

LATHAM & WATKINS

The Delimitation of the Outer Continental Shelf

Presentation by Stephen Fietta

Monaco, 17 October 2008

Introduction

- The delimitation of outer continental shelf areas (OCS) gives rise to a number of largely unresolved questions:
 - How should delimitation be effected in OCS areas?
 - Is the methodology for OCS delimitation the same as the accepted methodology for continental shelf delimitation within 200M?
 - If not, how is it different?
 - Does the CLCS have any role to play?

Delimitation of continental shelf within 200M

- UNCLOS Article 83
 - The overriding objective: an “equitable solution”
 - The “normal” starting point: the equidistance line
 - The consideration of “special circumstances”
 - The predominance of “neutral criteria of a geographical nature” (e.g., rocks and small islands, non-encroachment; disparity in relevant coastal lengths; proportionality)
 - Any role for natural prolongation? (*NSCS; Libya/Malta* etc)

Do the same principles apply to delimitation of the OCS?

- The different bases of legal entitlement under Article 76 of UNCLOS
- The basis of legal entitlement to OCS : “natural prolongation of ... land territory to the outer edge of the continental margin” (Article 76(1))
- The absence of EEZ jurisdiction beyond 200M (Article 57)
- Consequence for delimitation of OCS areas: the “re-emergence” of geological/ geomorphological factors in maritime delimitation?

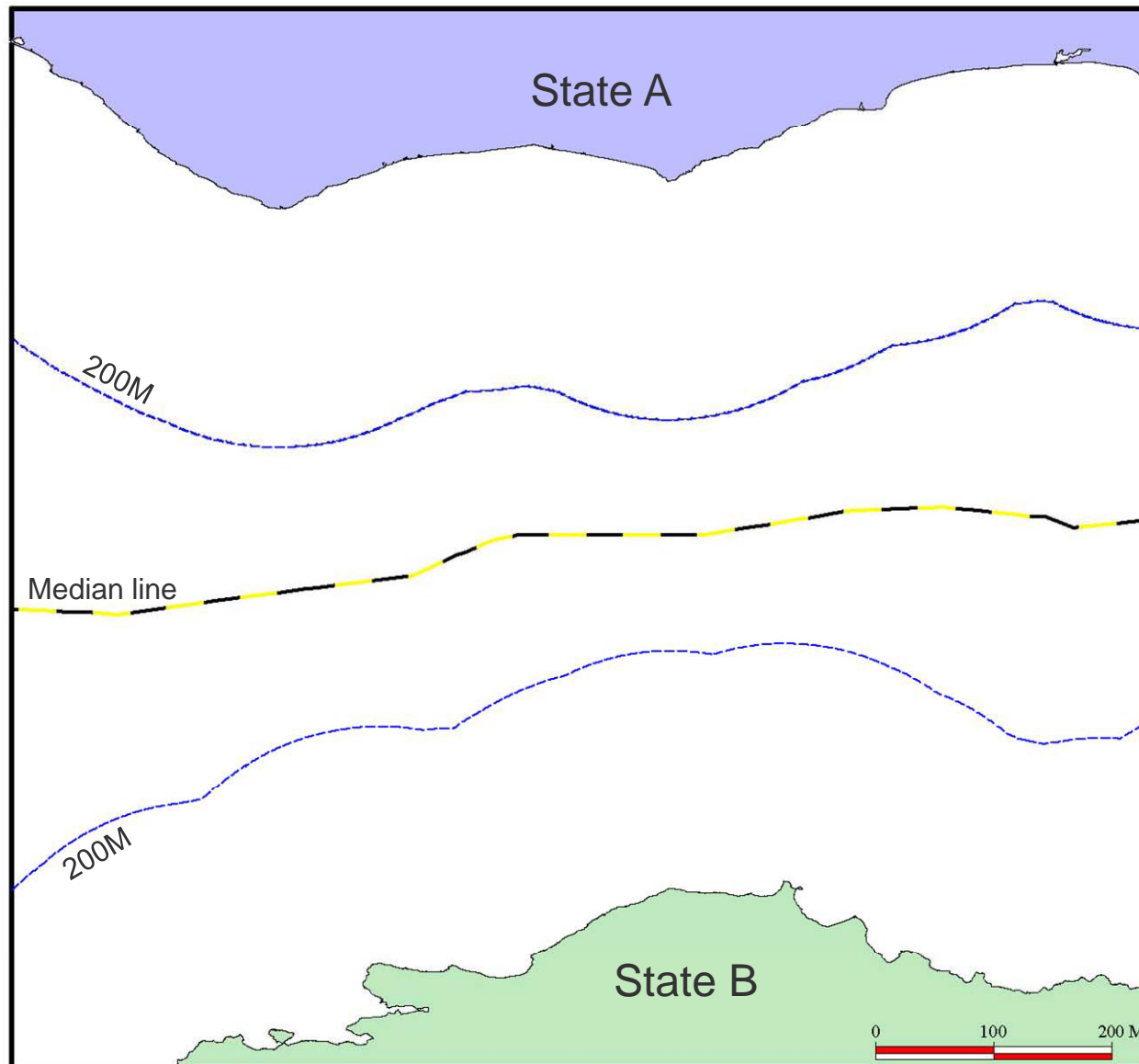
So what role should geological/ geomorphological factors play in OCS delimitation?

