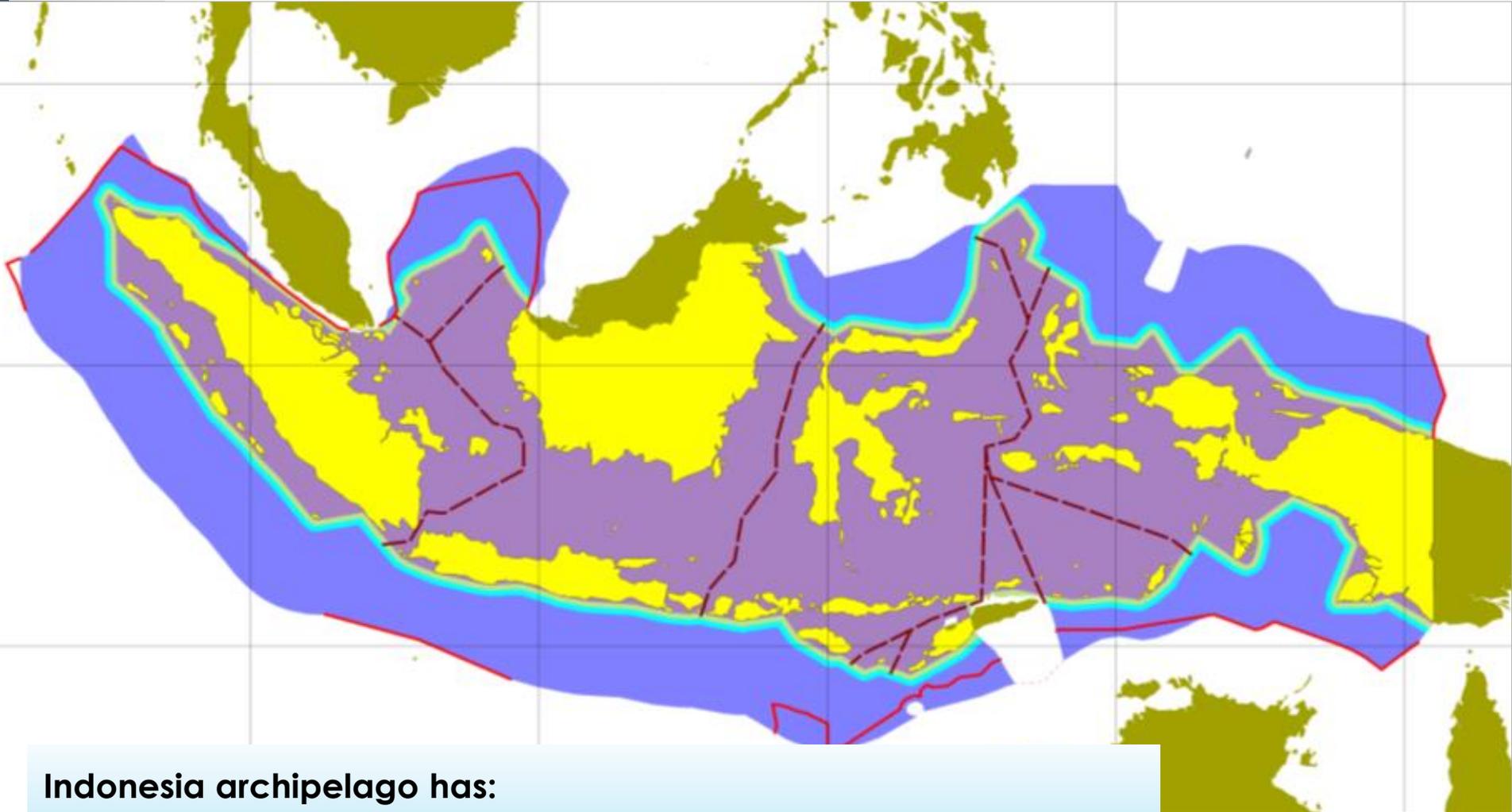


INDONESIA



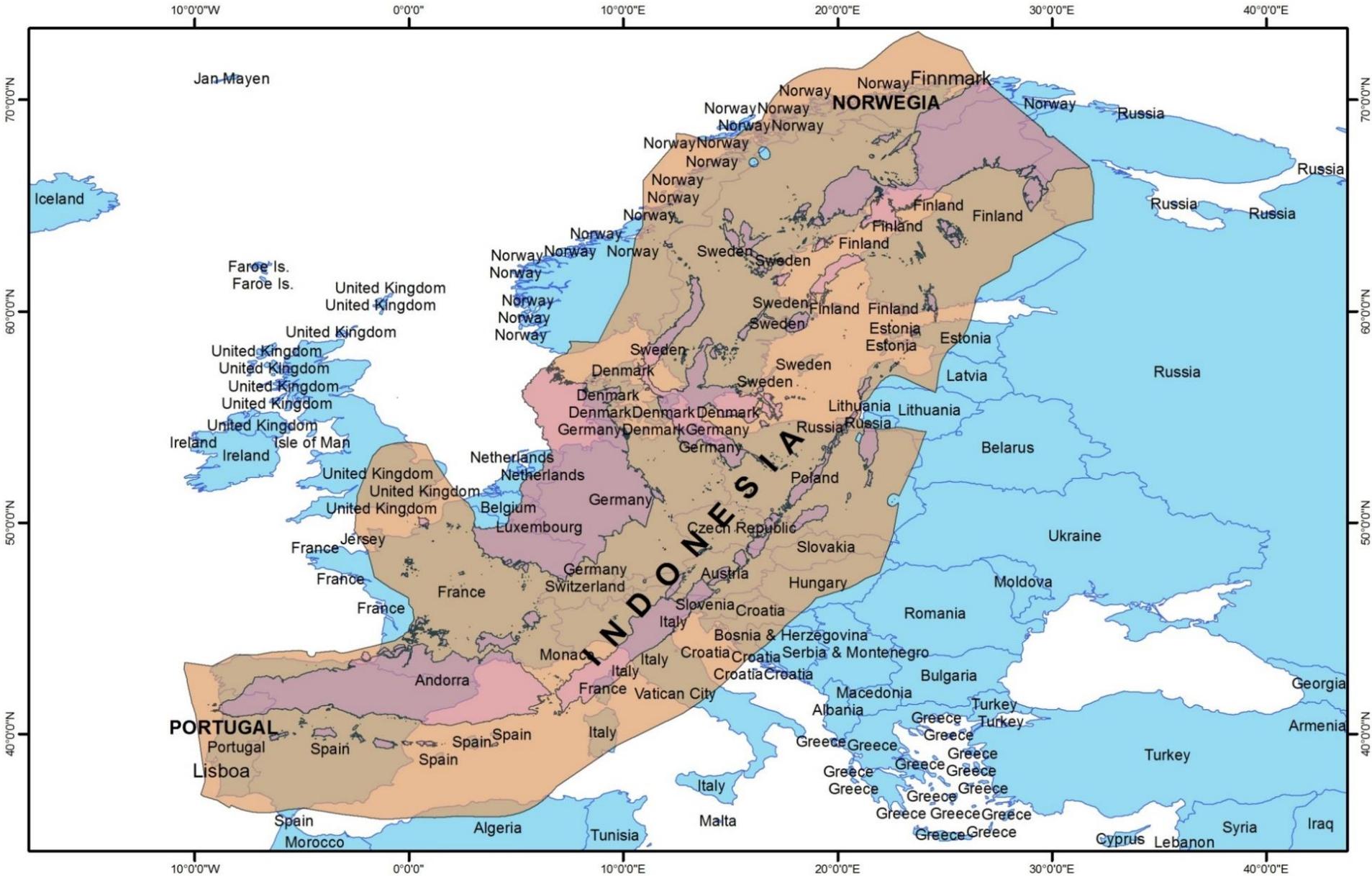
Indonesia archipelago has:

- The length of the coastline is 108,000 km
- Outside the waters of Indonesia 6,400,000 km²
- The number of islands 17,504 and 16,056 already have names

