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# Toward an Ocean Management Regime in the Sea of Japan



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## Recommended Citation

Mark J. Valencia, East-West Center, "Toward an Ocean Management Regime in the Sea of Japan", NAPSNet Policy Forum, January 08, 1999, <https://nautilus.org/napsnet/napsnet-policy-forum/toward-an-ocean-management-regime-in-the-sea-of-japan/>

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# Toward an Ocean Management Regime in the Sea of Japan

NE Asian Marine Issues - #2

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## I. Introduction

This essay is the second in a series of essays on energy-related marine issues in the regional seas of Northeast Asia. The energy, environmental and security aspects of such issues are explored with the purpose of engaging a broad community of experts, policymakers, non-governmental organizations, and interested citizens in a dialogue on ocean policies in the Northeast Asian region. The essay is based on a paper ("Ocean Management Regimes in the Sea of Japan: Present and Future") by Dr. Mark J. Valencia, a Senior Fellow at the East-West Center. Dr. Valencia has published over 100 articles and books. Recent works include *Sharing the Resources of the South China Sea* (with Jon Van Dyke and Noel Ludwig; Kluwer Law International, 1997); and *A Maritime Regime for Northeast Asia* (Oxford University Press, 1996). He is also co-author of the widely used *Atlas for Marine Policy in East Asian Seas* (with Joseph Morgan; University of California Press, Berkeley, 1992).

## II. Valencia Essay

### "Toward an Ocean Management Regime in the Sea of Japan"

#### 1. Political and Natural Setting

The countries relevant to an analysis of an ocean management regime in the Sea of Japan, or East Sea as it is referred to in the Koreans (and referred to in this essay as "the Sea") include: the Democratic People's Republic of Korea (DPRK), Japan, the Republic of Korea (ROK), and the Russian Federation, as well as China by virtue of the Tumen River whose watershed encompasses Chinese territory and which may provide China access to the Sea.

For millennia, the Sea has served as a conduit for the flow of culture, people, and goods between the Asian mainland and Japan. However, during much of this century, relations between most of the region's countries have been constrained by significant political and ideological differences. As a consequence, the Sea was a site of tension and potential conflict, and development of the coastal portions of all countries bordering the Sea lagged behind development of the opposite coasts of the above four countries.

We are currently witnessing, though, a transformation of the political system in the region. As survival has ceased to be the prime concern of powerful Northeast Asian states, their quest for relative gains has become less driven and consistent. Most governments are now more oriented towards maximizing wealth than controlling territory. Because of development of political multipolarity and the abandonment of Stalinist economic models, economic relationships have begun to develop a more "natural" pattern. These economic relations have tended to concentrate in those boundary areas where the economies of adjacent regions obviously complement each other, and comprise "natural economic territories" (NETs)?southern China, the Yellow Sea Rim, the Tumen River area, and the Sea Rim.

In this context, the use of the Sea's resources could stimulate economic growth along its coasts and thus help to reduce the internal economic gap in each country. Extension of coastal state jurisdiction over maritime resources and activities has encompassed the entire Sea and there are several areas where claims overlap. Given these overlapping claims and the transboundary nature of the ocean's resources, co-operation in their management is essential. Indeed, opening a new chapter in cooperative use of the Sea's resources and environment may help fulfil for the DPRK, Japan, the ROK, and Russia the promise of the Pacific Age and turn this Sea from a zone of conflict and isolation into a zone of peace and prosperity.

#### 2. Existing Regimes

Existing regimes, activities and programs related to the Sea include the United Nations Convention on the Law of the Sea (UNCLOS), International Maritime Organization (IMO) treaties, the London Dumping Convention (LDC), the Montreal Guidelines on Land-Based Marine Pollution, the Asia Pacific Economic Cooperation Forum (APEC) working groups, the North-West Pacific Region Action Plan (NOWPAP), the Tumen River Area Development Programme (TRADP), various marine scientific research programs such as the Working Group for the Western Pacific (WESTPAC) and North Pacific Marine Science Organization (PICES), the UNDP/GEF Program on Prevention and Management of Marine Pollution in East Asian Seas, and a web of nine bilateral fisheries agreements.

### 3. Problems and Inadequacies of Existing Regimes

#### Redundancy:

There is considerable redundancy of activities in the Sea. For instance, there is redundancy envisaged under the auspices of WESTPAC, UNDP/GEF, PICES, and NOWPAP. WESTPAC anticipates conducting training in the modeling of coastal circulation in order to predict and control accidental oil spills. It is also developing a WESTPAC Action Plan as a follow-up to UNCED. Both activities appear to be similar to activities contemplated by NOWPAP. The objectives of the UNDP/GEF Program also seem to greatly overlap those of the NOWPAP and the Program also includes North Korea and China in its terms of reference. A mechanism may be needed to coordinate WESTPAC and UNDP/GEF activities with NOWPAP, similar to the Coordinating Body on the Seas of East Asia (COBSEA) operative in Southeast Asia.