- Should equidistance still play a role?
- Geological/ geomorphological factors as “special circumstances” to adjust an equidistance line (Colson; *Nova Scotia/ Newfoundland*)
- What role other “special circumstances”?
 - rocks and small islands
 - non-encroachment (*Barbados/ Trinidad and Tobago*)
 - disparity in relevant coastal lengths/ proportionality
- Can geology/ geomorphology operate as a sole determinative factor overriding equidistance?

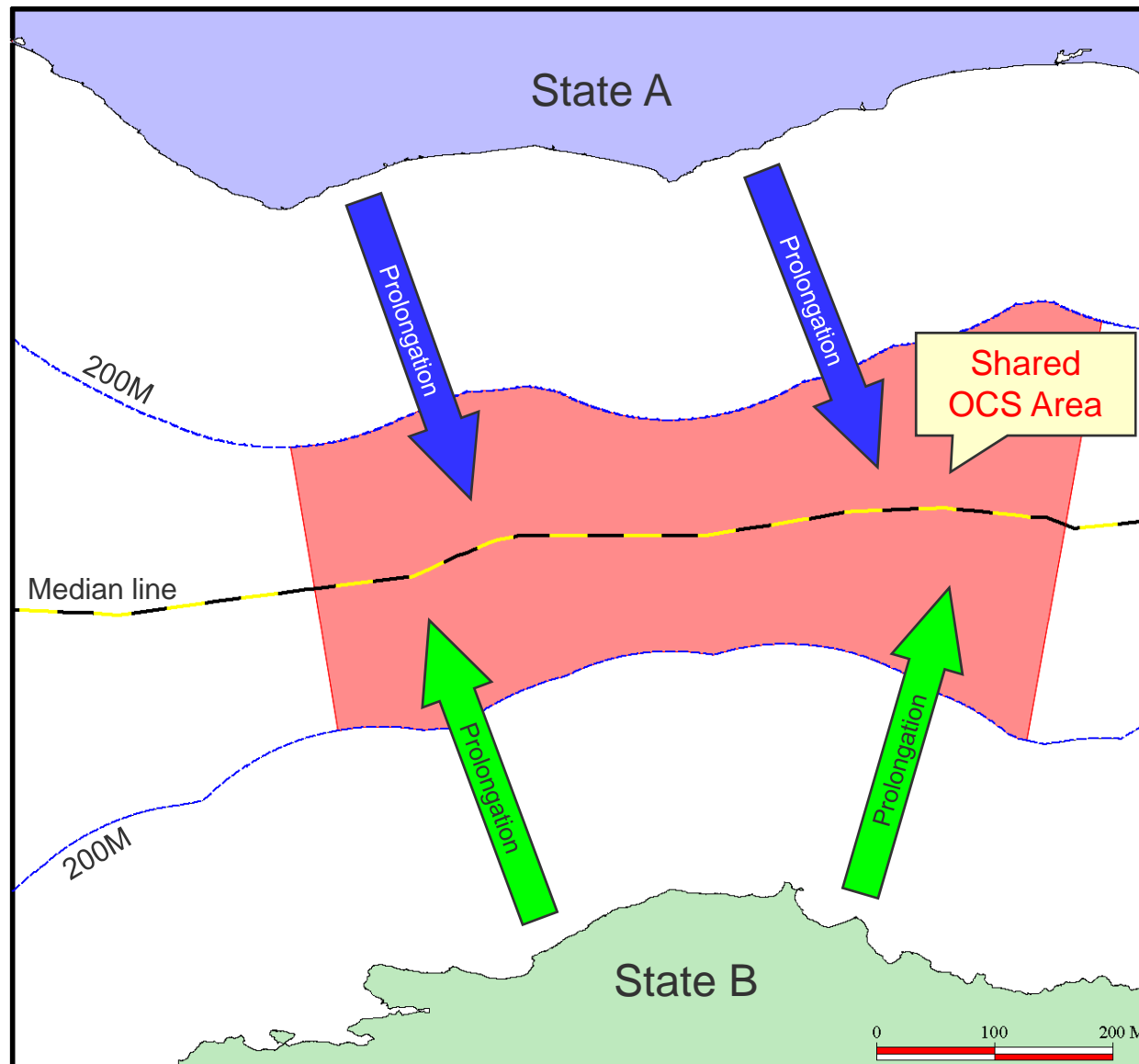
Consider six scenarios...

