

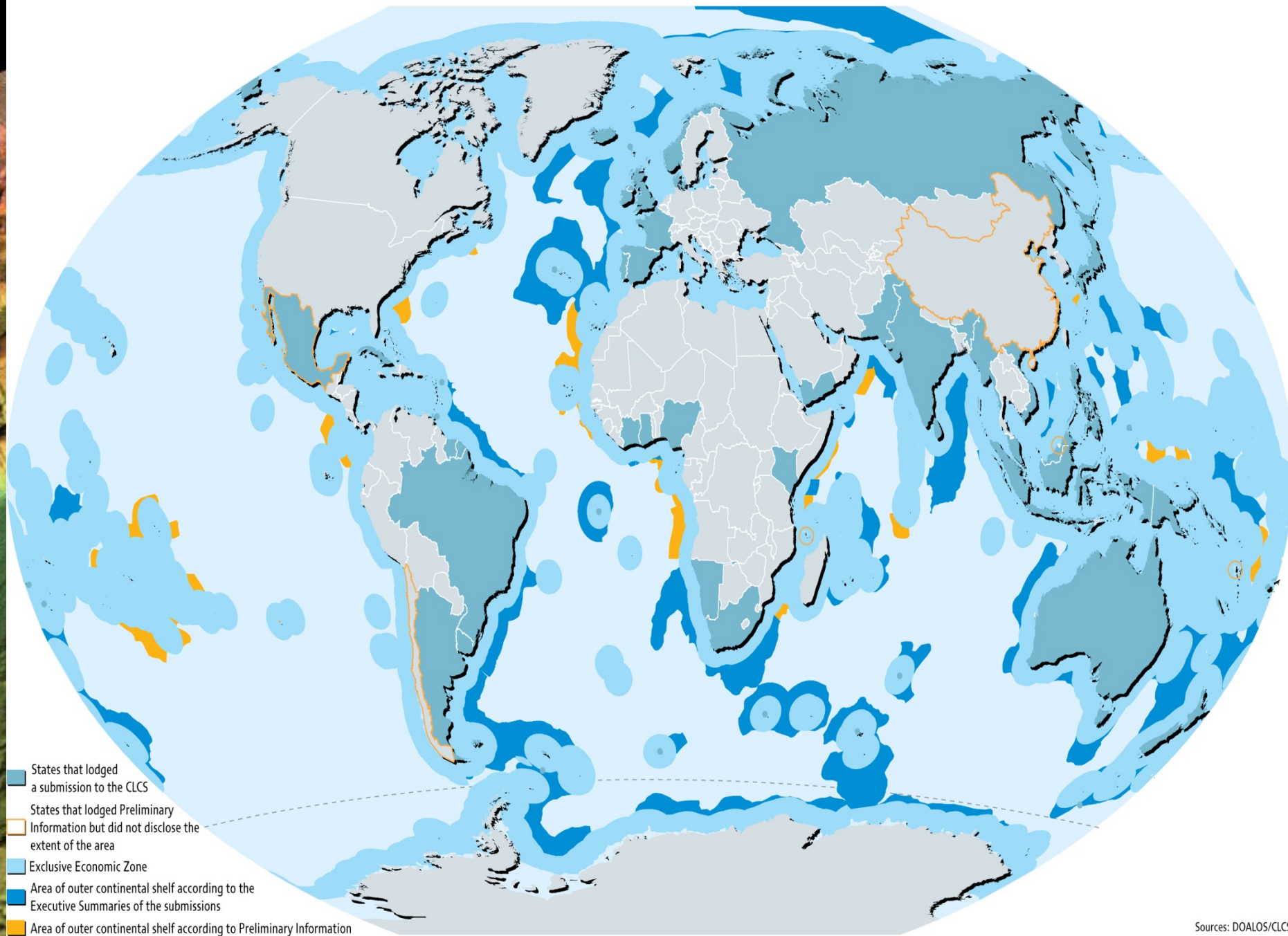


# Environmental Regulation on the Outer Continental Shelf

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The Management of Deep Sea Marine Resources  
and Oceans as a Means of Communication  
PECC, 4-5 December 2012

