

AUSTRALIA'S OFFSHORE JURISDICTION: EXPLANATION OF TERMINOLOGY IN RELATION TO PETROLEUM EXPLORATION AND DEVELOPMENT

Australia has a range of maritime zones, most of which are established under the *Seas and Submerged Lands Act 1973* (the SSL Act). Those zones are: waters within the limits of a State or Territory, coastal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), Australian fishing zone (AFZ) and the continental shelf. Each of those zones and their relevance to petroleum exploration and development is examined in more detail below. The attached simplified maps, which form part of the Offshore Petroleum Bill 2005, illustrate most of these zones.

Waters within the limits of a State or Territory

These are 'internal waters' for constitutional purposes – that is, they fall within the constitutional boundaries of a State or Territory. The waters which are capable of falling within these limits are described in s.14 of the SSL Act as 'bays, gulfs, estuaries, rivers, creeks, inlets, ports or harbours which were, on 1 January 1901, within the limits of the States and remain within the limits of the States'.

The relevant constitutional boundaries are determined by the Letters Patent issued to State Governors as at the date of Federation in 1901. A complex set of principles exists under which the coastal limits of the State are determined. In general, the coastal limit of a State will be low water along the coastline. Also, closing lines may be drawn across bays and river mouths and certain other types of features mentioned in the previous paragraph.

The position is slightly different in relation to South Australia and the Northern Territory. The Letters Patent of South Australia make specific reference to the 'bays and gulfs' of South Australia. Since the Northern Territory used to form part of South Australia, this marine extension of the constitutional limits also applies to the Northern Territory. It means, for example, that the waters of Spencer Gulf and Gulf St Vincent lie within the constitutional limits of South Australia and are internal waters for those purposes (*see Map 3*).

Petroleum exploration and development in waters within the limits of a State or Territory occurs under the provisions of State petroleum legislation (for example, the *Petroleum Act 2000* [SA], which is primarily an Act relating to onshore petroleum resources).

Territorial sea baseline

The Australian territorial sea baseline is the line from which all of Australia's international maritime zones are measured. The territorial sea baseline has been proclaimed under the SSL Act. For the most part, the territorial sea baseline is situated at lowest astronomical tide along the coast. River closing lines and bay closing lines may also be drawn. Those bay closing lines must not exceed 24 nautical miles in length. In certain places – where islands are near the coastline or where areas of the coastline are deeply indented and cut into – straight baselines have been proclaimed. There are also other factors that may determine the location of the territorial sea baseline along particular areas of the Australian coast. Principal amongst these are low-tide elevations – that is, areas of land which are covered at high tide but not low tide (*on Map 3, the position of the territorial sea baseline is the landward edge of the black strip that represents the first 3 nautical miles of the territorial sea*).

Coastal waters

The term 'coastal waters' is a product of the [Offshore Constitutional Settlement \(OCS\)](#) between the States and the Commonwealth which entered into effect in 1983. As part of the OCS, the Commonwealth transferred title to the seabed (including petroleum resources) of coastal waters to the States and the Northern Territory. Petroleum exploration and development in coastal waters is regulated under either onshore petroleum legislation or State and Northern Territory offshore legislation.

Coastal waters have two elements. The first element is that area between the territorial sea baseline and the line which is three nautical miles seaward of the territorial sea baseline – that being the limit of the old three nautical mile territorial sea (*the black strip in Map 3*). The second element consists of the waters landward of the territorial sea baseline but outside the limits of the State and Territory. An example of the second element is the area of waters between a straight baseline which forms part of the territorial sea baseline and the mainland of Australia – for example, waters between the mainland and an island (*such as the grid pattern zone between Kangaroo Island and Yorke Peninsula in Map 3*).

Formal definitions of coastal waters are to be found in s.5AAA of the *Petroleum (Submerged Lands) Act 1967* (the PSL Act) and also in clause 6 of the Offshore Petroleum Bill 2005.