- opposite coasts generating shared OCS areas
- opposite coasts where only one generates OCS entitlement
- opposite coasts generating separate and distinct OCS entitlements
- adjacent coasts generating shared OCS areas
- adjacent coasts where only one generates OCS entitlement
- adjacent coasts generating separate and distinct OCS entitlements

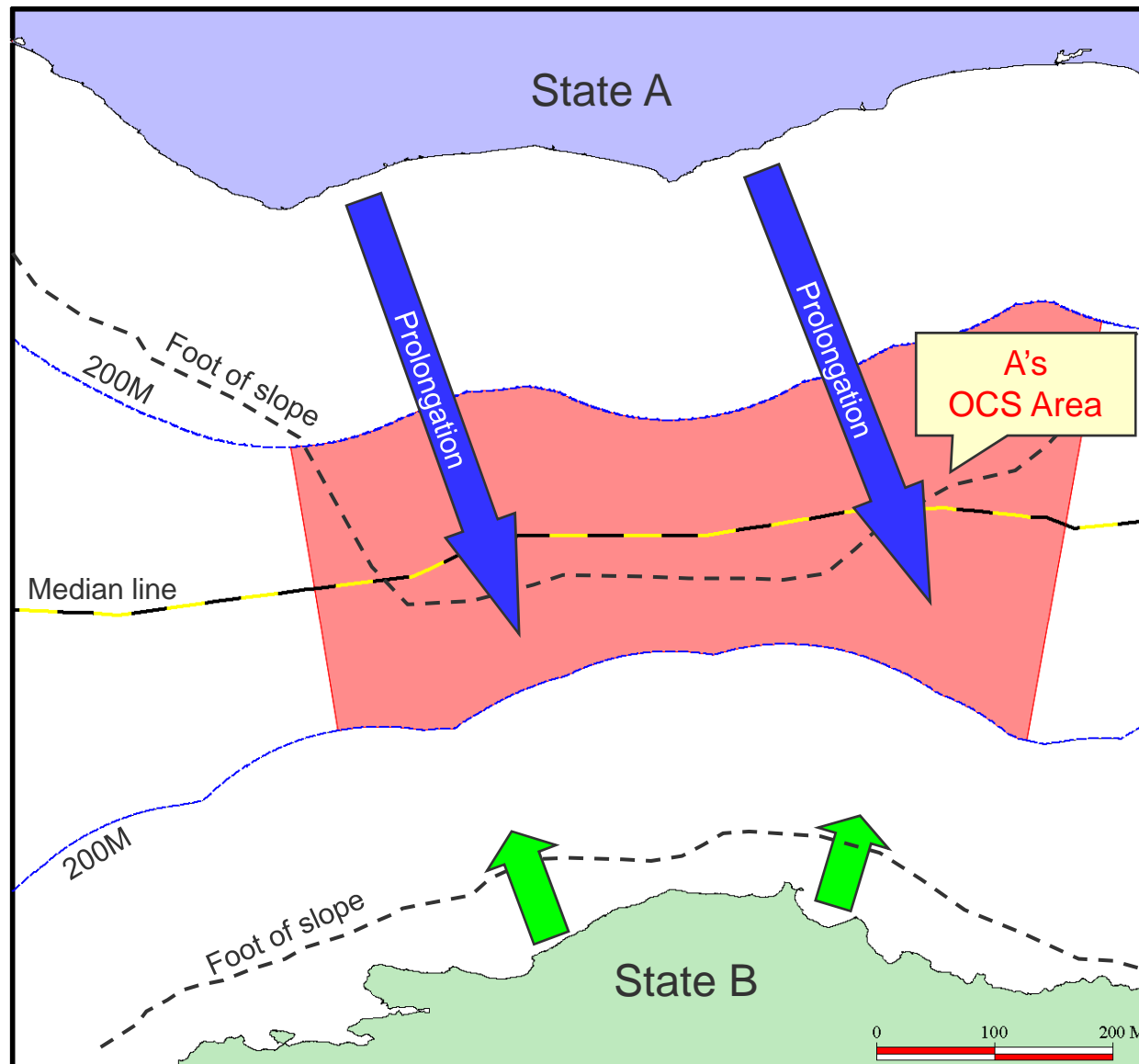
States with opposite coasts



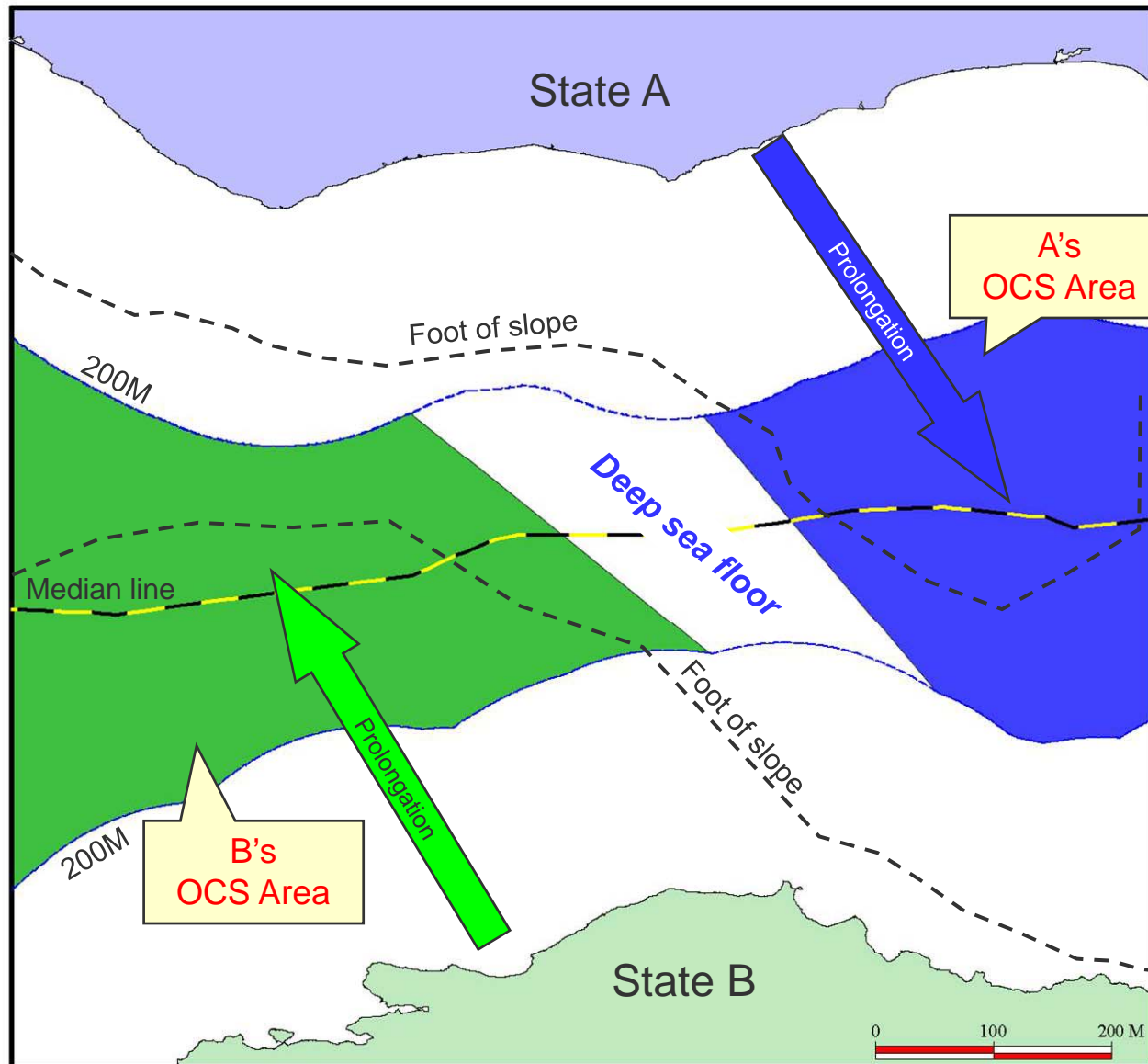
Scenario 1: opposite States with shared OCS areas



