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Panel 4: Straits Governance

The Legal Regime Governing Passage on
Routes used for International Navigation
through Indonesian Waters

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Outline of Presentation



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National University of Singapore

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Part 1

Indonesia and the History of UNCLOS Parts III & IV

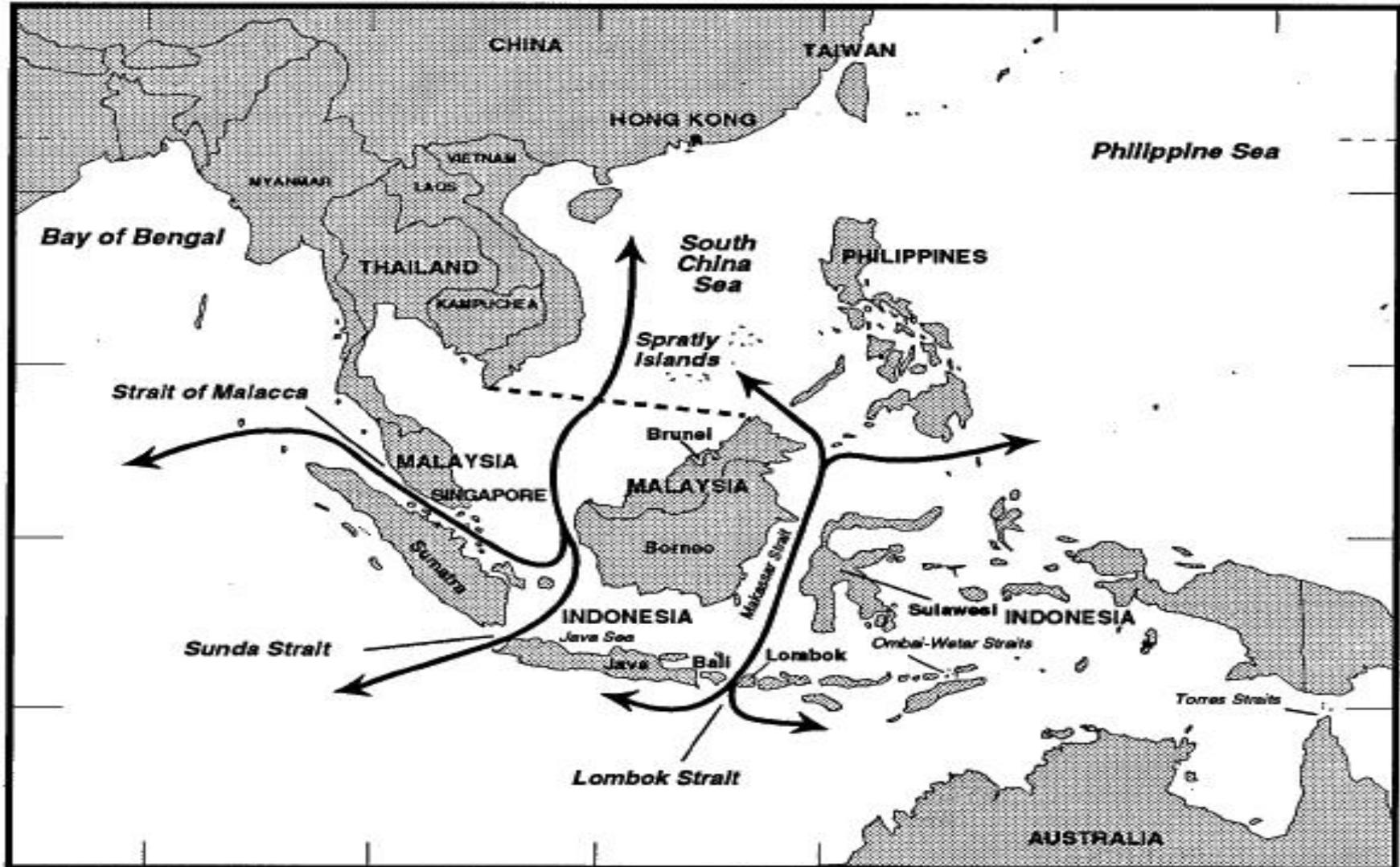
Indonesia: the Indo-Pacific Fulcrum



Size of Indonesia Compared to Europe



Figure 1. Strategic chokepoints: Straits of Malacca, Sunda, and Lombok and SLOCs passing the Spratly Islands



Choke Points in SLOCS

- Sunda Strait - less than 6 nm
- Singapore Strait - less than 6 nm
- Malacca Strait - less than 24 nm
- Lombok Strait - less than 24 nm

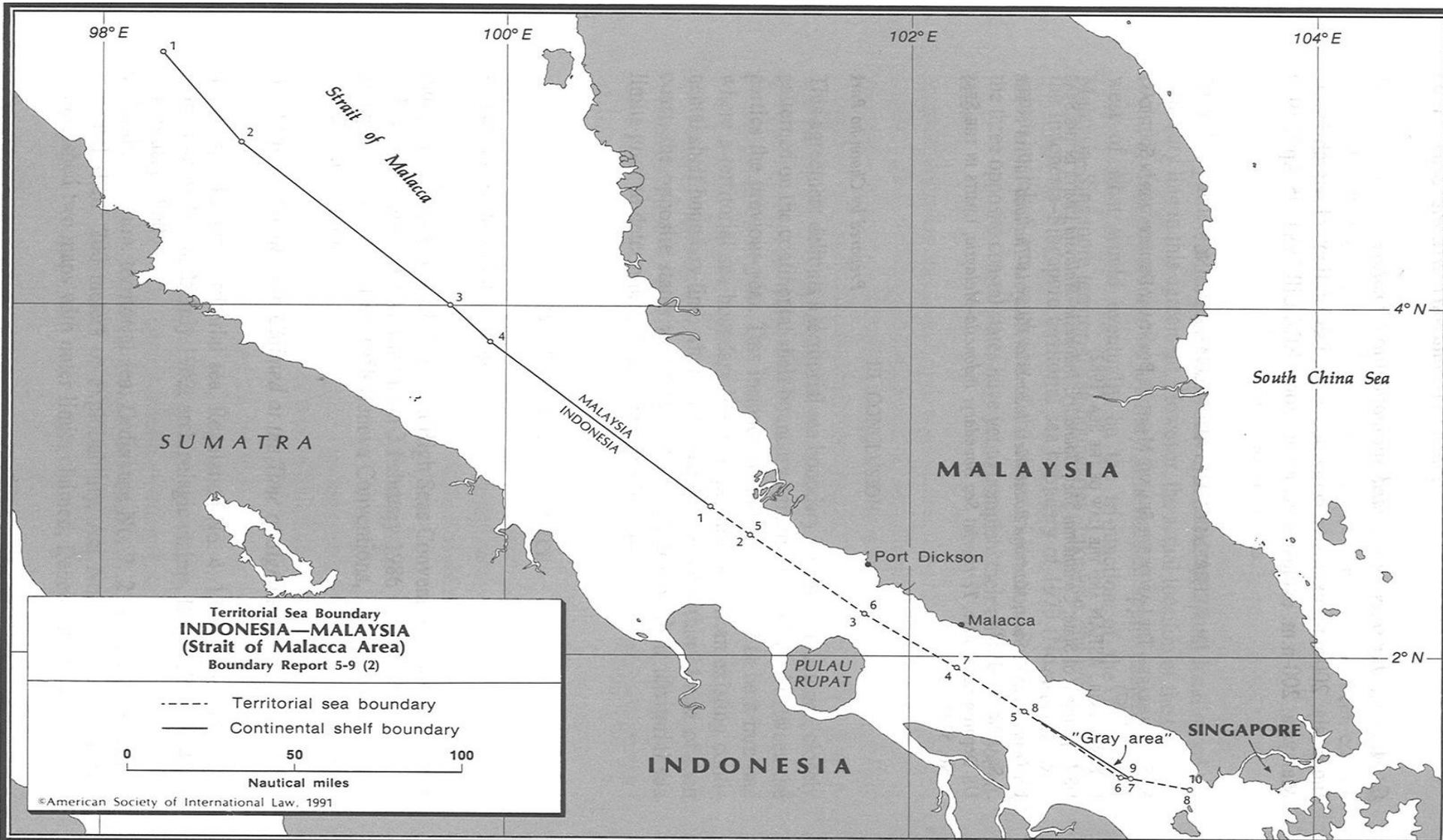
Before 1957 – Indonesia had 3 NM Territorial Sea