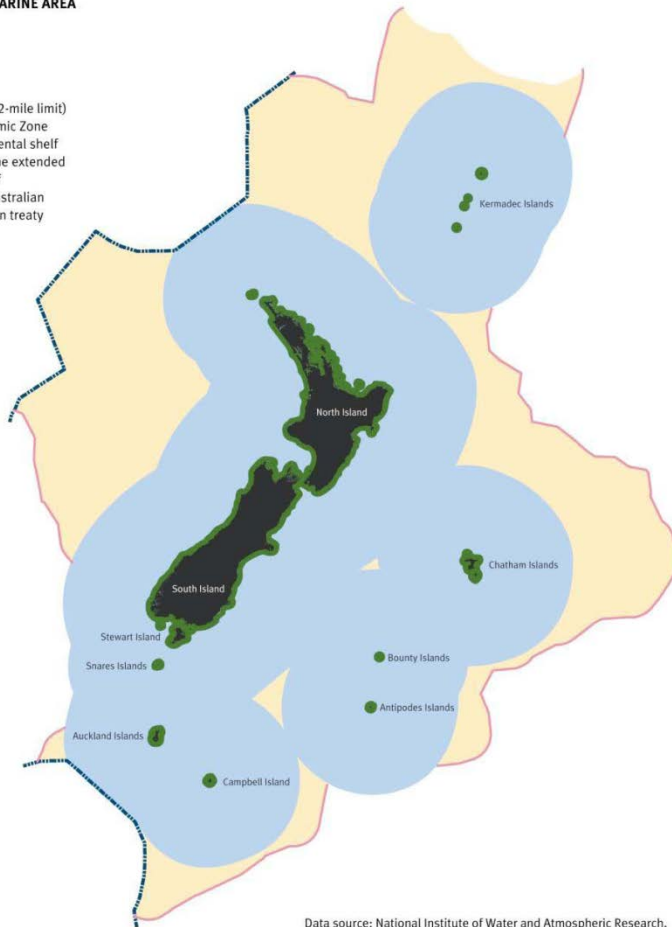
## Global distribution of outer continental shelf



