



The Role of Fishing Disputes in China–South Korea Relations

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China has become the most important economic partner of South Korea, even as their political relations are growing increasingly complex. In 2019, South Korea's exports to China totaled \$136.2 billion, while its exports to the United States were \$73.3 billion (54% of its exports to China).¹ On the other hand, in 2017, China sanctioned South Korea when the latter allowed the United States to deploy its Terminal High Altitude Area Defense (THAAD) anti-ballistic missile system on the Korean Peninsula. When one looks at issues between South Korea and China, fisheries are one of the most crucial areas that may aggravate the relationship. Nonetheless, the issue may contribute to a robust bilateral effort to solve problems, particularly regarding illegal fishing by Chinese vessels in Korean waters.

This essay examines the role of fishing disputes in China–South Korea relations. First, it will evaluate the implementation of the Fisheries Agreement in 2001. Second, it will look into the implications of the conflicts over exclusive economic zones (EEZs) for fishing disputes. Finally, the essay will examine South Korea's response to China's illegal fishing in the Yellow Sea (called the West Sea in Korea).

The 2001 Fisheries Agreement between South Korea and China

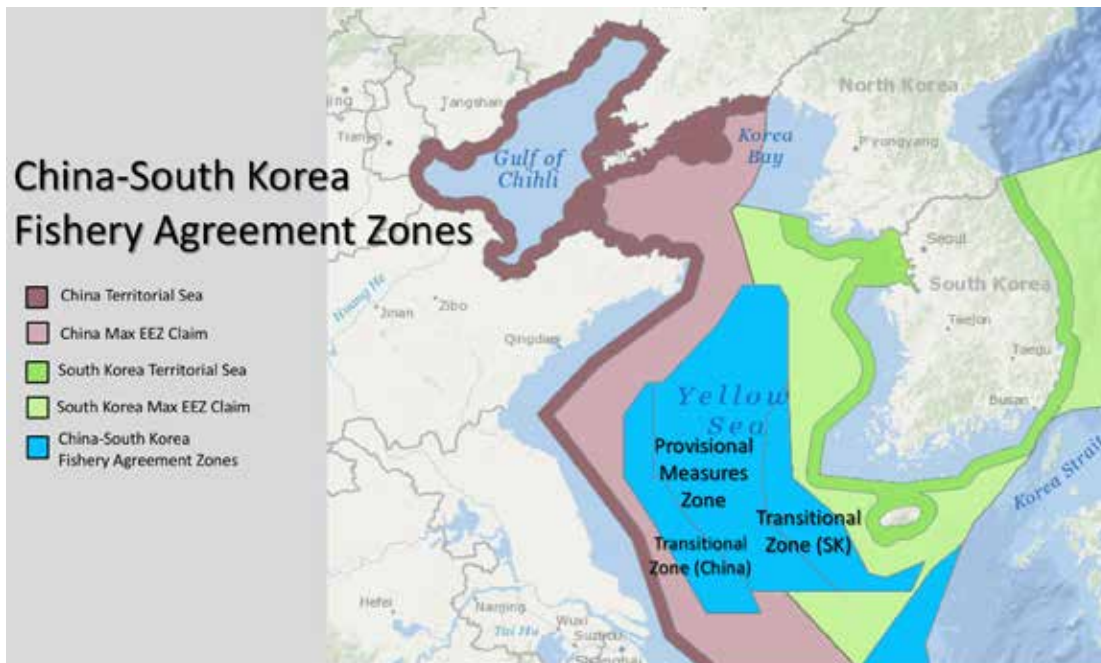
South Korea and China tentatively entered into a fisheries agreement on November 11, 1998, just before the signing of a similar agreement between South Korea and Japan on November 28, 1998. They officially signed the agreement in August 2000, and it went into effect in June 2001.² It was the first provisional arrangement to regulate EEZs in the absence of maritime boundary delimitation between the two countries. The agreement was crucial for South Korea to control the increasing number of illegal Chinese fisheries in Korean waters and

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NOTE: All views expressed here are solely the author's and do not represent the official position of the Korea Maritime Institute or the South Korean government.