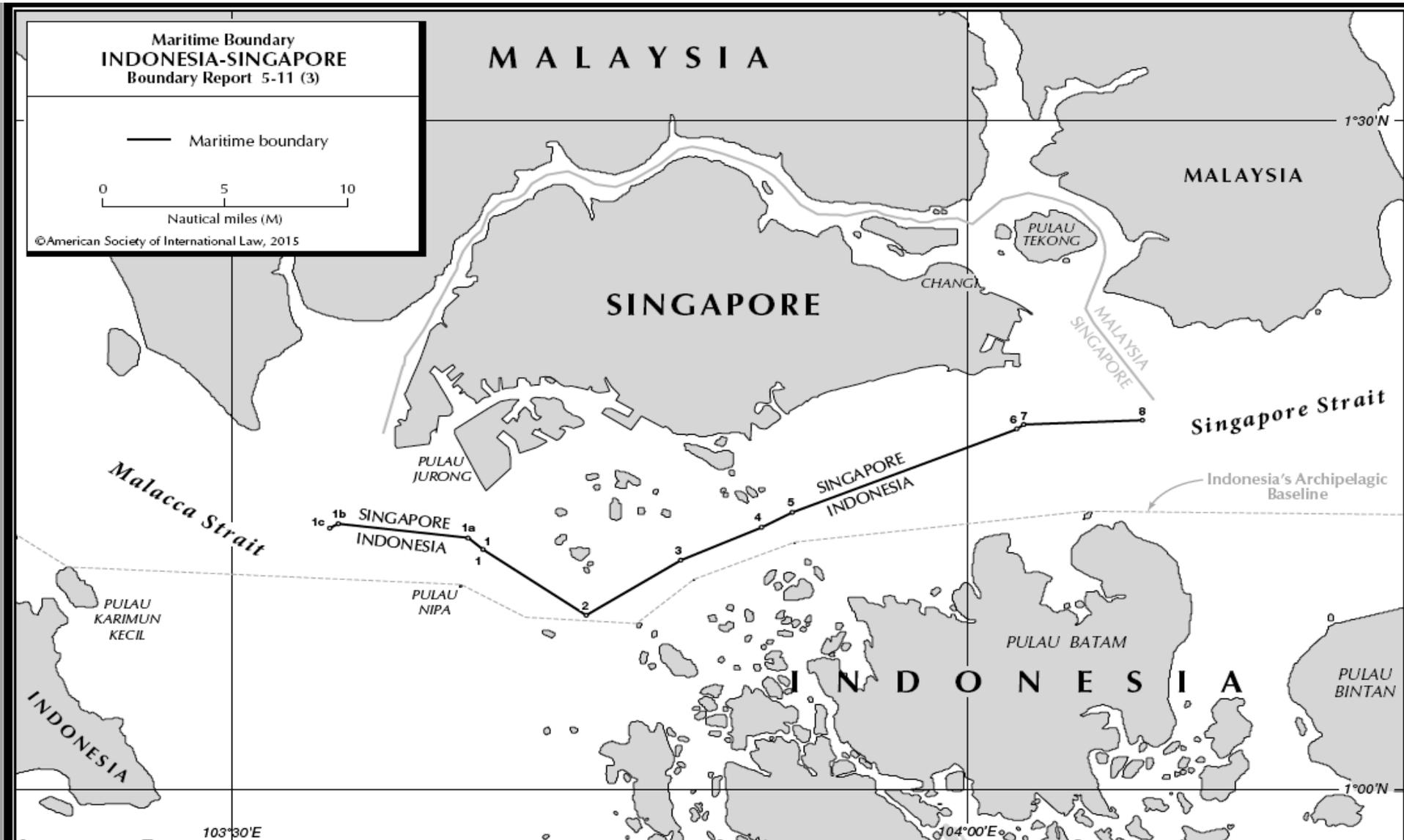
1957 Djuanda Declaration

- On 13 December 1957 Indonesia issued the Djuanda Declaration
- It declared that all the waters within its archipelago and the airspace above them should be under its sovereignty
- It declared the breadth of the territorial sea at 12 nm
- Rationale was that it was necessary for the unity and security of its 17,000 islands
- Act No. 4 of 1960 incorporated the Djuanda Declaration into Law, but law was met by protests from naval powers
- By extending its sovereignty to the waters inside its straight baselines, Indonesia expanded its overall territory from 2 M km² to over 5 M km²

1970 Indonesia–Malaysia Territorial Sea Boundary



1973 Indonesia-Singapore Territorial Sea Boundary



Third UN LOS Conference: Naval Powers opposed 12 nm TS

- **Right of Innocent passage** not sufficient for naval powers, especially for movement of aircraft carriers between the Indian & Pacific Oceans
 1. Can be suspended
 2. Applies only to ships, not aircraft
 3. Submarines must surface and fly their flag
 4. Cannot launch, land or take on board any aircraft during passage
 5. Cannot engage in any activity not having a direct bearing on passage – May limit ability of escort vessels to protect aircraft carrier

Result: Part III & IV of 1982 UNCLOS

- Part III. Straits Used for International Navigation
 - Right of Transit Passage
- Part IV. Archipelagic States
 - Right of Archipelagic Sea Lanes Passage
- **Key Differences from Innocent Passage:**
 1. Can never be suspended
 2. Applies to aircraft as well as ships
 3. Submarines may transit in their “normal mode”
 4. Escort vessels can transit in formation
 5. Can launch or land aircraft on carrier during passage

Archipelagic States

- Right to draw straight archipelagic baselines joining the outermost points of outermost islands and drying reefs
- Sovereignty of the archipelagic State extends to its “archipelagic waters” – the waters enclosed by the straight baselines
 - Sovereignty of the archipelagic State shall be exercised subject to the provisions in Part IV, including right of archipelagic sea lanes passage and right of innocent passage
- Maritime Zones are measured from the straight archipelagic baselines
- Right of Archipelagic Sea Lanes Passage similar to Transit Passage

Indonesia's Maritime Zones

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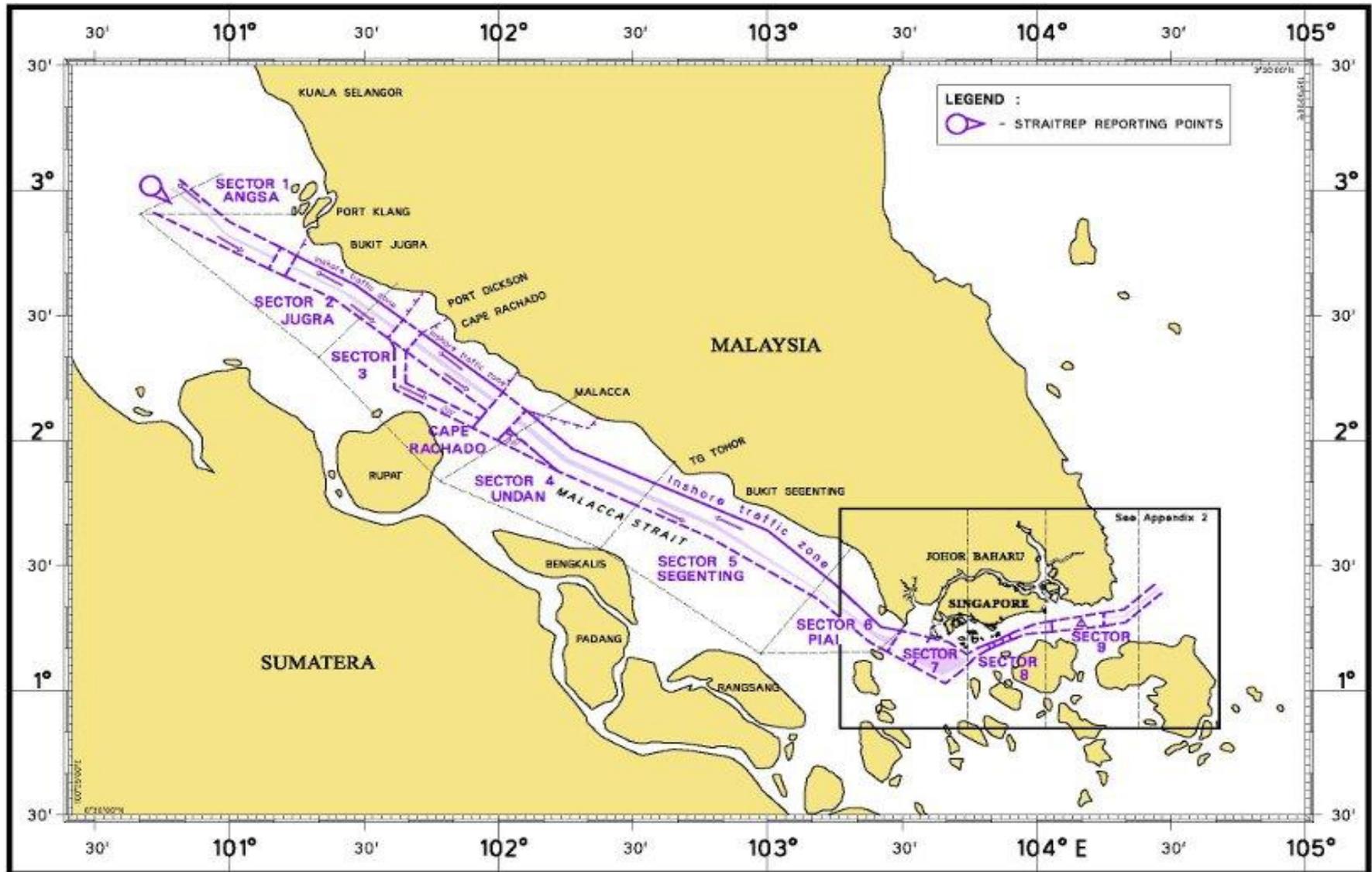
Part 2

