follows:
 - a. Refrain from any intentional destruction of marine habitats, including by dredging, land reclamation, or construction of facilities on unoccupied reefs.
 - b. Commit to perform and publicly release environmental impact assessments before undertaking construction or renovation work on occupied features.
6. Agree that in the case of a dispute over the interpretation or implementation of this agreement, either party may request the establishment of a commission of mediation, inquiry, or conciliation according to the procedures:
 - a. Each party to this agreement will name up to four experts in maritime affairs to be registered on a list to serve as potential members of a commission of mediation, inquiry, or conciliation. If a party has fewer than four experts registered to the list at any time, it may name additional experts to fill its quota.
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 - f. The commission will issue a decision outlining its conclusions on all questions of fact or law relevant to the dispute and make its recommendations for a settlement between the parties.

A Blueprint for Cooperation on Oil and Gas Production in the South China Sea

Competition for oil and gas resources has repeatedly triggered standoffs between claimants in the South China Sea in recent years, especially between China, the Philippines, and Vietnam. The last serious attempt to cooperate on this front was the trilateral Joint Marine Seismic Undertaking of 2005 to 2008, which was allowed to expire amid political controversy and questions about its constitutionality in the Philippines. Since late 2016, the Philippine and Chinese governments have been discussing joint development of hydrocarbons at Reed Bank, but there has been little apparent progress despite optimistic official pronouncements. Independent experts and prominent jurists in the Philippines have said any such scheme would likely be unconstitutional based on the strict provisions in the country's charter demanding that the government protect the nation's rights to offshore resources.

The U.S. Energy Information Agency estimates that the South China Sea holds about 190 trillion cubic feet of natural gas and 11 billion barrels of oil in proved and probable reserves, most of which lie along the margins of the South China Sea rather than under disputed islets and reefs. The U.S. Geological Survey in 2012 estimated that there could be another 160 trillion cubic feet of natural gas and 12 billion barrels of oil undiscovered in the South China Sea. Beijing's estimates for hydrocarbon resources under the sea are considerably higher but still modest in relation to China's overall demand—the country's oil consumption in 2018 is expected to top 12.8 million barrels per day.

For Vietnam and the Philippines, however, access to energy resources in the South China Sea is crucial. Block 06.1, part of the Nam Con Son project near Vanguard Bank, supplies about 10 percent of Vietnam's total energy needs. The Philippines generates about a third of the electricity for its main island of Luzon from a single source, the Malampaya gas field, which is expected to cease production by 2024. Unless an alternative is found—and Reed Bank is the only good option currently on the table—the Philippines will need to either import significant amounts of natural gas at greater costs, rapidly incorporate other energy sources into its power supply, or face severe shortages.

Cooperation on disputed oil and gas resources is more difficult, both legally and politically, than for [fisheries or environmental management](#). Unlike for fish, there is no provision in the United Nations Convention on the Law of the Sea (UNCLOS) mandating that states cooperate to manage oil and gas resources in a semi-enclosed sea like the South China Sea. UNCLOS articles 74 and 83 do say that in the absence of a final delimitation of maritime boundaries, states should exercise mutual restraint and establish “provisional arrangements of a practical nature” to manage their disputes, which offers a narrow foundation for compromise. But successful bilateral joint development agreements for oil and gas in disputed waters are relatively few, and there are no cases of fully operational “provisional arrangements” involving three or more parties. Nonetheless, finding a way forward is necessary if the claimants hope to defuse tensions and avoid harming their energy security.

Despite the obvious difficulties, it is possible for claimants to cooperate on oil and gas development in the South China Sea in a manner that would be both equitable and consistent with international law as well as the laws of all involved parties. Doing so would require considerable creativity and a greater willingness to compromise, especially by China, than has been evident to date. Such an agreement would need to be framed so that all parties could claim it was consistent with their interpretations of both domestic and international law. Most difficult would be finding a way for Beijing to reason that such cooperation was consistent with its assertions of “historic rights” while at the same time ensuring that Manila could uphold its 2016 award from an arbitral tribunal in The Hague and that all coastal states could maintain jurisdiction over their continental shelves.

Striking that precarious balance would require some politically difficult but legally feasible concessions up front. First, China would need to accept that being guaranteed a share of the profits from oil and gas resources throughout the South China Sea would be enough to satisfy its demand for “historic rights.” This would mean accepting a system in which other claimants exercise jurisdiction by licensing oil and gas exploration so long as Beijing shares in the spoils. This should be possible, given that no Chinese law, official statement, or government document has ever clarified exactly what historic rights Beijing claims.

