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Joint Development in the Timor Sea

Stuart Kaye

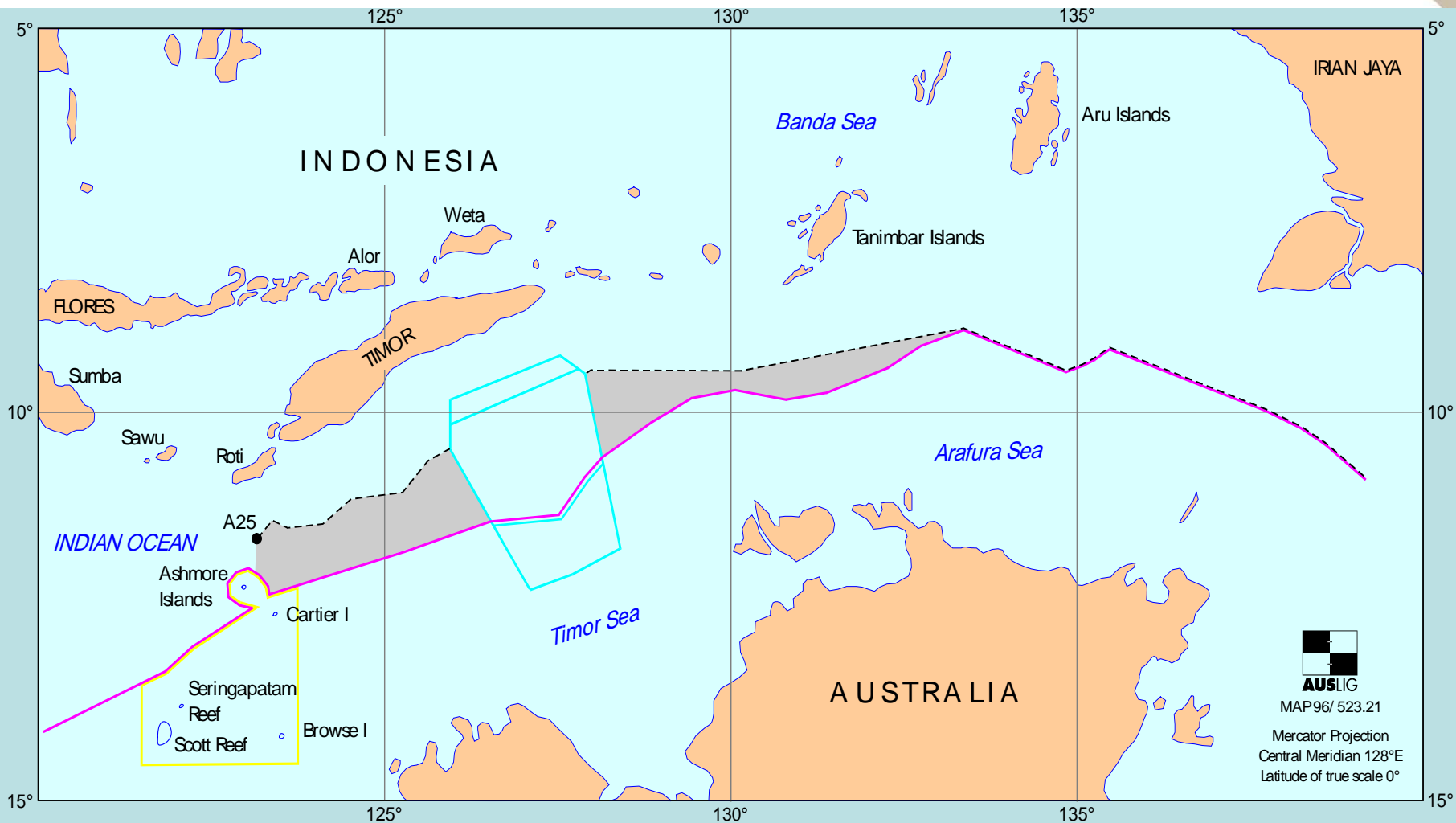
Faculty of Law, The University of Western Australia


Background



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- Australia-Indonesia Continental Shelf Boundaries
 - Equidistance (1971)
 - Use of the Timor Trough (1972)
 - *North Sea Continental Shelf Cases*
- Negotiations with Portugal to fill the Gap
 - Portugal insists on equidistance
 - Issues an oil concession in late 1974 based on equidistance lines




AUSLIG
 MAP96/ 523.21
 Mercator Projection
 Central Meridian 128°E
 Latitude of true scale 0°

- Previously agreed seabed boundaries (1971 and 1972)
- Area subject to 1974 MOU regarding the operations of Indonesian traditional fishermen within the Australian fishing zone
- Zone of Co-operation (Timor Gap Treaty)
- Provisional Fisheries Surveillance and Enforcement Line (PFSEL)
- Area of seabed north of PFSEL under Australian jurisdiction