¹ "Gukga suchulip" [National Exports and Imports], Korea International Trade Association, <http://stat.kita.net/stat/kts/ctr/CtrTotalImpExpList.screen>.

² The full text of the agreement in Korean is available at http://www.mofa.go.kr/www/wpge/m_3834/contents.do. For the English version, see Guifang Xue, *China and International Fisheries Law and Policy* (Leiden: Martinus Nijhoff Publishers, 2005), 299–300.



View of the 2001 China-South Korea Fishery Agreement Zones from the Maritime Awareness Project’s interactive map.

to protect its living resources from overfishing.³ Notably, the agreement was the first of its kind between the countries and established a legal order in the ocean—at least regarding fisheries—making clear the jurisdictional limits by dividing the waters into the territorial sea, an EEZ, and a provisional measure zone (PMZ).

There is a vast PMZ between latitudes 32° 11’ N and 37° N. The areas beyond the boundaries of the PMZ belong to the EEZ and the territorial sea of each state.⁴ The Joint Fisheries Commission decides the conditions for fisheries in the PMZ, and both governments are entrusted with taking measures for the conservation and management of fishing based on the commission’s decisions. Neither party has the power to control the people or fishing vessels of the other in the PMZ. One country can only notify the other when it encounters

a violation of the decision of the commission.⁵ The establishment of the PMZ and flag-state control system is a typical strategy for managing fisheries among South Korea, China, and Japan.⁶ Korean fishermen are discontent because the PMZ in the Yellow Sea is predominantly occupied by Chinese fishing vessels. Article 4 (2) of the 2001 Fisheries Agreement provides that each party has an obligation “to take necessary measures to ensure that its nationals and fishing vessels harvesting in the EEZ of the other Contracting Party, comply with the provisions of this Agreement, the conservation measures of marine living resources and other terms and conditions established in the relevant laws and regulations of the other Contracting Party.” Thus, China has a legal obligation to prevent its nationals from illegal fishing in Korean waters.

³ Joung Kap-Yong, “Legal Examination on the Fisheries Agreement between South Korea and China,” *Monthly Oceans and Fisheries* 171 (1998): 4–6 (in Korean).

⁴ Article 7 (1) of the Fisheries Agreement, available at http://www.mofa.go.kr/www/wpge/m_3834/contents.do.

⁵ Article 7 (3) of the Fisheries Agreement, available at http://www.mofa.go.kr/www/wpge/m_3834/contents.do.

⁶ There is a PMZ in the East China Sea delimited by the 1998 China-Japan Fisheries Agreement and two PMZs (intermediate zones) delimited by the 1999 Korea-Japan Fisheries Agreement.

Tensions in the EEZs

There have been tensions and occasional conflicts between South Korea and China in their EEZs, mostly deriving from overlapping jurisdiction and the absence of a maritime boundary. China claims its maritime jurisdiction extends out 200 nautical miles (nm) based on the Exclusive Economic Zone and Continental Shelf Act. The act includes no provision on the limit of its jurisdiction. South Korea also claims its 200 nm EEZ based on the same legislation. However, its position is different from China's in that South Korea restricts the enforcement jurisdiction in the area beyond the median line between the baselines of both states.⁷ China enforces its EEZ jurisdiction more assertively than South Korea. For example, China Coast Guard ships periodically patrol waters that are clearly beyond the median line, while other government ships conduct marine scientific research or hydrographic surveys.

Another point of contention is Socotra Rock (Ieodo in Korean), which is 4.6 meters below sea level and located 80 nm southwest of South Korea's Mara Island and 155 nm from China's Sheshan Island. China protested South Korea's construction of the Ieodo Ocean Research Station on the rock in the early 2000s, claiming that it violated international law because the Socotra Rock area belongs to China's EEZ. South Korea responded to the protest, saying that the construction was legitimate under international law because Ieodo is clearly on the Korean side of the median line. Liu Cigui, director of China's State Oceanic Administration, said in an interview with Xinhua in 2012 that "Ieodo falls under Chinese jurisdiction and his country's radar and aircraft will conduct regular surveillance of the submerged rock."⁸

Another example of bilateral tension is the encroachment of Chinese naval ships into South Korea's EEZ. The navy encroached on the EEZ 112

times in 2017 and 243 times in 2018.⁹ The Chinese strategy is to continue to do so until the incursions are institutionalized so as to incrementally consolidate China's rights in the area. Although the South Korean government does not confront China about whether its vessels are free to navigate in the Yellow Sea, repeated intrusions accelerate tensions.