Transit Passage in Straits of Malacca and Singapore

Straits of Malacca & Singapore - IMO-approved Measures

- Administered by three littoral States as a single strait since the 1970s
- Measures adopted by the IMO upon the request of the 3 littoral States:
 1. Traffic Separation Scheme and associated routeing measures adopted in 1977
 2. Traffic Separation Scheme extended in 1998 from Port Klang off Kuala Lumpur southward through the Singapore Strait to Pedra Branca
 3. Mandatory Ship Reporting System adopted in 1998 (STRAITREP)
 4. Vessel Traffic System

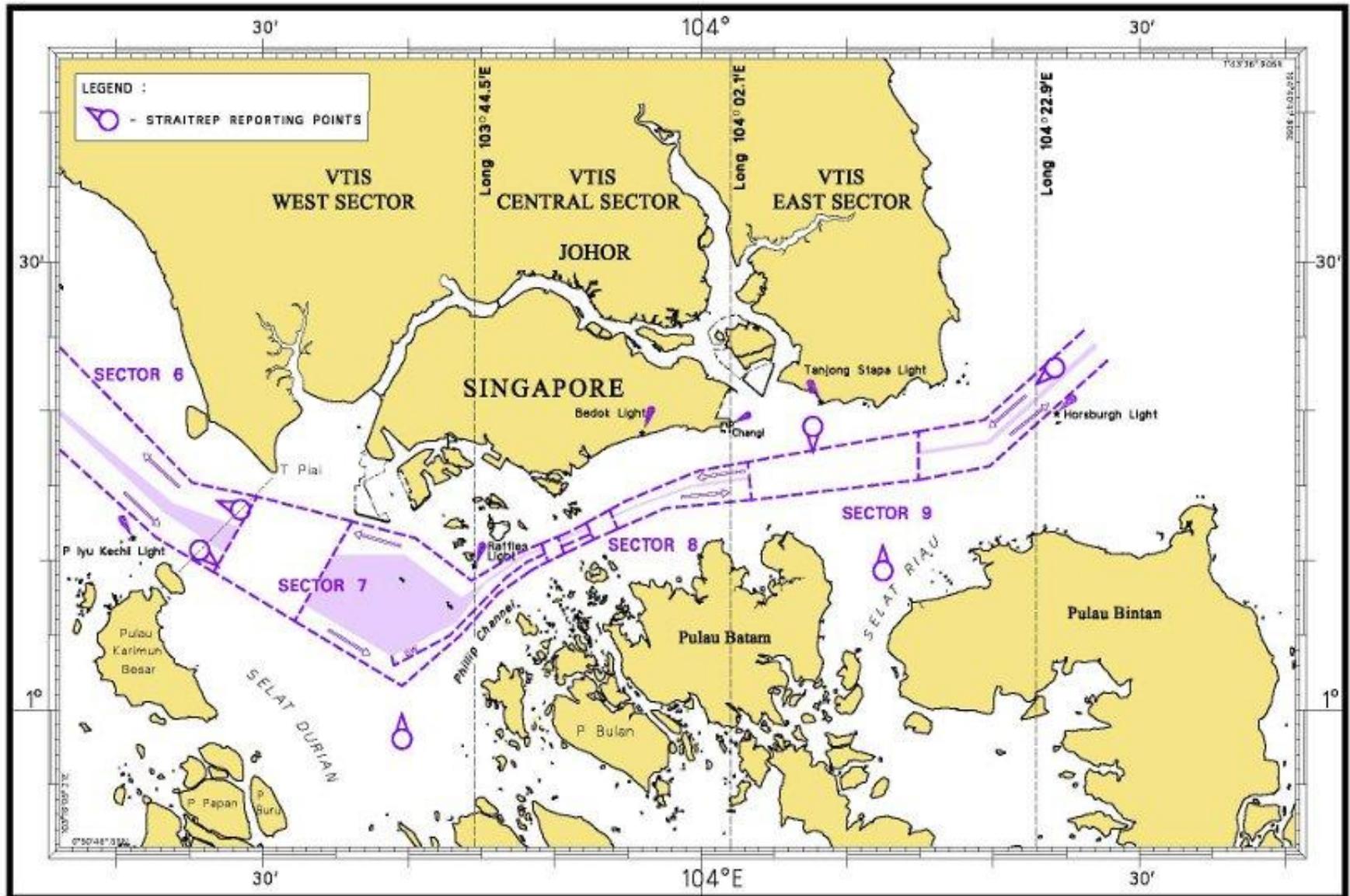
Ship Reporting System



STRAITREP OPERATIONAL AREA (SECTORS 1 TO 9)

