Australia and Maritime Delimitation vis-à-vis Neighbouring States

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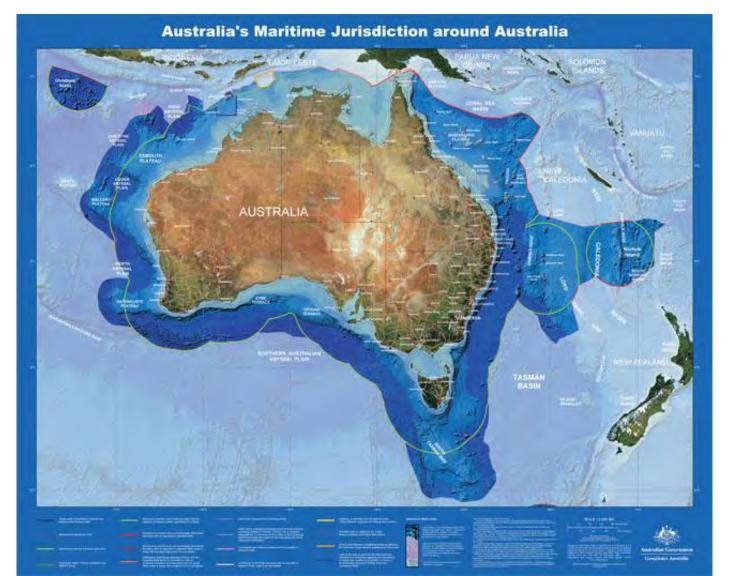
Australia's Maritime Boundaries

- 1. Papua New Guinea
- 2. Solomon Islands
- 3. France (Pacific)
- 4. New Zealand
- 5. France (Southern Ocean)
- Indonesia
- 7. Timor-Leste
- 8. Antarctica*

Characteristics of Australia's Maritime Boundaries

- Concluded by negotiation
- Pre-date and post-date UNCLOS
- Impact created by new States
 - PNG + Timor Leste
- Colonial powers
 - > France + Indonesia
- > Three different oceans
- Equidistance

Australia's Maritime Jurisdiction



Australian Article 36 (2) ICJ Declaration

- Adjusted Declaration under Art 36 (2) ICJ Statute [2002] ATS 5 (21 March 2002)
- Withdraws previous declaration and provides new declaration
- Acceptance of ICJ jurisdiction
 - Except disputes concerning delimitation of maritime zones including TS, EEZ, CS
 - Whaling case (Australia v. Japan; NZ intervening) [2014] ICJ Reports [30-41]
- Similar variation of ITLOS jurisdiction

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Papua New Guinea

- 1978 Torres Strait Treaty
 - □ [1985] ATS 4; EIF 15 February 1985
- Pre-UNCLOS Delimitation
- Colonial power and former colony
 - □ PNG independence in 1975
- Status of 19th Century maps and charts
 - □ Raised issues as to status of certain islands

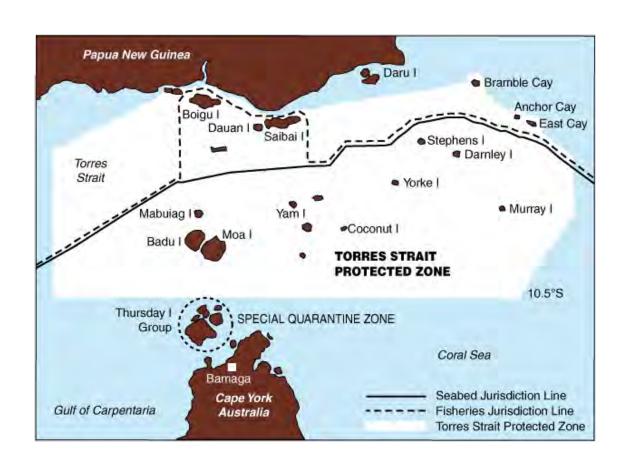
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Papua New Guinea

Torres Strait Treaty

- Equidistance Lines
 - □ Seabed Line + Fisheries Line
- Diverges in centre of Strait
- Protected Zone
 - □ Cultural Rights + Migration + Customs
- 3nm Territorial Sea for enclaved Australian islands north of seabed line