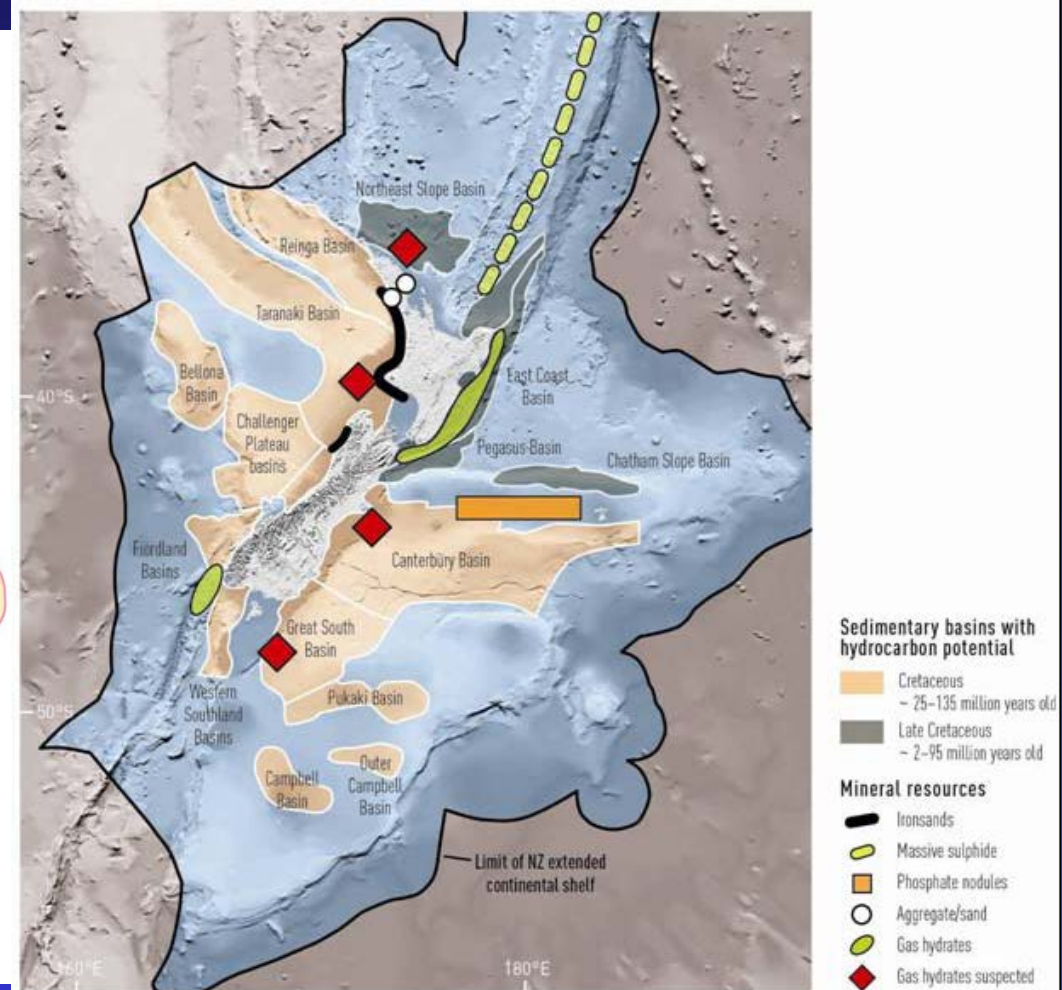
## NEW ZEALAND'S MARINE AREA

- Territorial sea (12-mile limit)
- Exclusive Economic Zone
- Extended continental shelf
- Outer limits of the extended continental shelf
- New Zealand–Australian 2004 delimitation treaty

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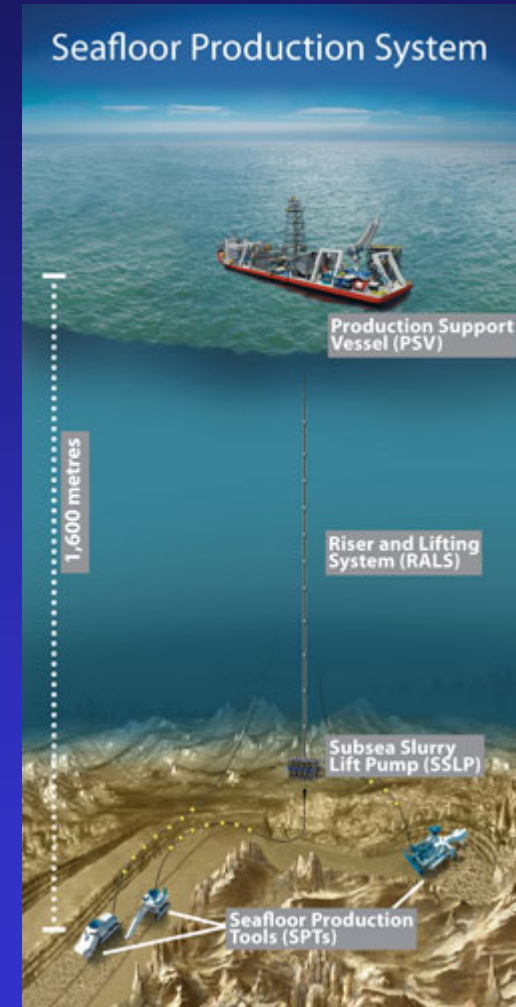
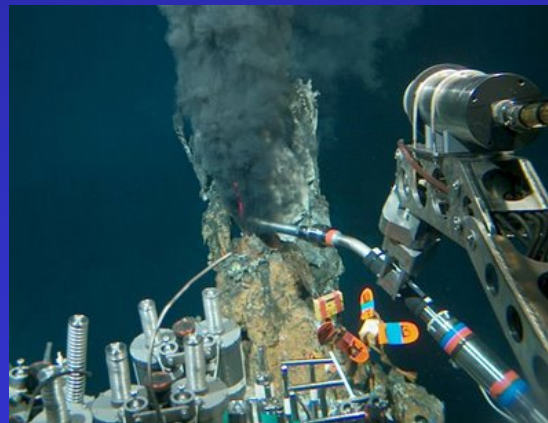
Data source: National Institute of Water and Atmospheric Research.