Australian territorial sea

The territorial sea of Australia consists of the area commencing at the territorial sea baseline and ending 12 nautical miles from that baseline (the position differs in certain parts of the Torres Strait – see below). Under international law, Australia has sovereignty over the territorial sea (including the water column, the seabed and subsoil below it) subject to one major limitation, that being the right of innocent passage of foreign vessels.

The first three nautical miles of territorial sea also form part of the coastal waters (see above). Petroleum exploration and development in that three nautical mile area is covered by State legislation. Beyond three nautical miles, petroleum exploration and exploitation is covered by Commonwealth legislation, including the PSL Act. That Act, as well as the new Offshore Petroleum Bill, apply from the three nautical mile limit to the outer edge of the Australian continental shelf (subject to the application of other more particular regimes such as those applying in the Timor Sea).

In the Torres Strait, the territorial sea surrounding many Australian islands is limited to three nautical miles or less. The relevant islands are Anchor Cay, Aubusi Island, Black Rocks, Boigu Island, Bramble Cay, Dauan Island, Deliverance Island, East Cay, Kaumag Island, Kerr Islet, Moimi Island, Pearce Cay, Saibai Island, Turnagain Island and Turu Cay. The Torres Strait Treaty also contains a seabed jurisdiction line creating an area (known as the ‘top hat’) where Australia has water column jurisdiction and Papua New Guinea has seabed jurisdiction (including jurisdiction over petroleum). A moratorium exists on petroleum exploration and exploitation in the Protected Zone established under the Torres Strait Treaty.

Contiguous zone

This zone is the area between 12 and 24 nautical miles seaward of the territorial sea baseline. It is proclaimed under the SSL Act. In this area, Australia may take anticipatory action to prevent infringement of customs, fiscal, immigration and sanitary laws and regulations within its territory or territorial sea. It may also take action to punish infringement of such laws that have occurred within its territory or territorial sea. The contiguous zone has no direct relevance to petroleum exploration and exploitation, though it should be noted that its area overlaps with the first 12 nautical miles of both the exclusive economic zone and of the Australian continental shelf.

Exclusive economic zone

Australia has an EEZ declared under the SSL Act on 1 August 1994. The inner limit of the EEZ is the outer limit of the territorial sea located 12 nautical miles seaward of the territorial sea baseline. The outer limit of the EEZ is 200 nautical miles from the baseline, except where it has been pulled back to take account of maritime delimitations or potential maritime delimitations with other countries. Except in the area of those delimitations, it is therefore 188 nautical miles wide.

Within the EEZ, a coastal State has ‘sovereign rights’ and those sovereign rights are reflected in the following paragraphs of Article 56 of the United Nations Convention on the Law of the Sea (UNCLOS):

1. In the exclusive economic zone, the coastal State has:
 - (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or no-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
 - (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - (iii) the protection and preservation of the marine environment;
 - (c) other rights and duties provided for in this Convention.
2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

Sovereign rights within the EEZ extend to both the water column and the seabed and subsoil. Indeed, to the extent that the EEZ covers the seabed and subsoil, in most places it is co-extensive with the first 188 nautical miles of Australian continental shelf (*its seaward boundary is the same as the outer edge of the light grey shading in Maps 1 and 2*). Further, by reason of maritime delimitations with both Indonesia and Papua New Guinea, there are areas of so-called ‘overlapping jurisdiction’. More particularly, in certain areas between Australia and Indonesia it is Australia that exercises sovereign rights over the seabed and Indonesia that exercises sovereign rights over the water column. Also, in the area of the Torres Strait known as the ‘top hat’, the reverse occurs – Australia exercises fisheries jurisdiction and Papua New Guinea exercises seabed jurisdiction.

