

An intra-national perspective on regimes implementation

The case of fisheries in China: keen conflicts and hazy contents*

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In the last thirty years, on the basis of increased scientific knowledge on marine ecosystems, the international legal framework established by the *United Nations Convention on the Law of the Sea* (UNCLOS) (1982) has been enhanced by various international agreements promoting the conservation and sustainable use of fisheries resources. Yet, world fish stocks are still experiencing severe depletion. International institutions (i.e. sets of rules that define standards of behaviours among states) can influence domestic policy by creating a pull towards compliance. Nevertheless, in order to be effective, international agreements have to be voluntarily implemented by national governments.

The process of domestic implementation has been little investigated by regime theory (especially in fisheries, and particularly in developing countries), despite the rich amount of frameworks developed by policy studies since the 1970s to explain implementation of national policies.

With the aim of contributing to regime theory, the paper will rely on implementation studies to explain deficits in the implementation of international fisheries agreements in China.

After ratifying the UNCLOS and adopting China Ocean Agenda 21 (in 1996), China has amended its national fisheries law and promulgated new regulations and rules to promote the conservation of fisheries resources as required by international fisheries instruments. Despite such legislative adaptation, responsible fisheries are not yet a common practice in China. Implementation of laws and regulations has been jeopardized not only by the lack of resources, but mainly by institutional defects. Conflicts at all levels (particularly in the administration, and between political responsibility and economic interests), and unclear and incomplete policy contents have hindered the execution and enforcement of enacted international provisions.

Key words: China, Environmental policy, Governance, Policy analysis, Public policy.

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Introduction

Since the 1970s, under the pressure of a growing demand, fisheries resources have suffered a serious depletion in the majority of the world's oceans. Not only the overuse of resources has severely damaged intertwined marine ecosystems, but it is also affecting the socio-economic conditions of developing countries, which represent today the major fish suppliers (FAO 2007; OECD 2006; UNEP/GPA 2006).

Such overexploitation has taken place despite the complex system of governance for fisheries management developed at the *global* level by the United Nations and its agencies through binding and non-binding instruments (Symes 2007). Particularly, four documents address *all* types of fisheries in the sea area under the national jurisdiction of coastal states, the *Exclusive Economic Zone* (EEZ). While the focus of the United Nations Convention on the Law of the Sea (UNCLOS 1982, 1994) is on the *allocation and exploitation* of resources through the introduction of the EEZ, Agenda 21 (adopted by the United Nations Conference on Environment and Development in 1992) represents a shift towards the *sustainable use and conservation* of resources, later confirmed by the FAO Code of Conduct for Responsible Fisheries (CCRF 1995) and the *Johannesburg Plan of Implementation* (JPOI) (adopted at the 2002 World Summit on Sustainable Development) (Freestone, Barnes and Ong 2006).

In order to be effective, international obligations need to be voluntarily incorporated by states into their national legislations, and be applied and enforced in areas, such as the EEZ, which fall completely under national jurisdiction. Despite the existing international framework for the sustainable management of fisheries, national governments have generally failed in implementing international instruments at the domestic level and usually continued unsustainable fisheries practices (Hall 1998).

The reasons why such 'incorporation' does not take place are only partially understood (Freestone et al. 2006), with little research focusing on how *developing countries* comply with international environmental treaties (Zhao 2005). Because of such gap in literature on one side, and the relevance of fisheries for developing countries on the other, the paper wants to investigate *why developing countries are failing in implementing international agreements for fisheries management*.

The paper is part of the EU-funded project 'ECOST', which aims at evaluating the economic, social and ecological costs of fisheries, with a focus on three developing regions: South-East Asia, West Africa and the Caribbean. Within this multi-disciplinary project, in order to answer the question formulated above, our research will analyze the implementation of four international instruments (UNCLOS, Agenda 21, CCRF, and JPOI) in three different countries (Most Different System Design), one from each region: China, Senegal, and Jamaica. The work presented in this paper summarizes our

findings on China, first case in our multi-case study. (Although China is experiencing a fast growth, it still remains a developing country – see for example UNDP 2006.)

China represents an interesting case both for gaps in literature and its socio-economic relevance. Firstly, although the country has signed more than 20 international environmental treaties, the level of compliance with those agreements and – more interesting for us – the reasons affecting compliance have not been investigated systematically (Zhao 2005). Secondly, since the 1990s, China is the largest fish producer and main exporter in the world (FAO 2007) and has in the meantime experienced a severe decline of fish stocks (Xue 2005; Zou 2005).

Faced with the issue of remarkable provincial differences across the country (see Saich 2004 for details on the issue), the Guangdong Province has been taken as unit of analysis for the sub-national aspects of policy implementation in China. The selection is again motivated in the framework of the ECOST project, which studies fisheries in the Pearl River Delta as one of the selected sites.

1. Domestic implementation of international regimes

Intended as systems of governance which regulate specific issues of international relations, *international regimes* have increased through the years and their domestic implementation has been recognized as pivotal in their functioning (Andresen, Skjoerseth and Wettstad 1995; Breitmeier, Young and Zürn 2006; Chayes, Chayes and Mitchell 2000; Underdal & Hanf 2000; Victor, Raustiala and Skolnikoff 1998). With *implementation* generally understood as the execution of decisions for the achievement of given goals (Hill & Hupe 2002; Lane 1995; Najam 1995), domestic implementation of international regimes is the process which translates international commitments into action at the national level and can steer actors towards specific behaviours (Andresen et al. 1995; Underdal & Hanf 2000; Victor et al. 1998).

Despite the recent acknowledgement, the process of domestic implementation has been little investigated by regime theory and the need for more research has been argued by various authors in the field. Scholars of international relations have mainly been interested in regime formation, with only few authors focusing on regime implementation during the last decade (see Brown Weiss & Jacobson 1998/2000; Underdal & Hanf 2000; Victor, Raustiala & Skolnikoff 1998). Although these recent studies have highlighted some important state-level factors influencing implementation, they still neglect the *details* of the domestic component and the knowledge developed by implementation studies since the 1970s (Chayes et al. 2000; Najam 1995).

Therefore, the theoretical purpose of this paper is *relying on implementation studies to supplement regime theory*.

The main challenge still open in implementation research is that “no single model captures the full complexity of the implementation process” (Elmore 1978: 129, quoted in Younis & Davidson 1990: 4). Yet, we felt the urge to rely on a comprehensive ‘conceptual map’ (as in Pollitt and Bouckaert 2004 for public management reform) for “depicting the broad forces that have been at work” (Pollitt and Bouckaert 2004: 25) in the implementation of international regimes. In the absence of a grand theory on implementation, the work by Grindle and Thomas (1991) and their *Interactive Model of Policy Implementation* provides a useful map for the integration of most variables explained in implementation literature, with a distinct focus on developing countries.

