

COASTAL STATE REGULATION OF NAVIGATION IN ADJACENT WATERS – THE EXAMPLE OF THE TORRES STRAIT AND GREAT BARRIER REEF

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Coastal State regulation of navigation in adjacent waters is increasing

- Shipping accidents – human error
- Environmental Norms
 - General obligation in UNCLOS
 - Precautionary principle
 - Particularly Sensitive Sea Areas (PSSAs)

Particularly Sensitive Sea Area

- A Particularly Sensitive Sea Area (PSSA) is an area that needs special protection through action by the IMO because of its significance for recognized ecological or socio-economic or scientific reasons and which may be vulnerable to damage by international maritime activities
- IMO Guidelines – 3 given criteria (ecological; social, cultural and economic; and scientific and educational) and vulnerability to damage by shipping

Australian Experience

- Compulsory Pilotage in the Torres and Great Barrier Reef
- Recent proposal to extend mandatory ship reporting in the Great Barrier Reef

Torres Strait - Considerations

- UNCLOS straits transit passage regime applies to Torres Strait – but only for shipping transiting the strait via the Great NE Channel
- Navigation in the Torres Strait is extremely hazardous – narrow passages, shallow, many reefs, strong tidal streams, low visibility, etc
- Sensitive marine habitats, traditional and commercial fishing
- Boundaries, Protected Zone and management arrangements provided by Torres Strait Treaty between Australia and PNG

Definition of Transit Passage

- the exercise of the freedom of navigation and overflight by ships and aircraft through a strait used for international navigation “between one part of the high seas or an exclusive economic zone and another part of the high seas or exclusive economic zone” (UNCLOS 38(2)).
- The laws and regulations of States bordering straits “shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage” (UNCLOS 42(2)).

Torres Strait

- Great Barrier Reef PSSA approved by IMO in 1990 with compulsory pilotage regime for Inner Route
- Recommendatory pilotage regime introduced for Torres Strait in 1991
- High level of non-compliance by 2001
- Torres Strait PSSA approved by IMO in July 2005
- Australia introduced compulsory pilotage regime for Torres Strait with effect 6 Oct 06 – 100% compliance since

Arguments Against

- The IMO did not formally approve a compulsory pilotage regime;
- The regime has the practical effect of “denying, hampering or impairing the right of transit passage” and is thus contrary to UNCLOS;
- It establishes a precedent that might be adopted for other straits; and
- Is beyond powers of UNCLOS Art. 42

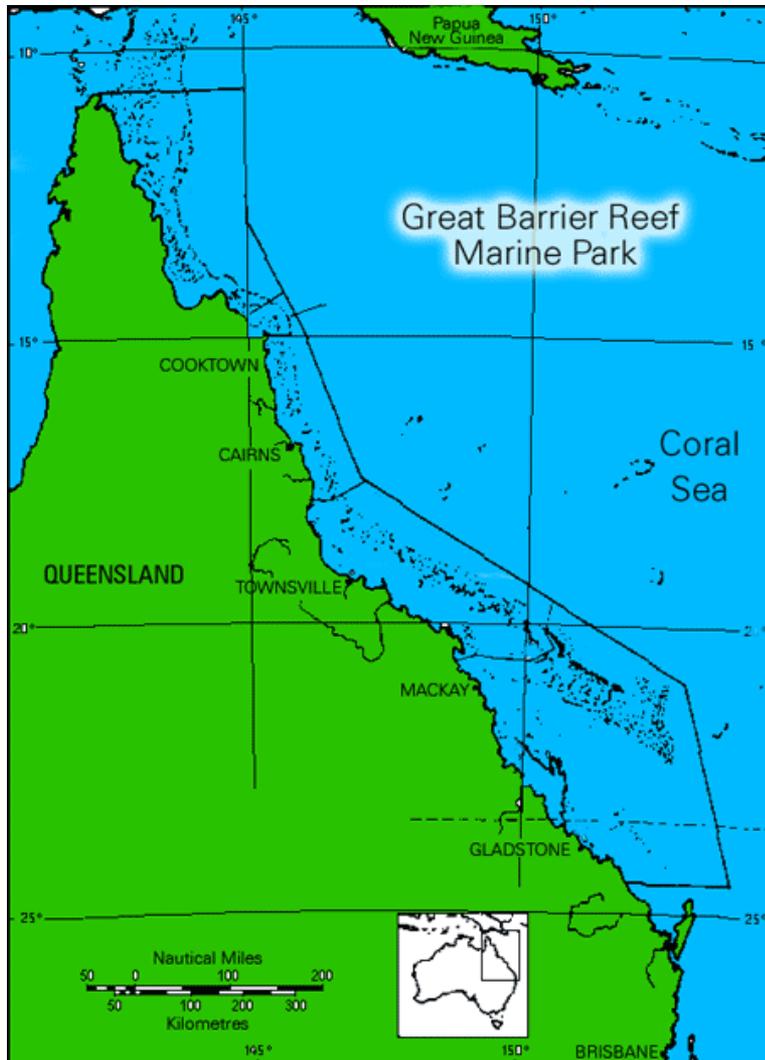
Australia's Response (1)