#### Insufficient Knowledge and Awareness:

The concept of the EEZ is not yet ingrained in the psyche of policymakers. Problems are most likely to arise in waters close to land, and national attention is therefore concentrated on protecting the health of the coastal waters rather than offshore areas, especially in semi-enclosed seas like the Sea. Moreover, countries generally resist involvement of other nations in their coastal waters, no matter how well-intentioned. Aside from physical and ecological degradation of the coastal and near-shore zones, and of course, nuclear waste dumping and massive oil spills, continuous pollution from land-based sources is at present the single most important threat to the Sea marine environment. Prospects for improved transnational cooperation in environmental management depend upon better understanding of the causes and consequences of marine pollution in open-sea areas. Indeed increased knowledge is extremely important to the creation of regimes and accounts for the expansion and strengthening of marine pollution regimes worldwide. The most successful efforts to deal with marine environmental problems appear to have been carefully nurtured with simultaneous institution-building, scientific, and treaty-drafting activities at the regional level. But this can come about only with strong and sustained littoral state support and state or international organizational leadership.

#### Different National Perspectives:

The Sea countries have fundamental differences in their approaches to regional cooperation in environmental protection. China believes such cooperation should focus on urgent issues? industrial pollution, soil erosion, desertification, decrease in agricultural output, marine pollution, and depletion of marine resources. China prefers an informal mechanism to facilitate periodic meetings and exchange of relevant information and personnel. Further, it believes the developed countries in the region and international institutions should contribute technical and financial assistance to projects in these issue areas. Japan prefers to start with an exchange of information and knowledge and then to gradually move to policy-oriented dialogue on common environmental concerns. Japan does support the establishment of a central secretariat to organize meetings, publish a newsletter,

and administer subcommittees which would handle concrete issues. But Japan feels that the establishment of a framework for implementation of multilateral cooperation will take a long time. Russia clearly requires financial assistance to protect its environment. It prefers ecosystem management and more practical and action-oriented cooperation programs. South Korea emphasizes the necessity of regional cooperation for environmental protection. South Korea feels such cooperation should include both technical projects as preferred by China, and environmental management projects such as a joint survey of the state of the environment as preferred by Japan.

#### Institutional Inadequacies:

In few other semienclosed seas are multilateral measures for marine pollution control as deficient as those in the Sea. Indeed beyond coastal waters, most of the Sea is a "mare nullius" in terms of marine environmental protection. There is a general dearth of capacity and will to cooperatively monitor marine pollution. There is no formal infrastructure to bring about the critical mass of international collaboration and cooperation in monitoring and research activities that would delineate the spatial distribution of a contaminant and its subsequent effects, and, in particular, whether it would cross national boundaries. The lack of such a structure prevents the development of well-coordinated cooperative baseline studies and coordination in emergencies (such as a spill of oil or other toxic and hazardous materials). Also, the degree of concern with marine pollution is quite varied, and actual practice is even more diverse. Japan is clearly the leader in marine pollution policy and prevention in the Northeast Asian region, but even it is now backsliding in policy and enforcement. Marine pollution awareness and prevention are much more recent phenomena in China, South Korea, and Russia, and although their laws and regulations are sufficiently strict, there is a wide gap between the law and its implementation and enforcement.

#### Summary:

There was, and still is, except in some heavily polluted coastal areas, little public awareness of the importance of marine environmental protection, and central governments still tend to see environmental problems as peripheral issues to be acknowledged but effectively ignored. Whatever attempts were made to draft regulations have been hindered by the need to balance the interests of competing national and province-level sectors, such as coastal and offshore shipping interests, fishing and fish processing enterprises, coastal inland development construction and water conservancy bureaucracies, port and harbor administrations, and agriculture and industrial ministries. Thus, the main constraints to regional cooperation in marine environmental protection are poor political relationships and environmental apathy. Addressing transboundary pollution, coordination of regulations and their implementation, and prevention of a "tragedy of the commons" are the most pressing issues. Two trends are relevant for the Sea: increasing marine pollution with concomitant damage to living resources, and a growing environmental consciousness which may spill over into the marine sphere. What is not clear is whether warming political relations and increasing environmental consciousness will overtake and mitigate an environmentally damaging ethos before irreversible damage is done.

#### Steps Toward a Regional Marine Environmental Protection Regime

Despite the relatively poor record of the region's entities in joining or adhering to international conventions protecting the marine environment, the new environmentalism combined with the muting of the Cold War in Northeast Asia has stimulated a proliferation of multilateral discussions and program proposals for environmental protection. However, the motives and rationale for these new initiatives may be broader than concern for the environment. By calling attention to politically benign but mutually threatening environmental issues, states sometimes can achieve broader objectives. Indeed, although marine environmental protection is a minor peripheral issue in relations

among the East Asian coastal states, negotiations or provisional agreement on environmental questions may permit parties to avoid more controversial issues such as boundary delimitation.