Firstly, according to the model, implementation can be hindered by the *policy characteristics* (Grindle & Thomas 1991). The problem addressed could be of difficult solution (see Underdal 2002 for the ‘malignancy of the problem’); the type of policy could generate high costs (Birkland 2001); or its design (objectives, causal theory and implementation framework) may be vague and inadequate (Hill & Hupe 2002; Winter 2006).

Secondly, the characteristics of the policy will determine a *response* within the bureaucracy and a *reaction* from target groups, which define the *arena of conflict* and influence the results of implementation (Grindle & Thomas 1991). Already in the bottom-up approach, within implementation studies, implementation started to be conceptualized as an open and dynamic process, where the bottom of bureaucracy became important as well as the policy receivers (Lane 1995; Winter 2006). With regard to bureaucracy, conflicts may also occur across functional divisions, as well as between different layers of government (Pressman & Wildavsky 1973, quoted in Sabatier 1986).

Thirdly, according to the characteristics of the policy and the conflicts it determines, a certain level of *resources* is *required*, with policies more easily implemented when a low amount of resources is needed (Grindle & Thomas 1991). Under the term of resources, implementation studies have included a long list of physical and immaterial assets, which Grindle and Thomas (1991) categorize as ‘political resources’ (e.g. legitimacy of the regime and political support) and ‘bureaucratic resources’ (i.e. financial, managerial and technical resources¹).

¹ We will rearrange within these categories variables tested in implementation studies. We will then define financial resources as funds (Grindle & Thomas 1991), but also personnel and physical facilities – such as buildings, supplies, technology, etc. With managerial resources we will intend control and leadership (Grindle & Thomas 1991). Technical resources will include skills (Grindle & Thomas 1991), and more broadly knowledge, data and information, but also ‘awareness’ of target groups about existing problems and related policies/programmes.

The model adopted by Grindle and Thomas (1991) needs to be adapted to the process of domestic implementation of international agreements described by Andresen et al. (1995), who distinguish five phases:

1)	Ratification (i.e. acceptance of international programs through parliamentary procedures);
2)	Transformation of international commitments into [2a] national legislation or [2b] administrative decisions;
3)	Exercise of national programmes through the administrative system;
4)	Relationship between regulators and target groups and the target groups' response to regulation;
5)	Consequence of target groups' response for the physical problem at hand.

We will mainly focus on the three central phases in order to highlight domestic outputs (phase 2 and 3) and outcomes (phase 4). Outputs will refer to both the incorporation of international obligations into national laws² (or *enactment*) (phase 2a) (Hill & Hupe 2002; Siedentopf & Hauschild 1988), and the strictly administrative implementation of those derived national laws through administrative rules and actions³ (or *execution*) (phase 2b and 3) (Brown Weiss & Jacobson 2000). Outcomes will indicate the behavioural change induced by international instruments (Andresen et al. 1995, Najam 1995; Victor et al. 1998). The model is shown in figure 1.

2. Assessing implementation

Implementing international regimes means in fact implementing specific treaty rules (either binding or non-binding) decided at the international level (Andresen et al. 1995; Mitchell 1994, quoted in Chayes et al. 2000). Therefore, we have selected international provisions related to a set of policy tools, which represent the reference point for our implementation analysis (Lane 1995). According to literature on fisheries management (Charles 2001) and international guidelines (FAO 1997), fisheries are managed through three types of instruments.

² Within the EC framework (Siedentopf & Hauschild 1988), as well as in the context of international regimes (Najam 1995), national transposition is regarded as an integral and relevant part of domestic implementation, although this step implies the elaboration of new national legal acts or the amendment of existing laws (policy formation).

³ *Enforcement* represents a method (based on a mix of rewards and sanctions) to promote behaviours which comply with international commitments (Breitmeier et al. 2006). It *can* be part of the implementation process (Victor et al. 1998) or, more precisely, of the execution phase, in the form of administrative actions depending on the policy tools adopted. Yet, we would like to highlight it in the process of domestic implementation (and in our model) because fundamental for compliance (Brown Weiss & Jacobson 2000) with the specific tools selected in our research, i.e. economic regulations (see Salamon 2002).

Input controls, such as fishing licenses, regulate the amount of fishing activity. *Output controls*, focusing on the catch, consist mainly in the establishment of a Total Allowable Catch (TAC) and a quota system.

Technical measures embrace various instruments addressing the ‘how, when and where’ of fishing. Because of their relevance in the international debate on biodiversity conservation, we have selected marine protected areas (MPAs) within this category; MPAs are usually defined as “areas of the marine environment designated for some form of protection” (Charles 2001: 233).

In order to understand whether the international obligation has been implemented at the national level, by adaptation from the work of Oberthür and Gehring (2006) on *institutional interaction*, we will (1) look for an output/outcome in the country which corresponds to a specific commitment defined in the international document (for each tool selected), and (2) show whether the national output/outcome is the result of such commitment. While the first point will be addressed for each tool in the related section, we will tackle the second issues in the analysis of the enactment process (as national transposition of international commitments).

For each policy tool selected we will look at both domestic outputs – i.e. all national laws and rules enacting and executing the international obligations (Breitmeier et al. 2006; Underdal 2002) – and outcomes – i.e. the actual change, measured through the following indicators:

Licensing system	Number of vessels, tonnage and power
Quota system	Amount of catch
Marine Protected Areas	Number and size of areas

2.1. Data collection

Data have been collected mainly through *document analysis* and *interviewing*.

The international fisheries regime has been firstly reconstructed on the basis of available documentation (agreements, literature, and reports by international organizations). Then, ten semi-structured interviews with top officers from international institutions (FAO and IOC-UNESCO) carried out in October 2007 (in Rome and Paris) have provided us with relevant information, and confirmed the relevance of the four documents selected and the emphasis on policy tools.

With regard to China, we have analyzed the content of national laws, regulations and measures, as well as provincial legislative documents since the 1980s. A good basis for our research has been provided by books on the Chinese system and articles on environmental policy in China. We have obtained further

information on the policy, management and administrative framework for fisheries through interviews with public officers carried out in China (Guangdong Province) in the period June 2007–June 2008.

Interviewing in China has differed from the practice usual in western cultures under many aspects. The semi-structured interviews have been carried out in a rather informal way (and after the approval of the local Communist Party Committee in one case), and mainly out of public offices (for courtesy or privacy?). No recording was allowed – hence only detailed notes (no transcripts) of these interviews are available – and anonymity has been guaranteed to the interviewees.