Map 1 - Existing maritime boundary arrangements between Australia and Indonesia

Background



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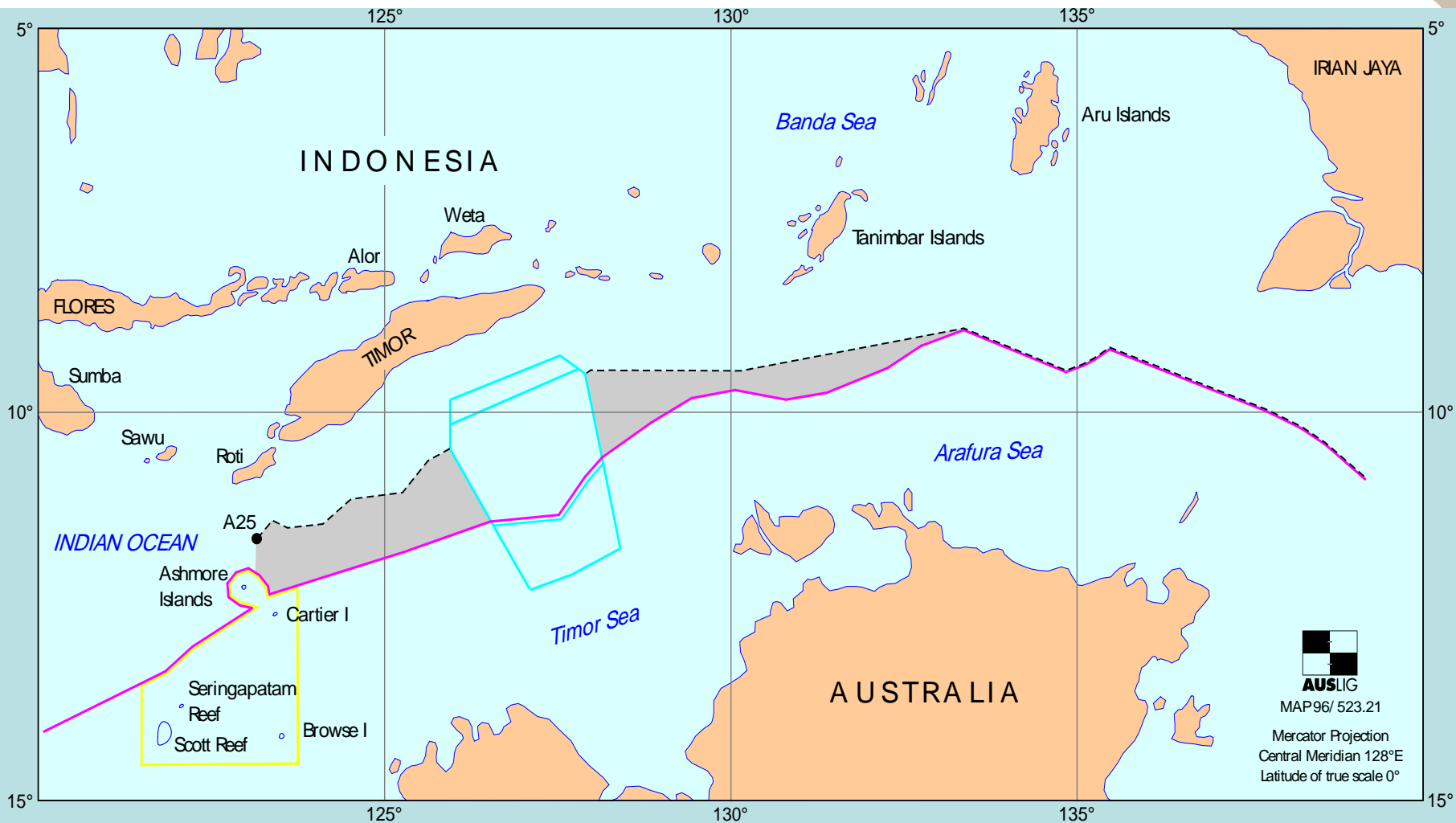
- Indonesian occupation of East Timor 1975
- Australian recognition of Indonesian sovereignty
 - *de facto* (1978) and *de jure* (1979)
- 1981 Provisional Fisheries Line
- 1989 Timor Gap Treaty
- 1997 Maritime Boundary Treaty

Timor Gap Treaty



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- Negotiated in 1980s
- Division of claims into 3 sectors
- Area A with shared jurisdiction, responsibility and revenue
- Administered by a Joint Authority overseen by a Ministerial Council
- Designed to return a profit



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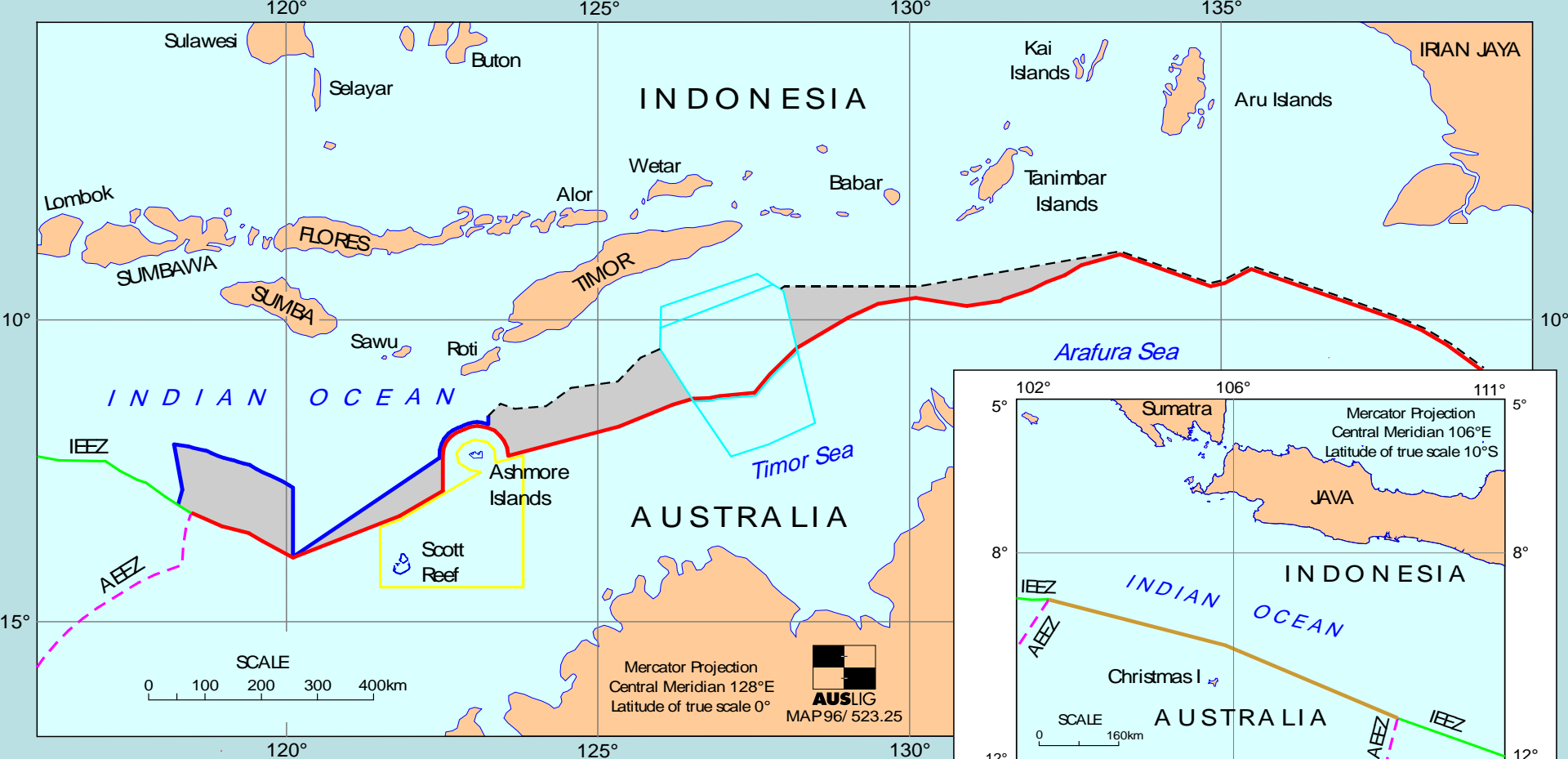
Map 1 - Existing maritime boundary arrangements between Australia and Indonesia