China's Illegal Fisheries in the Yellow Sea

Widespread illegal fishing by Chinese vessels in the Yellow Sea causes severe harm to South Korea by depleting its resources. The Korea Fisheries Association estimates that the economic loss to South Korean fishers from illegal fishing reaches about \$1.1 billion per year.¹⁰ In 2015 a law was proposed to provide exclusive compensation for losses to fishers living in the five islands in the Yellow Sea,¹¹ though it was abandoned due to difficulties in calculating the damage and equity issues elsewhere in the South and East Seas. The South Korean government has expended many budgetary and administrative resources to control illegal fishing by Chinese vessels in Korean waters. Moreover, the lives of several members of the Korea Coast Guard have been lost due to attacks by Chinese fishermen during boarding and inspection.¹²

⁹ Park Hee-seok, "Jinan samnyeongan oeguk gunhamui wuri suyeok chimbeom hoetsuneun yukbaekihoe...obaekhoega Jungguk gunham sohaeng" [The Number of Foreign Warships Entering South Korean Waters Totals 602 for the Last 3 Years...505 Were Chinese Warships], *Monthly Chosun.com*, March 6, 2019, http://monthly.chosun.com/client/mdaily/daily_view.asp?idx=6364&Newsnumb=2019036364.

¹⁰ Shin Joon-sub, "Jungguk eoseon bulbeopjoeop pihae yeongan iljosamcheoneokwon, beolgeumman 10nyeongan 1300eokyeowon" [Damage Due to Chinese Illegal Fishing Amounts to 1 Trillion Won, Only about 130 Billion Won of Fines Imposed], *Green Post Korea*, June 27, 2016, <http://www.greenpostkorea.co.kr/news/articleView.html?idxno=63155>.

¹¹ Son Hyun-gyu, "Park Nam-chun Jungguk eoseon bulbeopjoeop pihaejiwon teukbyeolbeop balui" [Park Nam-chun Proposes a Special Bill on Supporting Chinese Illegal Fishing Damages], *Yonhap*, April 23, 2015, <https://www.yna.co.kr/view/AKR20150423077300065?input=1179m>.

¹² Choi Jung-in, "Dansok Haegyong samangsageon napo Junggukeseon iphang" [Chinese Fishing Boat Related to the Coast Guard Death Incident Arrives at Port], *Yonhap*, December 13, 2011, <https://www.yna.co.kr/view/AKR20111213007200065>. On the other hand, the captain of a Chinese fishing vessel protesting the inspection by the Korea Coast Guard died by a gunshot in 2014. See Choi Yoon-shin, "Bulbeopjoeop Junggukeseon sunjang samang... Haegyong gwonchongemaja" [Chinese Illegal Fishing Boat Captain Dies...Shot by South Korean Coast Guard Pistol], *Money Today*, October 10, 2014, <https://moneys.mt.co.kr/news/mwView.php?no=2014101013388056564&outlink=1>.

⁷ Article 5 (2) of the Exclusive Economic Zone and Continental Shelf Act.

⁸ Lee Tae-hoon, "Seoul to Summon Chinese Diplomats over Ieodo Remarks," *Korea Times*, March 11, 2012, http://www.koreatimes.co.kr/www/nation/2012/03/113_106688.html.