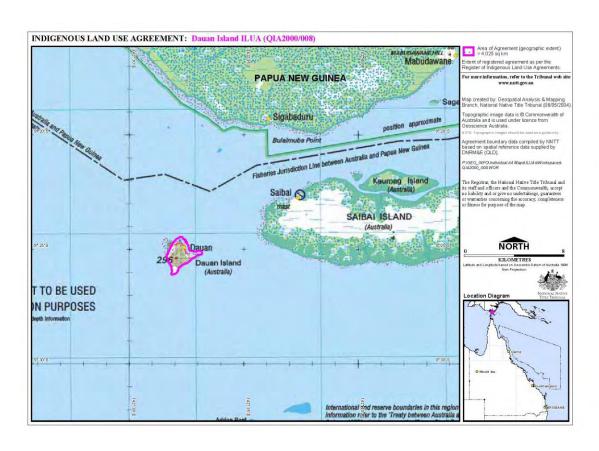
Torres Strait Protected Zone



Australian Islands and 3nm Territorial Sea



Proximity of Australian islands to PNG coast



Australian Maritime Jurisdiction in Torres Strait

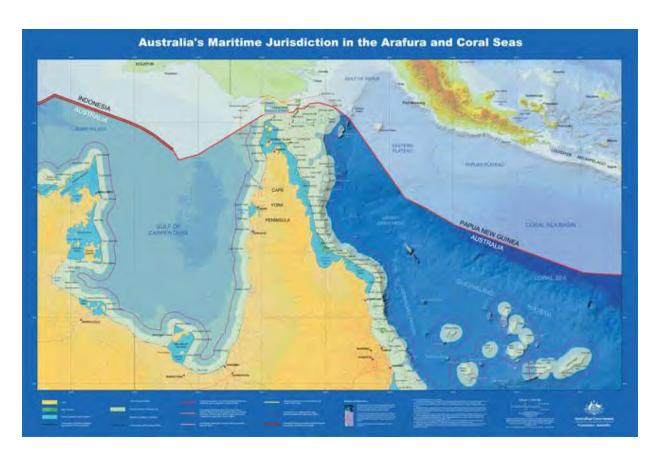


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Solomon Islands

- 1988 Coral Sea Treaty
 - □ [1989] ATS 12; EIF 14 April 1989
- Has only 3 points; 150nm long
- Equidistance relying upon outermost islands and adjacent reefs as basepoints
- Connects Aust/PNG and Aust/France boundaries
 - □ Resulting in tri-points where boundary interests of 3 states coincide

Maritime Boundaries with PNG and Solomon Islands



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France (Pacific)

- 1982 Coral Sea Treaty
 - □[1983] ATS 3; EIF 9 January 983
- Boundary between Australia and French Overseas Territory of New Caledonia
- Total of 22 turning points: 1200nm
 - Modified Equidistance Line points
- Reliance upon certain islands
 - ☐ Are they Article 121 (3) islands?

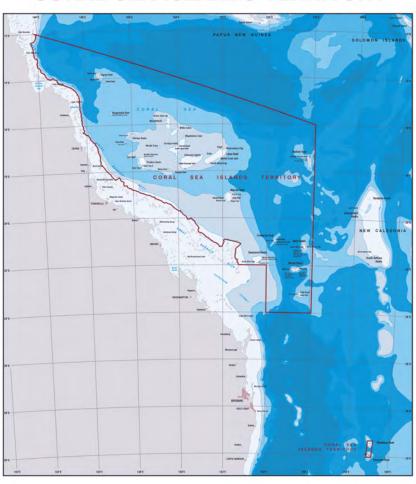
Middleton Reef



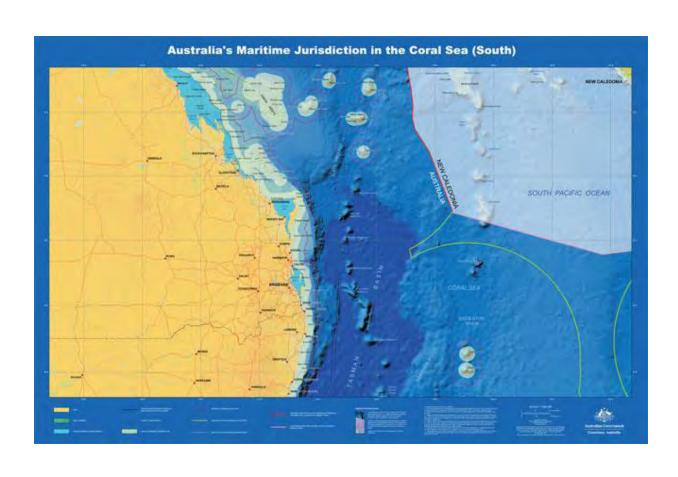


- Legal Status of Middleton Reef
 - □ Island or Rock?
 - ☐ Article 121 UNCLOS
 - ☐ French concessions