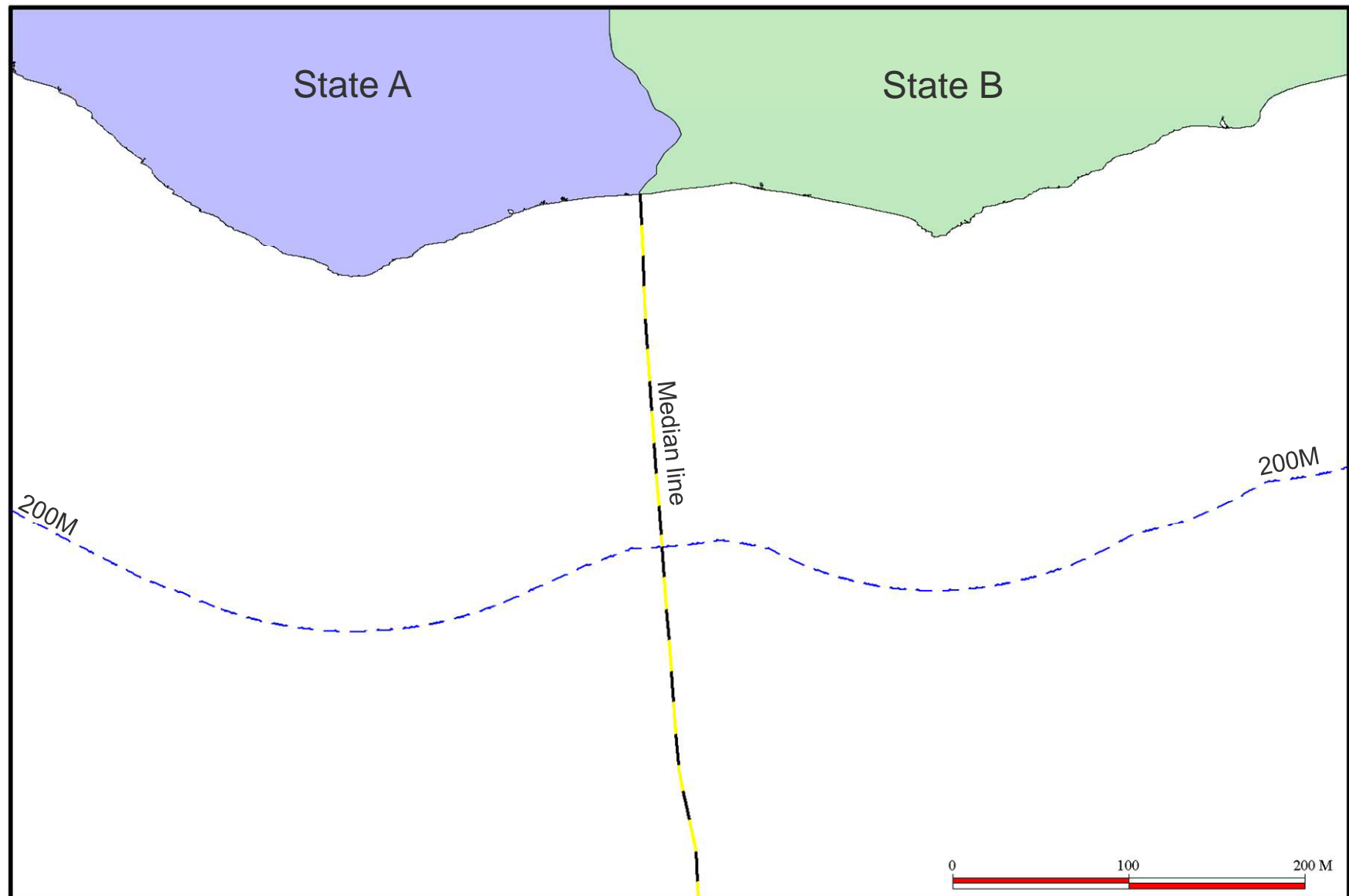
Scenario 2: only State A has OCS entitlement