Australian fishing zone

The AFZ is established under the *Fisheries Management Act 1991* (the FMA). The inner limit of the AFZ is three nautical miles seaward of the territorial sea baselines (the outer limit of coastal waters). The outer limit of the AFZ is largely the same as the outer limit of the EEZ. Australia controls fisheries within the AFZ. It has no particular significance for petroleum exploration and exploitation.

Continental shelf

Australian control over seabed resources is fundamentally based upon continental shelf jurisdiction (although, as noted earlier, that jurisdiction is co-extensive with EEZ jurisdiction within 200 nautical miles of the territorial sea baseline).

The legal extent of the continental shelf is defined in Article 76 of UNCLOS. This provision forms the basis of the declared Australian continental shelf under the SSL Act. Australia's continental shelf commences at the outer limit of the territorial sea (12 nautical miles from the territorial sea baseline) and, subject to boundary delimitations with other countries, extends to at least 200 nautical miles. If beyond that point there is a physical continental shelf as defined in Article 76 of UNCLOS, then the Australian continental shelf extends beyond 200 nautical miles to the limits defined in UNCLOS. Australia is required to submit those areas beyond 200 nautical miles (extended continental shelf) to the Commission on the Limits of the Continental Shelf. Australia submitted ten such areas to the Commission in 2004 for its views.

Australia is required to pay a percentage of the value or volume of production in any area of extended continental shelf to the International Seabed Authority. These payments commence the sixth year after production starts. The initial rate is 1% of the value or volume of production at the site. The rate increases by 1% for each subsequent year until the twelfth year and then remains at 7%. The company carrying out such exploitation would be required to fund those payments.

Petroleum exploration and development on any part of the Australian continental shelf is carried out under the PSL Act. The areas of continental shelf covered by that Act are generally those parts of the continental shelf that lie within areas defined in Schedule 2 of that Act. In the case of the Offshore Petroleum Bill, the relevant Schedule is Schedule 1 (*in Map 1, the legislation applies to each light grey and brickwork shaded area within the dark line boundary of a scheduled area*).

The fundamental purpose of these Schedules is to divide the Australian continental shelf into areas adjacent to each State and the Northern Territory. They serve a number of other functions. They:

1. reflect the agreed seabed boundaries between Australia and other countries,
2. encompass the furthestest points to sea to which Australia's legal continental shelf is likely to extend (in other words, leaving aside the Australian Antarctic Territory, Schedule 1 of the Offshore Petroleum Bill encompasses all of the areas of extended continental shelf which Australia has submitted to the Commission on the Limits of the Continental Shelf), and
3. mark out the limits beyond which the PSL Act has no potential application.

By way of clarification, but with the exceptions discussed below, the test for application of the PSL Act to a particular site is twofold. First, the relevant site must lie within the Schedule 2 area. Second, the site must be within an area of continental shelf as defined in the SSL Act or in that part of the territorial sea lying beyond three nautical miles.

Commonwealth legislation – primarily the PSL Act – applies beyond three nautical miles in the adjacent areas and the relevant State/Northern Territory legislation applies within the three nautical mile limit.

The application of the PSL Act to the island external territories requires some further explanation. The Territory of Ashmore and Cartier Islands has its own Schedule 2 area. The area of the continental shelf adjacent to the Coral Sea Islands Territory is administered as if it forms part of the Queensland adjacent area. The Act applies to the areas adjacent to the other external island territories (Norfolk Island, Christmas Island, Cocos (Keeling) Islands and Heard Island and McDonald Islands) from low water to the edge of the continental shelf.

Area of international seabed

The non-living resources of the seabed and subsoil, beyond the limits of any nation's jurisdiction, lie within the zone called 'the Area'. It is considered 'the common heritage of mankind'. The Area is defined in Article 1 of UNCLOS as 'the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction' – that is, beyond the continental shelf of coastal States such as Australia (*in Map 1, the Area to the west and south of Australia consists of the seabed beyond the outer edge of the light grey and brickwork shading*).