CORAL SEA ISLANDS TERRITORY



Australia's Maritime Jurisdiction in the Coral Sea



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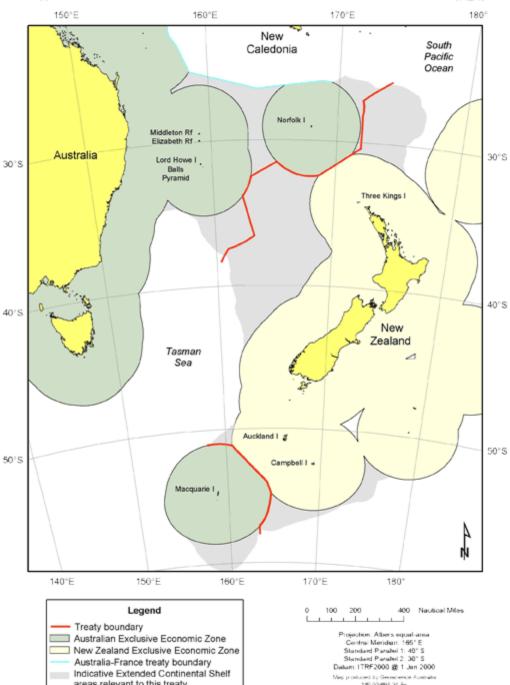
New Zealand [2006] ATS 4

- 2004 Treaty establishing certain EEZ Boundaries and Continental Shelf Boundaries
 - □ [2006] ATS 4; EIF 25 January 2006
- First Australia/NZ maritime boundary
 - □ Previous 'informal boundary' EEZ boundary
 - Pending CLCS submissions were incentive to finalise



Australia - New Zealand Maritime Boundary



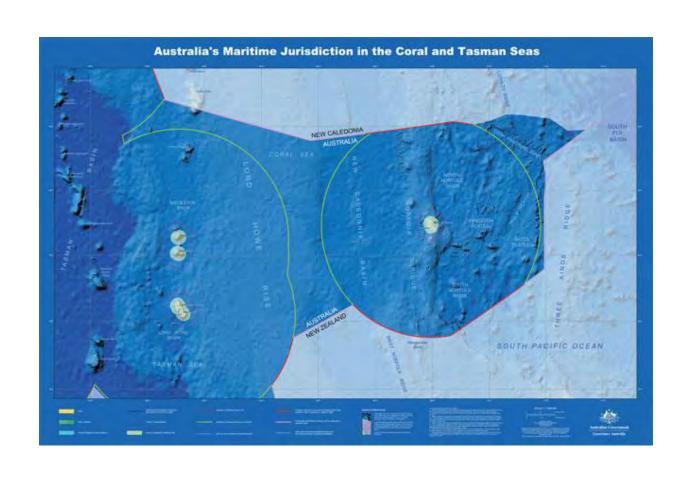


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New Zealand

- Single boundary through Tasman Sea
- Boundary predominantly framed around external islands
 - Macquarie Is, Norfolk Is, Lord Howe Is; Three Kings Island; Auckland and Campbell Islands
- Anticipates Article 76 outer continental shelf submissions to CLCS
- Can the outer continental shelf be delimited?

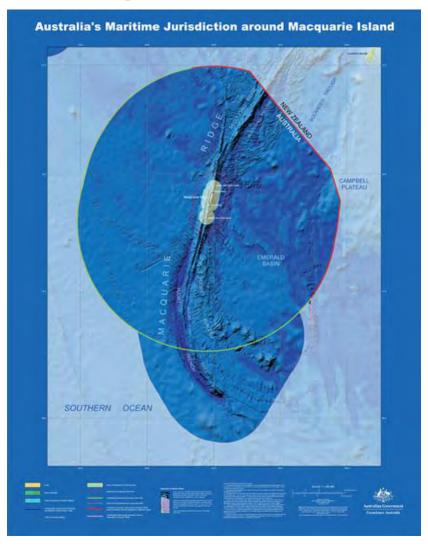
Coral and Tasman Sea Boundaries



Tasman Sea



Macquarie Island



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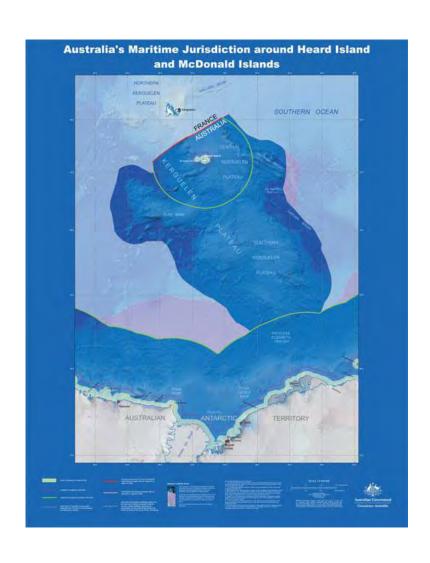
France (Southern Ocean)