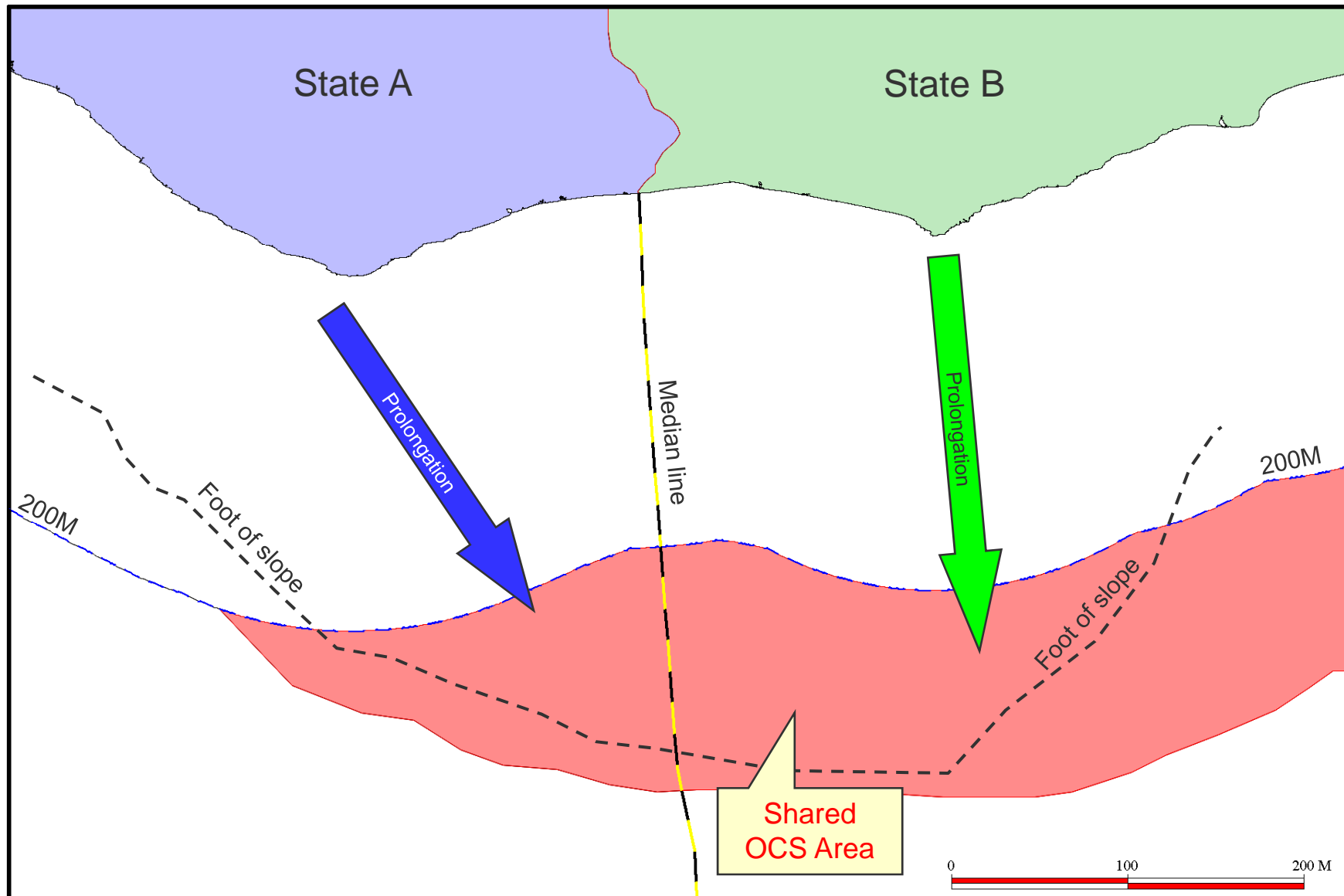
Scenario 3: separate and distinct OCS areas