Second, all claimants must be willing to forego pursuing oil and gas drilling based on entitlements from the disputed islands and reefs of the South China Sea. **Fisheries management areas** around the reef systems could provide a politically palatable way to cordon these features off from exploration without dealing with their legal statuses or delimitation issues. For China, which sees the islands as fully entitled to exclusive economic zones (EEZs) and continental shelves, this could be internally justified as a magnanimous gesture and act of good faith. Beijing could reason that even if the disputed features were islands under article 121.3 of UNCLOS, any equitable delimitation of boundaries with the much longer coastlines of the Southeast Asian states opposite them would result in their EEZs and continental shelves being reduced to small enclaves around the features. For the other claimants, agreeing to forego drilling around the disputed reefs and islands based on the need for environmental conservation should prove a politically palatable rationale to focus petroleum exploration and development on areas closer to their coasts.

These concessions would need to underpin the agreement without being spelled out in its text. That would allow each party to agree on the mechanisms for cooperation while still using different domestic legal justifications for doing so.

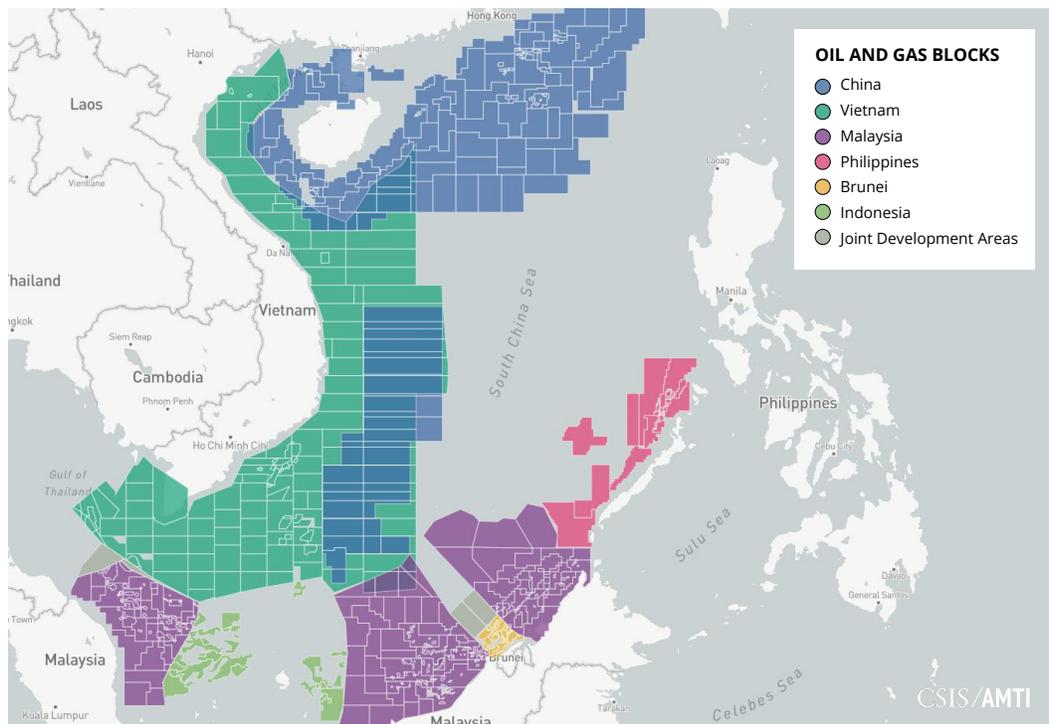
To that end, claimants and littoral states should agree to:

1. Establish a joint venture, in the form of a new commercial entity, in each South China Sea littoral state involving that claimant’s national petroleum company and as many of its counterparts from the other claimants as are interested in investing. Each joint venture’s sole business will be exploration and production of South China Sea hydrocarbon resources off that country’s coast. There are already successful models of joint ventures among state-owned petroleum companies operating in the South China Sea, but a multiparty corporation established by parties to a dispute would be groundbreaking. These joint ventures will operate as follows:

- a. The corporations will seek to acquire petroleum licenses for new offshore blocks in the South China Sea offered by the countries in which they are headquartered, either via production sharing agreements or service contracts, depending on the domestic law of the tendering state. This will ensure that all parties have the opportunity to benefit from oil and gas production throughout the South China Sea.

