



Welcome to the DKI APCSS Alumni Meeting

A satellite image of a coastal region, likely a bay or a large inlet, with a prominent curved shoreline. The water is a deep blue, and the land is a mix of green and brown, indicating vegetation and possibly urban or developed areas. The image is used as a background for the title text.

Building Maritime Shared Awareness: Models, Means and Reasons Why

Kerry Lynn Nankivell

#1

The South China Sea
disputes are about more
than one thing.



#2

Cooperation in the South China Sea is possible (especially where resources are involved)

US DoD, 2012

www.southchinasea.org

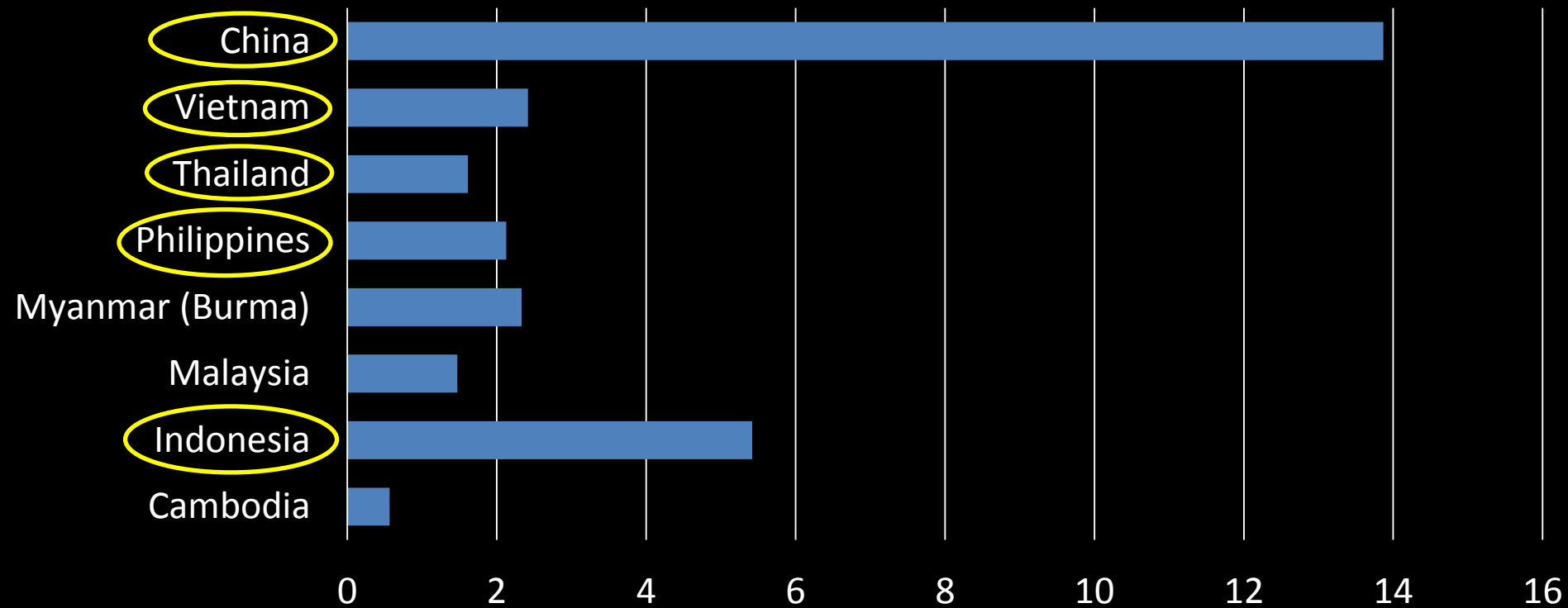


Figure 1: Sovereignty Claims in the South China Sea.

#3

Fish are important as
sovereign assets (and they
are in decline?)

Fisheries Production, capture fisheries only, ASEAN MS + PRC (millions of tonnes)



#4

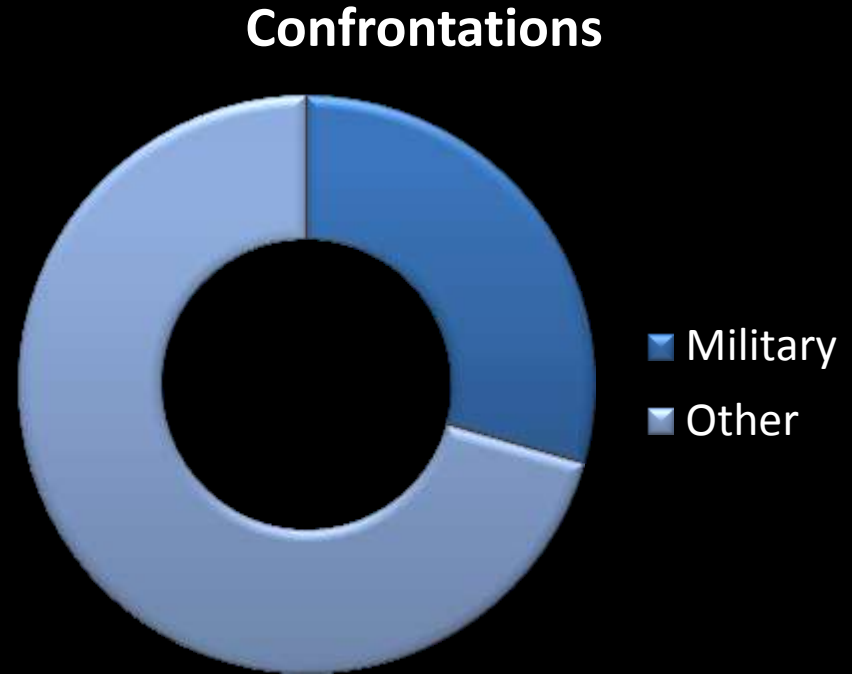
Fish are important as a
driver of confrontation