# Current and future activities on the OCS

- Marine scientific research (MSR)
- Fishing
- Mining for seabed minerals
- Hydrocarbon extraction
- Bioprospecting
- Others?





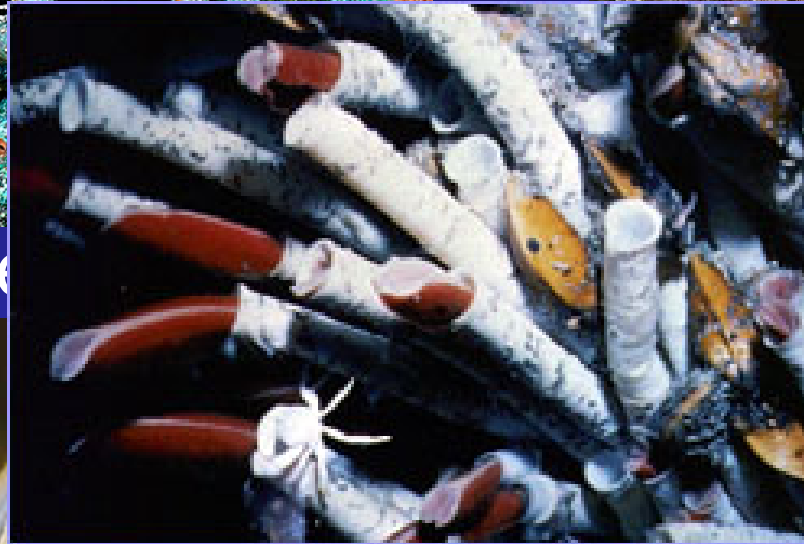


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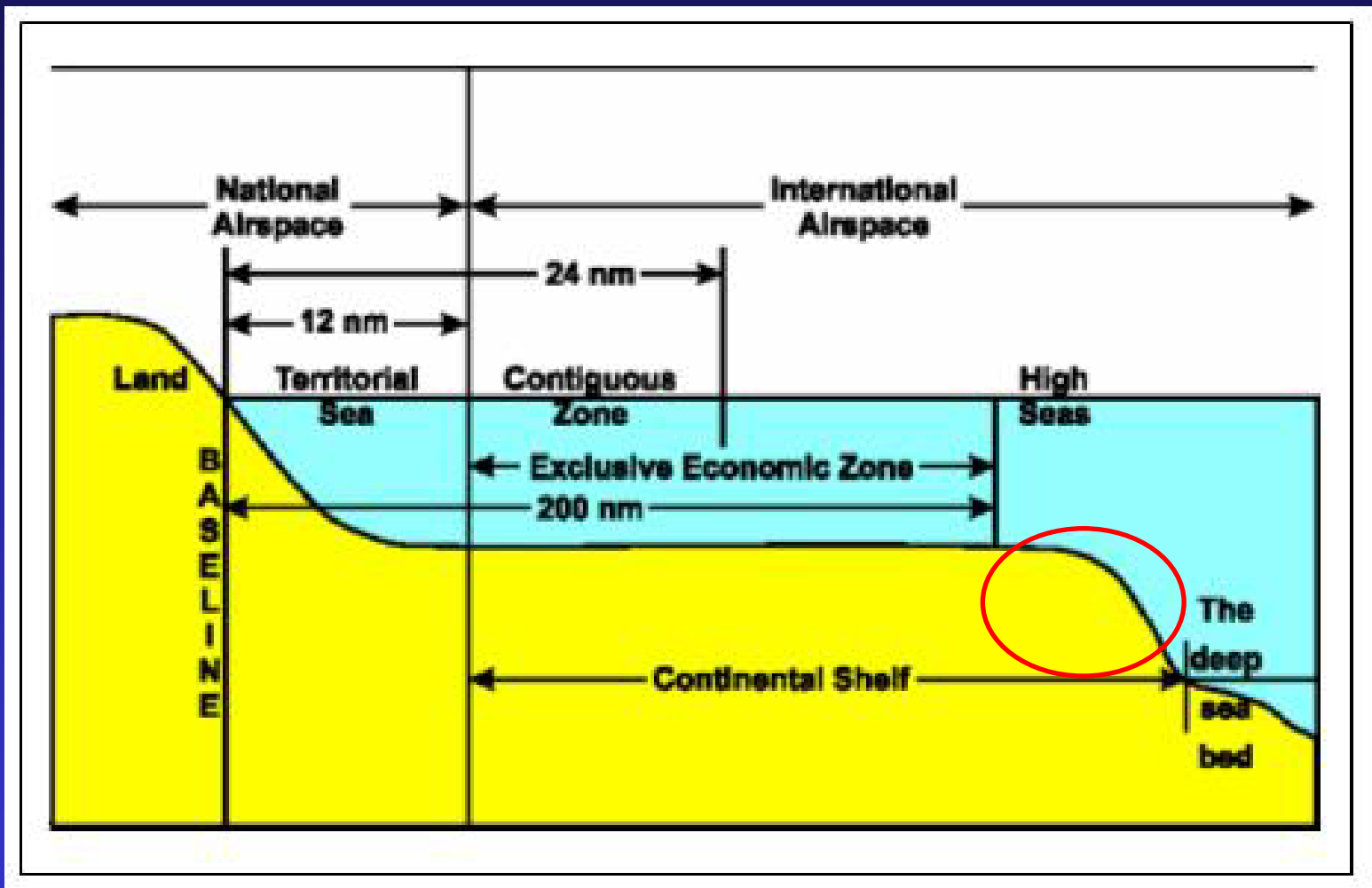