1997 Boundary Treaty



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- Comprehensive settlement of all remaining EEZ and continental shelf between Australia and Indonesia
 - Includes Christmas Island and Browse Basin
- To enter into force upon ratification
- Yet to be ratified



Agreed extension of the seabed boundary in the area between continental Australia and the Indonesian archipelago (Article 1)

Agreed exclusive economic zone (water column) boundary in the area between continental Australia and the Indonesian archipelago (Article 2)

Area subject to 1974 MOU regarding the operations of Indonesian traditional fishermen within the Australian fishing zone

Zone of Co-operation (Timor Gap Treaty)

Previously agreed seabed boundaries (1971 and 1972)

Agreed seabed and water column boundary between Christmas Island and Java (Article 3)

Area of overlap between Australian seabed jurisdiction and Indonesian exclusive economic zone (water column) jurisdiction

Indonesian exclusive economic zone boundary

Australian exclusive economic zone boundary

Consolidated depiction of all Australian-Indonesian maritime boundaries after entry into force of the Treaty

Reopening the Gap



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- East Timor referendum 1999
- Indonesian withdrawal
- INTERFET and concern over existing petroleum concessions
- UNTAET and the Gap Treaty
 - Maintenance of the *status quo*

Independence and the Gap



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- Uncertainty over arrangements post-independence
- East Timor unwilling to act as a successor State to Indonesia
- Negotiation of the Timor Sea Treaty 2002

Timor Sea Treaty



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- Signed on creation of the Government of Timor Leste and ratified within 2 weeks
- Creation of the Joint Petroleum Development Area (JPDA)
 - Occupies the same location as Area A of the Timor Gap Zone of Cooperation
- Jurisdiction shared
- Revenue shared
 - 90% Timor Leste
 - 10% Australia