It has often been difficult to lead interviews in China, because the question-answer dynamics seemed to be perceived as too intrusive. Therefore, the setting rather resembled a ‘friendly’ discussion, where the interviewee, rather than the interviewer, directed the conversation. Despite these difficulties, we managed to get relevant information.

Furthermore, it was a general characteristic of all interviews that public officers showed some level of preoccupation about their answers. On one occasion the interviewee refused to answer any question and simply kept on presenting his activity in general terms; on another occasion a provincial officer denied any interview with foreigners. In general, interviewees seemed more uncomfortable to talk about fisheries as ‘resource’, than environmental protection: the open conversation about the need to protect environment and the Chinese initiatives dealing with it changed when the focus was shifted towards fisheries as economic (strategic) resource.

Using multiple sources (policy documents, literature and interviews) and interviewing officers at different levels of governance (international institutions, regional offices⁴, and national administration) has guaranteed data reliability.

3. The institutional framework for fisheries in China

This section will provide an overview on the whole legislative and administrative framework ruling fisheries in China, with a special focus on the systems of licenses, quota, and MPAs vis-à-vis the international obligations defined in the four core agreements listed above. In the analysis of the implementation of such tools, we will focus on the constraints in the process described by Grindle and Thomas (1991): the content and characteristics of the policy decided, the conflicts which might

⁴ One interview at the FAO regional office for Asia and the Pacific (Bangkok, May 2008) helped us contextualize the data collected through interviews in China and put them in perspective within the Asian region.

characterize the bureaucratic and/or the public arena (i.e. target groups), and the resources required (vs. those available).

Legislation

The body of Chinese national legislation relevant to fisheries includes two main strands: one related to fisheries resources management, and one focusing on marine environmental protection (see fig. 2). The related legislative acts are respectively the 1986 *Fisheries Law* (FL 1986), ruling all aspects of fisheries management, and the 1982 *Marine Environmental Protection Law* (MEPL 1982) (Beyer 2006; Xue 2005; Zou 2005).

Both acts were completely revised at the turn of the century, as a response to the country's environmental degradation, the ratification of the UNCLOS (1996), and the national commitment to sustainable development stated in China Agenda 21 (1994) and Ocean Agenda 21 (1996) (Xue 2005; Zou 2005). In 1999, China amended the MEPL to incorporate the principle of sustainable development highlighted by international environmental law since the early 1990s (Zou 2005). A year later (2000), a new Fisheries Law was issued which emphasizes the conservation of fisheries resources by incorporating the guidelines of the CCRF (Xue 2005).

Administration

As argued by Saich (2004), it is a general characteristics of the Chinese system that policies decided by the party are implemented (and often distorted) by a dispersed system of state organs, where control and leadership flow along two dimensions. Each subnational administrative unit is accountable *vertically* to the competent ministry (bureaucratic control) and *horizontally* to the party committee of that specific geographical level (political control). Tensions for dominance between competence branch and geographical area occur regularly, especially after the decentralization process has empowered localities to pursue their autonomous development strategies (Saich 2004).

Administrative fragmentation has been recognized by the Chinese government as the greatest challenge in fisheries and marine affairs (China Agenda 21), managed by multiple administrative layers

and characterized by overlapping competences between fisheries management and marine protection (see fig. 3).

The Fisheries Law (1986/2000) attributes fisheries competences to the Ministry of Agriculture (MOA) and management responsibilities to the *Fisheries Management Bureau* (FMB) – which responds to the MOA. Under the supervision of the FMB, three Coastal Fisheries Management Bureaus (CFMBs) regulate each one of the three Chinese seas (Yellow, East China, and South China Sea), and, at a lower level, 11 Local Management Bureaus (LMBs) manage fisheries in each coastal province (Cheng, Cai, Cheung, Pitcher, Liu and Pramod 2006; Xue 2005; Zou 2005).

The *State Environmental Protection Administration* (SEPA) – which became the Ministry for Environmental Protection in 2008 (Interviews with civil servants, Guangdong, May 2008) – has nationwide control over environmental protection and represents the main authority for the implementation of the MEPL (Beyer 2006; Zou 2005). On the contrary, the *State Oceanic Administration* (SOA), which is China's governmental agency for marine affairs, has been recognized limited authority in the implementation of the MEPL (Zou 2005).

The Local Management Fisheries Bureau of the Guangdong Province – i.e. *Guangdong Oceanic and Fishery Administration* (GDOFA) – combines fisheries and oceanic competences and so responds to both FMB and SOA (Interviews with civil servants, Guangdong, May 2008). As all other LFMBs (see Xue 2005), it is also accountable to the provincial government from where funding comes. The result is that GDOFA, pulled in different directions, enjoys in the end a high degree of autonomy (which makes it a relevant veto point).

The bureaucratic complexity faces a weak civil society. Social actors cannot organize easily, with the result that civil participation in China is still immature (Yu 2006; Oksenberg & Economy 2000). Fishers have a weak role in the policy process and can only influence implementation through informal channels, such as (limited) protest against local enforcement and reasonable evasion. Evasion occurs through informal relationships between fishers, local enforcement officials and higher authorities, and is formally justified on the basis of resource shortage (Interview with civil servant, Guangdong, October 2007). (We will come back to *evasion* later in the paper.)

3.1. Licensing system

While the UNCLOS simply mentions *licensing* as a measure for managing fisheries, the CCRF calls for coastal states to reduce fishing effort to sustainable levels (tab. 1). (Both Agenda 21 and the JPOI indirectly confirm these provisions by asking the implementation of the UNCLOS and CCRF.)

China's Amended Fisheries Law (2000) foresees stricter requirements for issuing licenses (Cheng et al. 2006; Xue 2005) and the new *Provisions on the Administration of Fishery Licensing* (PAFL) (adopted by the MOA in 2002) recognize full competences in managing licenses to provincial fisheries administrations. China is also promoting vessel reduction (Xue 2005), through a five-year buy-back programme adopted in 2002: the government provides subsidies to fishermen leaving their profession and training for redundant fishers (Cheng et al. 2006; FAO 2007). (Reduction targets are specified for each coastal province.)

Although outcome assessment results particularly difficult in China due to the high level of unregulated fishing and lack of data, the information available shows that Chinese attempts to reduce fishing intensity are still inadequate (see Cheng et al. 2006 and FAO 2007 for details; confirmed in Interviews with civil servants, Guangdong, May 2008).

Tab. xx: Powered fishing fleets in China

	2000	2001	2002	2003	2004	2005
Number	487 297	479 810	478 406	514 739	509 717	513 913
Tonnage (GT)	6 849 326	6 986 159	6 933 949	7 225 660	7 115 195	7 139 746
Power (kW)	14 257 891	14 570 750	14 880 685	15 735 824	15 506 720	15 861 838

Source: FAO (2007: 27).

