

2018 APOLIA-KIOST CONFERENCE

Area-Based Marine Protection in the Asia-Pacific

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18-19 August 2018

Session 3. Regional Initiatives in the South China Sea

**A Potential Area-Based Management
Initiatives in the South China Sea**

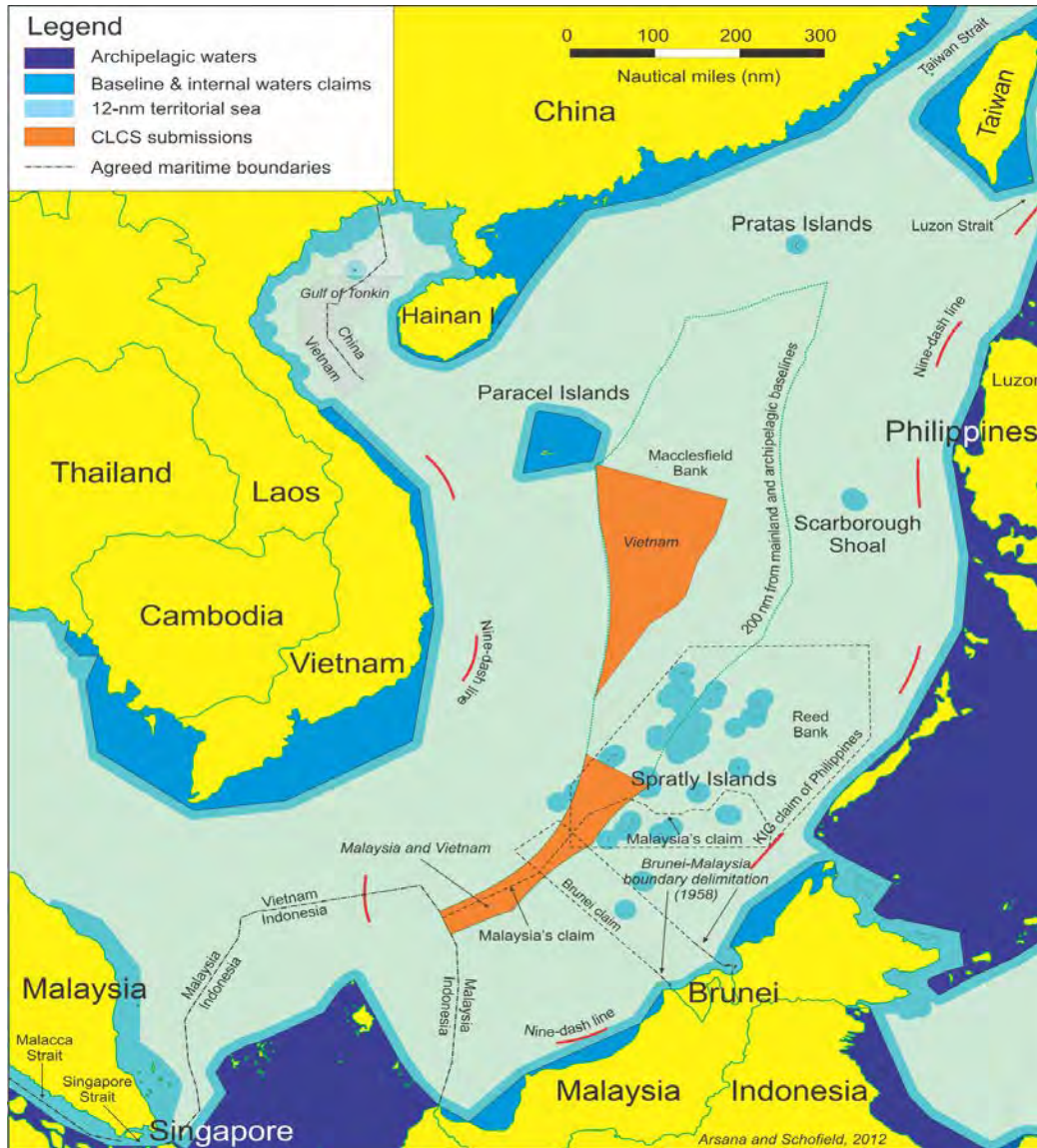