- 1982 Agreement on Maritime Boundary Delimitation
 - □ [1983] ATS 3; 10 January 1983
- Kergeulen Islands (France)/Heard and McDonald Islands (Australia)
- Median line
- Reliance upon all islands, islets, rocky outcrops
 - See Judge Vukas in Volga case (Russia v. Australia) (2002)
 ITLOS

Herd Island



Heard and McDonald Islands



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Indonesia

- Multiple boundaries with Australia
- Extends from Arafura and Timor Sea in east to Indian Ocean in west
- Segments negotiated pre and post UNCLOS
- 1980s negotiations over East Timor
- Current uncertainty re Indian Ocean



Indonesia: Arafura Sea

- 1971 Aust/Indonesia Seabed Agreement 974 UNTS 307
 - □ First Australian continental shelf delimitation
 - □Point B1 (offshore New Guinea) to Point A12 in Arafura Sea (adjusted to A3 >1975)
 - Provision for possible shared deposits
 - □ Equidistance line

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Indonesia: Timor Sea

1972 Aust/Indonesia Seabed Agreement 974 UNTS 319

- □ Boundary either side of E Timor
- □ Impact of Timor Trough
- □ Difference of view re natural CS
- □ Runs from A12 A23 (Timor Gap)
- □ Indonesia abandons median line
- Support for finalisation of boundary to gain access to potential seabed resources

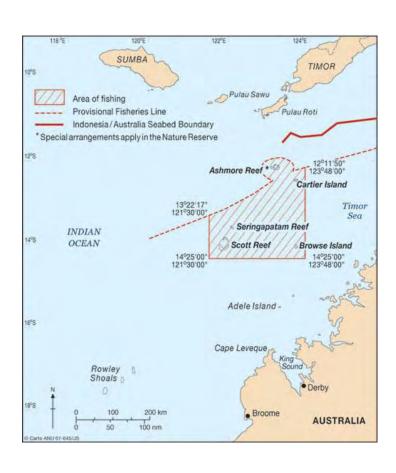


Indonesia: Fisheries Boundary

1974 MOU on Traditional Fishing Activities

- □ Recognition of customary rights of Indonesian fishermen to take fish and sedentary species
- Access to Australian waters around Ashmore, Cartier Is and Scott, Seringapatam Reefs and Browse Islet
- Limited right to land on East and Middle Is of Ashmore Islands
- □ Traditional fishermen those taking fish using traditional fishing methods over decades of time

MOU Box in Indian Ocean



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Indonesia: Fisheries Boundary

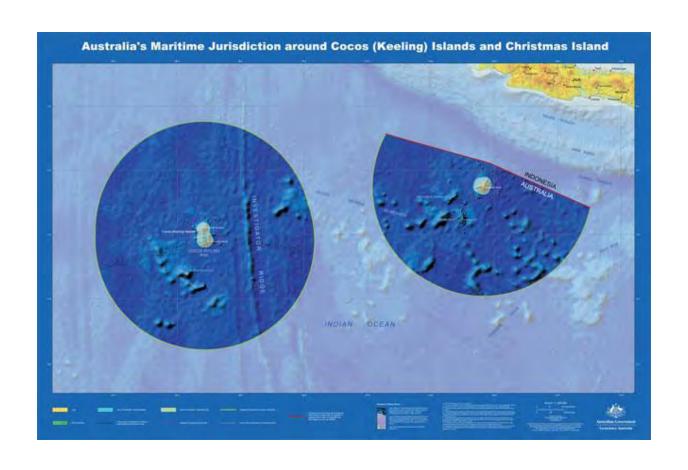
- Fisheries Negotiations
 - Previous seabed delimitations excluded fisheries
 - □ 1981 Provisional Fisheries Agreement
 - Runs west of A12 further south than seabed
 - Bubble around Ashmore Island which is given diminished effect
 - Extends into Indian Ocean to Point 44
 - Gives to Indonesia 70% of area