# UNCLOS Part VI

## Article 78

1. The legal rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
2. The exercise of the rights of the coastal State over the continental shelf **must not infringe or result in any unjustifiable interference with** navigation and other rights and freedoms of other States as provided for in this Convention.





Schofield, 2003



# Environmental Protection on the OCS

- No mention in Part VI of environmental obligations. Cf Part V
- Rights “for the purpose of exploring it and exploiting its natural resources” (77(1))
- General obligation to protect and preserve the marine environment (192, 194)
- Customary obligation not to cause transboundary harm or harm to areas BNJ. (*Pulp Mills, Advisory Opinion*)
- Due diligence to ensure harm is not caused incl environmental impact assessment. (*Pulp Mills, Advisory Opinion*, art 194)
- Other obligations: see eg, Convention on Biological Diversity.





# Environmental obligations

- Consider and mitigate the impact of activities on:
  - Seabed ecosystems
  - Migratory species including mammals and fish
- Prevent pollution affecting other states and areas beyond national jurisdiction



# Some environmental issues for coastal states

- What mechanisms are in place for the coastal state to evaluate the environmental impact of the activity on the OCS?
- Can a coastal state declare a marine protected area on the OCS to protect a vulnerable marine ecosystem? Will this allow the state to refuse consent to MSR under art 246(6)?
- What environmental conditions can the coastal state impose on MSR beyond 200nm?



# Safety zones

- Art 60 permits a state to establish safety zones around installations and structures up to 500 metres.
- Art 80: art 60 applies *mutatis mutandis* (with the necessary changes) to the continental shelf.
- Where an activity is above a fixed location but a vessel is not tethered to the seabed, can article 60 apply? Will a safety zone be an unjustifiable interference with high seas freedoms?





# How to evaluate proposed regulation

1. Evidence of interference with shelf resources
2. Level of harm to the shelf resources
3. Relative importance of the interests
4. Is the interference as minimal as possible?
5. International or regional institutions and soft law instruments



# Conclusion

- Activities on the continental shelf beyond 200 nm face unique issues, e.g.
  - Interactions with users in the high seas
  - Different rules re MSR
  - Higher risk of transboundary harm or harm to the commons?
- Coastal states, when regulating such activities, should not assume 'business as usual'. Careful consideration is required to take into account the legal differences.
- The differences should be reflected in the regulatory framework to avoid conflict with other states.