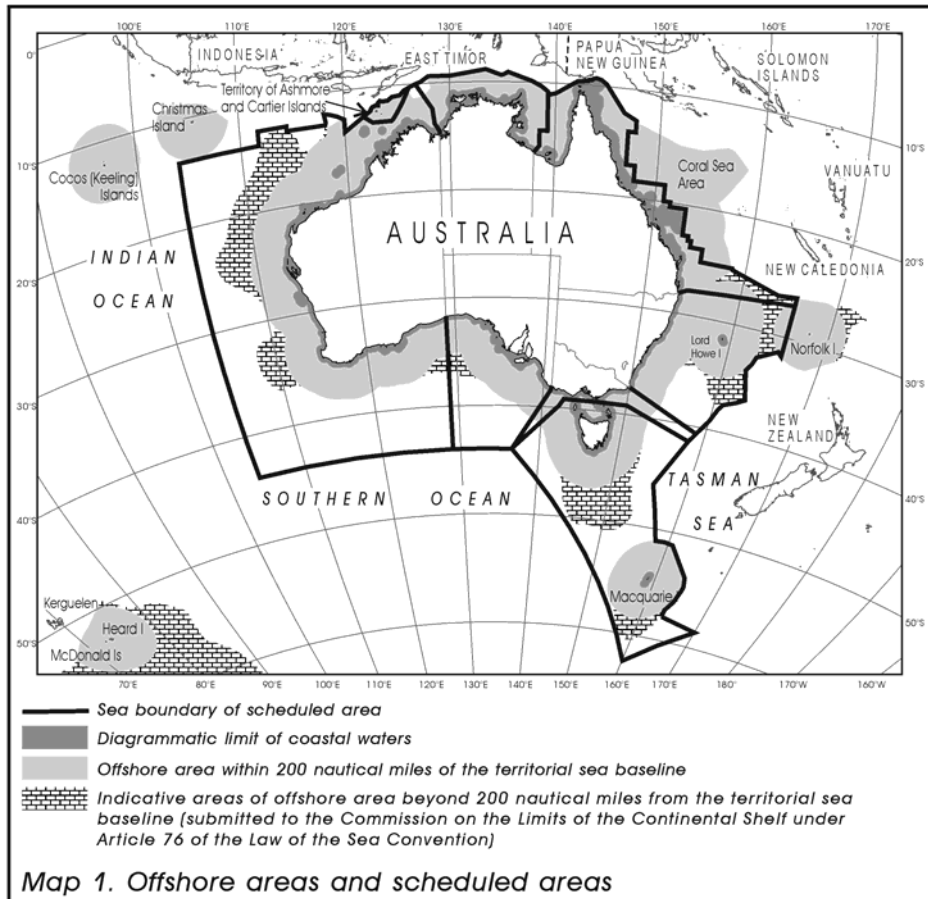
Article 150 of UNCLOS sets out the policies relating to resource development activities in the Area. For example, they are to be carried out in such a manner as to foster healthy development of the world economy and balanced growth of national trade, and to promote international co-operation for the over-all development of all countries, especially developing States.

Article 147 of UNCLOS provides, among other things, that installations used for carrying out activities in the Area shall be erected, emplaced and removed solely in accordance with Part XI of UNCLOS and subject to the rules, regulations and procedures of the International Seabed Authority.