Constraints in implementation

The main components of the new policy can be summarized in three points: 1) stricter requirements in licenses; 2) vessel reduction; and 3) provincial competences. The policy is affected by weaknesses in its content, the conflicts it generates, and the amount of resources demanded (as in the model of Grindle and Thomas 1991).

With regard to the policy characteristics, the main constraint in the effective functioning of the licensing system and the capacity reduction initiatives lies in the inadequate system of incentives and disincentives put in place. Although the 2000 Amended Fisheries Law enhances the legal liability of people fishing in violation of the national licensing systems and establishes a set of higher fines than in the past, sanctions are still negligible and over-fishing would pay more than the loss due to penalties (Cheng et al. 2006; Zou 2005). On the other side, the plan of vessels reduction conceived by Beijing largely relies on provincial governments for implementation and financial contribution, but local funds are so limited that an inadequate system of incentives has been put in place (Guangdong Provincial Government 2004). Furthermore, most of the financial resources allocated for the reduction plan are used for compensations (buy back) to fishermen, with only a limited amount of money dedicated to vocational re-training, which leaves unsolved the problem of fishermen re-collocation (Interviews with civil servants, Guangdong, November 2007 and May 2008).

Not only the new policy generates conflicts, mainly in the bureaucratic arena, but the same operation of licenses and buy-back plan are affected by dysfunctions due to bureaucratic conflicts already existing.

As any economic regulation, licensing causes visible costs for target groups, hence their opposition. It follows that coastal provinces (competent for issuing licenses) have started to compete with each other by issuing *licenses of convenience* so that vessels tend to be registered in places where lower fees and weaker enforcement are guaranteed (Xue 2005). Despite the legal responsibility and sanctions put in place in Beijing, fishers' violations are sanctioned with a high degree of discretion by *local* implementors (Interviews with civil servants, Guangdong, May 2008).

The weak coordination among provinces also affects the implementation of the capacity reduction plan: in the absence of any coordination mechanism, each province (competent for the implementation of the plan) ends up carrying out its own plan at its own pace according to its own priorities (Interviews with civil servants, Guangdong, October 2007). Coordination is also weak at the central level between departments which should cooperate in the plan: vessel reduction cannot be isolated from other governmental actions tackling education, vocational training and employment (Interviews with civil servants, Guangdong, October 2007 and June 2008).

Finally, the administration of both initiatives and the enforcement of the licensing system would require a high amount of resources vis-à-vis the vast marine area to be monitored, crossed by a high number of vessels and characterized by numerous harbours. But financial support, personnel, equipment and facilities (which should come from the province mainly) are in general inadequate. The same income

generated by the fee system linked to the emission and renewal of licenses (in place since 1988-89) is still insufficient to finance management operations (Xue 2005; Zou 2005).

To sum up, China has enacted international provisions related not only to (stricter) input controls (see UNCLOS), but also to reduction of fishing effort (see CCRF), mainly during the early years 2000, under the boost of the Amended Fisheries Law. Yet, the full implementation of the enacting initiatives, which rests on the responsibility and institutional capacity of each province, has been jeopardized by the three elements highlighted in the model of Grindle and Thomas (1991): 1) weak policy characteristics (e.g., inadequate system of sanctions and incentives), strong (bureaucratic) conflicts (mainly between Beijing's decisions and provincial execution, and among provinces), and high amount of resources requested.

3.2. Quota system

According to the UNCLOS, coastal states must determine their TAC and fix a system of quotas (tab.1). (Such measures are implicitly confirmed by Agenda 21 and the JPOI under the call for implementation and compliance with the UNCLOS.)

With the aim of implementing the related provisions of the UNCLOS, the 2000 Amended Fisheries Law foresaw the introduction of the TAC and a quota system (art. 22 FL) (Xue 2005), later confirmed by the PAFL. Yet, by 2008 China has not yet adopted implementing measures to put the TAC and a quota system into practice (Interviews with civil servants, Guangdong, May 2008). The country has instead adopted a 'zero growth' policy in 1999 – i.e. no growth was allowed in the output of marine capture fisheries – followed by the adoption, in 2000, of a 'minus growth' policy⁵ (Xue 2005).

Since 1999 Chinese catch seems to be diminishing (Xue 2005). Yet, such decrease (which is taking place since the 1990s at a global scale) might represent a symptom of general stock depletion, rather than an indicator of policy effectiveness (Christensen 2007).

⁵ Such output initiative works though through input controls and limits on licensing.

Tab. xx: China's Marine Catch: 1996-2002

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Output (million tones)	12.49	13.85	14.97	14.98	14.78	14.41	14.34	14.32	14.51	14.53	14.42

Source: Xue (2005: 117) updated with China Fishery Yearbook (2005 and 2006) for the period 2003-2006.

Constraints in implementation

The 2000 Amended Fisheries Law foresaw the introduction of the TAC and a quota system, *but* on condition that the MOA (under the State Council) would organize an “investigation and assessment of the fishery resources so as to provide basis for implementation of the catch quota system” (art. 22 FL) (Xue 2005). (The ‘clause’ was *intentionally* added by the legislative commission of the NPC when the FL revision was discussed in 2000⁶.) The difficulty of the assessment coupled with the low amount of technical knowledge, justifies then, on the basis of the clause contained in the FL, an unlimited delay in the adoption of a quota system – the feasibility of a TAC in China still being under academic research (Interviews with civil servants, Guangdong, May 2008).

Interviews carried out in China (Guangdong, May 2008) highlighted the high number of independent small fishers as the most relevant obstacle in any monitoring activity. On one side, the absence of an effective system of fishers’ representation impedes the development of any plan agreed with fishermen; hence, conflicts with target groups represent here a potential obstacle in implementation. On the other side, resources (e.g. administrative personnel) are insufficient compared to the high number of people involved in fishing activities, so that any possibility of effective monitoring is discarded in advance. In the absence of the *fisheries commune* of the past, which collected all fishers’ harvest before China’s shift to market economy – and whose dismantling has left an ‘administrative power vacuum’ at the village level (Saich 2004) – monitoring on catches would be extremely difficult in China.

To sum up, the difficulty in determining a TAC for China (malignancy of the problem) requires an amount of technical resources not yet available in the country. Also the monitoring activity implied by a quota system (as an economic regulation – see Salamon 2002) would lack resources (limited personnel) vis-à-vis the possible opposition of a multitude of independent and unrepresented fishers. Again issues of

⁶ See Gazette of Ninth Standing Committee of NPC, Issue 6, Year 2000.

policy characteristics, consequent (expected) conflicts and resource requirements (as in Grindle and Thomas 1991) have impeded the full implementation of output controls in China, although the obligations present in the UNCLOS were enacted by the 2000 FL.