Confrontations



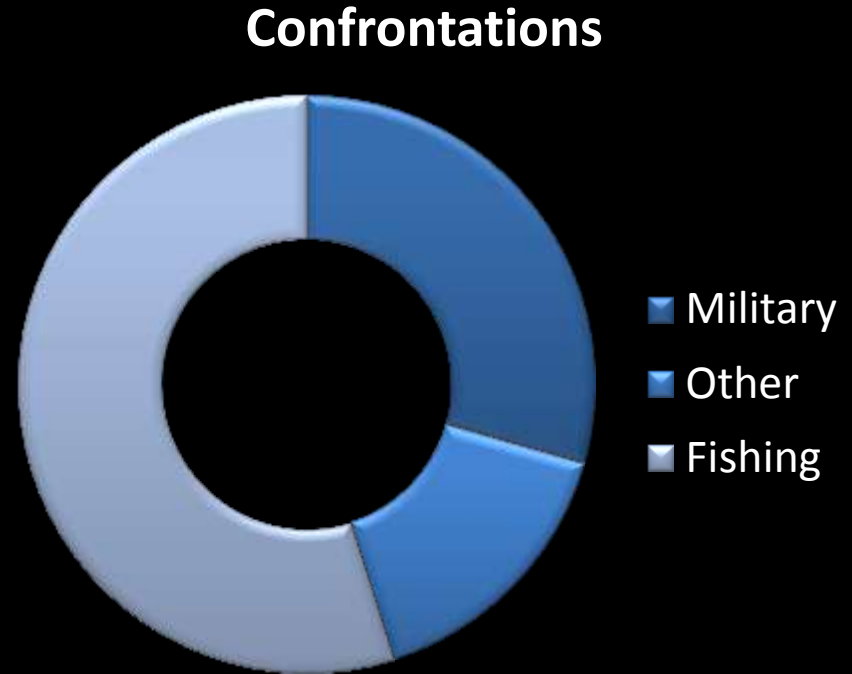
#4

Fish are important as a driver of confrontation



#4

Fish are important as a driver of confrontation



#5

Regional architecture
is not yet focused on
coordinating
enforcement efforts,
but should be?



So What?

- Fisheries are *not the whole answer* to the South China Sea disputes, but *are an important part*
- Forthcoming jurisdictional clarity provides the opportunity for new regional initiatives
- There is a lot of *raw material* to help Southeast Asia think creatively:
 - Fisheries-related organizations
 - Law enforcement capacity
 - Legal authorities and regional models
 - Accessible technologies



A regional solution to IUU fishing

The WCPFC high seas boarding and inspection regime

CAPT Andrew Norris, JAG
Naval War College



Part I – General high seas rules

Part II – Derogation from the high seas rules
by treaty – the Western and Central Pacific
Fisheries Commission (WCPFC) high seas
boarding and inspection regime



UNCLOS Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law comprises, inter alia, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (e) freedom of fishing, subject to the conditions laid down in [UNCLOS Articles 116-119] . . .

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas . . .



Exclusive flag state jurisdiction; high seas rules applicable in EEZ

Article 92 Status of ships

1. Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.

Article 58 Rights and duties of other States in the exclusive economic zone

2. Articles 88 to 115 (UNCLOS's high seas rules) and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with [UNCLOS Part V, the EEZ rules].

Part II – Regional derogation from high seas rules to prevent IUU Fishing

UNCLOS



Fish Stocks Agreement



Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean



Western and Central Pacific Fisheries Commission (WCPFC)



Conservation and management measures



High seas boarding and inspection



UNCLOS AND FISHING

UNCLOS recognizes the right of all States to fish in the high seas, but subjects that right to compliance with Articles 117-119 of the convention.

Article 117 – States must adopt measures to regulate their nationals fishing on the high seas

Article 118 – States must cooperate with each other to conserve and manage high seas resources, **including forming subregional or regional fisheries organizations as appropriate.**

These organizations are known as regional fisheries management organizations (RFMOs)



Fish Stock Agreement

Where there is no existing RFMO with respect to a particular straddling or highly migratory fish stock, States are required to establish one, and to participate in its work.

When establishing an RFMO, States are required to agree upon, among other things:

- the stocks to which its conservation and management measures (CMMs) will apply;
- the area of application ("Convention Area");
- participatory rights (such as allocations of catch or levels of fishing effort);
- standards for collection, reporting, verification, and exchange of data; and
- Parties' obligations for effective monitoring, control, surveillance, and enforcement.



Fish Stock Agreement

Once an RFMO is established in a particular Convention Area:

- RFMO member States must comply with conservation and management measures (CMMs) adopted by the RFMO, and cooperate to make them work; and
- Non-member States who are parties to the Fish Stock Agreement must also comply with the CMMs; otherwise, their vessels cannot fish for the particular living resource(s) or in the area to/in which the CMM applies; and



Fish Stock Agreement

As for enforcement actions, the Fish Stock Agreement makes it clear that the primary enforcement responsibility with respect to vessels fishing in the Convention Area is on the flag State

However . . .



Fish Stock Agreement

There is one significant exception to the otherwise ‘plenary’ enforcement jurisdiction of the flag State.