Indonesia: Indian Ocean

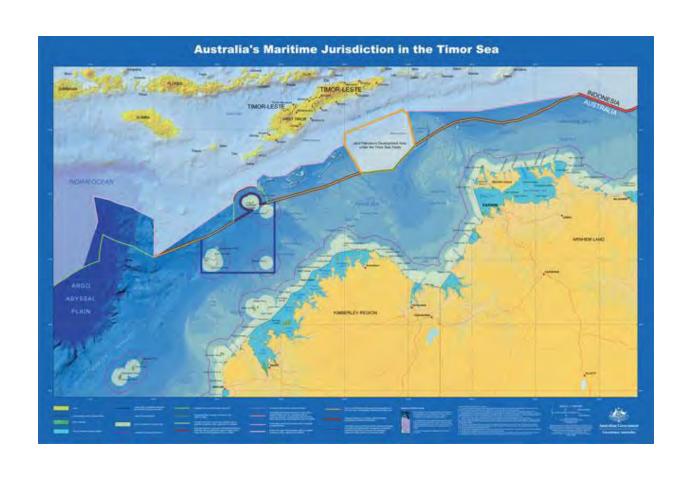
1997 Perth Treaty

- □ Seeks to finalise seabed delimitation west of 1972 Agreement
- Seeks to finalise EEZ arrangements under 1981 Provisional Agreement
- □ Gives reduced effect to Christmas Is and other outer Australian islands
- □ Recognises area of overlapping CS and EEZ jurisdiction
 - Indonesian EEZ jurisdiction over Aust CS
 - EEZ sovereign rights and jurisdiction limited to water column
 - CS sovereign rights and jurisdiction limited to seabed
 - MSR by one party to be notified to the other
 - Each Party liable for marine pollution from activities under their jurisdiction
 - Straddling Seabed deposits will be subject to negotiation

Cocos and Christmas Islands



Timor Sea/Indian Ocean

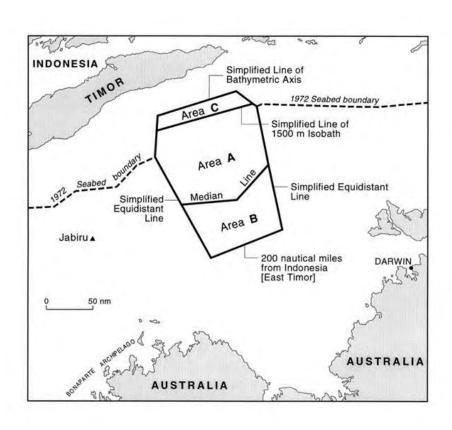


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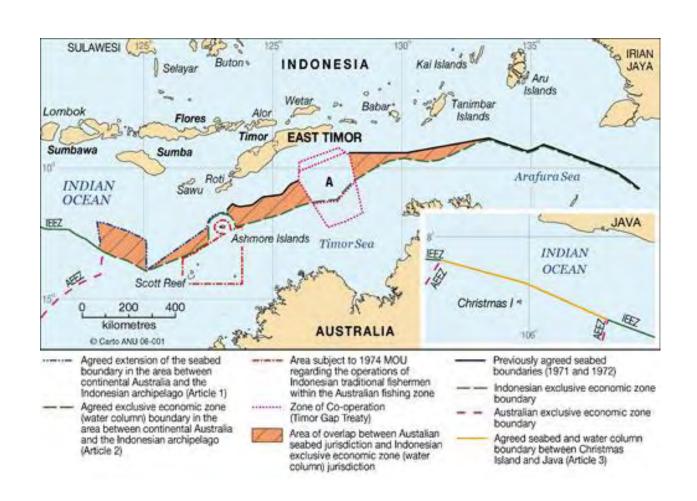
Indonesia: East Timor

- 1975 Indonesian annexation of East Timor
- 1979 Negotiations begin on Timor Sea
- 1989 Timor Gap Treaty
- 1991 Timor Gap Treaty operational: [1991] ATS 9
- 1991 Portugal challenges Timor Sea Treaty in ICJ
- 1995 ICJ Judgment: East Timor case (Portugal v. Australia) [1995] ICJ Reps 90
- **1999**
 - East Timorese UN administered vote
 - INTERFET mission to East Timor
 - Indonesian withdrawal
 - UNTAET administration