3.3. Marine Protected Areas

MPAs as tools for the protection of biodiversity (absent in the UNCLOS) are foreseen by Agenda 21. The JPOI not only confirms the commitment to the protection of marine environment through the establishment of marine protected areas, but calls for the establishment of representative networks by 2012 (tab. 1).

Most of the MPAs designated on the basis of the 1982 MEPL remained *on paper* because of the absence for many years of detailed implementing regulations⁷ (Zou 2005). It is under the amended MEPL (1999) that MPAs have been largely set up and increased at high pace (Xue 2005; Zou 2005). Furthermore, the *Programme on Developing China's Marine Nature Reserves* calls for the establishment of more than 100 marine nature reserves between 2001 and 2010, and the creation of a network of MPAs; yet, their actual number is still insufficient (Zou 2005).

Tab. xx: National MPAs in China

Year	1980	1986	1988	1990	1992	1995	1997	1999	2000
Number of MPAs	1	2	4	9	14	15	17	18	19
Area (square ha)	17,000	20,337	101,195	174,801	806,181	892,581	1,016,688	1,019,368	1,025,668

Source: Calculation based on the data of SOA (<http://www.soa.gov.cn>)

Constraints in implementation

Although under the amended MEPL China's policy for MPAs has improved, it is still affected by some deficiencies.

⁷ *Regulations on Natural Protected Reserves* were adopted only in 1994, and *Measures on the Management of Marine Nature Reserves* in 1995 (Xue 2005; Zou 2005).

Policy characteristics are weak with regard to sanctions: those foreseen in the Management Measures and the Regulations for Natural Reserves are extremely low. Nevertheless, violations from fishers do not seem to represent the main problem in the Chinese political system (Interviews with civil servants, Guangdong, May 2008); tensions emerge more frequently within the bureaucratic arena, along several dimensions.

Firstly, in spite of the improvement in the division of competences on environmental protection marked by the new text of the MEPL (especially when compared with the old version) (Interviews with civil servants, Guangdong, May 2008), the law leaves the division of authority among national agencies (mainly between SEPA and SOA⁸) still unclear (Zou 2005).

Furthermore, more departments than SEPA/SOA have an indirect role in the functioning of MPAs (e.g. the main threaten to MPAs is pollution from land-based activity) (Interviews with civil servants, Guangdong, May 2008); hence, the lack of administrative coordination, which characterizes the whole Chinese system (Saich 2004), represents a serious obstacle to successful implementation of MPAs.

Secondly, the 1995 Management Measures assign to provincial governments the management responsibilities for provincial MPAs. The consequence of such delegation of competences is that the province has now the power to manage its own MPAs, but also to prioritize development projects on the conservation of MPAs, even when Beijing commits to sustainability (Interview with MPA management body, Guangdong, November 2007 and May 2008).

The frequent provincial emphasis on development also affects budget allocation. According to the 1994 Regulations, most funds for nature reserves should come from local governments, which, concerned with economic development rather than environmental protection, have insufficiently funded MPAs (Zou 2005). The result of financial shortage is the low amount of resources available for basic needs, such as personnel and equipment, which has made daily management and monitoring of MPAs extremely weak (Interviews with civil servants, Guangdong, November 2007 and May 2008). The situation is worsened by the fact that the MEPL calls for SEPA and SOA to manage independently their own monitoring activities, which duplicates efforts and wastes manpower and financial resources (Zou 2005).

To sum up, once the implementation framework has been refined under the new MEPL, Chinese policy for MPAs is still affected by a system of low sanctions and an unclear implementation machinery (policy characteristics) which does not help tackle a dangerous and costly fragmentation. MPAs are not

⁸ MPAs fall under both the management of nature reserves and the marine protection. According to the 1994 Regulations, SEPA is competent for all nature reserves, while 1999 MEPL recognizes SOA as the competent authority for the management of marine reserves (Zou 2005).

yet managed in a unified way by the central administrations, and – more importantly – by Beijing and local governments. Provinces are in charge of establishing and financing local MPAs, but are often concerned with local economic development and other budget priorities. The result is a chaotic management, scarce funding, and weak enforcement.

4. Implementation of the international regime for fisheries in China

On the enactment process: between international pressures and internal urgencies

After the translation of Agenda 21's concern for sustainable development through China Agenda 21 (1994), the year 1996 marks an important milestone in the legislative framework for fisheries resources management: the UNCLOS is ratified and China Ocean Agenda 21 is adopted to complete the framework established by China Agenda 21. The document establishes that the number of fishing vessels would be restricted, a TAC and quota system would be introduced, and marine natural reserves would be put in place as means of marine biodiversity protection (China Ocean Agenda 21).

Consequently, the two legislative acts ruling fisheries management and marine environmental protection (respectively the 1986 Fisheries Law and the 1982 Marine Environmental Protection Law) have been revised (in 2000 and 1999). While the new MEPL promotes the creation of MPAs by filling the gaps of the existing legal framework, the amended FL marks the major legislative improvement in the management measures (both input and output controls) of Chinese fisheries and *de facto* enacts the CCRF and the shift towards sustainability promoted by Agenda 21. (We did not find any act referring explicitly to the JPOI.)

Although it cannot be denied the direct influence of international instruments on Chinese national legislation, the national legislative framework has been amended under the pressures of internal forces, such as the alarming depletion of fish stocks and the extreme pollution of the marine environment (see Chen 2000; confirmed by interviews with civil servants in Guangdong and an FAO officer in Bangkok, May 2008).

On the execution process: hazy policy contents

Despite enactment efforts, the Chinese legal framework for fisheries appears weak and mirrors the general vagueness other authors (Beyer 2006; Saich 2004) have highlighted in the laws of the People's Republic of China. Chinese legislative texts develop through general terms, and their provisions take more often the form of ideals than legal requirements; even when more concrete duties are stated in primary laws, those duties are not better specified in regulations and administrative acts, "which leaves disproportionate interpretative discretion to sub-national officials" (Beyer 2006: 206).

With regard to fisheries and marine protection in particular, the legal framework still appears 'embryonic' and 'far from complete' (Zou 2005): not only a number of new concepts still need to be captured and introduced into China's legal framework (e.g. ecosystem approach⁹), but simpler details on the implementation process are often missing, and responsibilities are unclearly demarcated.