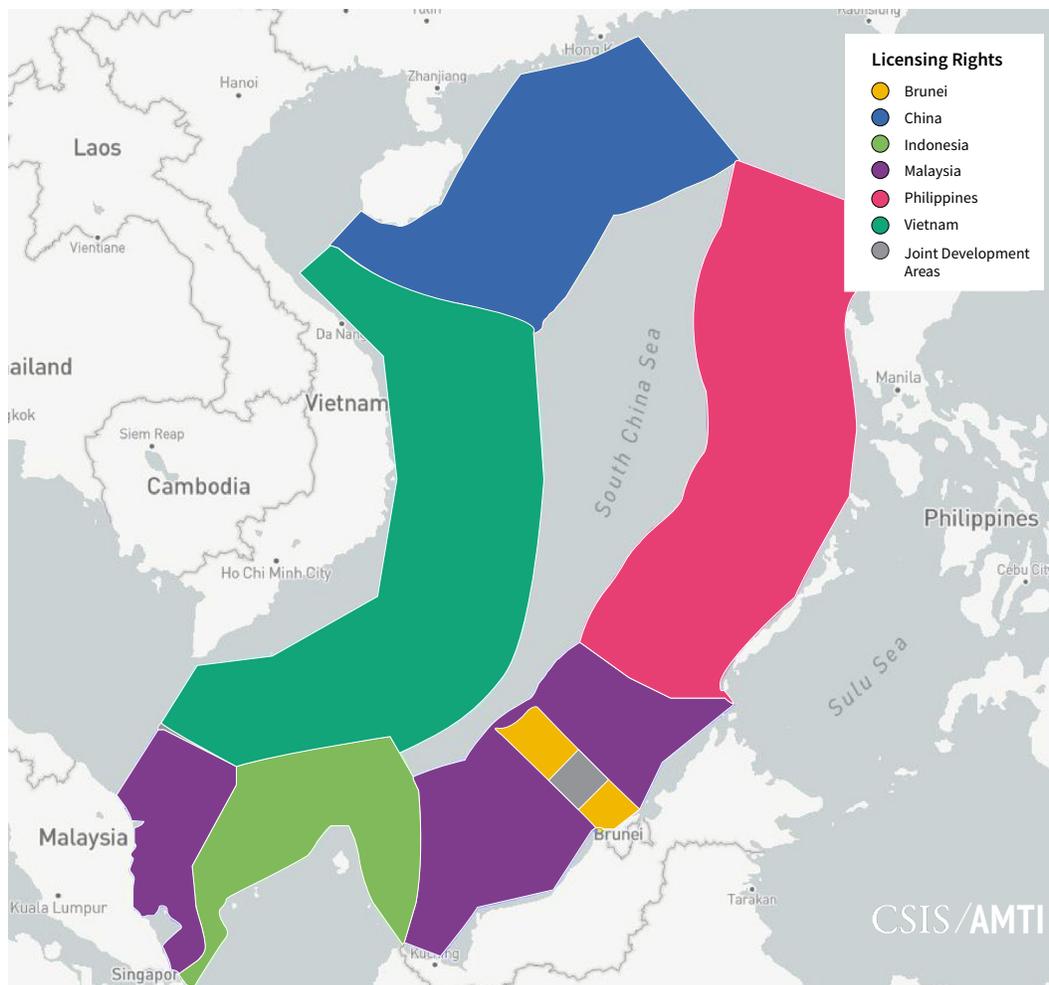
The joint ventures will seek to purchase stakes that their individual member-companies already hold in petroleum licenses in the portions of the South China Sea with which they are concerned. Existing contracts that coastal states have with other parties will not be affected, but the corporations may seek to acquire those licenses when they are relinquished by the current operators. The corporations may also seek to purchase minority stakes in commercially producing blocks in which the current operator is unlikely to relinquish the license any time soon. For a survey of oil and gas blocks that have been licensed by the Southeast Asian claimants or that are currently open for bids, see the map below.