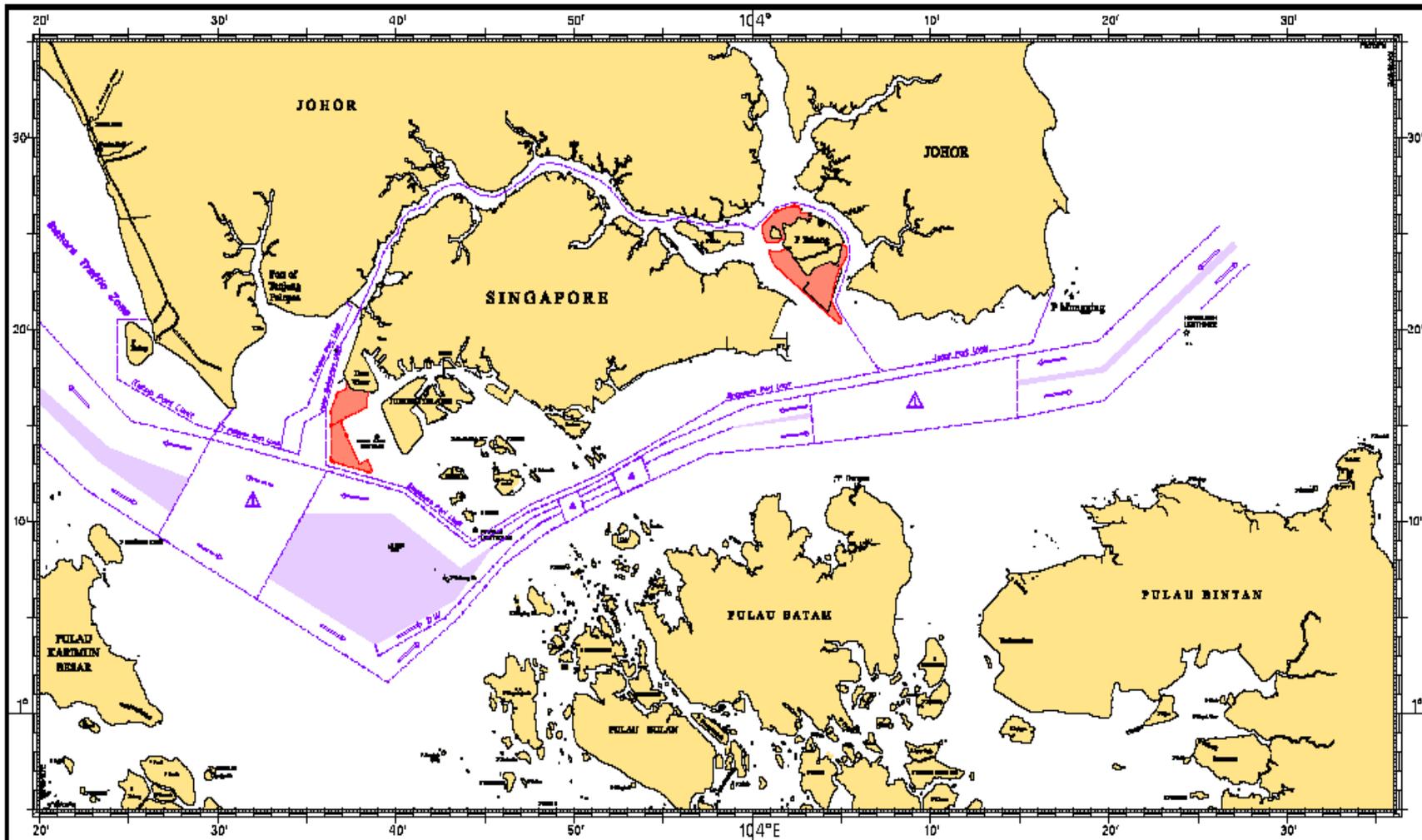
Appendix 1

Ship Reporting System



STRAITREP OPERATIONAL AREA (SECTORS 7 TO 9) Appendix 2

SINGAPORE STRAIT - PORT LIMITS AND TRAFFIC SEPARATION SCHEME



Prepared by Hydrographic Dept. MPA & Fed. of CA SINGAPORE 1980 DEP

POSITIONS IN WGS 84

HY Code AD0401308

Establishment of Cooperative Mechanism for SOMS in 2007

- New Cooperative Mechanism developed by three littoral States in cooperation with IMO and major users after 3 IMO-sponsored Meetings:
 - Jakarta, Indonesia, September 2005
 - Kuala Lumpur, Malaysia, September 2006
 - Singapore, September 2007
- IMO has no formal role in the new cooperative mechanism, but played a key role as a “facilitator”
- Discussions included important non-State users

2007 SOMS Cooperation Mechanism

1. Cooperation Forum to enable user States and other stakeholders to meet with Littoral States
2. Aids to Navigation Fund based on purely voluntary contributions by user States or other stakeholders
3. Specific Projects to enhance safety and environmental protection in the Straits, funded by user States in cooperation with littoral States

Principles Underlying the Cooperative Mechanism

1. It is consistent with Part III of UNCLOS
2. It does not infringe the sovereignty or territorial integrity of the littoral States
3. It is controlled & driven by the littoral States
4. It acknowledges the interests of user States, the IMO and other stakeholders the Straits

Part 3

Archipelagic Sea Lanes Passage through Indonesia

Article 53.

Designation of Sea Lanes

- 1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
- 2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.

ASLP

Sea Lanes and Air Routes

Article 53. Right of ASLP

- 4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.

- 9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the **competent international organization** with a view to their adoption. The **organization** may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.

ASLP – Sea Lanes and Air Routes

- 11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.
- 12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

Actions of IMO

- May, 1998: Maritime Safety Committee of IMO adopted General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes
- May, 1998: IMO Maritime Safety Committee adopted **the Partial System** of Archipelagic Sea Lanes in Indonesian Archipelagic Waters
- Jan, 1999: IMO published “Guidance for Ships Transiting Archipelagic Waters”

Indonesian Reg No. 37 of 2002

- June 2002, IMO circulated [Indonesian Government Regulation No. 37 of 2002](#) on the Rights and Obligations of Foreign Ships and Aircraft Exercising the Right of Archipelagic Sea Lanes Passage through the designated sea lanes
- In 2003 the USA and Australia raised certain questions about the consistency of the 2002 regulations with the IMO' s regulations

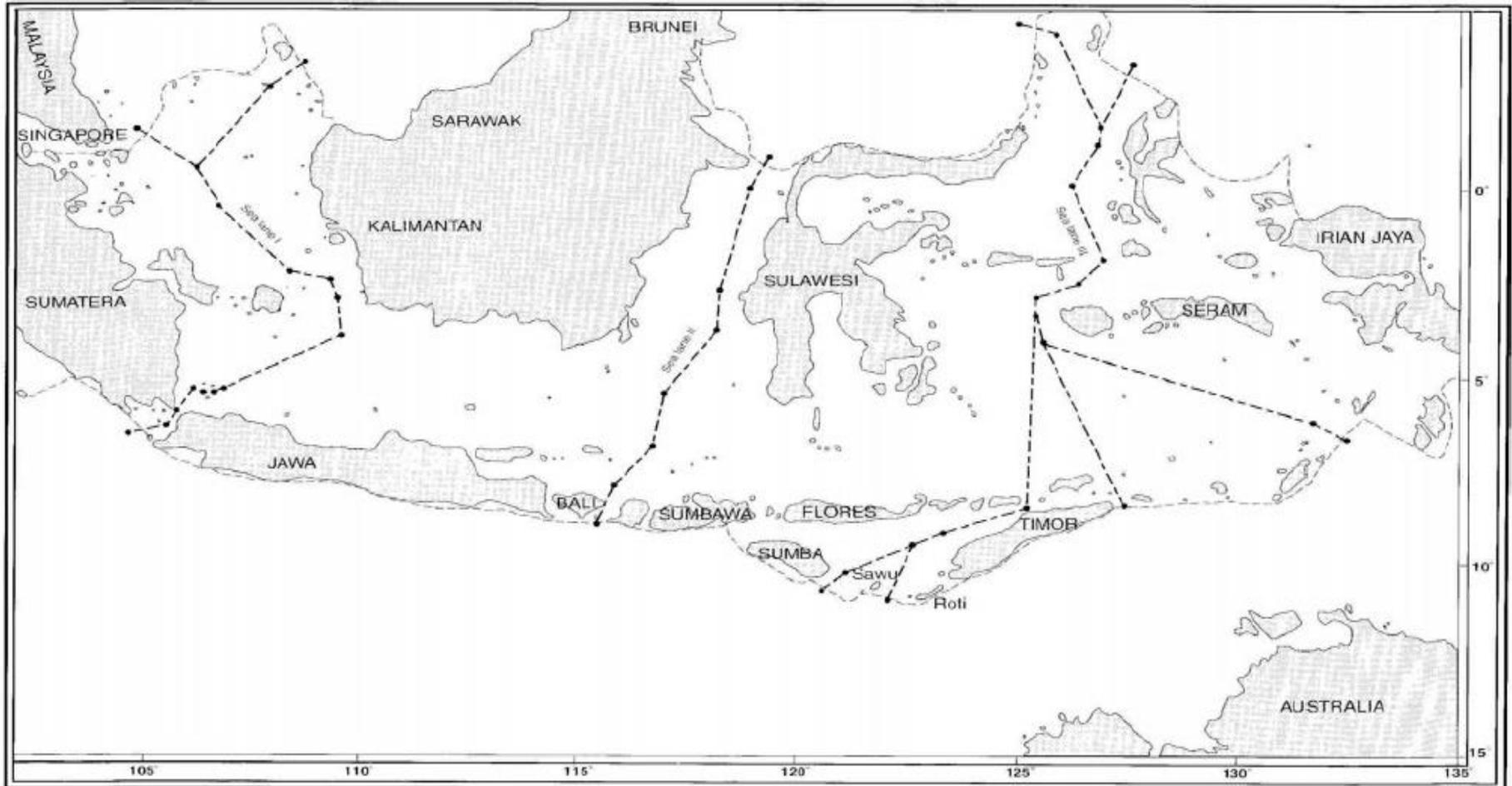
1986 Report of Louis Alexander, Reprinted in *Navigational Restrictions within the LOS Context*, J Ashley Roach ed., Brill 2017, page 75