The South Korean government has made every effort to reduce illegal fishing, including diplomatic cooperation with China. Of these measures, the most effective has been the enforcement of the full level of penalties for unlawful fishing. The government has increased penalties for those who conduct illegal fishing through several amendments of the Act on the Exercise of Sovereign Rights on Foreigners' Fishing, etc. within the Exclusive Economic Zone.¹³ For those who conduct illegal fishing activities in the particular prohibition area and without permission, for example, the act raised the penalty from \$160,000 in the 2012 amendment to \$240,000 in the 2016 revision. China has been cooperating with South Korea to reduce illegal fishing by its vessels in Korean waters. In 2019, for example, the Chinese government had meetings with the South Korean government seven times to discuss the fishery issue; conducted joint patrols in the Yellow Sea with the Korea Coast Guard; seized thousands of vessels, nets, and other equipment related to illegal fishing; and educated fishers.¹⁴ Although the level of illegal fishing has been decreasing for the last five years as a result of these efforts, illegal fisheries are still rampant in Korean waters.

	2016	2017	2018	2019
Arrest (NLL area)	248 vessels (50)	160 vessels (17)	136 vessels (16)	115 vessels (11)
Inspection	1,169 vessels	1,030 vessels	1,017 vessels	1,161 vessels
Illegal fishing rate	21.2%	15.5%	13.3%	9.9%

Source: Korea Coast Guard, Press Release, January 15, 2020.

Chinese Fisheries in North Korean Waters

Although the Moon Jae-in administration maintains relatively good relations with the Kim Jong-un regime, North Korea has always been a primary concern for South Korea. Chinese fishing in North Korean waters could elevate tensions between the two Koreas, in addition to depleting fishery resources.

A significant issue today is Chinese vessels fishing in North Korean waters in the East Sea (Sea of Japan) rather than the Yellow Sea. According to a report by the Korea Maritime Institute, the amount of squid caught by South Korean fishers declined from 163,886 tons in 2014 to 46,274 tons in 2018. During this same period, imports of squid from China increased from 8,815 tons in 2014 to 69,889 tons in 2018 as Chinese fishing vessels entering North Korean waters rose from 144 in 2014 to 2,161 in 2018.¹⁵ These statistics suggest that Chinese fishing in North Korean waters depletes resources and causes damage to South Korean fisheries.

North Korea's selling fishing rights to foreign fishers violates paragraph 6 of the UN Security Council Resolution 2397 adopted on December 22, 2017, prohibiting it "from selling or transferring, directly, indirectly, fishing rights." It is highly unlikely that Chinese fishing vessels would operate in North Korean waters without Pyongyang's permission. During the boarding and inspection by the Korea Coast Guard of Chinese fishing vessels sailing for North Korean waters in the East Sea, the captains of the vessels replied that they will obtain fishing permits from North Korea when they arrive there.¹⁶ If this is true, China is not free from criticism because it has an obligation to

¹³ See Korean Legislative Research Institute, March 21, 2017, http://elaw.klri.re.kr/kor_service/lawView.do?hseq=42868&lang=ENG.

¹⁴ Lim Yong-hyuk, "Haeryanggyeongchalcheong, jinanhae oegukeoseon joeopjilseo gaeseon apjangseo" [Last Year, Korea Coast Guard Leads Establishment of Fishing Order for Foreign Vessels], Korea Coast Guard, Press Release, January 15, 2020, <http://www.kcg.go.kr/kcg/na/ntt/selectNttInfo.do?nttSn=18021>.

¹⁵ Cho Hyun-sang, "UN Daebukjejae wiban Junggukeseon Bukhansuyeok ssaksseuli bogoman itneun Jeongbu" [Government Neglecting UNSC Sanctions Violations by Chinese Fishing Boats in North Korean Waters], *Korea News*, February 19, 2020, <http://thekoreanews.com/detail.php?number=64825>.

¹⁶ Chung Myun-koo, "Junggukeseon geommunhaetdeoni... 'Bukhansuyeok gamnida'" [When Inspecting a Chinese Fishing Boat... "We're Going to the North Korean Waters"], *KBS News*, June 4, 2019, <https://news.v.daum.net/v/20190604150641960>.

prevent its nationals from fishing in North Korean waters in accordance with the UN resolution. A South Korean lawmaker argued that the government should strongly request that the United Nations and China prohibit fishing by Chinese vessels in North Korean waters based on the UN Security Council sanction.¹⁷ South Korea has limits on taking measures against Chinese fisheries. It cannot prohibit Chinese fishing vessels from passing through its waters under freedom of navigation protocols in the high seas or innocent passage in the territorial sea, nor can it take measures to resolve the issue without collaboration with North Korea. Alternatively, South Korea could offer economic benefits to North Korea in return for controls on Chinese fishing in its waters.