SIMPLIFIED MAPS ILLUSTRATING AREAS OFF THE COAST OF AUSTRALIA THAT ARE RELEVANT TO THE OFFSHORE PETROLEUM BILL 2005

Map 1

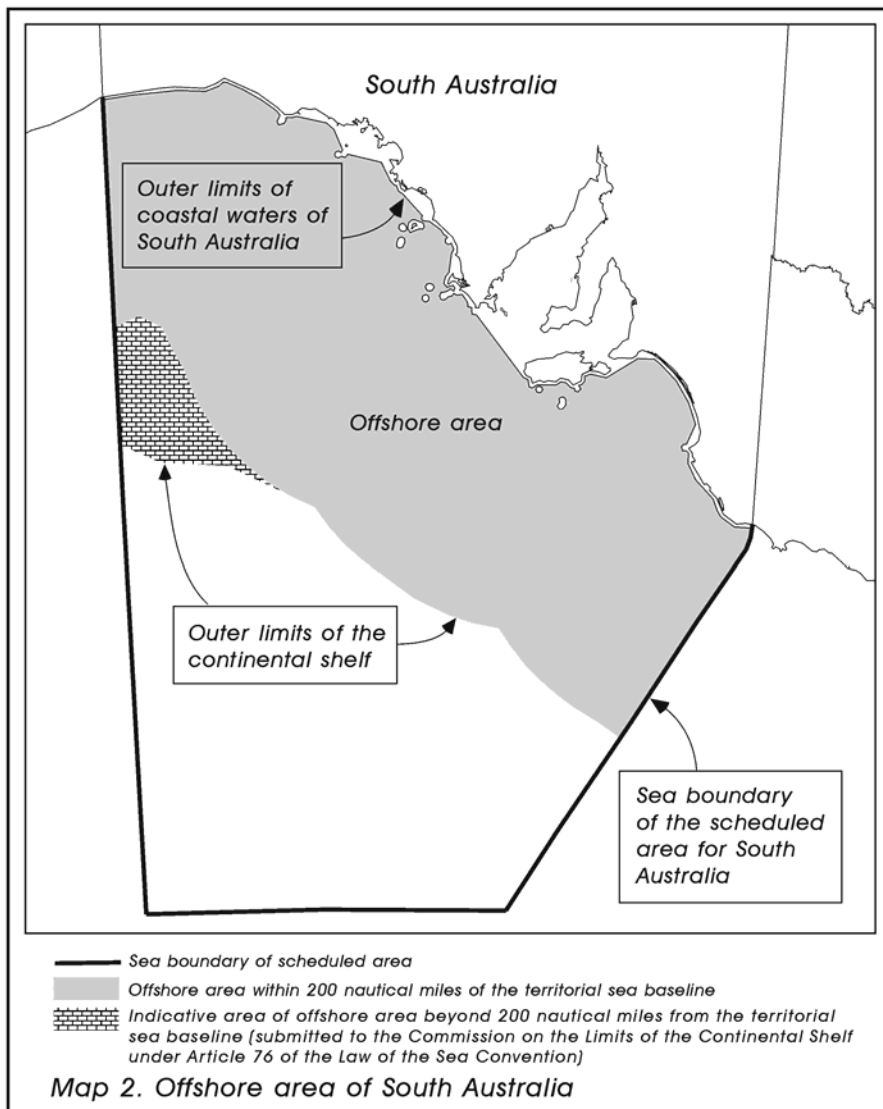
Map 1 illustrates the offshore areas and the scheduled areas:



- Note 1: Certain maritime areas adjacent to Australia remained subject to delimitation with other countries. The full extent of Australia's claimed exclusive economic zone and continental shelf jurisdiction has not been shown in this map. The claimed jurisdiction extends beyond the areas shown in this map.
- Note 2: Generally, the territorial sea baseline is the line of lowest astronomical tide along the coast, but it also encompasses straight lines across bays (bay closing lines), rivers (river closing lines) and between islands, as well as along heavily indented areas of coastline (straight baselines) under certain circumstances.
- Note 3: The location of the Joint Petroleum Development Area established under the Timor Sea Treaty is indicated on this map as the unshaded space abutting the offshore areas of Western Australia and the Northern Territory. The Joint Petroleum Development Area is not included in any offshore area as defined by this Act.