- The regime is aimed solely at enhancing safe navigation and environmental protection (i.e. is within UNCLOS Article 42)
 - A commercial arrangement not a fee for transit
- Not a denial, impairment or hampering of passage
 - Will not be physically enforced and “non-delaying” arrangements are in place
 - Recognises sovereign immunity and includes a pilotage exemption scheme

Australia's Response (2)

- Language used by IMO in 2005 resolution is identical to that used in 1990 resolution
- Torres Strait regime not directly a precedent for other straits
 - Arguably the most dangerous strait routinely used for international navigation
 - PSSA approval a necessary first step
- What other options were available if ships were not going to comply with the recommendatory regime and all appropriate VTS arrangements were in place?

Great Barrier Reef

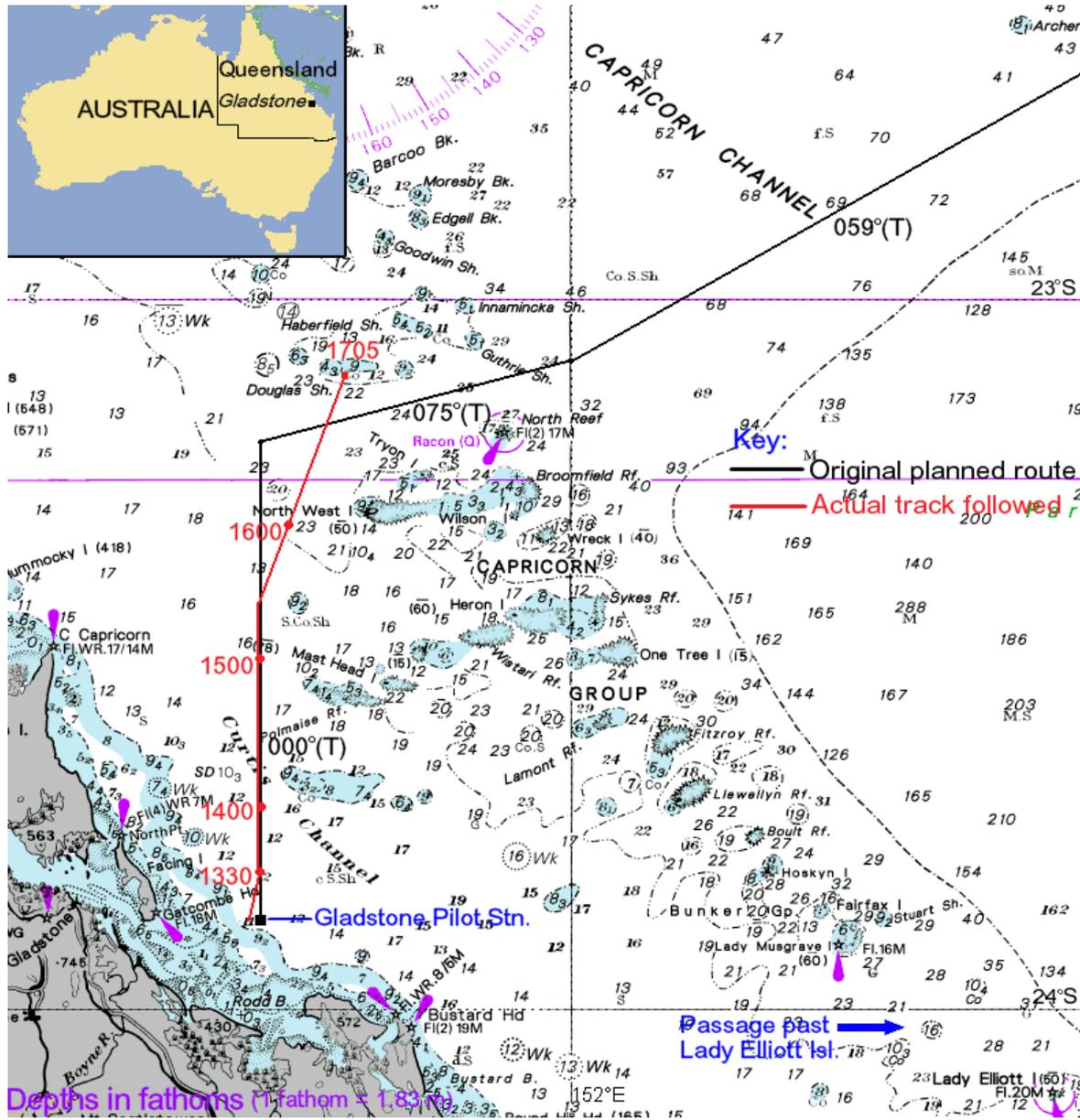


- Stretches 2,300 km from Torres Strait to Lady Elliott Is.
- First area to be designated by IMO as a PSSA.
- Administered by Great Barrier Reef Marine Park Authority
- Inner and Outer routes for shipping
- REEFVTS

Recent Developments

- Chinese bulk carrier *Shen Neng 1* laden with coal grounded on Douglas Shoal on 3 April 2010 – outside mandatory ship reporting area.
- Human error the major factor
- Proposal now to extend REEFVTS to southern limit of GBRMP