The ideal regime for ocean management in the Sea must satisfy many theoretical needs as well as national interests. Above all it should rectify existing inadequacies. It should rationalize the redundancy of the existing and proposed international programs. It should provide the consultative channels or infrastructure for cooperation to provide synchronic monitoring, coordinated baseline studies, and prevention and clean-up of transnational pollution. It should coordinate policies and regulations for national zones and tailor them to fit natural features and processes, e.g., current systems and ecological zones?nearshore, offshore, temperate, and boreal. It should foster coordination and sharing of results of research in individual zones. It should serve to educate the public and policymakers as to the causes and consequences of marine pollution and thus even up the degree of knowledge and concern among the various countries, particularly for the offshore living resources and ecosystems. Perhaps most important, it must provide opportunities to upgrade the capacities of North Korea and China to assess, monitor, prevent, control, and combat marine pollution.

There is a convergence of factors which makes formation of a marine environmental regime in the Sea more likely now than ever. Only four states actually border the Sea, thus lowering the complexity of the bargaining process. First, there is a growing recognition that successful efforts in environment regimes could have spill over effects to other spheres closer to the core of international relations, such as security and trade. The interconnectivity of the waters and their biota, including fisheries resources are increasingly apparent. Moreover, the Sea is considered relatively unspoiled and therefore a prime candidate for preservation. In addition, a community of scientists and environmentalists is emerging in the bordering countries to press for policy action.

The process of regime creation should recognize the natural course of events and allow the regime to form in stages, i.e., to evolve. It should begin with a limited and temporary focus on monitoring and possible clean-up of dumped radioactive materials and perhaps on oil spill modeling and contingency plans. But policymakers should be prepared to move rather quickly beyond this limited ad hoc arrangement to a broader coordination regime which would agree on rules and procedures while leaving each member free to implement them in their own way at their own pace. This more advanced arrangement would focus on service functions, e.g., information exchange, data gathering and analysis, consultation, coordination of research programs, and planning for joint action in emergencies. Gradually and incrementally addressing ever more competing uses of the seas can produce a more coherent, comprehensive, balanced set of arrangements. The trend from a use-oriented to a resource-oriented approach can move successively from pollution protection to species conservation, to collective management and more refined monitoring and research. Eventually the parties could agree on pollution reduction targets as well as on reporting on implementation, and on improved public access to information.

The regime should be simple but not too loose. The first step is to define the problem accurately, i.e., the varied capacity and will to cooperate in a structured manner to monitor and control marine pollution, particularly that beyond the narrow coastal zone. This requires intensive self-examination and specification of needs and intents. Rights and rules must be defined and agreed. Initially each government would manage its own jurisdictional areas according to agreed standards, perhaps using those of South Korea as a base, but with the monitoring capability of Japan?the most developed country in the region. Decisions should be by consensus and implemented by voluntary acquiescence to the rules. There is little point at this early stage in attempting to coerce compliance, and voting in international fora is generally an anathema to Asian countries. Compliance would be via detection, publicization and persuasion, as well as the costs?including loss of face?of

purposefully and continually "defecting" from the regime, once having joined. Differences would be discussed openly in the working committee meetings and, if necessary, in the plenary.

The benefits of a marine environmental protection regime will be positive but varied for each participant. Although all participants will lose the ability to treat the Sea as a free waste dump, all will clearly benefit from cleaner seas. The actual benefits are large but unquantifiable because of the long-term nature of the impacts of an environment which is less polluted than it might have been, and the uncertainty regarding the causal relationships between pollution and ecosystem damage. Perhaps most important, the level of marine environmental technology and expertise will be evened up throughout the region. The overall objective of the arrangement would be to manage the marine environment of the Sea. But a not-so-hidden agenda would be the provision of greater equity?equity in the sense of increased national capacity and responsibility to control pollution with potential transnational effects?and equity in the sense of a transfer of technology and knowledge from the rich to the benefit of all. In short, the major trade-off would be the benefit to Japan and South Korea of the adherence by China, North Korea, and Russia to a predictable regime with common minimum standards of discharge in exchange for training, equipment, and technical assistance from Japan and South Korea.

See related tables

[Table 1](#)

[Table 2](#)

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**["Ocean Management Regimes in the Sea of Japan: Present and Future"](#)**  
**The Nautilus Institute Invites Your Responses**

The Energy, Security, Environment in Northeast Asia Network invites your responses to this essay. Please send responses to: [esena@nautilus.org](mailto:esena@nautilus.org). Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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