Robert Beckman & Youna Lyons

Ocean Law and Policy Programme,

Centre for International Law

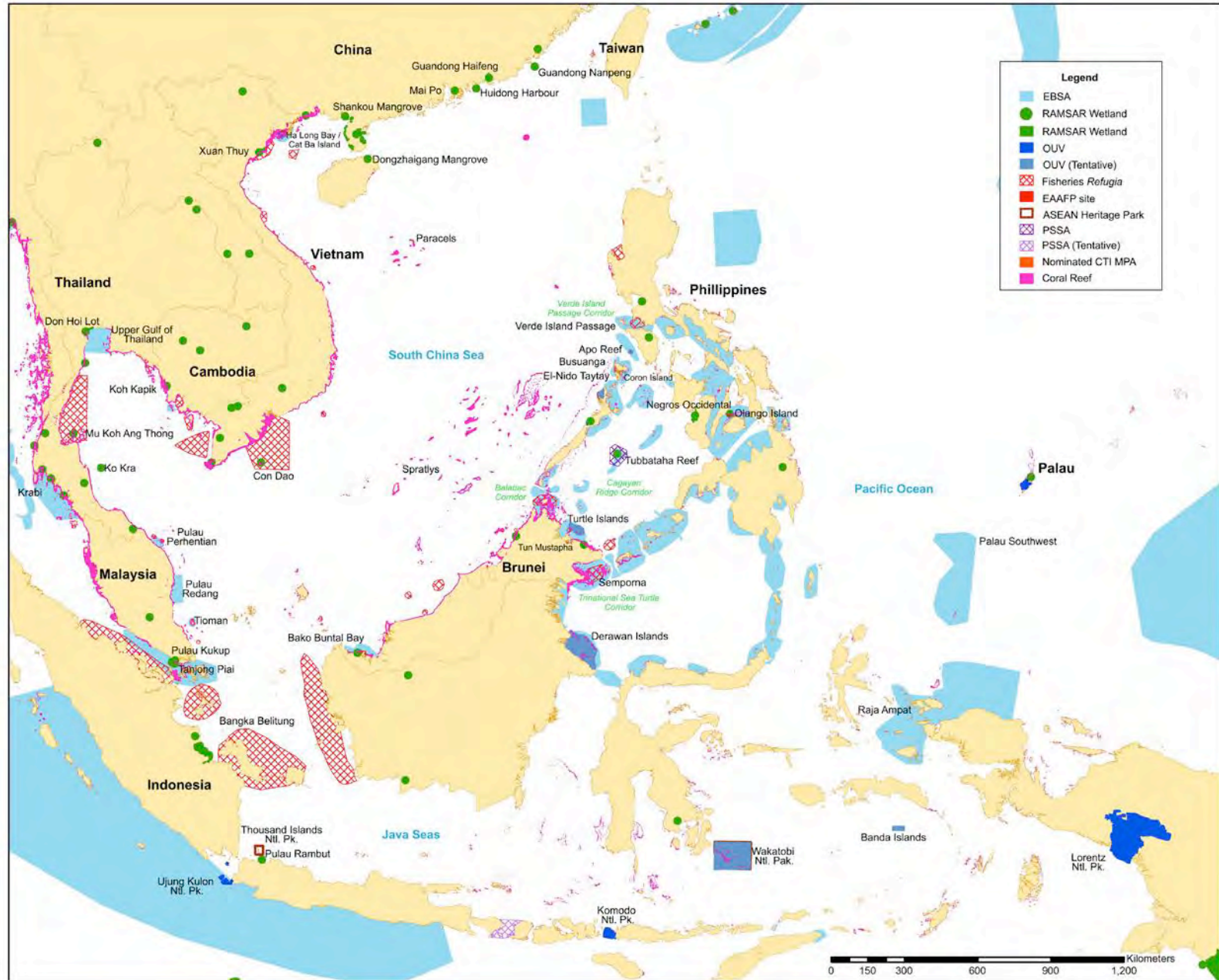
National University of Singapore

Disputes in SCS



- Sovereignty over islands
- Status & Entitlement of Features
- Overlapping EEZ Claims
- Historic Rights to resources inside Nine-Dash Line