Timor Gap Joint Development



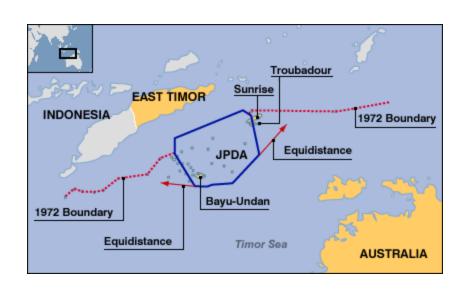
Timor Sea Boundaries: 2002



East Timor (UN control)

- 1999 UNTAET administration
- 2000 Exchange of Notes
- 2000 Negotiations on new boundary arrangements in Timor Sea
- 2002 conclusion of Timor Sea Treaty (negotiated by UN in conjunction with ET officials)

Timor Sea Joint Petroleum Development Area



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Timor-Leste

- 2002 Timor Sea Treaty
 - □ [2003] ATS 13; EIF 2 April 2003
 - □ Significant variance on Timor Gap Treaty
 - □ 90/10 split in favour of East Timor
 - Unitisation of adjacent deposits unresolved
- 2003 Unitisation Agreement
 - □ Did not enter into force
- 2004 Unitisation Agreement renegotiated

Timor-Leste

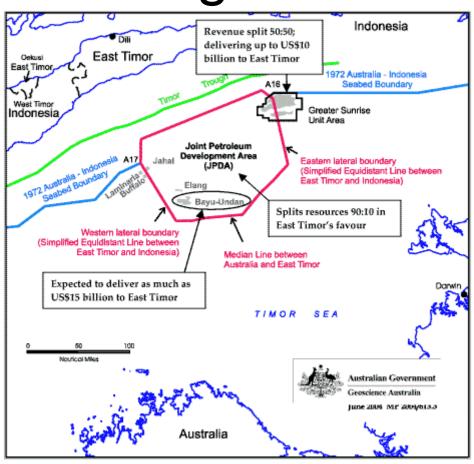
2006 Certain Maritime Arrangements in the Timor Sea Treaty (CMATS) [2007] ATS 12

- Sovereignty neutral + Revenue adjustment
- Petroleum resource jurisdiction (A 7)
- Water column jurisdiction (A 8)
- Maritime Commission (A 9)
- 50 y operation; or 5 y >exploitation ceases

2003 Unitisation Agreement [2007] ATS 11

□ Application to the Sunrise and Troubadour Fields

Timor Sea Boundary Arrangements

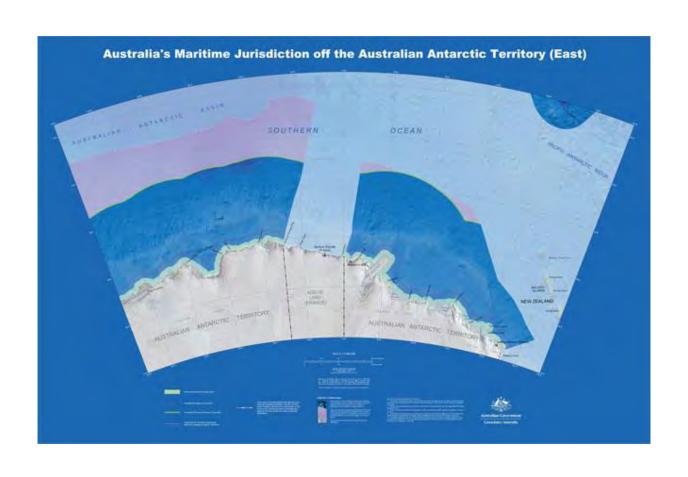


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Antarctica

- Can Australia assert maritime claims offshore Antarctica?
 - □ Antarctic Treaty, Article 4
- Need to assert claims as an assertion of sovereignty
- Australian claims to TS, EEZ, CS and extended CS (before CLCS)
- Need for boundaries with NZ, France, Norway

Australia/France undefined Southern Ocean maritime zones



Australia's potential Antarctic maritime boundary delimitations



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Concluding Remarks

- 1. Boundaries concluded by negotiation
- 2. No third party dispute resolution
- 3. Innovative solutions
- 4. Different approaches depending on geography and political circumstances
- Stronger national interest in areas that are resource rich

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 - □ Vol II: 1185; 1195; 1207; 1219; 1229; 1245
 - □ Vol IV: 2697; 2753
 - □ Vol V: 3759; 3867
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- Stuart Kaye, Australia's Maritime Boundaries (2nd, 2001)