Indonesia's 2002 "Partial

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INDONESIAN GOVERNMENT REGULATION
NUMBER 37 2002
JUNE 28, 2002



INDONESIAN ARCHIPELAGIC SEA LANES I, II AND III

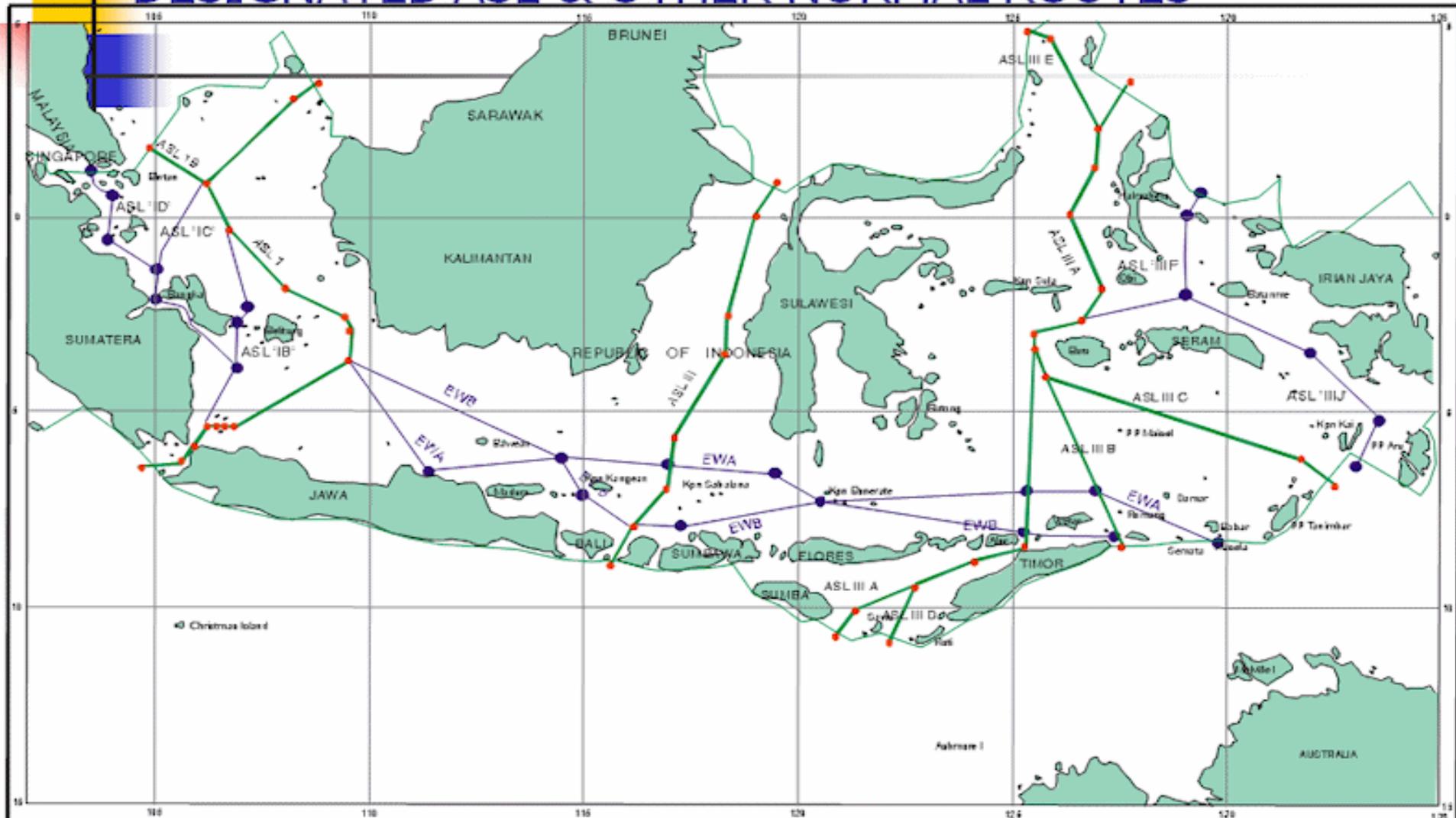
East-West Sea Lane?

<https://www.globalsecurity.org/military/world/indonesia/archipelagic-concept.htm>

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DESIGNATED ASL & OTHER NORMAL ROUTES



Issues on Archipelagic Sea Lanes Passage through Indonesia

- Although Indonesia indicated in 1998 that it would be declaring an East–West sea lane, it has yet to do so
- Indonesia’s 2002 Regulations on archipelagic sea lanes passage does not indicate that the three north–south routes are a “partial designation”
- In October, 2016, the USA delivered a diplomatic note to Indonesia identifying the issues that must be resolved with regard to Indonesia’s regulation archipelagic sea lanes passage

Part 5

Indonesian Proposals for Sunda & Lombok Straits

Indonesian Initiatives on Safety & Pollution

- Beginning in 2017 Indonesia began to take steps at the IMO to enhance safety and protect the marine environment in the Lombok Strait and the Sunda Strait
- Indonesia did not act unilaterally - it gave notice that it would be submitting proposals to the IMO for approval
- Purposes: to enhance safety of navigation and protect the marine environment from ship-source pollution

Indonesian Notice to MEPC on Proposal for PSSA in Lombok Strait

- In April 2017, Indonesia submitted an Information Paper to **Marine Environment Protection Committee** of the IMO
- Highlights the need to protect two islands which lie in close proximity to international shipping routes in the Lombok Strait from ship-source pollution
- Advises that a submission for the establishment of a *Particularly Sensitive Sea Area* (PSSA) is being developed
- Advises that the *associated protective measures* that are being considered are a Traffic Separation Scheme and a Ship Reporting System in the Lombok Strait

Indonesian Notice to NCSR on Proposed Measures in Lombok Strait

- In December 2017, Indonesia submitted an Information Paper to the IMO *Sub-Committee on Navigation, Communications and Search and Rescue* (NCSR) to advise that it is preparing proposals for regulating international shipping in the Lombok Strait:
 1. **Ship routing measures** consisting of:
 - Traffic Separation Scheme (TSS)
 - Precautionary Area
 - Inshore Traffic Zone
 - Area to be Avoided (ATBA)
 2. **Mandatory Ship Reporting System**

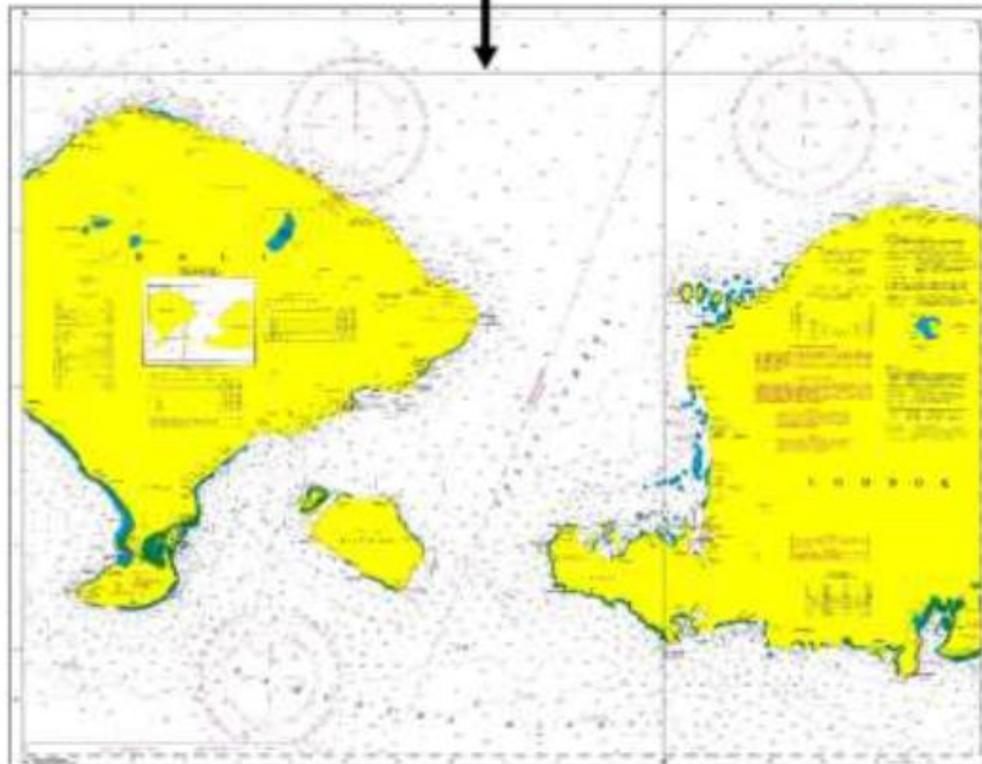




Figure 10: Nusa Penida Islands as Marine Conservation Area (MPA)