Sensitive Marine Areas Identified Under a Legal Instrument



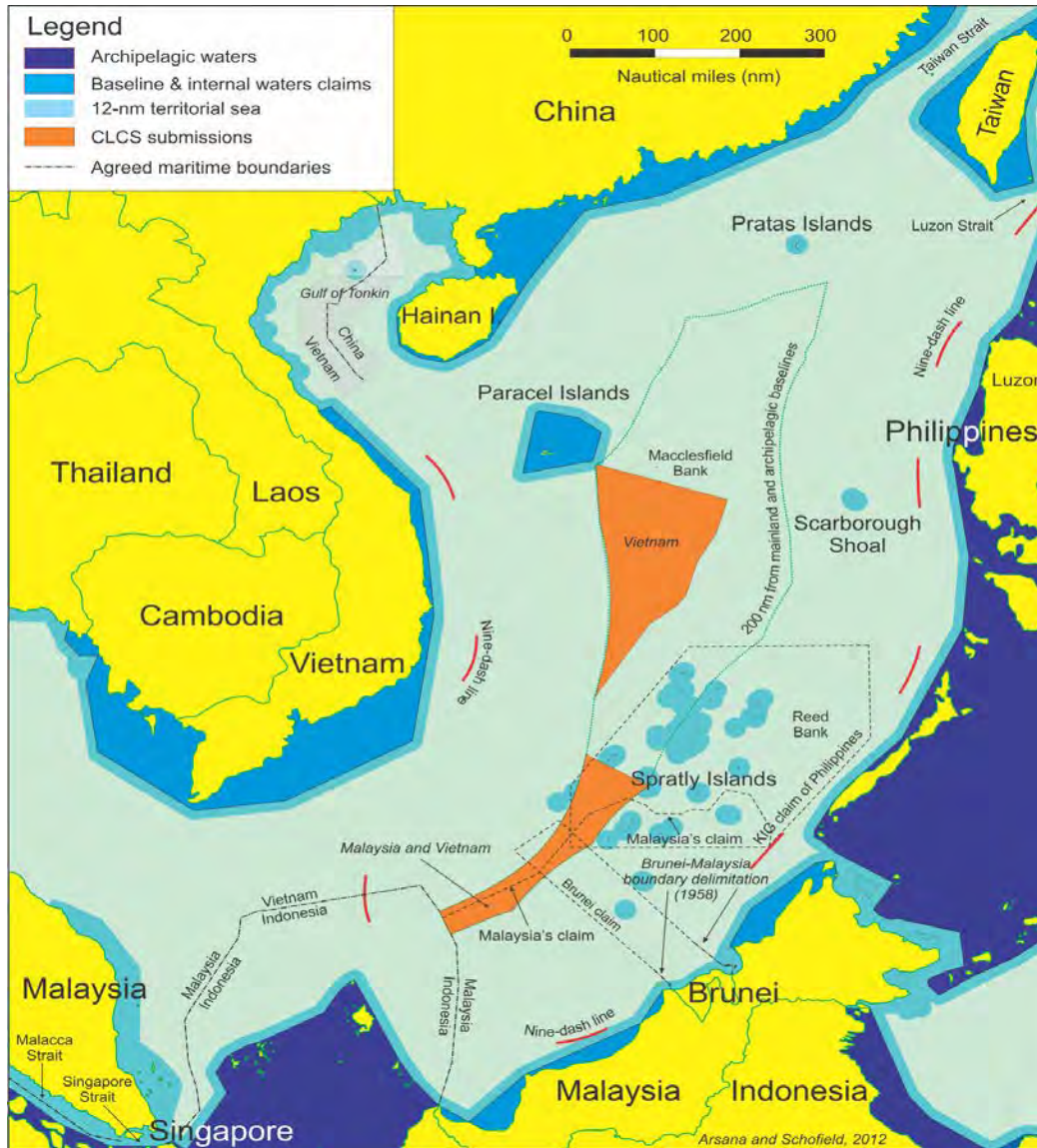
Sensitive Areas identified in the SCS

- **They include, at international level:**
 - Ecologically or Biologically Sensitive Sea Areas (EBSAs) under the **CBD** (light blue)
 - Areas of Outstanding Universal Value (OUV) under the **World Heritage Convention** (dark blue)
 - Ramsar wetland sites of international importance under the **Ramsar Convention** (Green)
 - Particularly Sensitive Sea Areas (**PSSAs**) under the IMO (purple crossed lines)
- **At regional level:**
 - Fisheries Refugia overseen by **SEAFDEC** (red crossed lines)
 - ASEAN Heritage Parks
 - Nominated MPAs for the **Coral Triangle MPA System** (CTMPAS)
 - Nominated sites in the **East- Asia Australasia Flyway Partnership** (EAAFP) (no legal instrument but partnership between governmental bodies)

Sensitive Areas identified in the SCS

- Map represents all the marine areas identified as ‘sensitive’ under different international and regional instruments
- MPAs identified unilaterally outside the context of intergovernmental meetings are not included
- All areas have been proposed, identified and or acknowledged by intergovernmental meetings
- Few areas identified in the South China Sea
- No sensitive areas or Marine Managed Areas areas subject to maritime disputes
- Only transboundary areas are located in the Sulu-Sulawesi

Disputes in SCS



- Sovereignty over islands
- Status & Entitlement of Features
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Seamounts & Coral Reefs in SCS

- Recent study by Youna Lyons and Prof Chou Loke Ming of NUS on the Spratly seamounts and their coral reefs in the southern half of the SCS basin
- Concluded that the seamounts and coral reefs meet 6 of the 7 criteria for EBSA criteria that has been applied for designation of other seamounts as EBSA
- Concluded that the seamounts and coral reefs in SCS are of critical importance to the connectivity between the coastal ecosystems and those in the South China Sea

Can States bordering SCS Cooperate in Managing Sensitive Marine Areas?

- Cooperation unlikely if it appears to entail recognition of the legitimacy of sovereignty claims and maritime claims of other States
- Cooperation unlikely if it appears to entail that a claimant is giving up its sovereignty and maritime claims
- Cooperation only possible on a “Without Prejudice” basis