In the high seas portions of the Convention Area of an RFMO, the Fish Stock Agreement permits authorized inspectors of a State which is a member of the RFMO to board and inspect any vessel flagged in a signatory State to the Fish Stock Agreement, whether or not that State is also a member of the RFMO, to ensure compliance with CMMs adopted by the RFMO.

This is referred to as the high seas boarding and inspection regime.



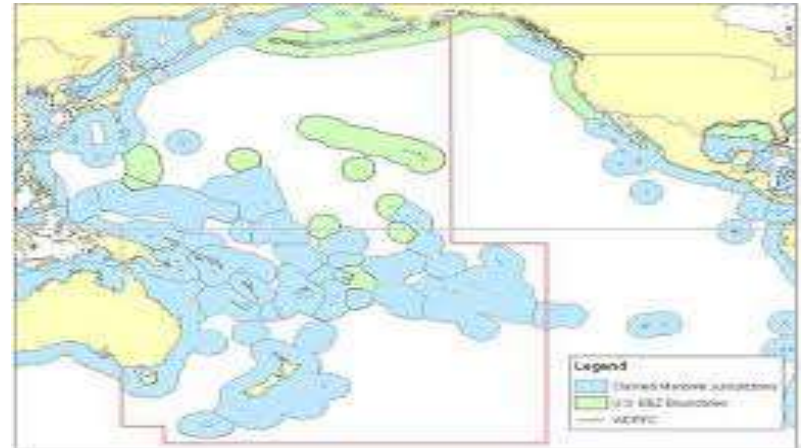
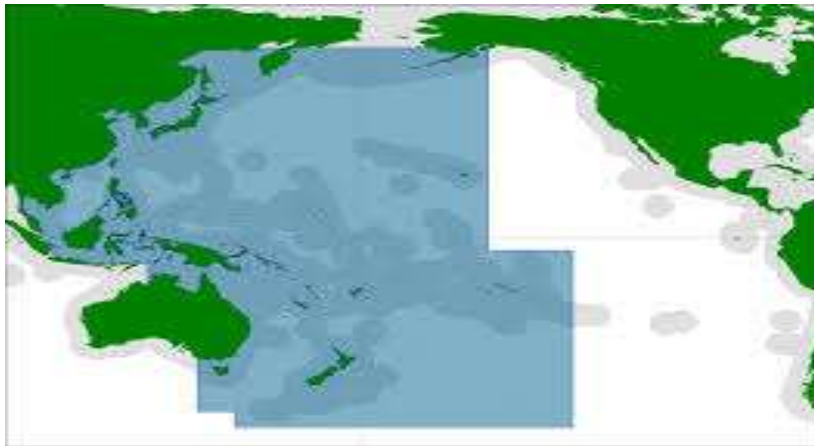
The WCPFC and the WCPF Convention

To date, the only RFMO that has authorized high seas boardings and inspections in its convention area is the Western and Central Pacific Fisheries Commission (WCPFC)

The WCPFC was established by the WCPF Convention, which entered into force on June 19, 2004.



The Convention Area





The WCPFC

The purpose of the WCPFC is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean.

Members of the WCPFC are Australia, China, Canada, Cook Islands, European Union, Federated States of Micronesia, Fiji, France, Indonesia, Japan, Kiribati, Republic of Korea, Republic of the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America , and Vanuatu.

Participating territories are American Samoa, the Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Tokelau, and Wallis and Futuna.

Cooperating non-member (CNM) States are Belize, Democratic Peoples' Republic of Korea (DPRK), Ecuador, El Salvador, Mexico, Panama, Thailand, and Vietnam.



The WCPFC has adopted many conservation and management measures:

CMM 2006-07 – fisheries observers

CMM 2014-02 – vessel management system

CMM 2006-08 – high seas boarding and inspection



CMM 2006-08

- Conducted in the high seas within the Convention Area.
- Conducted only by authorized enforcement vessels and trained and certified personnel.
- The inspection is of the vessel, its license, gear, equipment, records, facilities, fish and fish products, and any relevant documents necessary to verify compliance with WCPFC CMMs.
- Must be completed within four hours.
- Within three days of completion of the inspection, inspecting authorities are required to complete and submit a report to the Commission and to authorities of the fishing vessel.
- Only the flag state of the fishing vessel can take enforcement action for any violation detected during the boarding.



Enforcement obligation on the flag state

If the violation is a serious violation, authorities of the fishing vessel are required to order the vessel concerned to **cease fishing activities, and to not engage in such activities in the Convention Area until such time as all outstanding sanctions imposed by the flag State for the violation(s) have been complied with.**

Where the vessel concerned has conducted unauthorized fishing within the EEZ of a State party to the Convention, the flag State shall, in accordance with its laws, **ensure that the vessel complies promptly with any sanctions which may be imposed by such coastal State in accordance with its national laws and regulations, or shall impose appropriate sanctions on its own.**



Takeaways

Regional fisheries measures and other measures with binding effect are possible.

Those measures can extend into the high seas.

These measures can include limited enforcement mechanisms that derogate from the general rule in UNCLOS Article 92 that vessels on the high seas are subject to the exclusive jurisdiction of their flag state.

Any high seas enforcement measures by a nation other than the flag state need to be carefully limited, and carried out with due regard for the rights of the flag state.



College of Security Studies

Daniel K. Inouye Asia-Pacific Center for Security Studies

How the 2009 Port State Measures Agreement Can Build Maritime Shared Awareness to Counter Illegal, Unreported, & Unregulated Fishing

Jonathan G. Odom, J.D., LL.M.