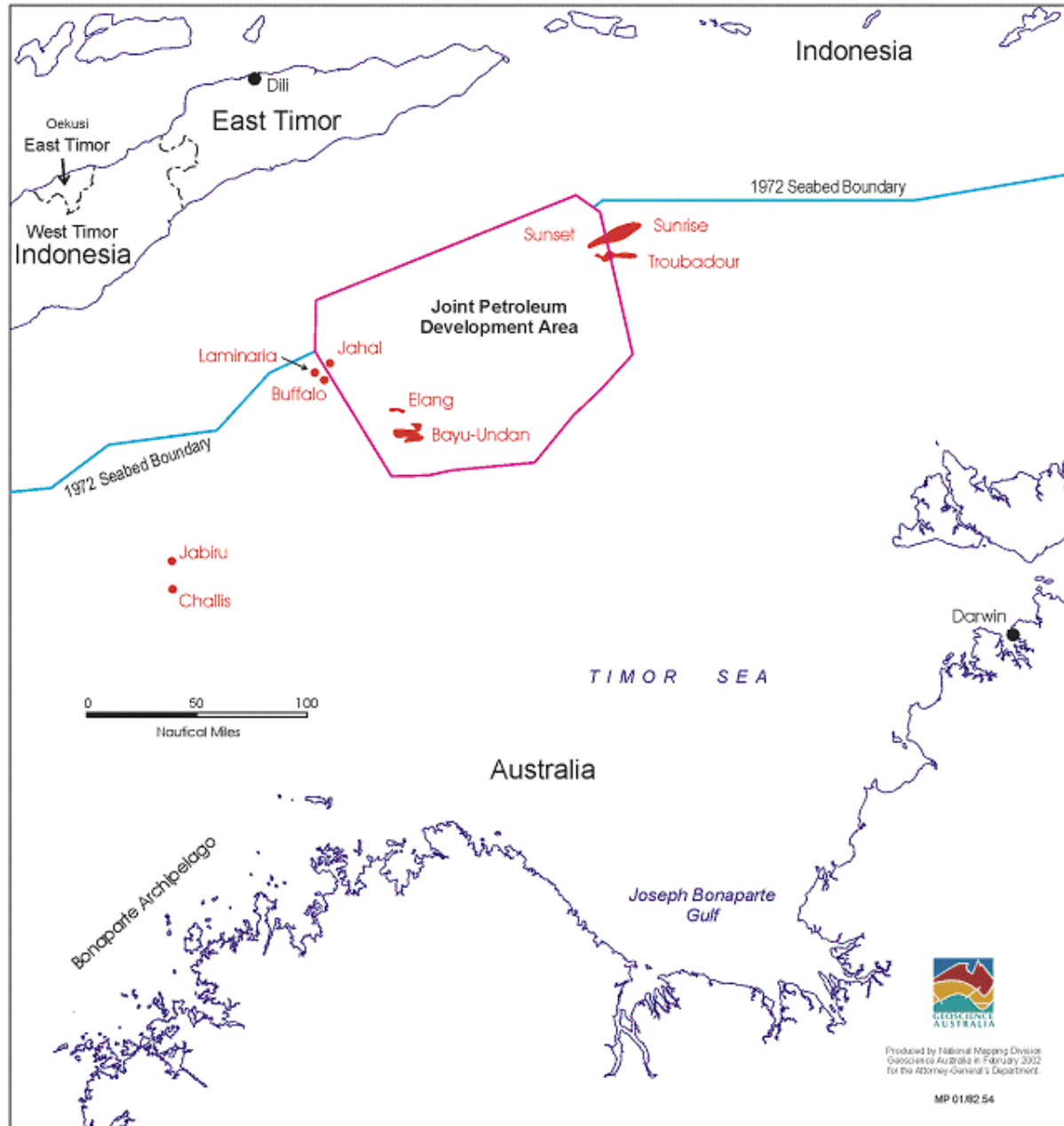
Timor Sea Treaty



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- JPDA administered by a Designated Authority overseen by a Joint Commission and a Ministerial Council
 - Structure now favours Timor Leste
- To operate for 30 years unless a permanent boundary is used
 - Without prejudice to future permanent boundary
- In force on ratification

Timor Sea Treaty Joint Petroleum Development Area



Timor Sea Treaty



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Approach to joint development

- Shared jurisdiction in employment, occupational health
- Cooperation on security, environmental protection, SAR
- Nationality jurisdiction over own national workers, shared for foreigners
- Customs and quarantine maintained, with no entry to JPDA other than from Australia or Timor Leste

Timor Sea Treaty



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Approach to joint development

- Use of production sharing contracts for revenue sharing
- Petroleum Mining Code established as a basis for operations in the JPDA
- Preference for Australian and Timorese nationals in employment
 - Double taxation arrangements

Complications



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- Greater Sunrise
 - Discovered after Gap Treaty
 - Extends from Australian continental shelf into JPDA
 - Necessity of a unitisation agreement
 - Unitisation agreement reached
 - 79.9% Australia
 - 20.1% Timor Leste