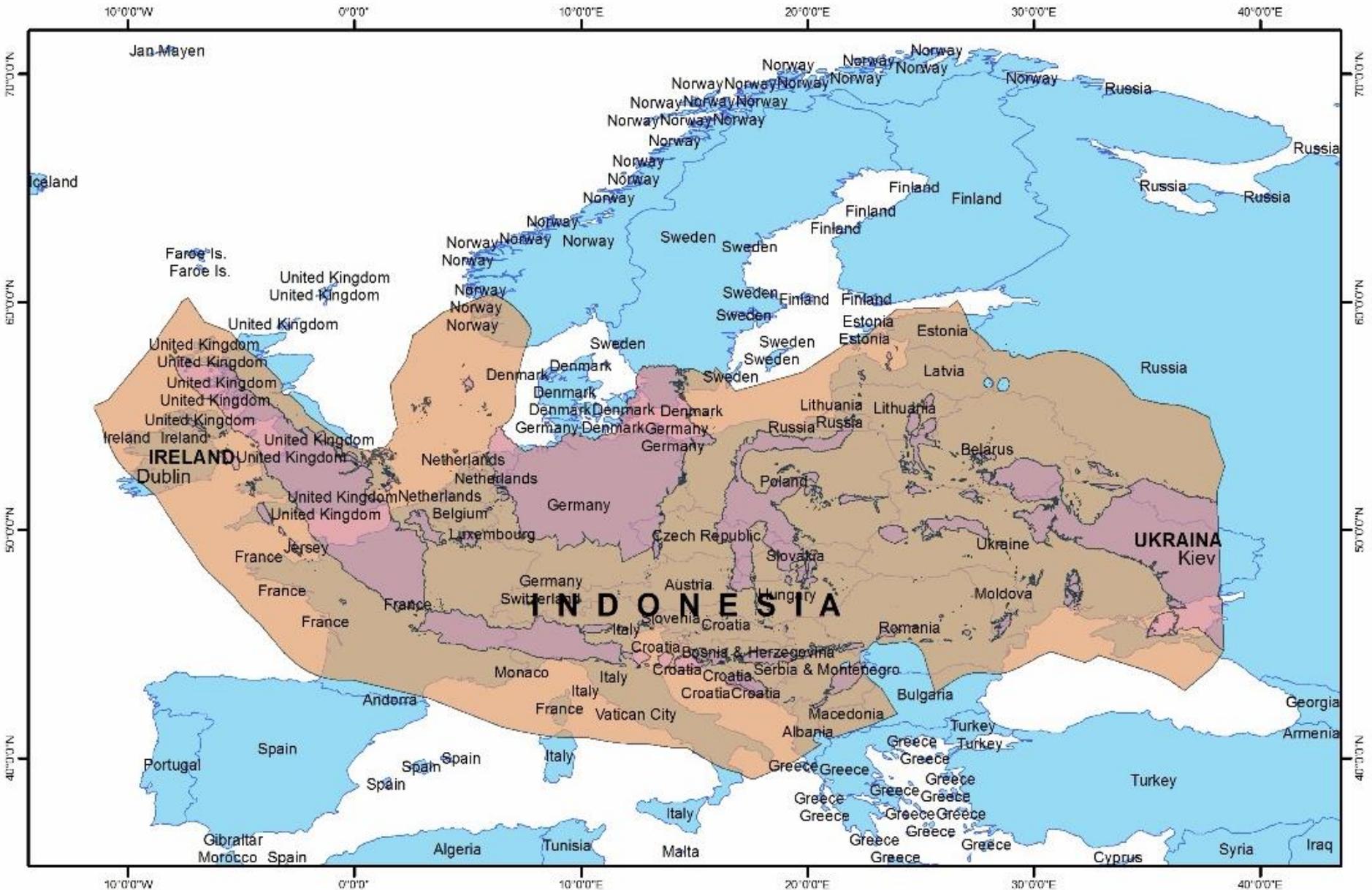
OVERLAY MAP OF INDONESIA TO UNITED STATES MAP