CDR, JAG Corps, USN

Military Professor

Goals of this Presentation

- Identify specific elements of the 2009 PSMA that can help to build maritime shared awareness among States to counter IUU fishing.
- Raise important questions that warrant further exploration by regional States and international organizations.

References

- **Text of PSMA**
 - <http://www.fao.org/3/a-i1644t.pdf>
- **Status of the PSMA**
 - http://www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf
- ***A Guide to the Background and Implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO Circular No. 1074, 2012)***
 - <http://www.fao.org/docrep/015/i2590e/i2590e00.htm>
- ***Implementation of Port State Measures (FAO/APFIC, 2013)***
 - Vol. 1: *Technical Guide to Port Inspection of Fishing Vessels*
 - <http://www.fao.org/3/a-i3508e/index.html>
 - Vol. 2: *Port Inspection Workshop Workbook for Trainers*
 - <http://www.fao.org/3/a-i3509e/index.html>
 - Vol. 3: *Port Inspections: Guide to Activities and Tasks*
 - <http://www.fao.org/3/a-i3510e/index.html>
- **Report of the FAO / APFIC Workshop on Implementing the PSMA (Bangkok, 2012)**
 - <http://www.fao.org/docrep/015/i2774e/i2774e00.pdf>

= Applicable Article/Annex of PSMA

= Applicable Article/Annex of PSMA

16

8

9

7

18

9

Vessels

9

16

11

19

Relevant Coastal State(s)

State of Vessel's Master

Relevant Port State(s)

2

Flag State
20
Actions Taken

**Other
International
Organization(s)**

Key Information-Exchange Provisions of the PSMA

- General Principle
 - Article 6 (Cooperate and Exchange Information)
- Specific Requirements
 - Article 8 (Vessel Request to Enter Port)
 - Article 15 (Results of Inspection by Port State)
 - Article 16 (Information-Sharing Mechanism)
 - Article 18 (Actions by Port State)

Article 6

Cooperation and Exchange of Information

1. “In order to promote the effective implementation of this agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.”

Article 8

Advance Request for Port Entry

1. Each Party shall **require**, as a minimum standard, the **information requested in Annex A** to be provided before granting entry to a vessel to its port.
2. Each Party shall require information referred to in paragraph 1 to be **provided sufficiently in advance** to allow adequate time for the port State to examine such information.

Annex A

Information to Be Provided in Advance by Vessels Requesting Port Entry

- Intended Port of Call
- Estimated date and time of arrival
- Purposes
- Name of vessel
- Flag State
- Type of Vessel
- Vessel Owner
- Certificate of registry ID
- Relevant fishing authorizations
- Relevant transshipment authorizations
- Transshipment information concerning donor vessels
- Total catch onboard (incl. "Catch area(s)")
- Catch to be offloaded (incl. "Catch area(s)")

ANNEX A

Information to be provided in advance by vessels requesting port entry

1. Intended port of call									
2. Port State									
3. Estimated date and time of arrival									
4. Purpose(s)									
5. Port and date of last port call									
6. Name of the vessel									
7. Flag State									
8. Type of vessel									
9. International Radio Call Sign									
10. Vessel contact information									
11. Vessel owner(s)									
12. Certificate of registry ID									
13. IMO ship ID, if available									
14. External ID, if available									
15. RFMO ID, if applicable									
16. VMS									
No Yes National Yes RFMO(s) Type									
17. Vessel dimensions									
Length Beam Draft									
18. Vessel master name and nationality									
19. Relevant fishing authorisation(s)									
Authoriser Issued by Validity Fishing area(s) Species Gear									
20. Relevant transshipment authorisation(s)									
Authoriser Issued by Validity									
21. Transshipment information concerning donor vessels									
Date Location Name Flag State ID number Species Product form Catch area Quantity									
22. Total catch onboard									
23. Catch to be offloaded									

Article 15

Transmittal of Inspection Results

Each Party shall transmit the **results of each inspection** to the flag State of the inspected vessel and, as appropriate, to:

- a) **Relevant Parties and States**, including:
 - i. Those States for which there is evidence through inspection that the vessel has engaged in IUU fishing or fishing related activities in support of such fishing **within waters under their national jurisdiction**, and
 - ii. The **State of which the vessel's master is a national**
- b) Relevant **regional fisheries management organizations**, and
- c) **FAO** and other **relevant international organizations**.

Article 16

Electronic Exchange of Information

1. To facilitate implementation of this Agreement, each Party shall, where possible, establish a communication mechanism that allows for direct electronic exchange of information, with due regard to appropriate confidentiality requirements.

Article 16

Electronic Exchange of Information

2. To the extent possible and with due regard to appropriate confidentiality requirements, Parties should **cooperate to establish an information-sharing mechanism**, preferably **coordinated by FAO**, in conjunction with the relevant **multilateral and intergovernmental initiatives**, and to facilitate the exchange of **information with existing databases** relevant to this Agreement.

Article 16

Electronic Exchange of Information

3. Each Party shall designate an authority that shall act as a contact point for the exchange of information under this Agreement. Each Party shall notify the pertinent designation to FAO.

Article 16

Electronic Exchange of Information

4. Each Party shall **handle information** to be transmitted through any mechanism established under paragraph 1 of this Article **consistent with Annex D.**

Annex D

Information Systems on Port State Measures

In implementing this Agreement, each Party shall:

- a) Seek to **establish computerized communication** in accordance with Article 16
- b) **Establish**, to the extent possible, **websites to publicize the lists of ports designated** in accordance with Article 7 **and the actions taken** in accordance with the relevant provisions of this Agreement
- c) Identify, to the greatest extent possible, each inspection report by a unique reference number starting with a 3-alpha code of the port State and identification of the issuing agency
- d) Utilize, to the extent possible, the international coding system below in Annexes A and C and translate any other coding system into the international system.