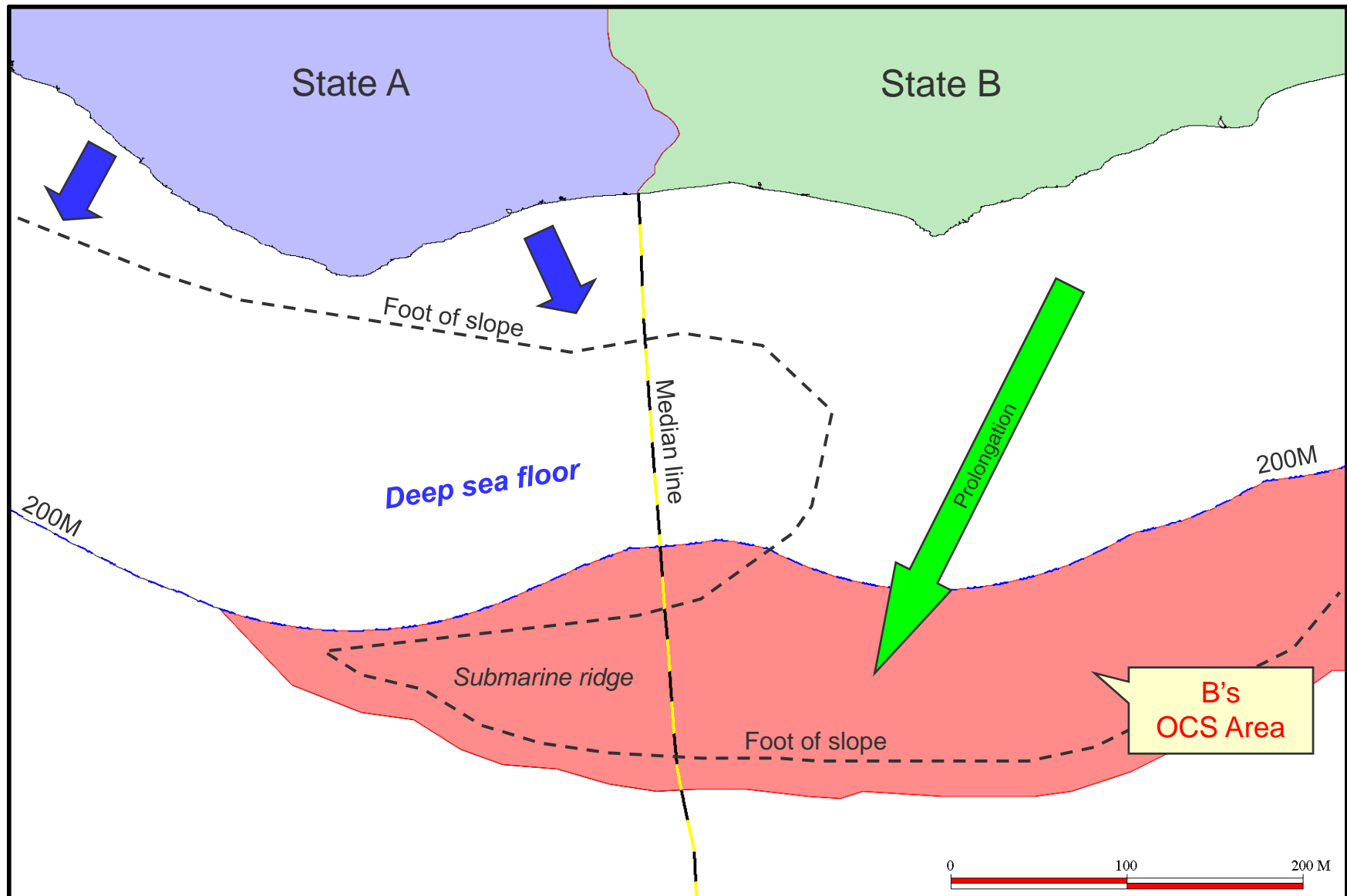
States with adjacent coasts



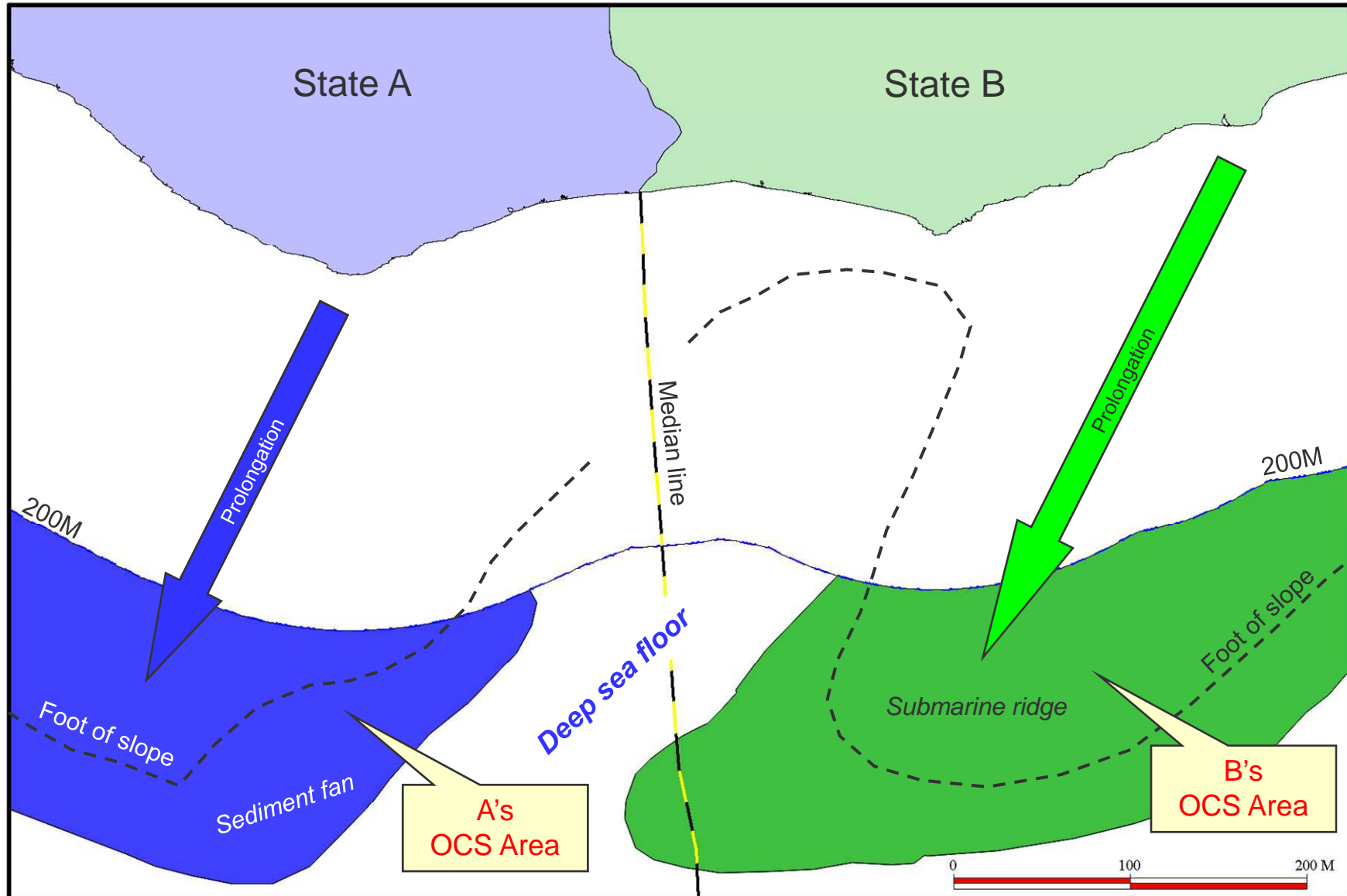
Scenario 4: adjacent States with shared OCS areas



Scenario 5: only State B has OCS entitlement



Scenario 6: separate and distinct OCS areas



The role of the CLCS

- Equidistance-based OCS delimitations (e.g., scenarios 1 and 4)
 - Confirmation of shared OCS areas
 - Confirmation of the outer limit
- Delimitations where geology/ geomorphology may play a more defining role (e.g., scenarios 2, 3, 5 and 6)
 - If the States agree that one has greater OCS entitlement than the other then they may delimit first (e.g., Australia/ New Zealand)
 - If States have possible overlapping OCS entitlements (e.g., Norway “banana hole”) or separate and distinct OCS entitlements then they may submit to the CLCS first

Some tentative conclusions...

- The different basis of legal entitlement to State sovereignty over OCS areas
- The consequences for delimitation beyond 200M: a revived role for geological/ geomorphological factors
- In some cases such factors might be overwhelming
- The role and timing of the CLCS process in OCS delimitation