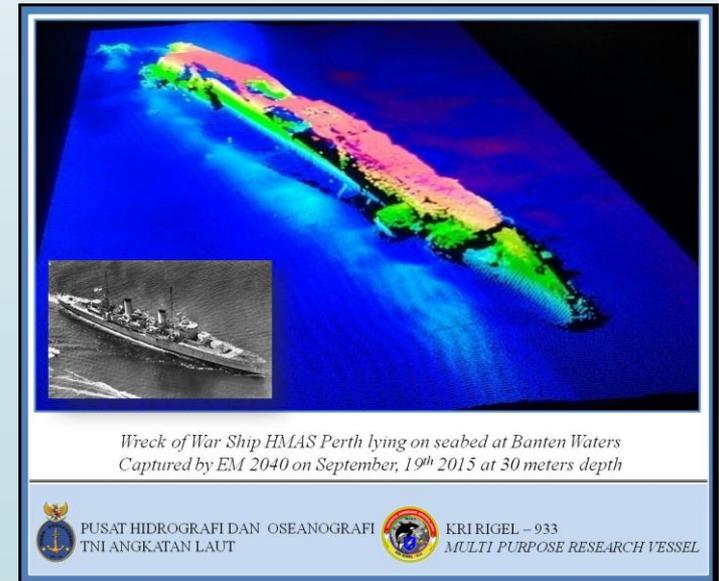
OVERLAY MAP OF INDONESIA TO EUROPE MAP



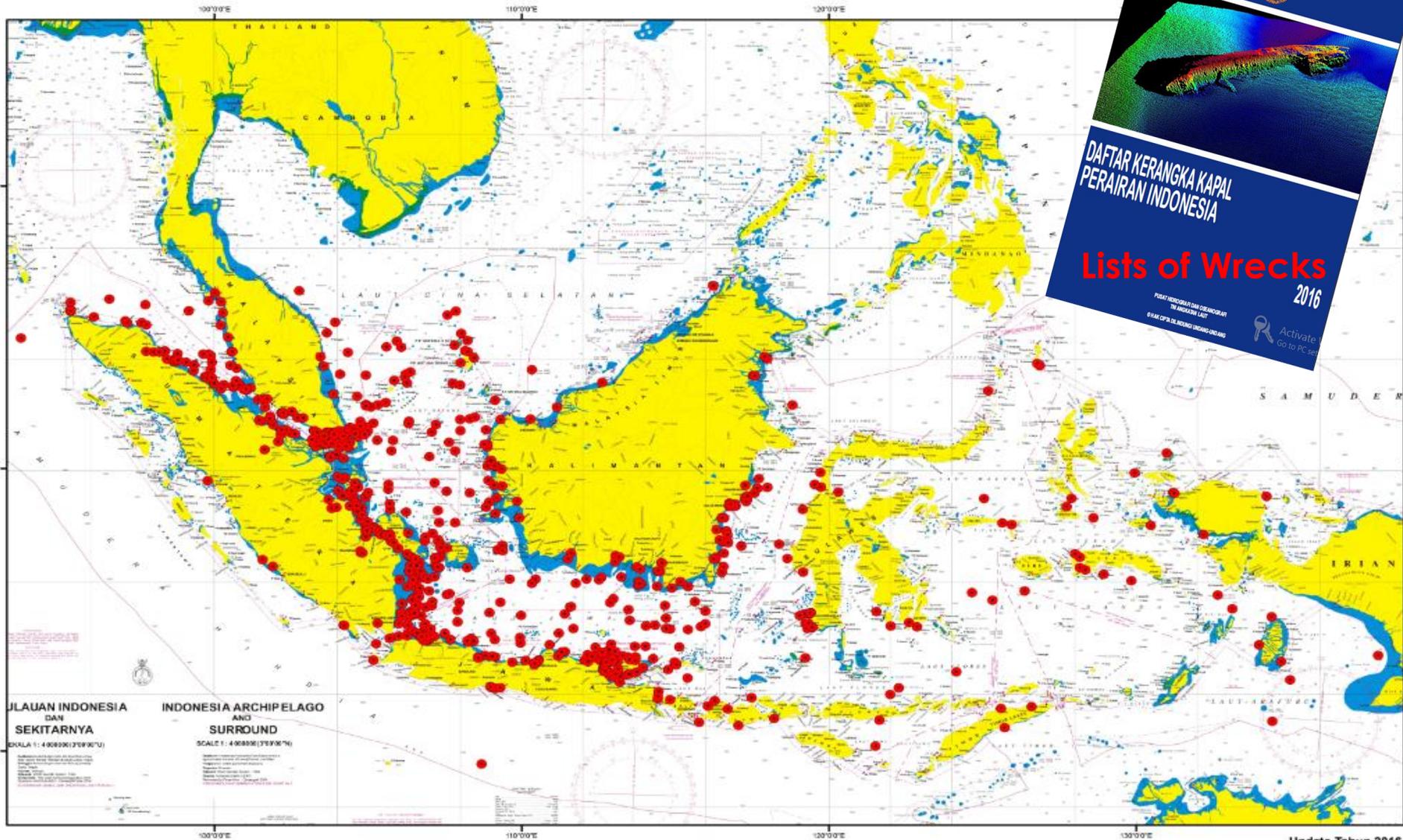
OVERLAY MAP OF INDONESIA TO EUROPE MAP



LEGAL STATUS OF THE INTERNATIONAL WARSHIPS WRECKS IN INDONESIA WATER

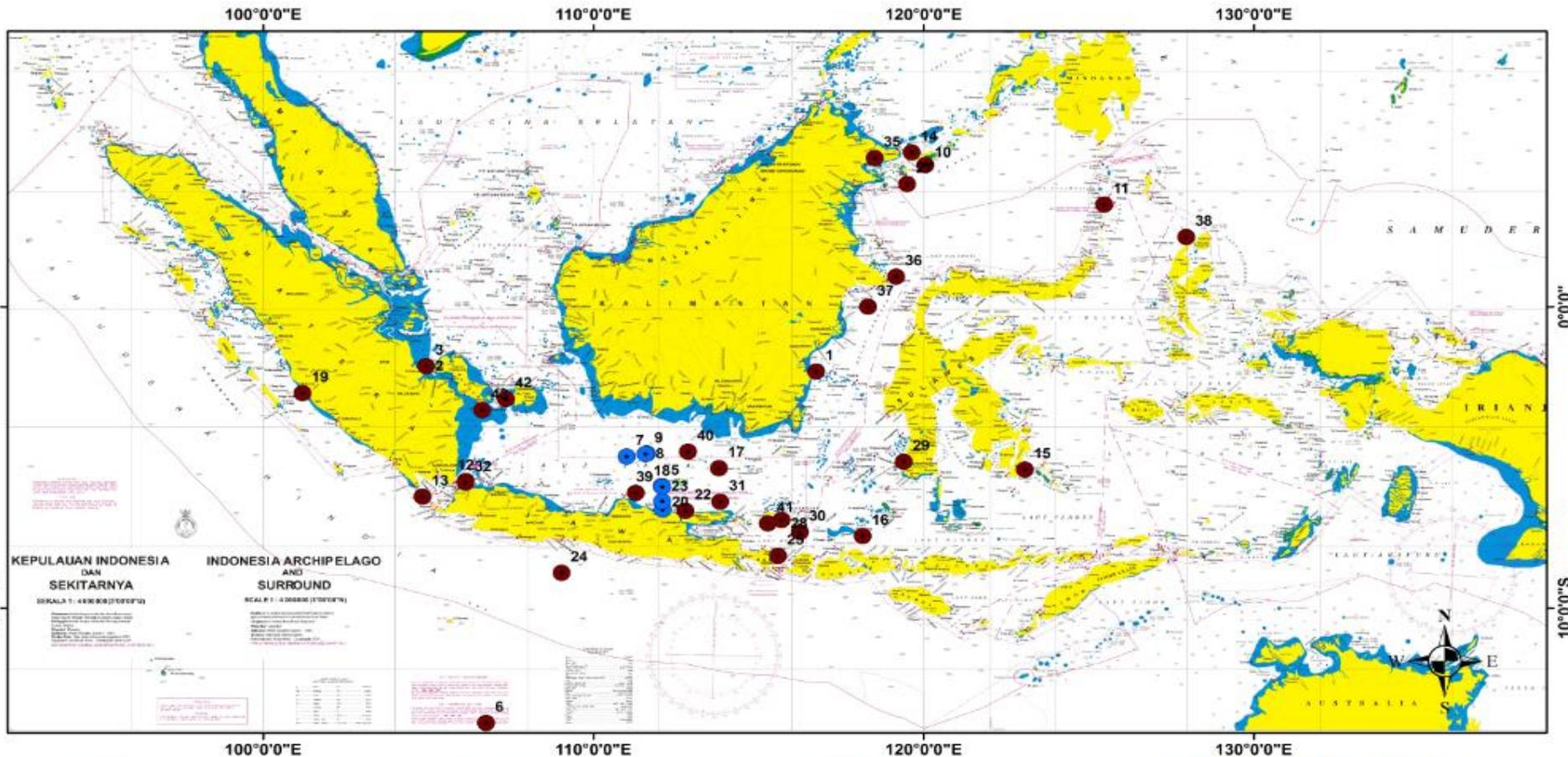


WRECK MAP IN INDONESIA WATERS



943 Wrecks

WARSHIP WRECK MAP IN INDONESIA WATERS



- 1) Amagiri
- 2) Asagumo
- 3) Ashigara
- 4) USS Bullhead (Tidak ada Posisi)
- 6) USS Edsall
- 10) Hayanami
- 11) Hokaze
- 12) USS Houston
- 13) I-60
- 14) Inazuma
- 15) Isonami
- 16) Isuzu

- 17) Itsukushima
- 19) Junyo Maru
- 21) HNLMS KVII (Tidak ada Posisi)
- 22) HNLMS KVIII (Tidak ada Posisi)
- 24) USS Langley
- 25) Usat Liberty
- 26) HMS Li Wo (Tidak ada Posisi)
- 27) Minasuki
- 28) Nadakaze
- 29) Natsushio
- 30) No.2
- 31) USS Perch

- 32) HMHS Perth
- 33) HNLMS piet Hein (Tidak ada Posisi)
- 34) USS Pope (Tidak ada Posisi)
- 35) USS S-36
- 36) SS Sierra Cordoba
- 37) Toho Maru
- 38) Tsugaru