Article 16

Electronic Exchange of Information

5. FAO shall request relevant fisheries management organizations to provide information concerning the measures or decisions they have adopted and implemented which relate to this Agreement for their integration, to the extent possible and taking due account of the appropriate confidentiality requirements, into the information-sharing mechanism referred to in paragraph 2 of this Article.

Article 18

Port State Actions Following Inspection

1. Where, following an inspection, there are **clear grounds for believing** that a vessel has engaged **in IUU fishing** or fishing related activities in support of such fishing, the inspecting Party shall:
 - a. **Promptly notify** the **flag State** and, as appropriate, **relevant coastal States, regional fisheries management organizations and other international organizations**, and the **State of which the vessel's master** is a national of its findings.

Questions to Consider

- What is the practical way-ahead for an “information-sharing mechanism” identified in Art. 16 of the PSMA? What does FAO envision for this mechanism? Should it be a stand-alone mechanism, or an add-on to existing information-sharing platforms?
- What is the most efficient way for all of the information (i.e., in the wire diagram) to be shared between States and relevant IGOs?
- What, if any, is the location data collected under PSMA? Is PSMA location data dependent solely upon veracity of the reporting vessel during inspection?
- From a legal/policy perspective, is one of the true benefits of PSMA is that it creates reporting requirements that reduce the scope of the first U (“unreported”) in IUU fishing?
- What are the “appropriate confidentiality requirements”?
- What good is PSMA in SE Asia if there is no RFMO?



MSA IS THE RESULT, NOT THE MISSION

Building Maritime Shared Awareness in Southeast Asia

DEFINING A MARITIME INFORMATION SHARING ENVIRONMENT THROUGH
COMMON DATA STANDARDS AND ARCHITECTURAL UNDERSTANDING

Mr. Frank Sisto



COMMON SHARING CONCERNS

- **COMMON QUESTIONS**
 - Can I? – Do I have the technology or resources to share?
 - May I? – Do I have supporting policies or guidance?
 - Should I? – Is it in the best interest of my government or agency?
 - An often misunderstood part is “what” to share.
More (everything) is rarely better
- **BUILDING TRUST**
 - Define a common architectural plan
 - Clear definitions of what will be shared, how it will be shared and with whom it will be shared
 - Share commonly available information to build confidence
 - Allows partners to focus on what sharing best supports their missions, not on technology or process



WHERE TO START

Successful information sharing activities are the result of operational, information and technological understanding achieved through a well-defined and routinely implemented processes

1. Describe the operational use case being supported
2. Identify the specific data elements required to support the use case
3. Develop a standard definition, model or product for the information to be shared
4. Identify any legislative or policy driven constraints
5. Implement appropriate controls to ensure proper management
6. Implement and monitor the sharing service



DEFINING THE MISSION

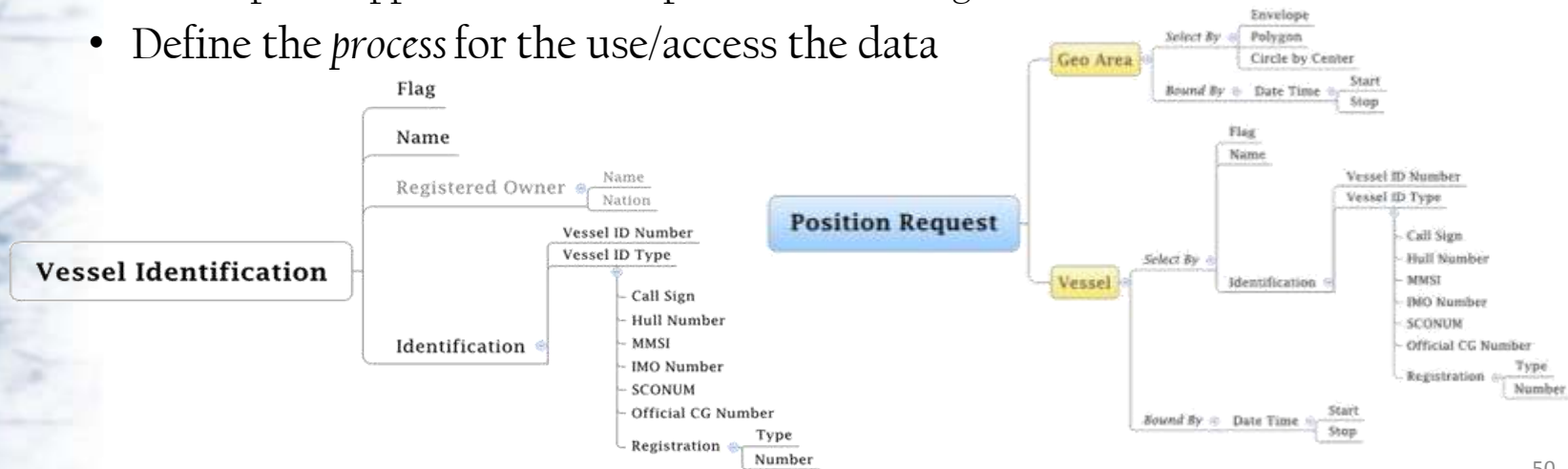
- **MULTIPLE MARITIME MISSIONS**
 - Illegal Maritime Migration
 - Illegal, Unreported, Unregulated Fishing (IUUF)
 - Maritime Security
 - Piracy, Sea Robbery
- **THE MISSION DEFINES THE EFFORT**
 - Keep focused on the mission requirements
 - Address the missions one at a time, *not* all at once
- **DEFINE OPERATIONAL USE CASES**
 - Avoid broad ideas like “improve maritime security”
 - Ensure legal and policy concerns are identified