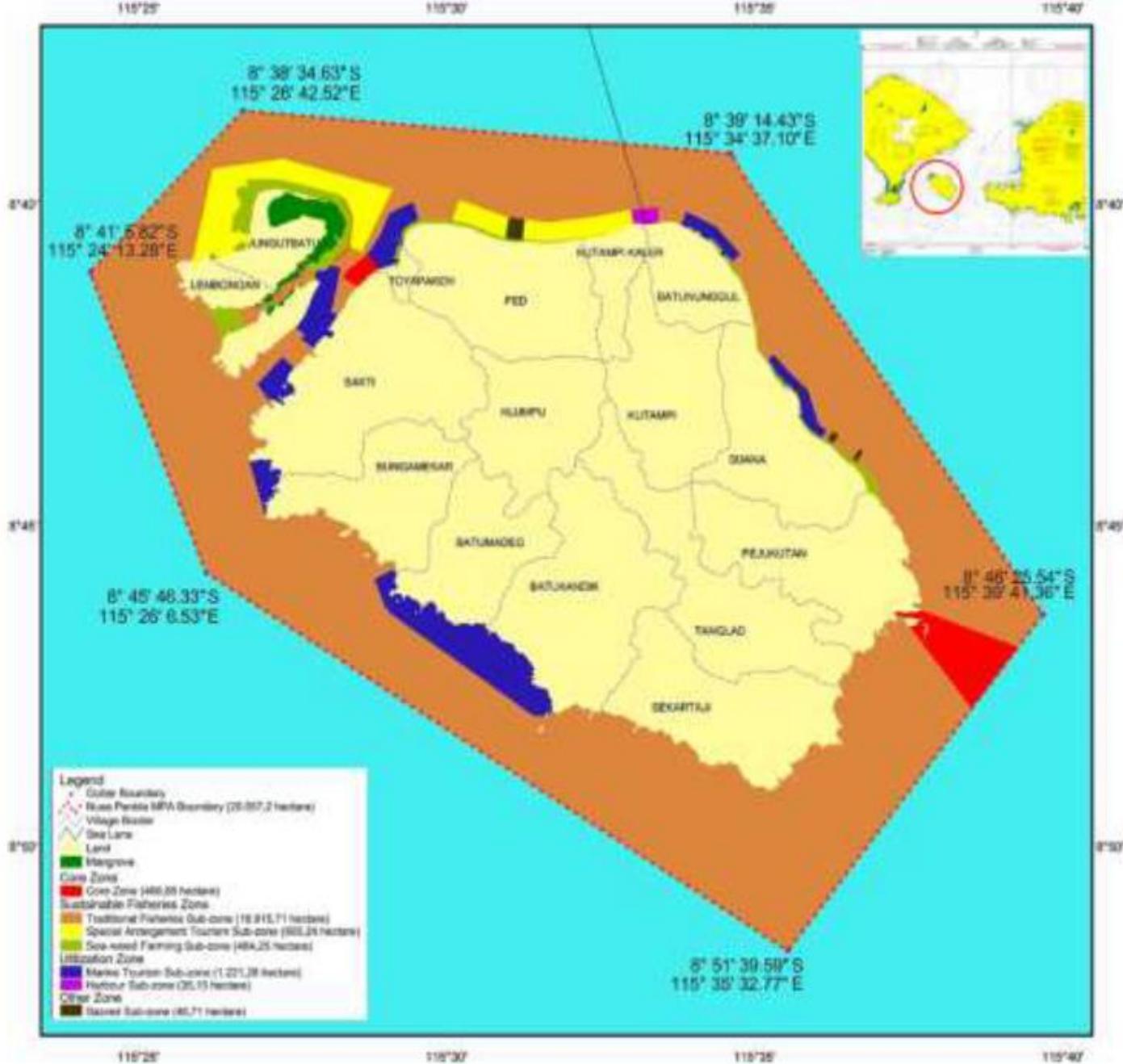


Figure 9: Nusa Penida Islands as Marine Protected Area Form Marine Tourism Park (MMAF)

Shipping Traffic in Lombok Strait

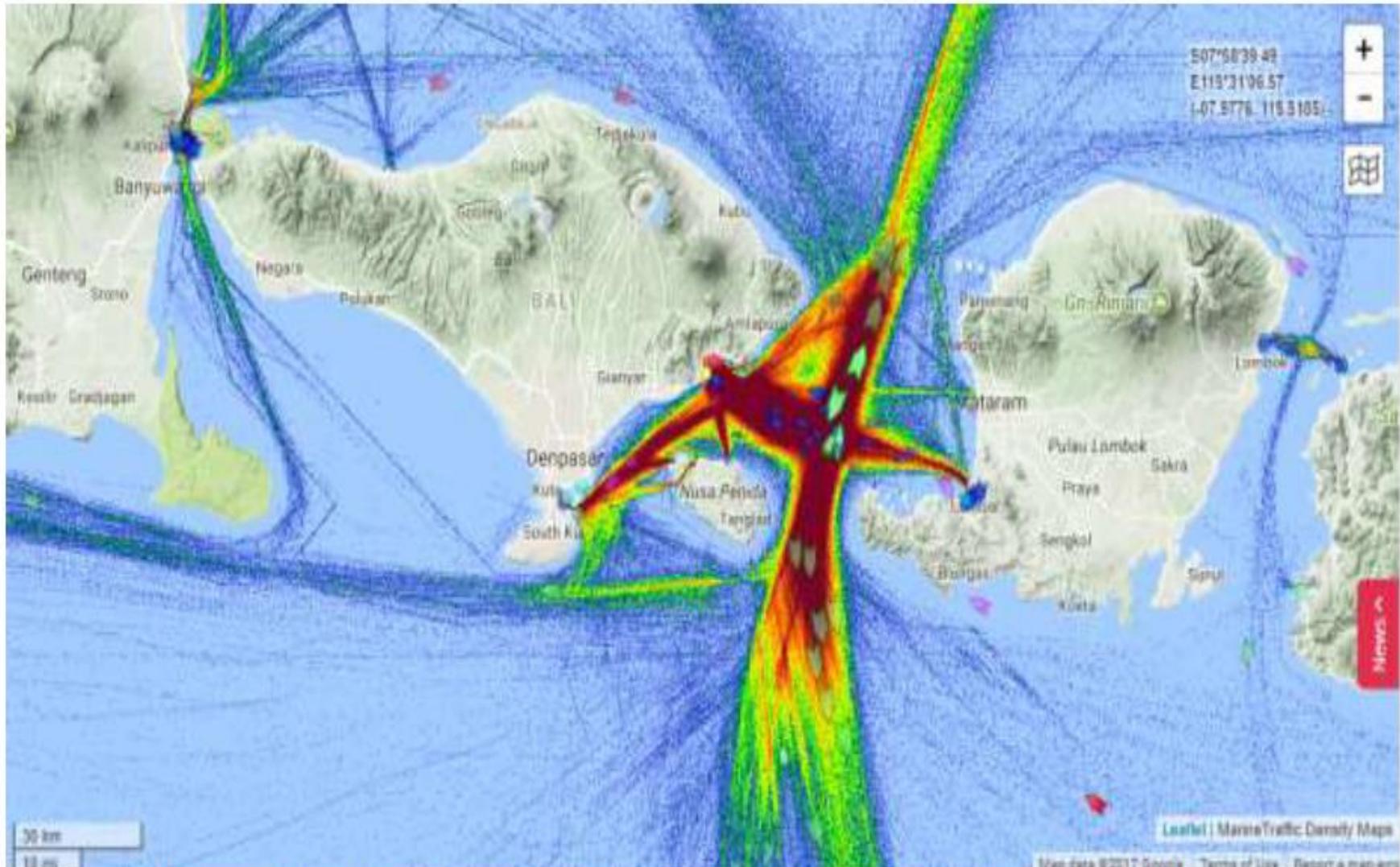
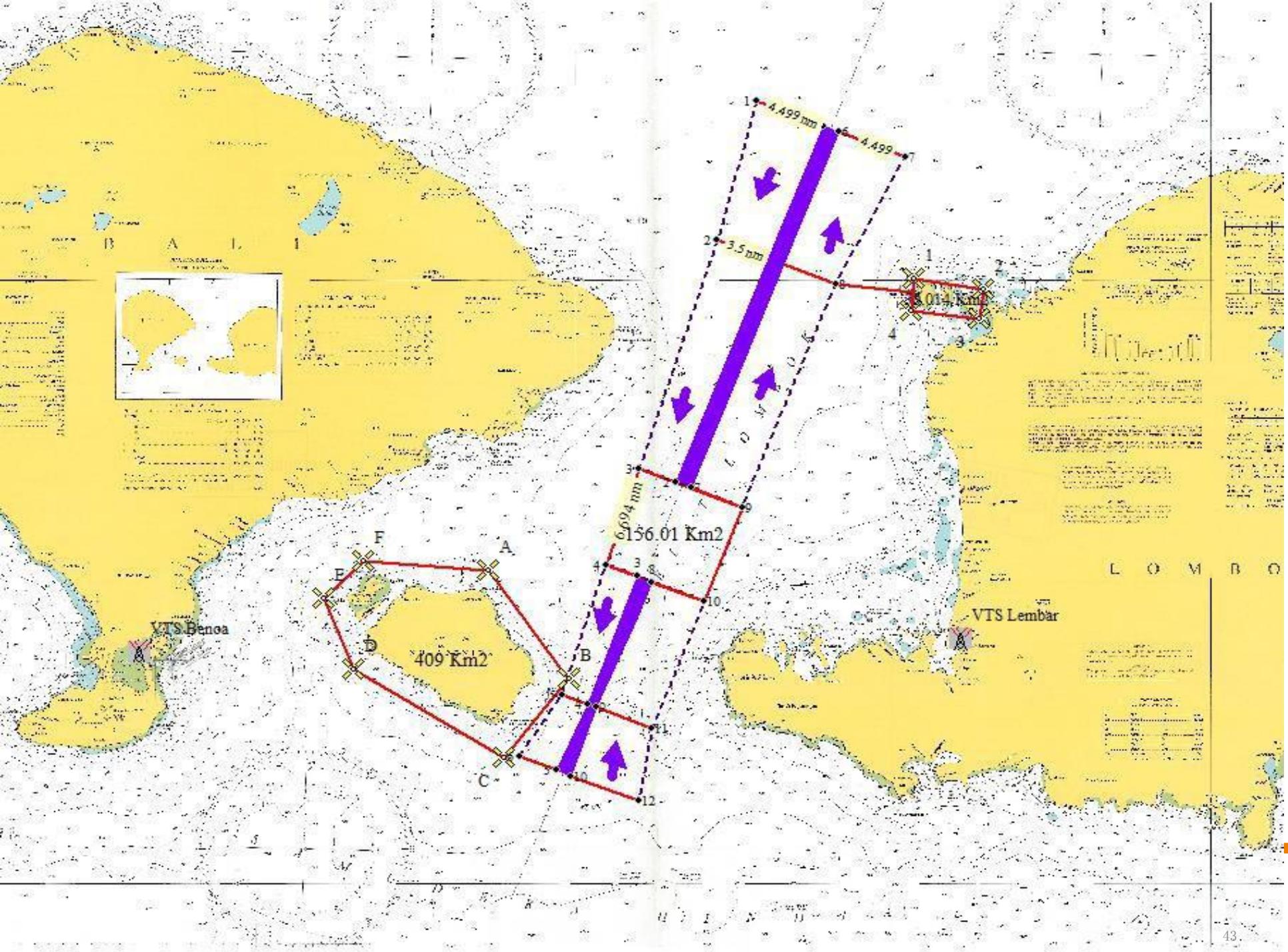