- 39) U-168
- 40) U-183
- 41) U-537
- 42) HNLMS Vanghen
- 43) HNLMS Vannes

DI TETAPKAN SEBAGAI HISTORICAL WRECK
(BPI NO.28 TH 2017)

- 5) HNLMS De Ruyter
- 18) HNLMS Java
- 23) HNLMS Kortenaar

DI TETAPKAN SEBAGAI HISTORICAL WRECK
(BPI NO.31 TH 2017)

- 7) HMS Electra
- 8) HMS Encounter
- 9) HMS Exeter
- 20) HMS Jupiter



OUTLINE

- Definition
- International Laws
- National Laws
- Protection
- Legal Status Warship Wrecks
- Kesimpulan



International Laws

- ❖ UNCLOS 1982
- ❖ IMO Convention on Salvage 1989
- ❖ International Convention for the Unification of Certain Rules Concerning the Immunity of State Owned Ships 1926
- ❖ The Nairobi International Convention on the Removal of Wrecks 2007
- ❖ United Nations Convention on Jurisdictional Immunities of States and Their Property 2004
- ❖ UNESCO Convention on the Protection of Cultural Heritage 2001.

National Regulations

- ❖ The Law of The Republic of Indonesia Number 11 year 2010 concerning Cultural Heritage