MSA IS THE RESULT, NOT THE MISSION



UNDERSTANDING THE DATA

- UNDERSTAND *EVERY* ELEMENT
 - Ask “What’s the decision point?” for every element
 - Understanding why the element is being shared often redefines its need or use
 - Refines the priority/importance of the data
 - Simplifies application of laws, policies and sharing controls
 - Define the *process* for the use/access the data





ACHIEVING RESULTS

- **MSA INFORMATION ON A CONTINUUM**
 - Somewhere between the sensor and the decision maker
- **ROUTINE, REPEATABLE RESULTS**
 - The strength of MSA efforts is in routine use and repeatable implementation
 - Routine use builds confidence and then trust
 - Enables more meaningful sharing when required
- **INCREMENTAL GROWTH**
 - Few partners will support leaps in capabilities
 - Manage growth to allow policies and resources to keep up
 - Build trust slowly



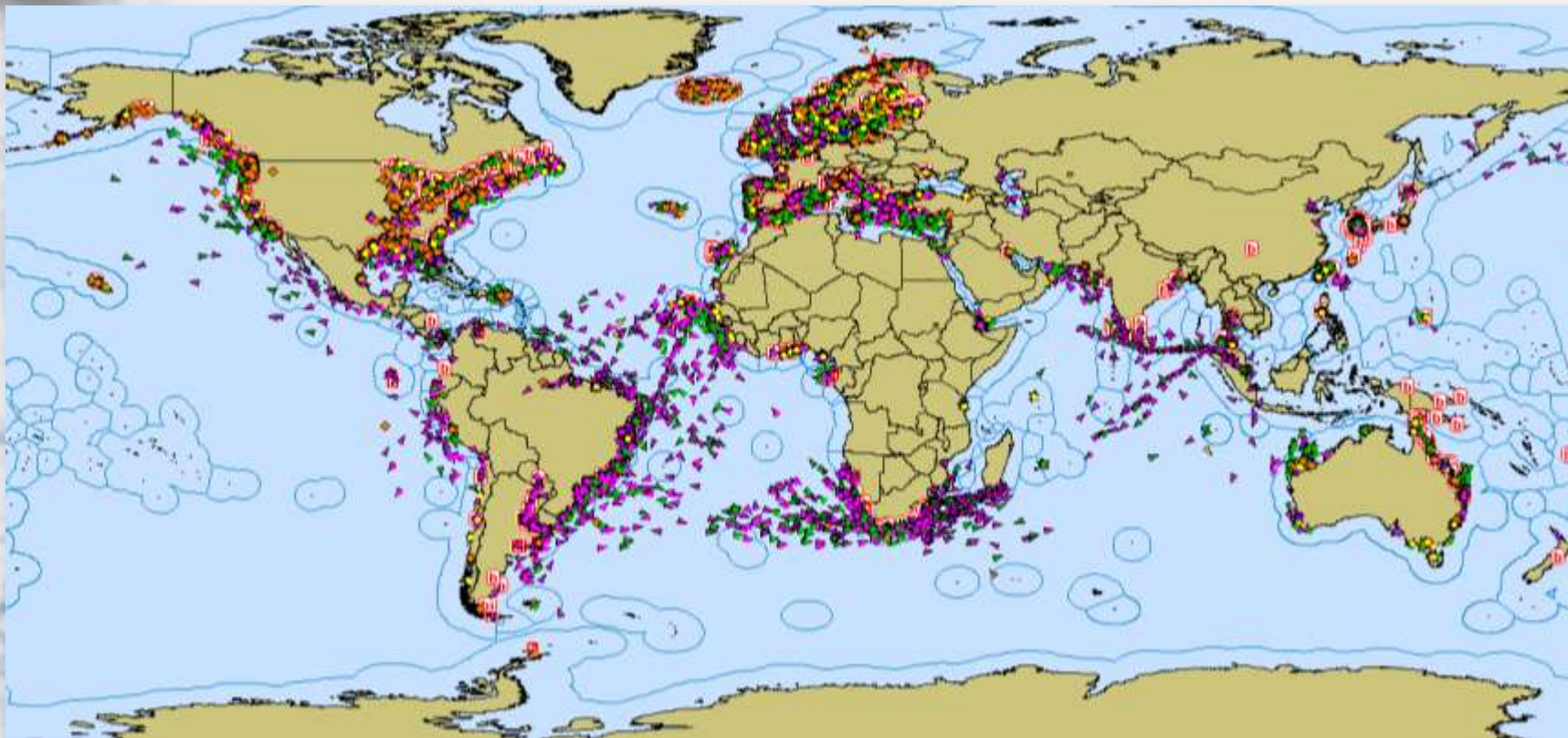
PLANNED GROWTH

AN EXAMPLE OF LONG TERM PARTNERSHIP PLANNING

- **BASIC UNDERSTANDING / LOW COST (1+ YEARS)**
 - Maritime Safety and Security Information System
 - 74 participating nations
- **ADD CAPABILITIES W/ MATURITY (2-7 YEARS)**
 - APAN and SeaVision
 - User defined/selected capabilities and data
- **MATURE PARTNERS (5+ YEARS)**
 - Transition to local/regional tools
 - Partner assumes cost to participate
 - Possible expansion to other systems/programs
 - Partner defines their own processes