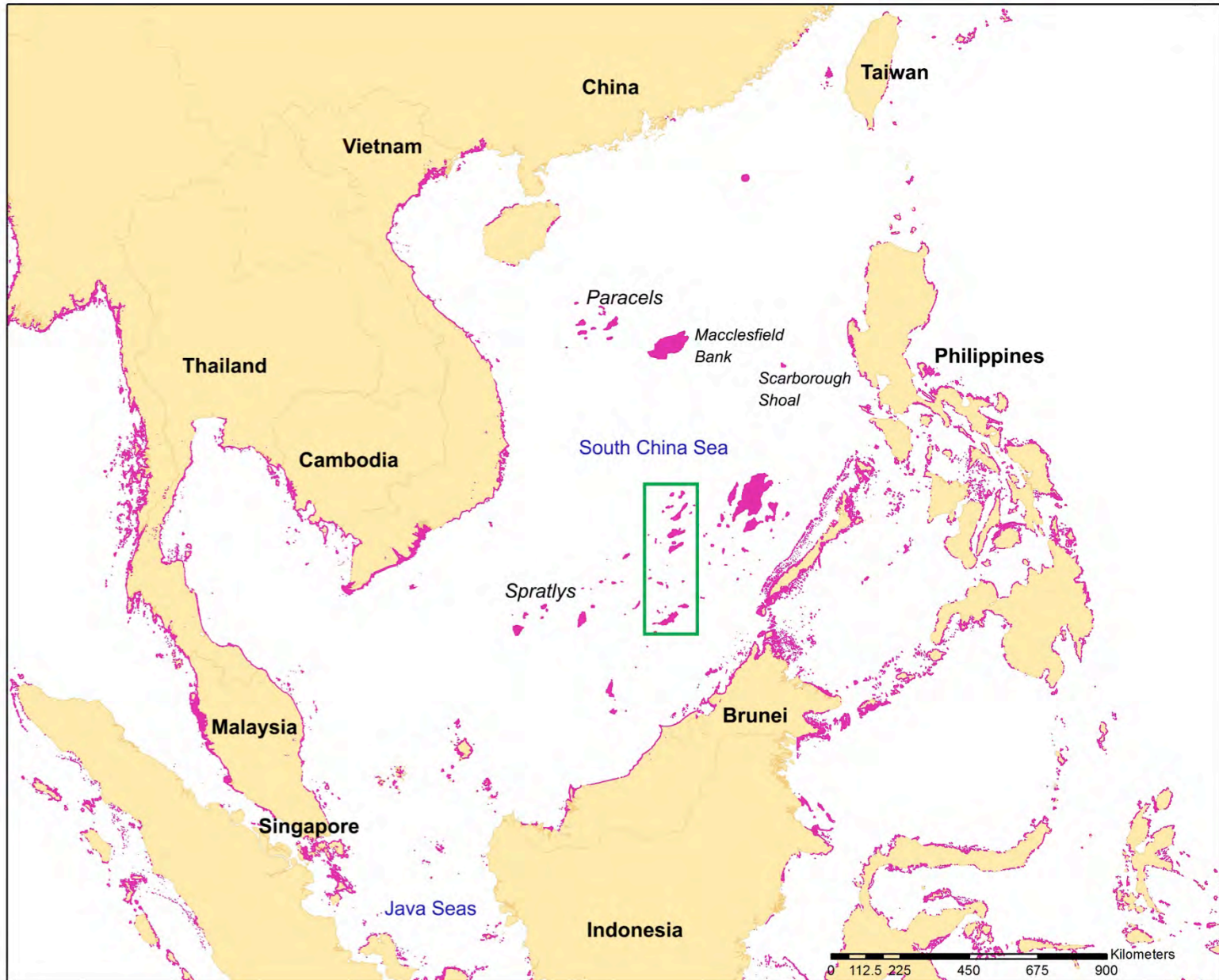
Would identification of a seamount as an EBSA area prejudice sovereignty & maritime claims?

- Identification of the seamounts and coral reefs would not prejudice the sovereignty, sovereign rights or jurisdiction of coastal claimant States bordering the SCS
- Rather, the designations could provide an opportunity for China and the ASEAN claimants to cooperate to protect the marine environment

Jurisdiction & Control over Activities

- The State occupying a feature in the SCS could designate the area as an EBSA area if it meets the criteria
- This State could also regulate the conduct of its nationals and ships flying its flag in the EBSA area
- This State could also monitor the effects of its regulations and activities and report the data to the ASEAN Biodiversity Center
- All such activities would be without prejudice to sovereignty & maritime claims

Proposed Marine Area for Cooperation



Rationale for the choice of this area

Ecological rationale:

- Spratly seamounts are critical to the connectivity of marine and coastal ecosystems in the SCS and the Sulu Sea
- Coral reefs on the Spratly seamounts are critical to coral reef diversity and resilience in the Paracels and reefs along the coastlines – Area proposed is central

Rationale under international law:

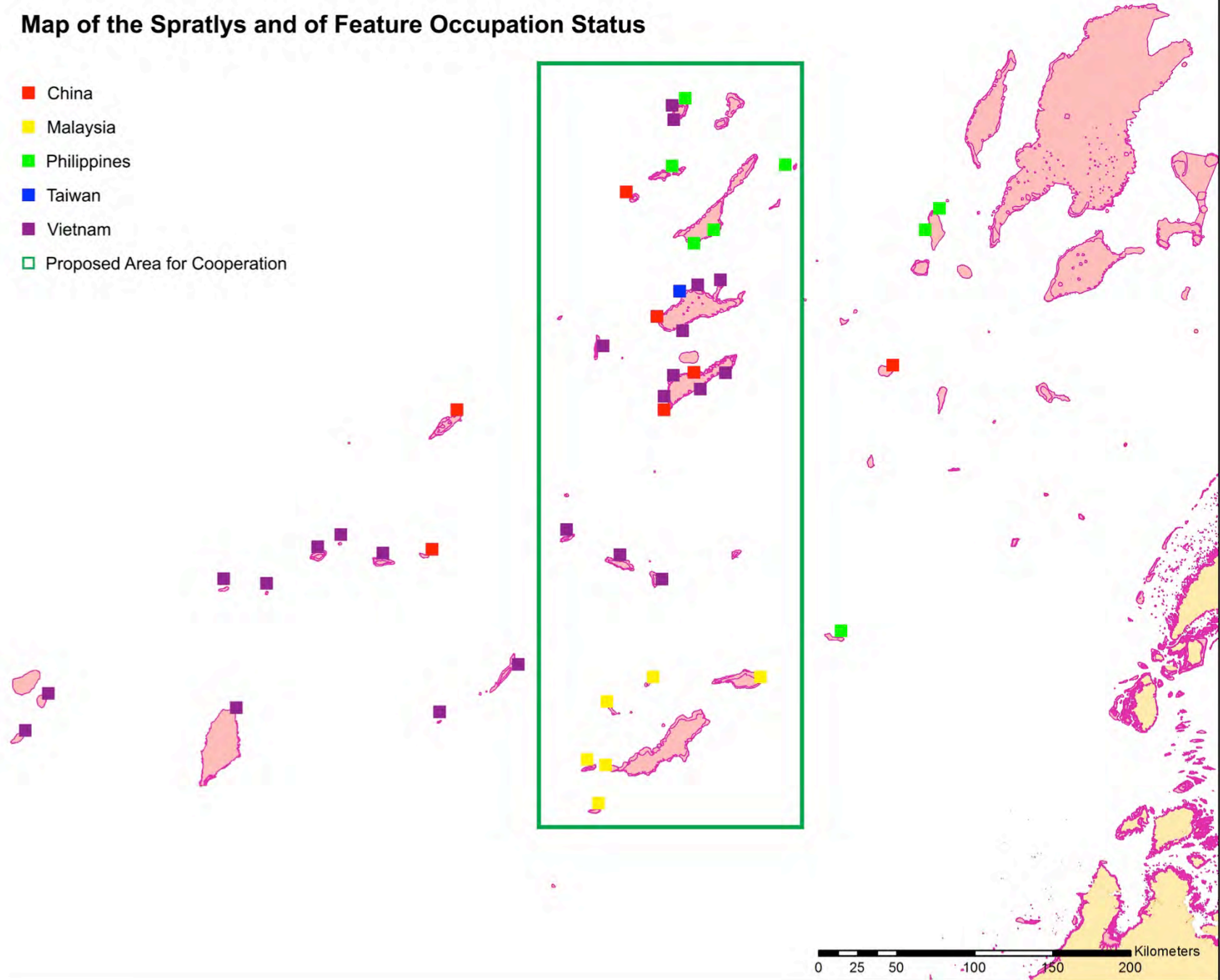
- Spratly seamounts meet the EBSA criteria under the CBD as well as the Ramsar criteria and OUV criteria (among others)

Political rationale:

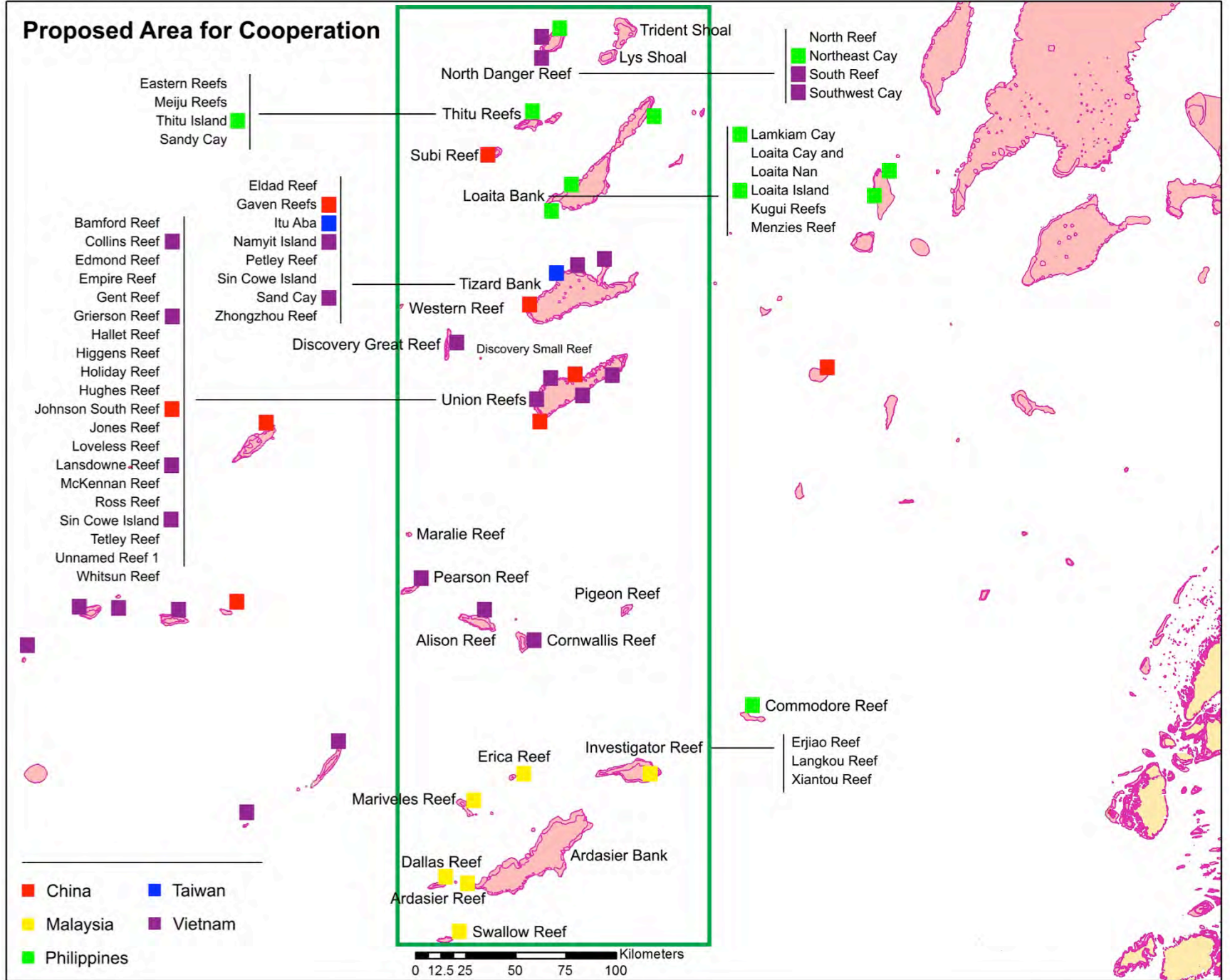
- The area includes features occupied by all claimants
- The area is located away from mainland territory

Map of the Spratlys and of Feature Occupation Status

- China
- Malaysia
- Philippines
- Taiwan
- Vietnam
- Proposed Area for Cooperation



Proposed Area for Cooperation



- Eastern Reefs
Meiju Reefs
Thitu Island
Sandy Cay

- Eldad Reef
Gaven Reefs
Itu Aba
Namyit Island
Petley Reef
Sin Cowe Island
Sand Cay
Zhongzhou Reef

- Bamford Reef
Collins Reef
Edmond Reef
Empire Reef
Gent Reef
Grierson Reef
Hallet Reef
Higgins Reef
Holiday Reef
Hughes Reef
Johnson South Reef
Jones Reef
Loveless Reef
Lansdowne Reef
McKenna Reef
Ross Reef
Sin Cowe Island
Tetley Reef
Unnamed Reef 1
Whitsun Reef

- North Reef
Northeast Cay
South Reef
Southwest Cay

- Lamkiam Cay
Loaita Cay and Loaita Nan
Loaita Island
Kugui Reefs
Menzies Reef

- Commodore Reef
Erjiao Reef
Langkou Reef
Xiantou Reef

- China (Red)
- Taiwan (Blue)
- Malaysia (Yellow)
- Vietnam (Purple)
- Philippines (Green)

0 12.5 25 50 75 100 Kilometers

Thank you for your attention

**For copy of the draft journal article by
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