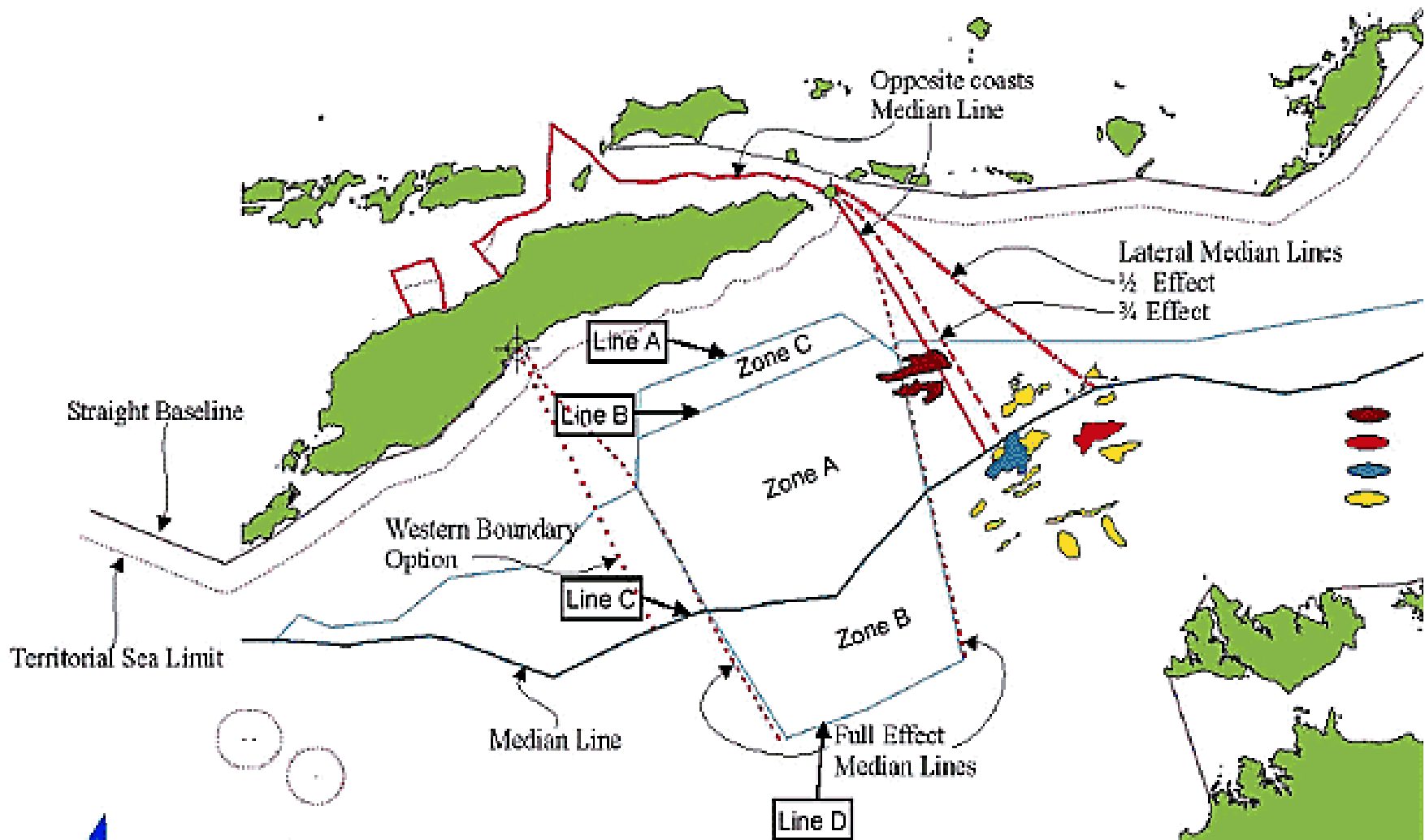
Complications



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PetroTimor and the Portuguese concession

- Grant in 1974 of oil concession to US oil company
- Concession held by PetroTimor
- Strenuous efforts to have East Timor not ratify the Timor Sea Treaty
- Lowe, Carleton, Ward opinion
- Gas pipeline



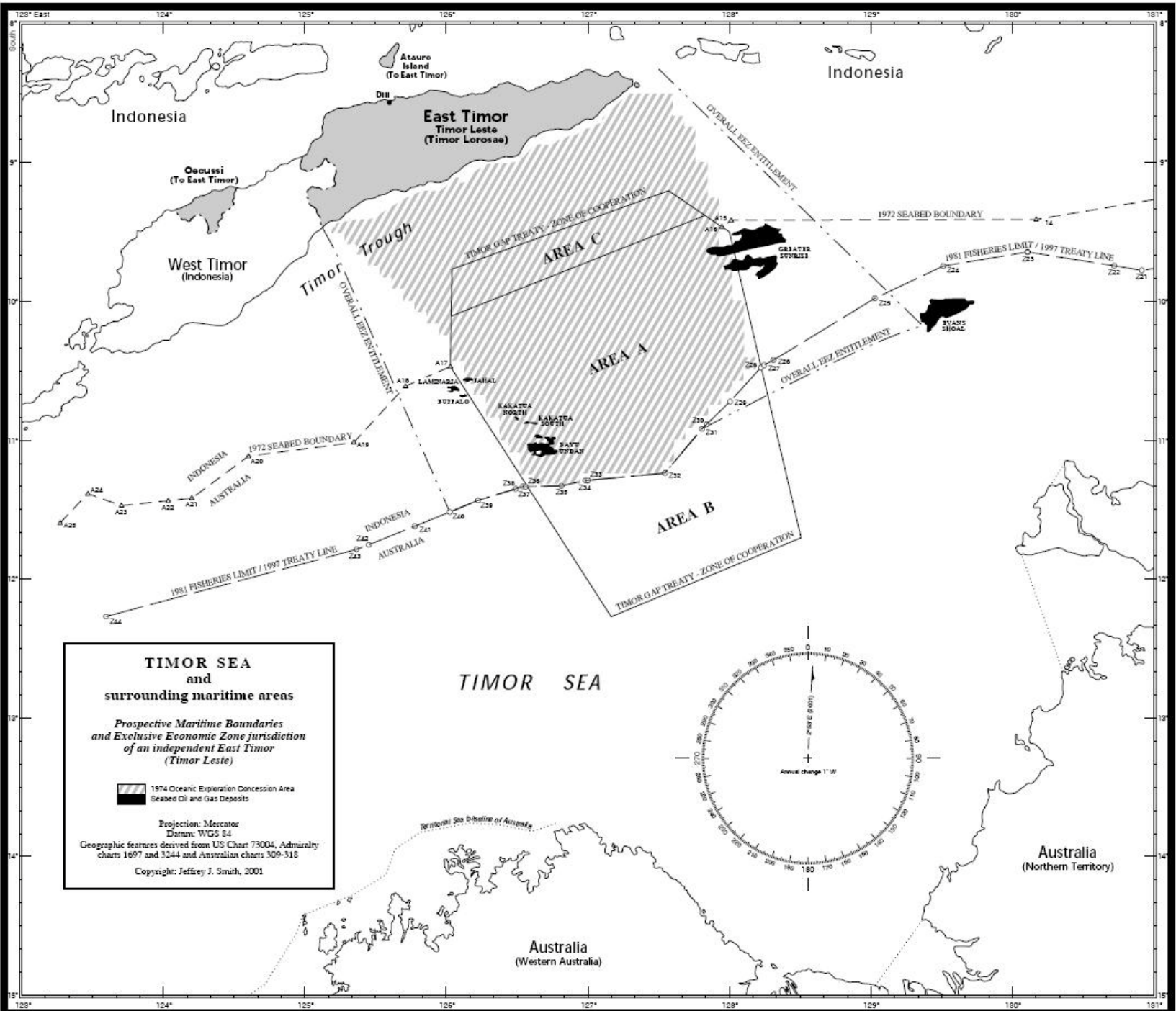
Law of the Sea
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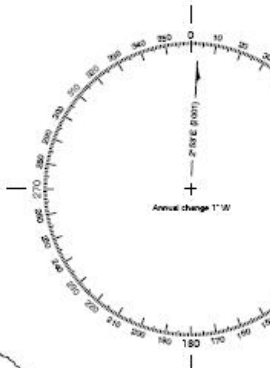