MARITIME SAFETY AND SECURITY INFORMATION SYSTEM



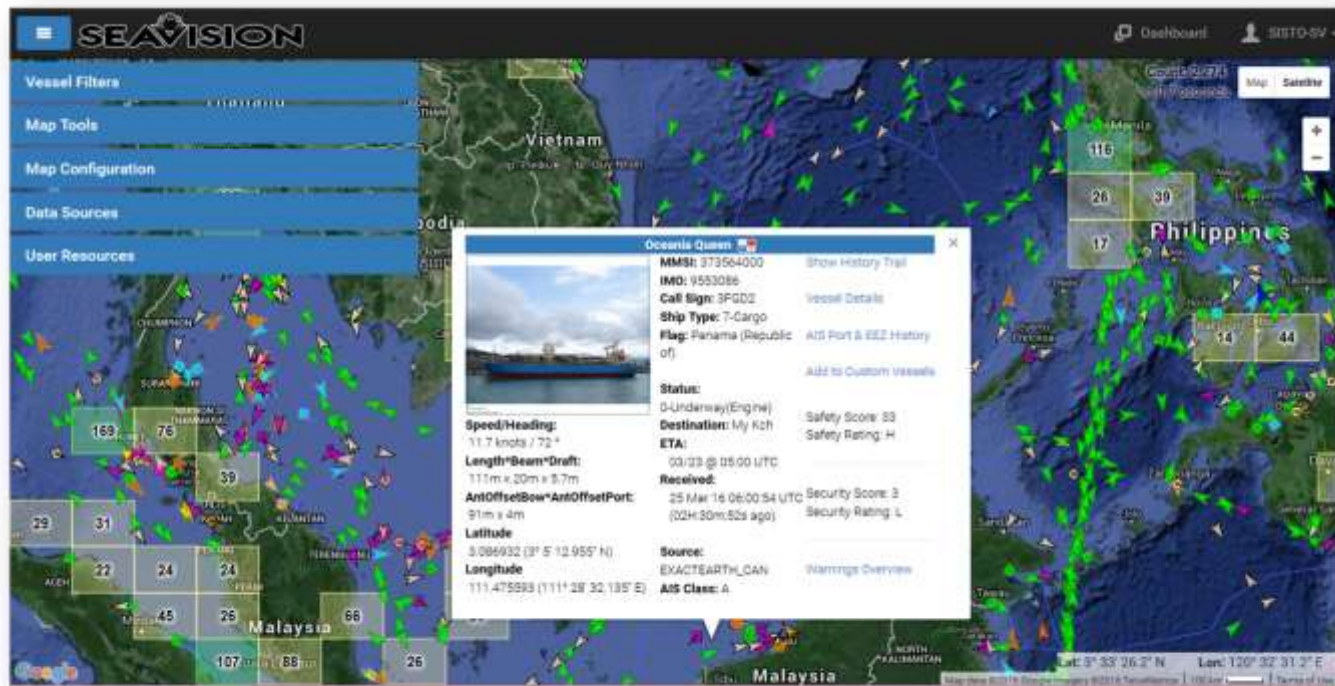


BRINGING IT ALL TOGETHER



SEAVISION

UNITED STATES DEPARTMENT OF TRANSPORTATION

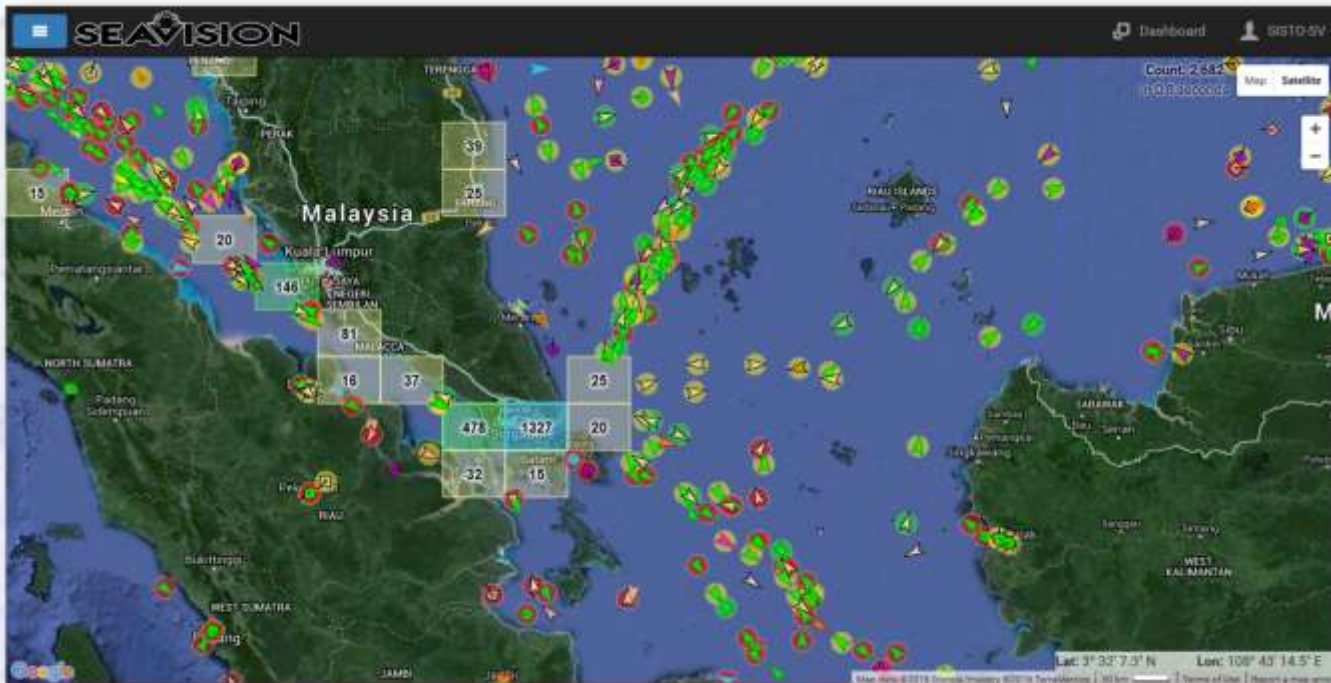




AUTOMATED RISK ASSESSMENT



UNITED STATES DEPARTMENT OF TRANSPORTATION





RULES BASED NOTIFICATIONS

Vessel Details

Vessel Details

REGISTRATION, P... + New Rule ▶ Run Now ⬇ Export Data ⬆ Import Data

Ship Crew History

Inspection & Deter...

Casualty History

Change of Informa...

Port Callings

My Rules

Active Rules	Disabled Rules	Expired Rules
Score	Name	
10	Malaysia Military Ops	
7	Malaysia Fishing	
4	Pacific Fishing (Active)	
2	Pacific Fishing (Total Reporting)	

4991 Vessels Mat

IMO	MMSI	Name			
0	533130389	Nautica Tg.puteri			
0	533190176	Sifa 4706			
0707883	533180156	Nautica Tg.puteri 25	3	13	14
9707895	533130368	Nautica Tg Puteri 26	3	13	14
9121687	533165000	Bunga Mas Enam	1	10	14
0	416705000	Sheng Hai 127	2	9	-
0	533190762	Jhf 2395 T	2	9	-
0	533190813	Jhf 6428 T	2	9	-
0	533190974	Paf 4773	2	9	-
0	533191185	Paf 4800	2	9	-
0	4	Yinokouzhanoduan	2	6	-

1 2 3 ... Last Page

Jump to: 1 Rows: 20

Rules

4 4991

Number of Rules Active Number of Vessels Matching Rules

Flags of Vessels Matching Rules



MOVING FORWARD

- **UNDERSTAND WHERE YOU ARE ON THE MSA CONTINUUM**
 - What is your agency/office/program trying to do?
 - What are YOUR priorities?
- **SMALL STEPS – AGREE ON THE BASICS**
 - Mission, Objectives, Decisions, Data, Constraints
- **DOCUMENT EVERYTHING EARLY**
 - Develop draft documents to review. Discuss documents, not ideas



Questions

BACK UPS



CMM 2006-08 – high seas boarding and inspection regime

CMM 2006-08 was adopted in December 2006.

What is permitted? Each WCPFC member State is authorized to carry out boarding and inspection on the high seas (HSBI) of fishing vessels engaged in or reported to have engaged in a fishery regulated by the Convention.

Which vessels are authorized to carry out such boardings? Authorized inspection vessels of member States.

Which vessels can be boarded and inspected? A fishing vessel of any member or CNM State in the high seas within the convention area.

What is the purpose of the boarding and inspection? To ensure compliance with the Convention, and with CMMs adopted by the WCPFC.



The HSB & I regime – some limitations

On vessels . . .

1. Any State desiring to conduct HSBI must provide to the Commission **information (name, description, registration number, call sign, and the like)** regarding any inspection vessel it intends to use for such purposes.