Planned Route and Actual Track of Shen Neng 1



Shen Neng 1 Aground at Douglas Shoal





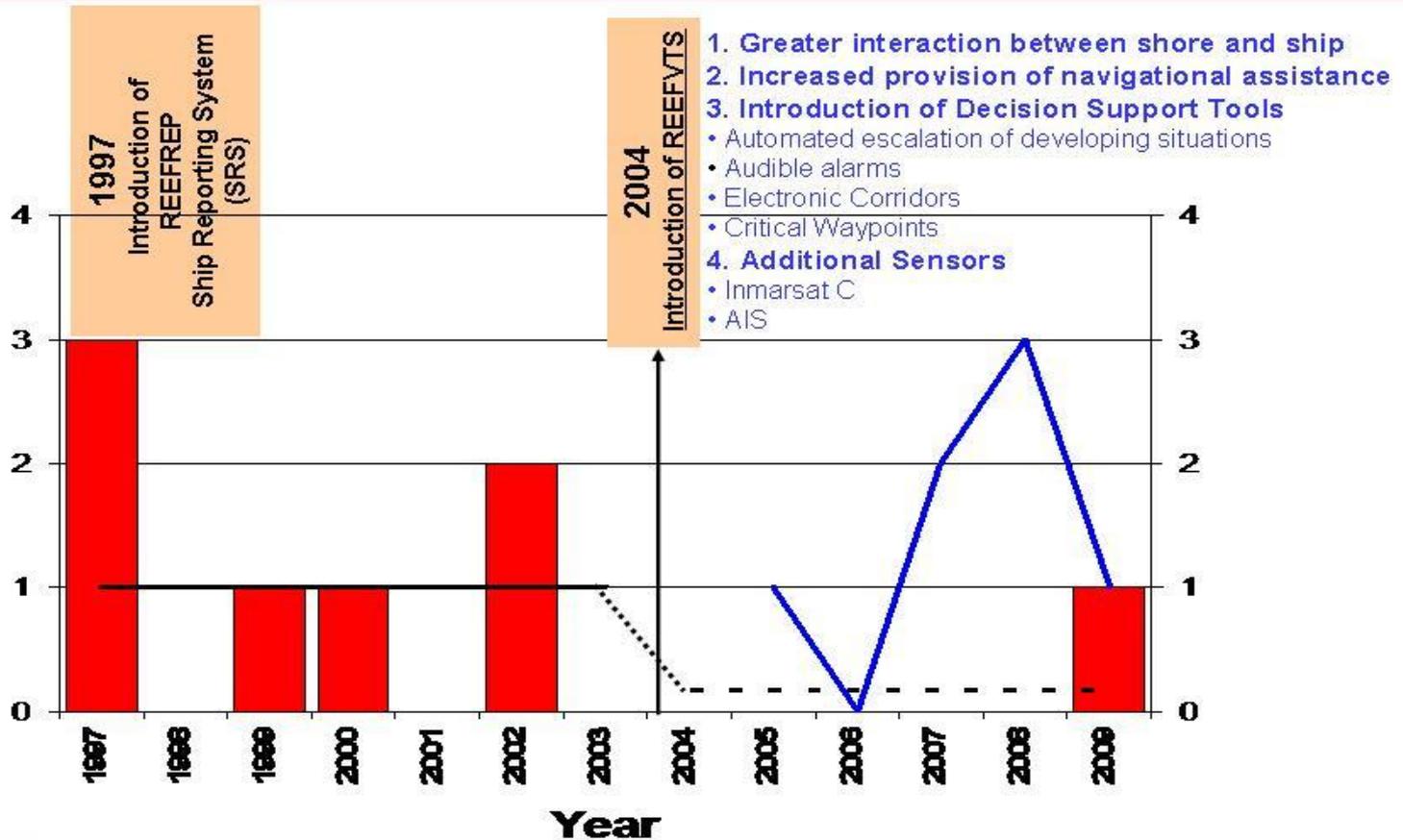
Australian Government

Australian Maritime Safety Authority

REEFVTS – Groundings reduced from 1.0 per annum to 0.16 per annum



Maritime Safety Queensland
Queensland Government

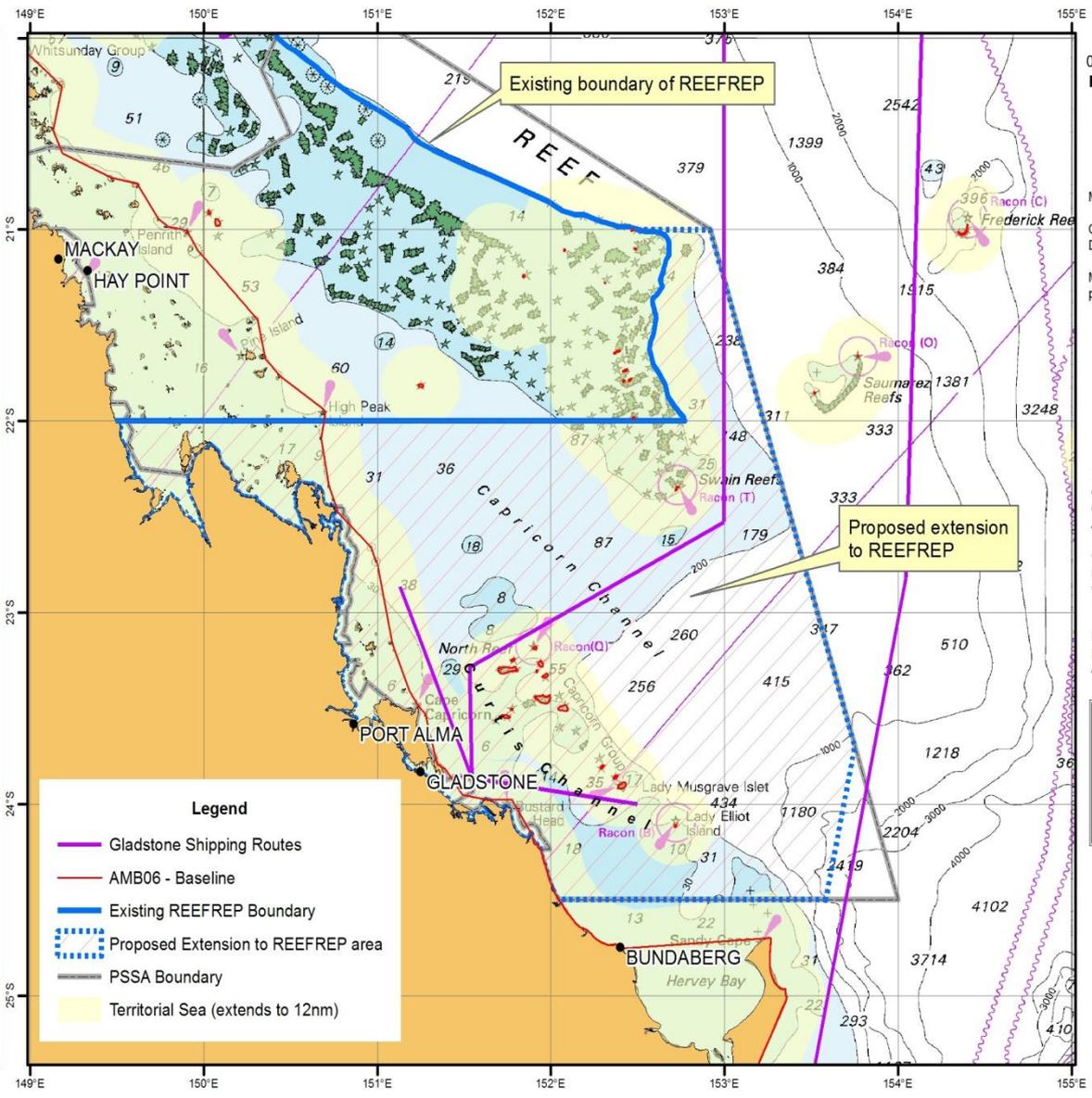


█ Groundings
 SRS - Av. No. Groundings / Year

— No. Interactions by REEFVTS (SHALREPS)
 VTS - Av. No. Groundings / Year



**PROPOSED EXTENSION TO THE MANDATORY
 SHIP REPORTING SYSTEM IN THE TORRES STRAIT
 AND THE INNER ROUTE OF THE GREAT BARRIER REEF (REEFREP)**

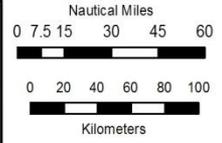


Legend

- Gladstone Shipping Routes
- AMB06 - Baseline
- Existing REEFREP Boundary
- Proposed Extension to REEFREP area
- PSSA Boundary
- Territorial Sea (extends to 12nm)

Existing boundary of REEFREP

Proposed extension to REEFREP



Map Datum: WGS84
 Coordinate Definition: Geographical
 Map not to be used for navigation purposes.

Background chart information obtained from raster nautical chart AUS4602 provided by the Australian Hydrographic Service.

Great Barrier Reef boundary information provided by the Great Barrier Reef Marine Park Authority.

Maritime boundary information provided by Geosciences Australia.



Conclusion

- Greater concern for the marine environment is the most significant development in oceans management and policy that has occurred over the last two decades.
- As a consequence of this concern, the freedoms of navigation are no longer the same, or as unrestricted, as those that prevailed in the more laissez-faire environment of the 1970s when UNCLOS was being negotiated.