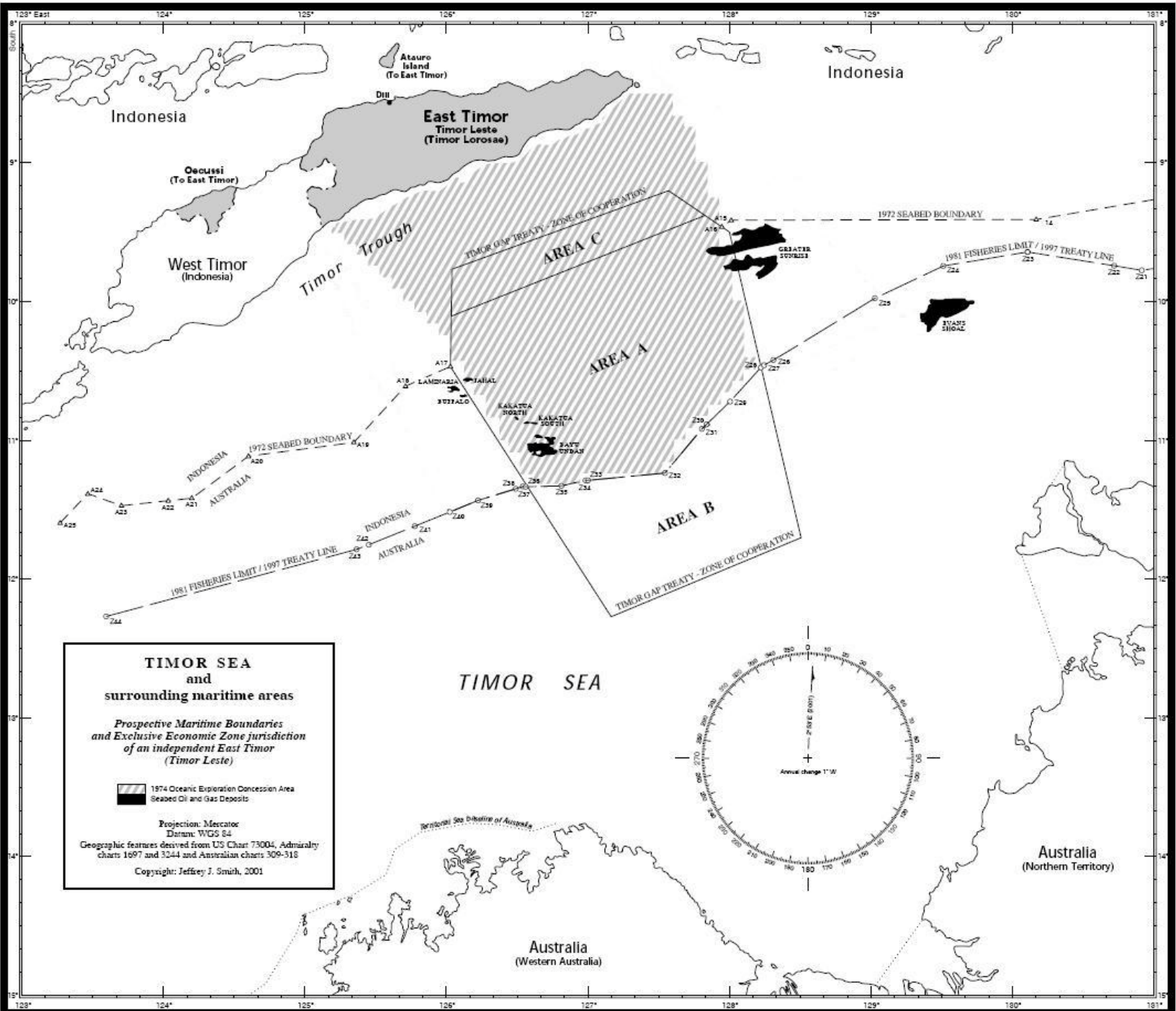
**TIMOR SEA
and
surrounding maritime areas**

*Prospective Maritime Boundaries
and Exclusive Economic Zone jurisdiction
of an independent East Timor
(Timor Leste)*

 1974 Oceanic Exploration Concession Area
 Seabed Oil and Gas Deposits

Projection: Mercator
 Datum: WGS 84
 Geographic features derived from US Chart 73004, Admiralty
 charts 1697 and 3244 and Australian charts 309-316
 Copyright: Jeffrey J. Smith, 2001