- ❖ The Law of The Republic of Indonesia Number 32 Year 2014 concerning Marines
- ❖ Regulation of the Minister of Transportation Number RI Number PM 33 Year 2016 Concerning Salvage and/ Under Water Activities.
- ❖ Regulation of the Minister of Marines and Fisheries Number RI Number 17 Year 2008 Concerning Conservation Areas in Coastal Areas and Small Islands

**There are no national rules/regulations on managing
"warship wreck" in Indonesia waters**

What is the Legal Status of Warship Wrecks?

- Do warship and warship wreck have the same legal status which is having sovereign immunity?
- Is warship wreck still defined as a warship or even an active warship?
- Is warship included as archaeological and historical objects?

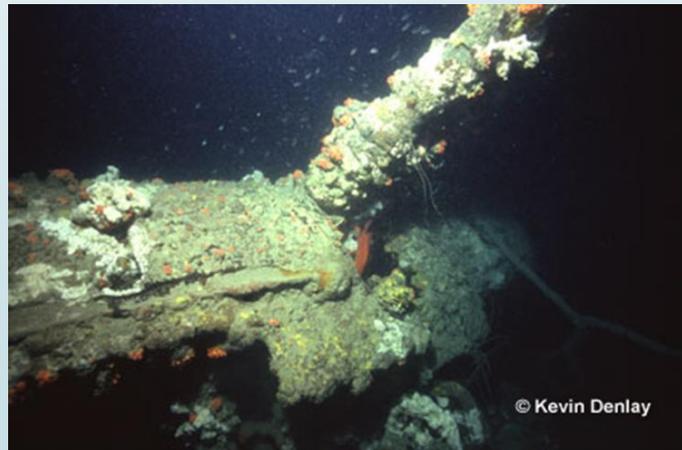


Figure 1: Looking from a lower angle at the face shields on *De Ruyter's* Bofors guns. This one is taken looking at the face from below and to the left. The twin barrels point out to upper right.