- b. Decisions by the joint ventures to invest in specific blocks in the South China Sea will have no impact on territorial claims or the eventual delimitation of maritime boundaries and cannot be construed as recognition of the claims of any party by the other members of the joint venture. To this end, an explicit non-prejudice clause will be incorporated into the agreements creating the joint ventures and in all contracts into which they enter.
- c. Each claimant will be guaranteed the right to invest, through their national oil companies, in each of the joint ventures but will be under no obligation to do so. This means that one claimant, such as China, might have a company invested in each of the joint ventures while another might invest in only one or two. Any



claimant that does not have its national oil company invest in a given joint venture at the time of its establishment will be welcome to do so in the future. Conversely, each company will be free to divest its stake in any given joint venture at any time (though only to the other national oil companies).

- d. Equal ownership stakes by each company involved in the joint venture might be preferable in some cases, while in others some might wish to invest more or less depending on their capabilities and interests. These details should be left up to negotiation and adjustment as needed. Similarly, the details of how each corporation makes investment decisions and which stakeholder(s) acts as the operator in any given project should be left to negotiation among the national oil companies. Profits from the joint ventures' operations should be shared based on each partner company's stake in the corporation.
2. Agree that all South China Sea littoral states may license petroleum exploration and production within 200 nautical miles of their coastlines pending the eventual delimitation of maritime claims. In areas of overlap, unless a previous bilateral agreement has been reached, a median line will be used to determine which state has the provisional right to license exploration and production. This arrangement is detailed in the map on the next page. Licensing will function as follows:
 - a. The establishment of offshore blocks will have no impact on territorial claims or the eventual delimitation of maritime boundaries and cannot be construed as recognition of the claims of others. Any licenses issued by the coastal states will also incorporate a non-prejudice clause specifying that this provisional arrangement will have no effect on the final delimitation of boundaries.
 - b. The licensing process will operate according to the domestic laws of the coastal states. In some cases, governments could simply grant licenses to the joint venture engaged in hydrocarbon exploration and production off its coast, while in others competitive bidding might be necessary. Even in those cases requiring bidding, the joint ventures will have considerable advantages—political and otherwise—over competitors.
 - c. The coastal state that tenders a license acquired by one of the joint venture corporations will enjoy the same share of profits (the majority in most cases) and the same right to taxation as it would in tendering the license to any other company. This will guarantee that the littoral states benefit most from the resources off their coasts while still allowing all members of the joint venture a share in the profits.
 - d. Any existing joint development frameworks, such as those between Malaysia and Brunei off the latter's coast or between Malaysia and Vietnam near the entrance to the Gulf of Thailand (see map), will remain unchanged. The newly-established joint ventures in the countries concerned will seek to acquire licenses in these areas as any oil company might, while the coastal states will tender licenses and split profits according to their preexisting agreement.
 3. Agree to forego oil and gas exploration in protected fisheries zones covering the vital reef systems of the South China Sea, including the Spratly and Paracel Islands, Scarborough



ough Shoal, and Luconia Shoals, as determined by a multilateral body of independent experts and regional officials (see [Blueprint for Fisheries Management and Environmental Cooperation](#)).

4. Undertake a joint oil and gas survey, performed by one or more of the corporations, of the area of seabed in the center of the South China Sea beyond 200 nautical miles from the coastlines as a provisional measure. This will serve as an acknowledgment that some areas beyond 200 nautical miles are subject to overlapping extended continental shelf claims by the coastal states while other areas might be entirely beyond any continental shelves and therefore constitute part of the common heritage of mankind.
5. Agree that in the case of a dispute over the interpretation or implementation of this agreement, either party may request the establishment of a commission of mediation, inquiry, or conciliation according to the following procedures:
 - g. Each party to this agreement will name up to four experts in maritime affairs to be registered on a list to serve as potential members of a commission of mediation, inquiry, or conciliation. If a party has fewer than four experts registered to the list at any time, it may name additional experts to fill its quota.

- h. A party to a dispute may request the establishment of a commission once it is satisfied that direct negotiations cannot resolve the issue. Participation in the process of mediation, inquiry, or conciliation will then be compulsory for all parties to the dispute.
- i. Each party to the dispute will appoint two experts from the standing list of potential members to serve on the commission. A party may not appoint one of the experts that it named to the list.
- j. Once all parties to the dispute have made their selections, those appointed commissioners will elect another expert from the list to serve as the chairperson of the commission. That chairperson may not be selected from among those experts named to the list by one of the disputing parties.
- k. The commission will determine its own procedure for investigating and mediating the dispute, unless the parties to the dispute have already agreed to a procedure.
- l. The commission will issue a decision outlining its conclusions on all questions of fact or law relevant to the dispute and make its recommendations for a settlement between the parties.

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