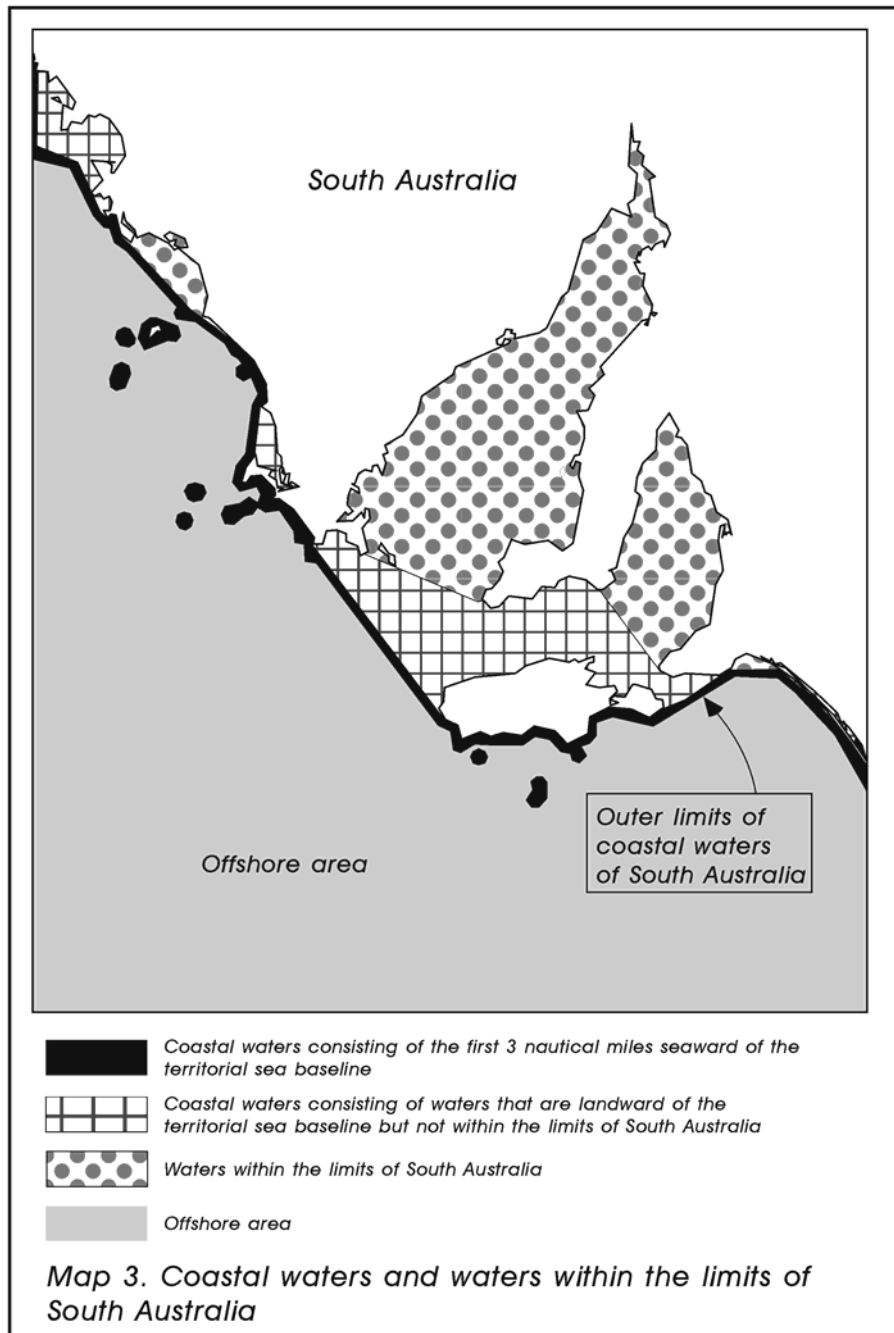
Map 2

Map 2 zooms in and illustrates the offshore area of South Australia:



Map 3

Map 3 zooms in and illustrates coastal waters and waters within the limits of South Australia:



Note: The bays shown as being within the limits of South Australia are for illustrative purposes only.