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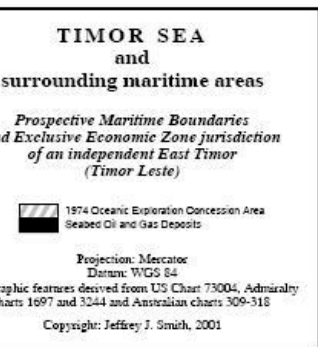
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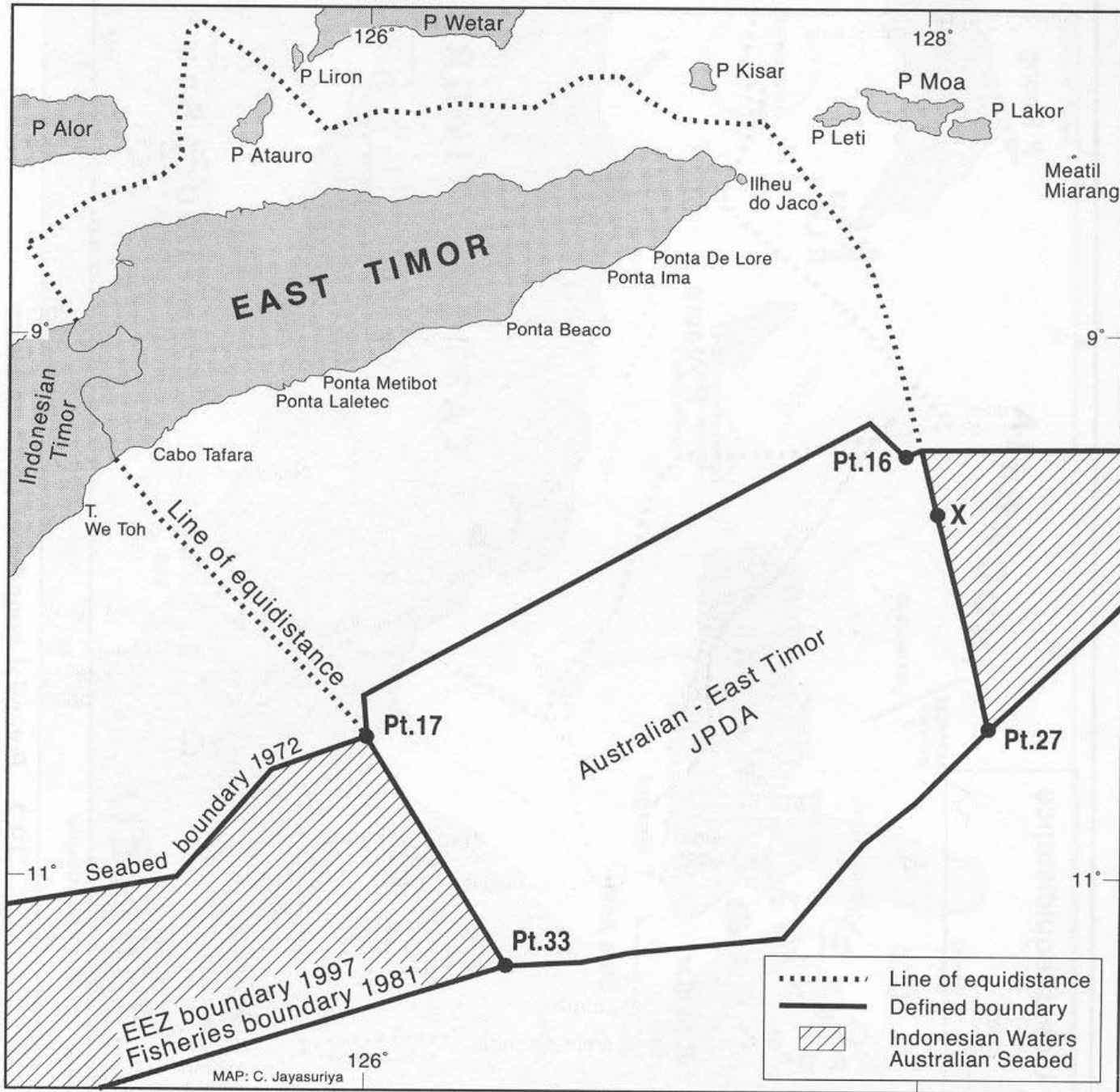
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TIMOR SEA

Australia
(Western Australia)

Australia
(Northern Territory)





Complications



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- Indonesia
 - Location of the tri-points on either side of the Gap
 - Unratified 1997 Boundary Treaty
 - Overlap with Timorese jurisdiction
- Political pressure in Timor Leste and Australia
- Unitisation agreement ratification delayed by Timor Leste

Consequences



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- Dispute Resolution
 - Australia has made declarations under Part XV of the Law of the Sea Convention and Statute of the ICJ with drawing jurisdiction of ITLOS and the ICJ from maritime boundary disputes
 - Declarations commence prior to East Timorese independence
- Timor Leste now a member of the UN, yet to ratify Law of the Sea Convention or make a declaration accepting the jurisdiction of the ICJ

Public Campaign



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- Campaign initiated by “Timor Sea Justice Coalition” in Australian media
- Assertion of Timor Leste’s “entitlement under international law”
- Expressed to be an equidistance or median line

CMATS Treaty



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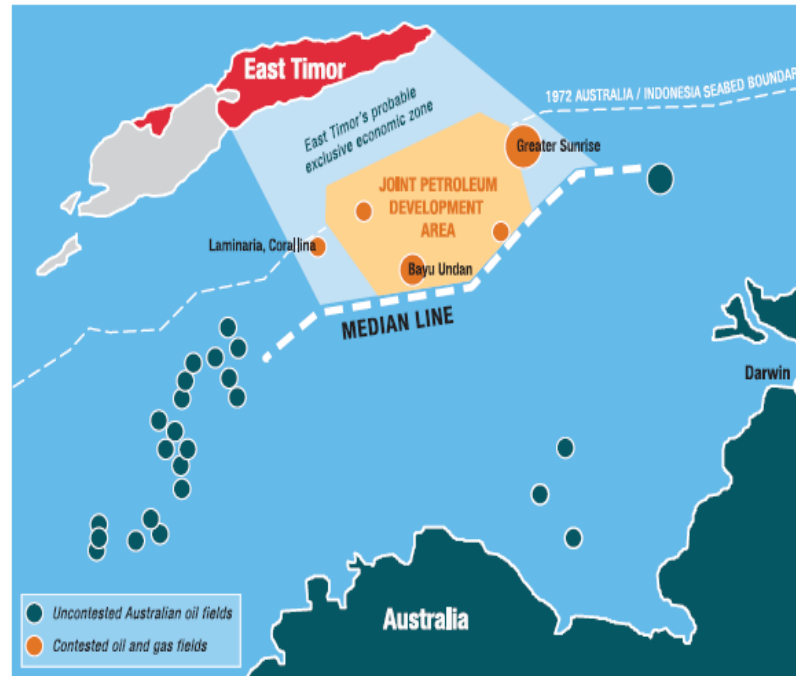
- Treaty on Certain Maritime Arrangements in the Timor Sea
 - Signed January 2006
 - Ratified February 2007
 - Reaffirms the continuation of the Timor Sea Treaty
 - Confirms the continuation of the JPDA