Chinese fishing vessels even use the Han River estuary along the North Korean side of the Northern Limit Line in the Yellow Sea—a neutral and demilitarized zone decided on by the parties of the Korean Armistice Agreement, which manage the jurisdiction jointly under the supervision of the Military Armistice Commission. South Korea established a special police team of 24 people from its coast guard, navy, and marine corps, as well as a member of the Armistice Commission, to expel Chinese fishing vessels from the zone. Through a joint declaration in 2018, North and South Korea agreed to use the area together, and they conducted a joint hydrographic survey later that year. The South Korean government delivered the new navigational chart made based on the survey to North Korea in early 2019. There are still some illegal Chinese fishing activities in the area that cannot be dealt with without the permission or acquiescence of North Korea.

¹⁷ Kang Jin-koo, “Gang Seok-ho uiwon, Junggukeseon ssaksseulijoeop Jeongbu daecheo jilta” [Representative Kang Seok-ho Rebukes Government’s Response to Chinese Fishing Boat’s Sweep Fishing], *Newsis*, February 18, 2020.

Chinese Fishing and the Maritime Boundary Delimitation

The last point relates to the maritime boundary delimitation between South Korea and China. The two countries began official negotiations to delimit the maritime boundary in December 2015. They reportedly agreed on the limits of the area but differed about fundamental principles and relevant circumstances that are crucial elements for the delimitation. In determining maritime boundaries, fisheries play an important role for both governments, given that there are no significant oil or gas resources in the region. South Korean fishers have strong complaints about the current system instituted by the 2001 Fisheries Agreement because Chinese fishing vessels have dominated the established PMZ. Thus, the South Korean government may maintain a single maritime boundary line that does not consider fisheries as a relevant circumstance.¹⁸ International case laws support the position of South Korea inasmuch as they do not consider fisheries as a relevant circumstance to adjust a provisional boundary line. To keep its benefits, China may try to maintain the existing agreement or adopt a new agreement.¹⁹


Conclusion

China’s fisheries in the Yellow Sea are a primary concern for South Korea because they cause severe damage to South Korean fishers. Although China has been cooperating with South Korea to reduce illegal fishing by its vessels in the latter’s waters, China does not appear to have fully implemented its obligations under the 2001 Fisheries

¹⁸ Lee Kibeom, “Danilhaeyanggyeonggye seoljeonggwa eoeopmunje goryeo yangripbaneungseong munje” [The Consideration of Fisheries in Establishing a Single Maritime Boundary], *Korean Journal of International Law* 61, no. 2 (2016): 98, 121.

¹⁹ On December 25, 2000, China and Vietnam signed the Agreement on the Delimitation of the Territorial Sea, EEZ, and Continental Shelves in the Bay of Tonkin and the Agreement on Fishery Cooperation in the Bay of Tonkin.

Agreement. Illegal Chinese fisheries are still prevalent in Korean waters, and the fishery resources are being depleted. Though the number of illegal fishing arrests in South Korean waters has decreased over the last four years, it is unclear whether the current pattern will continue. Today, South Korea is damaged by China's fisheries in North Korean waters because the depletion of resources

there directly affects South Korean fisheries. The ongoing maritime delimitation negotiation between South Korea and China could solve some of these problems. Deciding how to deal with the fishery issue will be a priority for both governments and an important dimension of the broader maritime boundary negotiation. 

Banner image source: © Dong-A Ilbo/AFP via Getty Images. South Korean coastguard officers (L) stand on guard after a Chinese fishing boat arrived in the southwestern port of Mokpo on October 17, 2012, a day after it was seized for illegal fishing in the Yellow Sea.

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