While for output controls (i.e. a TAC and quota system) the implementation framework is still absent, for input controls it is the weak instrumentality which represents the critical aspect: the system of sanctions and incentives put in place (i.e. fines for violations of the licensing system, and compensations in the buy-back programme) seems inadequate. With regard to MPAs, the initial failure in the creation of marine nature reserves under the 1982 MEPL (due to a delay in the definition of implementing measures) has been partially balanced since the late 1990s, following the amendment of the MEPL – but the system is still affected by low sanctions.

If incentives are low because of constraints on (mainly provincial) budget, low fines are due rather to structural deficiencies. Many laws and regulations of the Chinese system lag far behind the rapid socio-economic development, but the process of law revision is slowed down by the fragmentation of the bureaucratic arena (Interview with civil servant, Guangdong, May 2008).

Administrative fragmentation in China makes consensus-building fundamental in the policy process; bargaining is so extensive that the process becomes 'protracted, disjointed, and incremental' (Lieberthal & Oksenberg 1998, quoted in Saich 2004: 234) with the result that the whole legal framework is poorly developed (Saich 2004). Current low fines were actually 'high' at the time the sanctioning regulation was issued; but revising such provision today goes much slower than the general economic growth.

In a situation of endemic bureaucratic fragmentation – which frequently leads to conflicts, duplication of efforts, and dissipation of already limited resources – vague legal frames reiterate overlaps and uncertainty in the machinery entitled to reach state objectives. For example, the new MEPL has

⁹ The topic, treated in the context of the ECOST project, implies a long debate and complex analysis, which cannot be reproduced in this paper.

designed a confusing implementation system: the SEPA (designated as the main authority for the implementation of the MEPL) lacks forces for implementation, while the SOA (China's governmental agency for marine affairs), which possesses the intellectual resources and specialist in marine environmental protection, has limited authority in the MEPL's implementation (Zou 2005).

In conclusion, the execution process does not end up being as successful as the enactment phase, which is mainly due to unclear contents and weak characteristics in the policy. Hazy policies are often the result and the cause of conflicts in the bureaucratic arena: they perpetuate existing administrative conflicts (which in turn impede updating policy contents), create new ones, and empower provincial authorities with an arbitrary interpretation of Beijing's direction.

On the enforcement process: the role of resources

If it is true that the process of execution has been weakened by deficiencies in the policy design, it is mainly the weaknesses in enforcing the existing policy framework which further jeopardize the whole implementation process.

Although enforcement has been recently enhanced (Cheng et al. 2006; Zou 2005), overall it is still very weak, mainly because of the low amount of resources available to the Chinese administrative system (Beyer 2006; Xue 2005). Financial support, personnel (both for administrative and enforcement tasks), equipment and facilities are inadequate.

Contrary to this evidence from previous studies (e.g. Xue 2005 and Zou 2005) and our interviews in the Guangdong Province, Saich (2004: 175) talks of 'overstaffing of local governments'. The contradiction could then be explained either as unbalanced allocation of resources among provincial departments (the authors), or on the basis of divergence in administrative capacity (especially funds and personnel) across Chinese provinces (Oksenberg & Economy 2000). The consequence is that, although Beijing implements international agreements and issues national laws and regulations, the local efforts for compliance and enforcement vary across provinces, and is still weak in some of them, particularly in Guangdong (Beyer 2006; Oksenberg & Economy 2000).

The scarcity of resources does not explain the whole problem of weak enforcement; other factors are also responsible: the fragmented response within the administration and the arbitrary application of sanctions by local administrators (issue of *evasion* previously mentioned), to which we turn now.

Arena of conflict: does fragmentation say it all?

According to Manion (1991: 253)

“The process of policy implementation is potentially a situation of tremendous conflict between authoritative decision of policymakers and individual interests of those directly targeted by policy” (Manion 1991: 253).

Particularly, fisheries as regulatory policy would be expected to cause highly visible costs for the groups targeted by its measures (e.g. licenses), hence their acute opposition (Birkland 2001; Salamon 2002). This does not seem to be the case in China, where – as in other developing countries studied by Grindle and Thomas (1991) – the state is powerful and ‘decisions taken on high reach the farthest corners’ (Saich 2004: 7).

The main problem lies instead in the administrative ‘messiness’ which characterizes not simply marine affairs (Zou 2005), but any policy field in China (Saich 2004), and which – in our study – explains inefficiencies and ineffectiveness in both the execution and enforcement phase.

Although the central state is still powerful enough to impose its policy priorities, in the Chinese *disjointed* system, each organization involved in the policy implementation will try to adapt central policies to its own advantage (Saich 2004). This is particularly true for provincial governments, whose role and authority has increased as a result of the decentralization process started in the 1990s.

The point opens our analysis to further considerations on the arena of conflict and possible extensions to Grindle and Thomas (1991).

In the model adopted from Grindle and Thomas (1991) conflicts are clearly framed within two distinct arenas, the bureaucratic system on one side and the general public on the other. The distinction applies very well to political contexts where the public and private spheres are clearly separated. The case of China shows instead collusive intersections between the two and a peculiar overlapping.

According to Saich (2004) the Chinese policy process is characterized by the intervention of strong interests and informal relationships of patron-client type especially at the level of local governments. The clientelist structure of the Chinese local state has been confirmed by episodes of bribery and collusion of individual entrepreneurs with Chinese local officials (Saich 2004) and might explain the tolerance for evasion shown by local fisheries implementors.

The problem is even more acute when local enterprises are run by local officials or the same provincial government.

Concerning the first point, since the late 1990s, with the promotion of shareholding (coupled with the decentralization process), local officials have used their position of power to acquire majority shareholdings in enterprises and started to run major local businesses (Saich 2004).

With regard to the second point, we extrapolate from other studies (see Beyer 2006) and suppose that Provinces (main actor in fisheries policy implementation) might possess local fishing companies. This is at least the case for the Guangdong Province, where the provincial government owns one of the major companies in the area. Addressing such conflict of interests as a potential cause of bad implementation and fish stock depletion should not be surprising: Saich (2004) has already identified in the state-owned massive forestry industry the main ‘culprit’ in forestry destruction.

5. Conclusions

At first analysis, international instruments (together with internal worries) seem to have caused a policy adjustment in China (Xue 2005; Zou 2005). Particularly after the ratification of the UNCLOS and the adoption of China Ocean Agenda 21 (1996), China has amended its national fisheries law and promulgated new regulations and rules to promote the conservation of fisheries resources as required by international fisheries instruments (Xue 2005; Zou 2005). Nevertheless, implementation of laws and regulations has been weakened by the policy characteristics, the arena of conflict, and the resource requirements – as described in the model by Grindle and Thomas (1991).

Particularly, the phase of execution is characterized by vague contents in the administrative acts supposed to better specify already vague laws, which leads to two main consequences. Firstly, it empowers provincial and local governments with high interpretative discretion. Secondly, it leaves the demarcation and allocation of competences with no clarity, which generates (or maintains) conflicts within the bureaucratic arena.