2. Along with this information, the State must certify that the vessel is **clearly marked as being in government service**, and that its crew has been trained to conduct boardings and inspections for the purposes of CMM 2006-08.

The Commission is required to maintain a list of authorized inspection vessels. Only vessels listed by the Commission are permitted to carry out high seas boardings and inspections in accordance with CMM 2006-08.



Procedures to follow

- The inspection vessel must fly the WCPFC inspection flag in clearly visible fashion.
- It must make its best efforts to establish contact with the fishing vessel by radio, by the appropriate International Code of Signals, or by other accepted means of alerting the vessel
- It must identify itself as an authorized inspection vessel (name, registration number, international radio call sign and contact frequency)
- It must communicate to the master of the vessel its intention to board and inspect the vessel under the authority of the Commission and pursuant to the HSB & I procedures; and
- It must provide notice of the boarding and inspection through the authorities of the inspection vessel to the authorities of the fishing vessel.



Once aboard, authorized inspectors are required to:

- a. present their identity card to the master of the vessel and a copy of the text of the relevant measures in force pursuant to the Convention in the relevant area of the high seas;
- b. not interfere with the master's ability to communicate with authorities of the his flag State;
- c. complete the inspection of the vessel within 4 (four) hours unless evidence of a serious violation is found;
- d. collect and clearly document any evidence they believe indicates a violation of measures in force pursuant to the Convention;
- e. ensure the inspection and associated activities are carried out in accordance with internationally accepted principles of good seamanship so as to avoid risks to the safety of the fishing vessel and its crew, and are conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the fishing vessel, adversely affect the quality of the catch, or constitute harassment of the fishing vessel, its officers or crew ;
- f. provide to the master prior to leaving the vessel a copy of an interim report on the boarding and inspection, including any objection or statement which the master wishes to include in the report;
- g. promptly leave the vessel following completion of the inspection; and
- h. provide a full report on the boarding and inspection to the authorities of the fishing vessel, which shall also include any master's statement.