Figure 8: Traffic density in Lombok Strait given by density plot of AIS data

Source: <https://www.marinetraffic.com/>



The Chartlet of the Area to be Avoided

Reference chart: Dinas Hidro-Oceanograf Chart 291, May 2008 edition.

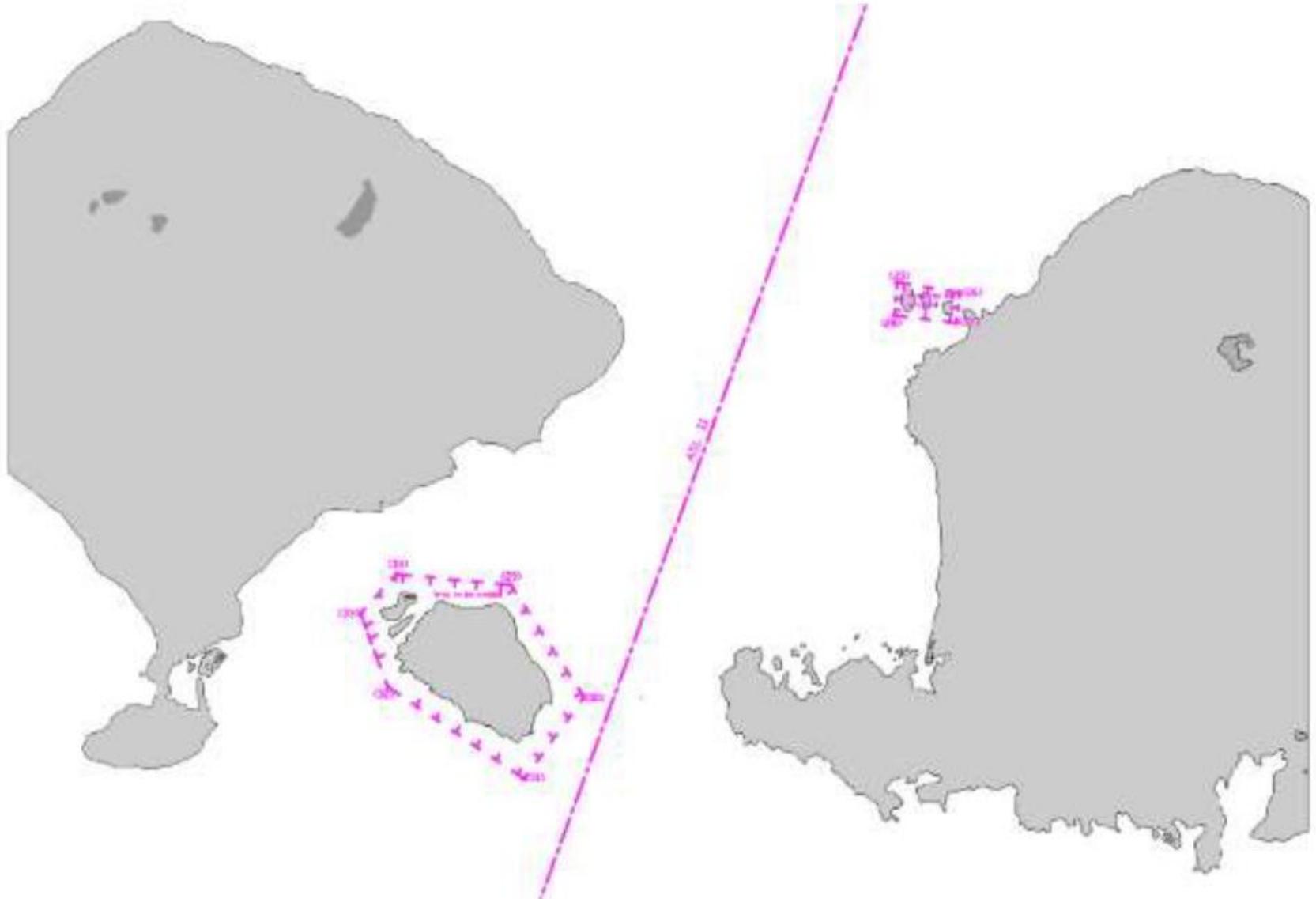




Figure 1: Proposed ships' reporting system in Lombok Strait

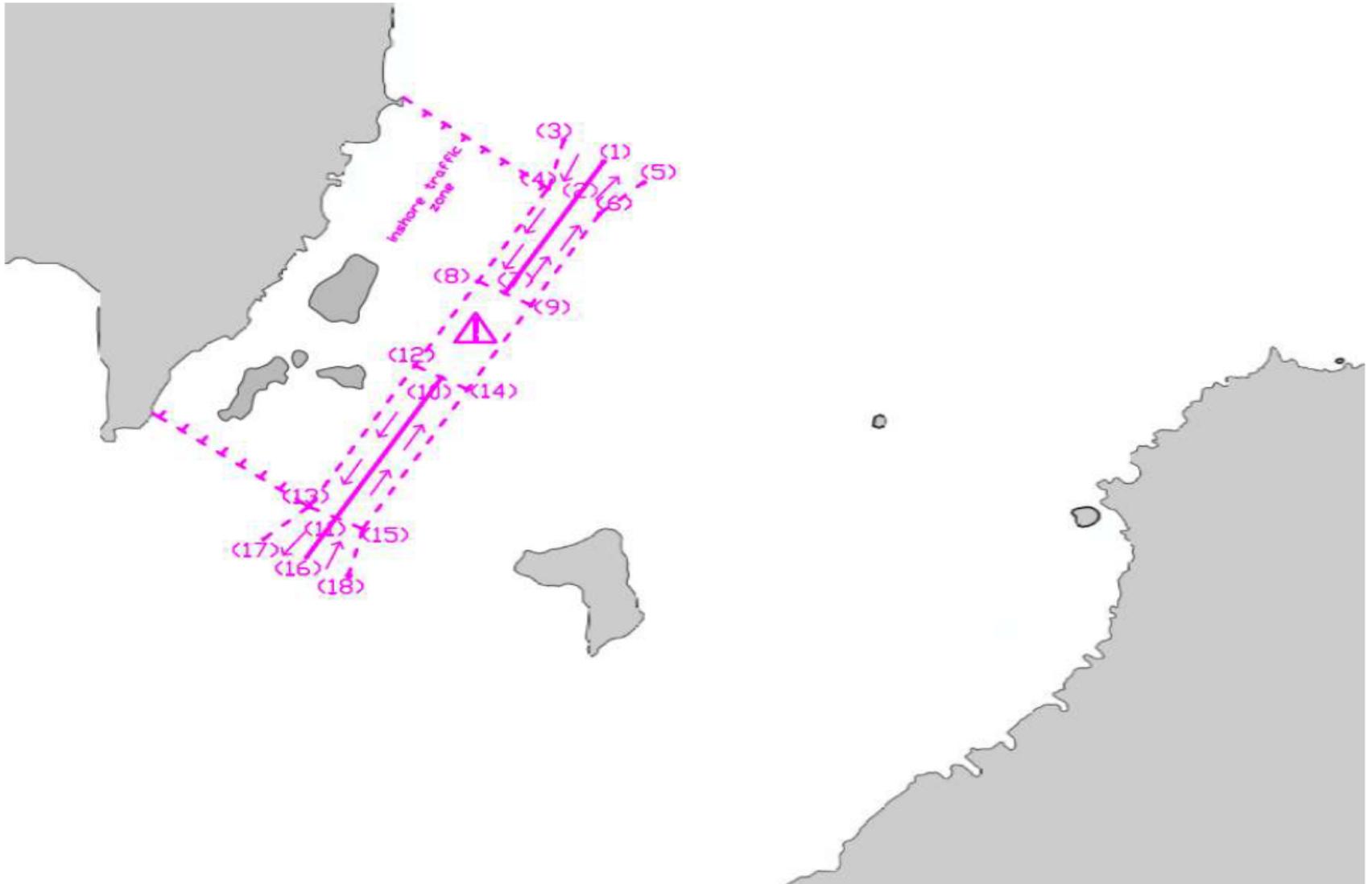
Indonesian Notice to NCSR on Proposed Measures in Sunda Strait

- In December 2017, Indonesia also submitted an Information Paper to the IMO *Sub-Committee on Navigation, Communications and Search and Rescue* (NCSR) to advise that it is preparing proposals for regulating international shipping in the Sunda Strait:
 1. **Ship routeing measures** consisting of:
 - Traffic Separation Scheme (TSS)
 - Precautionary Area
 - Inshore Traffic Zone
 2. **Mandatory Ship Reporting System**



Figure 1: Location of Indonesia and Sunda Strait

Chartlet of the Traffic Separation Scheme, Precautionary Area and Inshore Traffic Zone in Sunda Strait