Furthermore, the contents of such policy require a high amount of resources for execution (e.g. to establish a TAC or to overcome bureaucratic conflicts through administrative coordination) and for enforcement (e.g. for the monitoring and sanctioning mechanisms needed for input controls and MPAs), so that their scarcity has often impeded effective implementation.

Although both weak policy characteristics and scarce resources (with important variations across provinces) are accountable for deficits in implementation, the main problem seems to lie in the arena of conflicts.

Firstly, within the bureaucratic arena, the administrative ‘messiness’ creates a situation where multiple organizations try to bend central decisions to their own advantage. This compromises the whole implementation process and slows down any attempt to develop the legal framework and enhance the content of policies.

Secondly, in such a disjointed system the province emerges as particularly powerful and at the centre of relationships not foreseen in the model. On one side, the province can be characterized by collusive affairs between entrepreneurs and individual officials (see Beyer 2006 and Saich 2004). On the other side, it can be constrained by conflicts of interest (highlighted in our fieldwork) into a schizophrenic attitude, split between ruling fisheries (and sanctioning violations), and exploiting fish stocks for local economic development.

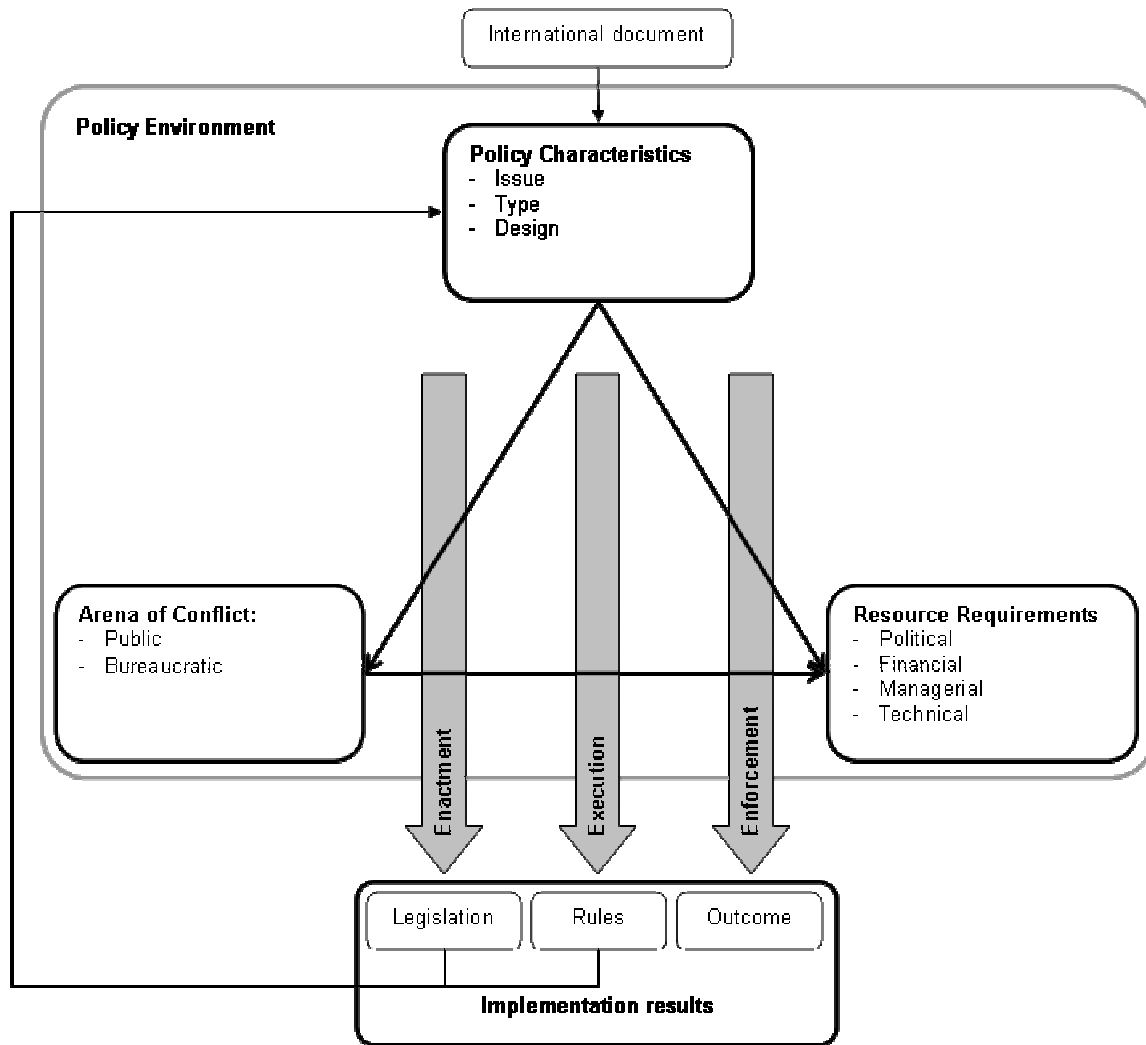
In conclusion, unclear policies, strong administrative oppositions and scarce resource result in an unsuccessful implementation process. Particularly, administrative fragmentation (as in Grindle & Thyomas 1991) and conflicts of interests (revealed from our empirical analysis) can explain content sloppiness, diverted resources, delayed execution, and weak enforcement.

If better coordination within bureaucracy could be achieved in different ways (although not easily and with a high demand of resources), it will be more difficult to deal with the high socio-economic interests at stake in fisheries. Despite formal commitments of Beijing to sustainability, development and employment are the main priority not only of the central state, but – more importantly – for local governments, which are also in charge of implementing more sustainable fisheries policies.

Particularly the system of self-financing regime imposed to local governments causes a general preference of localities for development plans that maximize short-term revenues over longer-term needs and take natural resources as an important source of revenues (Saich 2004). Furthermore, China, still a developing country for many aspects, relies heavily on fishing as a source of employment, which creates an important social obstacle to the effective implementation of fishing effort reduction (Cheng et al. 2006; Xue 2005).

The case of China suggests the need to focus on domestic factors and *intra*-national dynamics for better understanding the functioning and effectiveness of *international* agreements. The process of domestic implementation in China, indeed, reveals the important role played by variables such as policy design and internal (often sub-national) conflicts (mainly after the enactment stage), little investigated by literature on regimes. Further attention should then be paid to the ‘proximate factors’ involving the country highlighted only by few authors of regime theory (see Brown Weiss & Jacobson 2000 as an example). Causal frameworks broadly developed by implementation studies might help in this effort, as the paper has tried to show.