Figure 1: While the letter D is hidden by a small coral bush on left, the letters E and R of *De Ruyter's* name, as seen in historical photos on her stern, are clearly visible. A large gash or split runs down *De Ruyter's* port hull just to the right of the letter R.

DEFINITION

SHIP

- MARPOL Convention - Article 2 (4)

“Ship” means a vessel of any type whatsoever **operating** in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

- Nairobi Convention 2007 - Article 1 (2)

“Ship” means **a seagoing vessel** of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, **except** when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

State Vessel

- UNESCO Convention 2001 – Article 1 (8)

“State vessels and aircraft” means **warships, and other vessels or aircraft** that were **owned or operated by a State and used**, at the time of sinking, only for government non-commercial purposes, that are identified as such and that meet the definition of underwater cultural heritage.

WARSHIP

- **UNCLOS - Article 29**

“Warship” means a ship **belonging to the armed forces** of a State bearing the **external marks** distinguishing such ships of its nationality, **under the command of an officer** duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

SHIPWRECKS

- **Nairobi Convention 2007 - Article 1 (4)**

“Wreck”, following upon a maritime casualty, means: (a) a **sunken** or stranded **ship**; or (b) **any part of a sunken** or stranded ship, including any object that is or has been on board such a ship; or (c) **any object that is lost at sea** from a ship and that is stranded, sunken or adrift at sea; or (d) **a ship** that is about, or may reasonably be expected, **to sink or to strand**, where effective measures to assist the ship or any property in danger are not already being taken.

UNCLOS 1982

WARSHIP (UNCLOS - Article 29)

“Warship” means a ship **belonging to the armed forces** of a State bearing the **external marks** distinguishing such ships of its nationality, **under the command of an officer** duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

IMMUNITIES OF WARSHIPS (UNCLOS - Article 32)

With such exceptions as are contained in subsection A and in articles 30 and 31, **nothing** in this Convention **affects the immunities of warships** and other government ships operated for non-commercial purposes.

SOVEREIGN WRECK COULD LOSE HERS SOVEREIGN IMMUNITY STATUS IF:

- 1) It was abandoned by the State - There are two theories proposed, first that State expressly abandoned ownership over state vessel, and second, that abandonment is implied through State's inaction and passing of time. Expressive abandonment is what is generally accepted by national laws, as well is seen through state practices and municipal courts decisions. Implied abandonment on the other hand is rejected by majority of states firmly claiming that sovereign right over warship wrecks is neither extinguished by passing of time nor States inaction.
- 2) Taken by mutinous crew - UNCLOS 1982 regulates that acts of piracy done by such a warship shall be "assimilated as acts committed by a private ship", implying that sovereign immunity is lost.
- 3) The hostal takeover by enemy force - The transfer of title occurs trough capture of warship in ongoing battle before it actually sinks.

IMO International Convention On Salvage 1989

STATE-OWNED VESSELS Article 4 (1)

- ▶ This Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless that State decides otherwise.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES CONCERNING THE IMMUNITY OF STATE-OWNED SHIPS 1926

Article 3

- ▶ The provisions of the two preceding Articles shall not apply to ships of war, State owned yachts, patrol vessels, hospital ships, fleet auxiliaries, supply ships and other vessels owned or operated by a State and employed exclusively at the time when the cause of action arises on Government and non-commercial service, and such ships shall not be subject to seizure, arrest or detention by any legal process, nor to any proceedings in rem.

THE NAIROBI INTERNATIONAL CONVENTION ON THE REMOVAL OF WRECKS 2007

Article 3 (2)

A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4.

When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention.

Article 4 (2)

This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

United Nations Convention on Jurisdictional Immunities of States and Their Property 2004

STATE IMMUNITY - Article 5

- ▶ A State enjoys **immunity, in respect of itself and its property**, from the jurisdiction of the courts of another State subject to the provisions of the present Convention.