Area of dispute



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- The **Median Line** is the halfway point between the two coastlines. According to current principles of International Law, the maritime boundary should be established along this line.
- The **Joint Petroleum Development Area (JPDA)** is an area in which East Timor and Australia have a temporary resource sharing agreement that provides the legal framework for development to occur while negotiations for maritime boundaries take place. Australia takes 10% of the royalties from this area.
- If permanent maritime boundaries were established in accordance with current International Law, **East Timor's Exclusive Economic Zone** would include the JPDA as well as most or all of the **Laminaria, Corallina and Greater Sunrise** fields.
- As the map shows, Australia has many other petroleum resources in its own territorial waters that are not in any dispute.

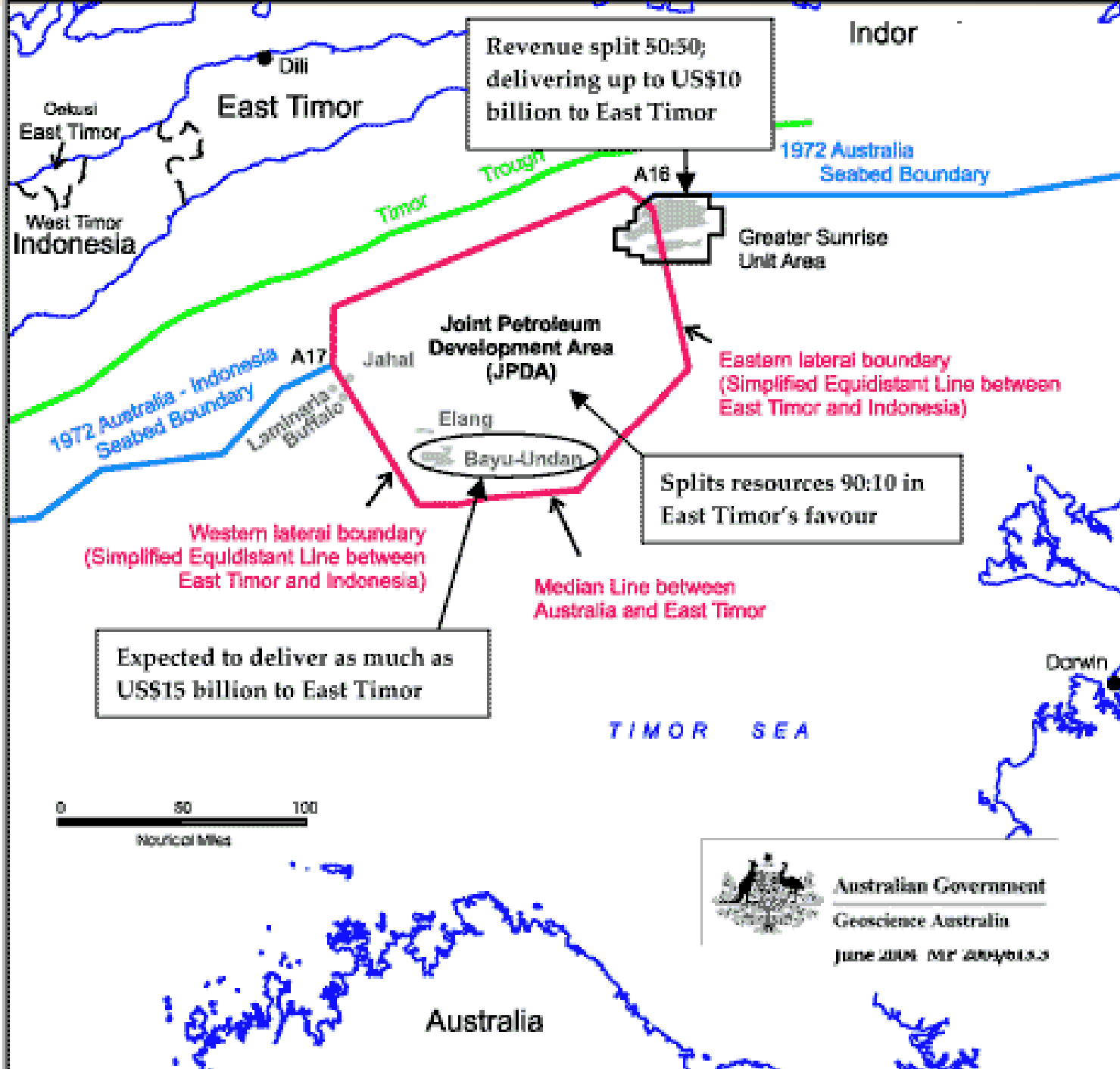
**East Timor has an annual budget of approximately \$100 million.
The \$2 billion that Australia has taken from East Timor since
1999 is equal to four years of East Timor's Gross Domestic Product.
For Australia, it's about one day's worth.**

CMATS Treaty



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- Maintenance of existing arrangements for 50 years
- Retention of existing Greater Sunrise unitisation
 - Australia to transfer equivalent revenue to 50% of value of Greater Sunrise
- Median line used for water column
- Establishes a joint maritime commission
- No more negotiation on boundaries
- No use of dispute resolution



Revenue split 50:50;
delivering up to US\$10
billion to East Timor

Splits resources 90:10 in
East Timor's favour

Expected to deliver as much as
US\$15 billion to East Timor



 Australian Government
Geoscience Australia
JUNE 2008 MR 000013.0

Australia

Conclusion



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- Issues still not entirely resolved
 - Pipeline
 - Timor Leste's maritime boundaries with Indonesia and the location of the tripoints