Fig. 1: The model



The figure brings together the interactive model of policy implementation by Grindle and Thomas (1991) and the main stages in the domestic implementation of international regimes highlighted by Andresen et al. (1995).

Fig. 2: China's legislative framework for fisheries

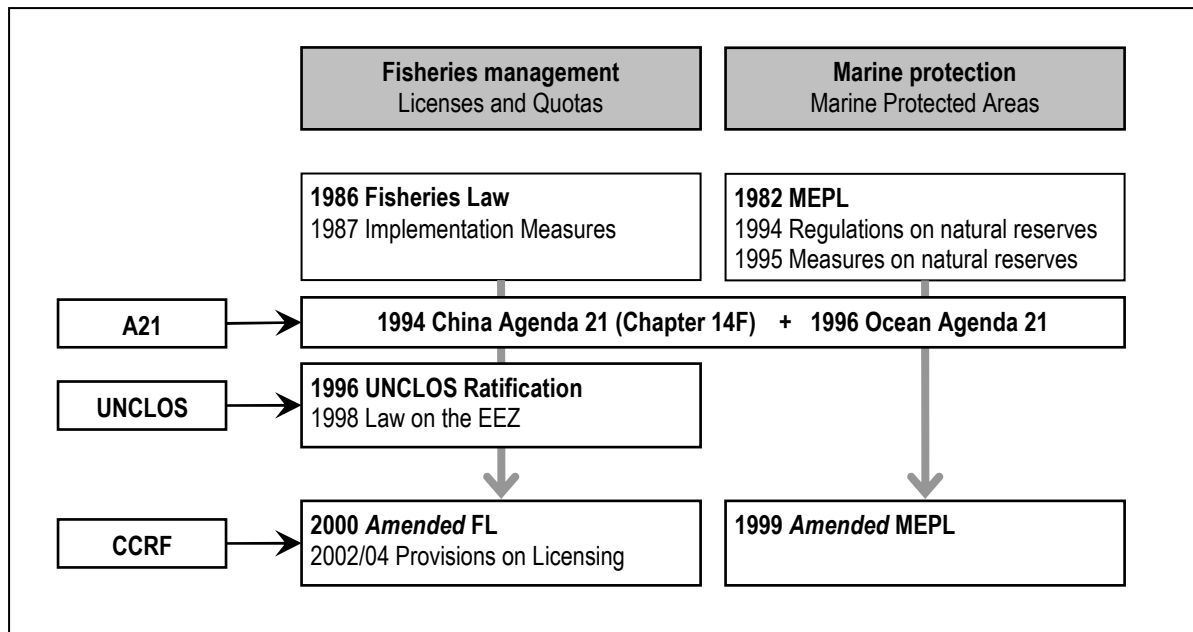
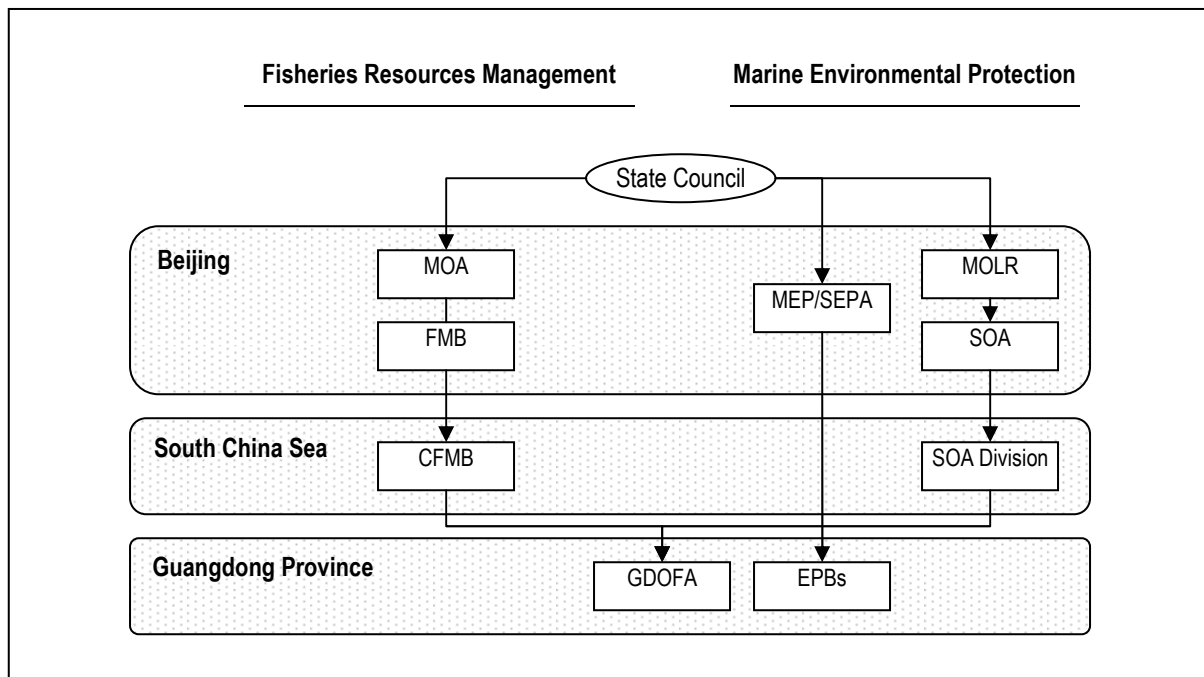


Fig. 3: China's administration for fisheries



Tab. 1:

	UNCLOS Part V	A21 Chapter 17 Programme Area D	CCRF Article 7	JPOI Paragraph 30-36
Licensing	Coastal states' conservation measures can relate to: - licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, (art. 62.4.a) - regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used (art. 62.4.c)	<i>States should ensure that marine living resources are conserved and managed in accordance with the provisions of the UNCLOS (art. 17.77)</i>	Excess fishing capacity is avoided (art. 7.2.2, art. 7.1.8) or eventually reduced (art. 7.6.3)	<i>Implementation of UNCLOS (Par. 30) Implementation of CCRF (Par. 31)</i>
Quotas	Coastal states shall determine the allowable catch (art. 61.1) Coastal states' conservation measures can relate to: - fixing quotas of catch (art. 62.4.b)	<i>States should ensure that marine living resources are conserved and managed in accordance with the provisions of the UNCLOS (art. 17.77)</i>		<i>Implementation of UNCLOS (Par. 30)</i>
Marine Protected Areas		States should identify specific marine ecosystems and provide necessary limitations on use in these areas, through, inter alia, designation of protected areas (art. 17.85)		Establishment of MPAs and of representative networks by 2012 (Par. 32.c)

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