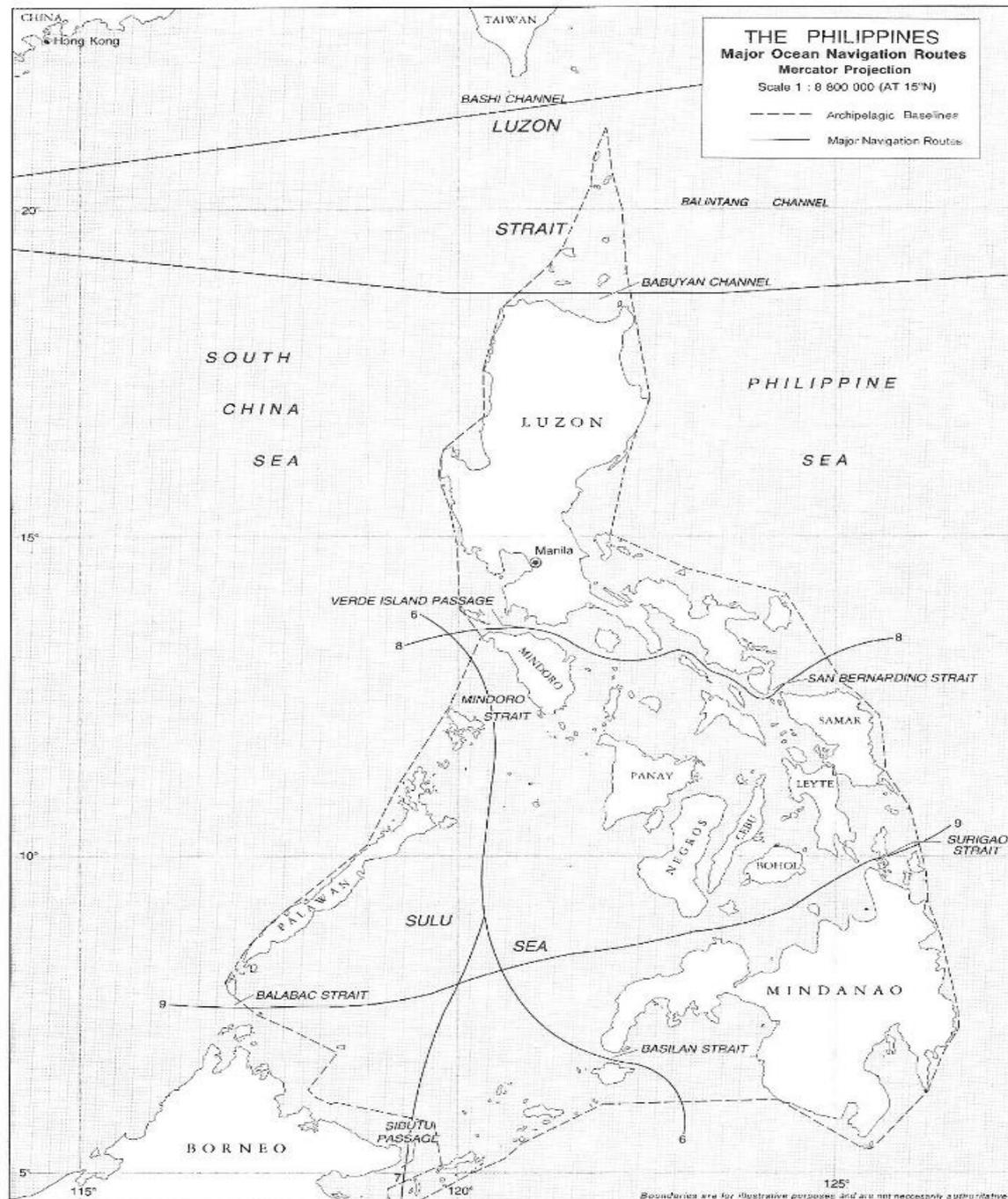
Traffic Separation Scheme, Precautionary Area and Inshore Traffic Zone

Part 6

Conclusions

Conclusions

1. Passage through Indonesian archipelagic waters is critically important to maritime trade as well as to naval powers
2. Parts III and IV of UNCLOS establish a delicate balance between the interests of international community and the sovereignty of coastal States
3. Indonesia played leadership role in negotiating and implementing the regimes in Parts III and IV of UNCLOS
4. Indonesia, Malaysia and Singapore have a vital interest in the rules-based order established in 1982 UNCLOS
5. Naval powers and maritime powers have a vital interest in maintaining the delicate balance set out in Parts III and IV of UNCLOS



The Next Challenge: Philippines Sea Lanes

1986 Report of Louis Alexander, Reprinted in *Navigational Restrictions within the LOS Context*, J Ashley Roach ed., Brill 2017, page 77

Thanks for your attention!

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