SHIPS OWNED OR OPERATED BY A STATE - Article 16

- ▶ 1. Unless otherwise agreed between the States concerned, **a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State** which is otherwise competent in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.
- ▶ 2. **Paragraph 1 does not apply to warships**, or naval auxiliaries, nor does it apply to other vessels owned or operated by a State and used, for the time being, only on government non-commercial service.

UNESCO Convention on the Protection of Cultural Heritage 2001

Article 2 (8)

- Consistent with State practice and international law, including the United Nations Convention on the Law of the Sea, **nothing in this Convention shall be interpreted as modifying the rules of international law and State practice pertaining to sovereign immunities, nor any State's rights with respect to its State vessels and aircraft.**

The Law of The Republic of Indonesia Number 32 Year 2014 concerning Marines

Article 1 (8) **Marine Management** is the activity of organizing, cultivating, and supplying Resources

Article 1 (10) **Marine Environmental Protection** is carried out to conserve Marine Resources and prevent pollution and / or damage in marine environment including **marine conservation**, control of marine pollution, management of marine disasters, overcoming pollution, as well as pollution prevention.

Article 51 (1) **The government approves the marine conservation policy** as an inseparable part of the Protection of the Marine Environment.



Regulation of the Minister of Transportation Number RI Number 33 Year 2016 Concerning Salvage and/ Under Water Activities.

Article 8 (1) The ship owner and / or the captain must report immediately his shipwreck located in Indonesian waters to Harbormaster at the nearest port

Article 8 (5) If the shipwreck or its cargo disrupts safety navigation, the Head of Port Authority/ Harbormaster (the Office of the Technical Implementation Unit of the Port) determines the level of safety navigation disturbance

Article 13 (1) The ship owner is required to remove the shipwreck and / or the cargo to another place or dumping area determined by the Head of Port Authority/ Harbormaster (the Office of the Port Technical Implementation Unit)

Regulation of the Minister of Marines and Fisheries Number RI Number 17 Year 2008 Concerning Conservation Areas in Coastal Areas and Small Islands

Article 1 (21)

A **Marines Conservation Area (MCA)** is a protected area of maritime customs and cultures that has a value of special history and archaeology, maritime historical sites, places of religious or customary rituals, and their nature which is in line with the efforts of coastal and small islands conservation.

Article 7

The types of MCA consist of: Protected maritime custom areas; and **Marines Cultural Protection Areas**.

Article 8 (2)

(a) MCA can be designated as a maritime cultural protection area if it meets the criteria: **spots of sinking vessels that have special archaeological-historical value**.

Article 20

The determination of MCA is carried out through some stages: initiative proposals of MCA candidates; assessment of the feasibility of prospective MCA; and determining MCA.

Protection

- Marines Conservation Area
- Cultural Heritage
- Notice to Marine (Charting)
- Navigational Warning
- UNCLOS (Article 303)

ARCHAEOLOGICAL AND HISTORICAL OBJECTS FOUND AT SEA - Article 303

1. States have the **duty to protect objects** of an **archaeological and historical nature** found at sea and shall cooperate for this purpose.

3. **Nothing in this article affects the rights of identifiable owners**, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.



USS Liberty Wreck
Tulamben - Bali Island (Diving Spot)

REGULATIONS OF THE IHO FOR INTERNATIONAL (INT) CHARTS and CHART SPECIFICATIONS OF THE IHO

IHO PUBLICATION S-4,
APRIL 2017

INTERNATIONAL HYDROGRAPHIC
ORGANIZATION



REGULATIONS OF THE IHO FOR
INTERNATIONAL (INT) CHARTS
AND
CHART SPECIFICATIONS OF THE IHO

Draft Edition 4.7.0 – April 2017

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MONACO

B – 420

Page 4

Chart Specifications of the IHO

Medium and Large-scale Charts

- i. **Historic wrecks.** Many nations have designated certain wrecks to be of historical or cultural importance (for example: due to age; as sea graves), to protect the wrecks from unauthorised interference (for example: by diving; salvage; anchoring). Such wrecks must be indicated, if required, by a magenta legend '*Historic Wk*', or equivalent, adjacent to the symbol. Any wreck detail and associated buoyage must be shown in black, including the abbreviation '*Wk*', where appropriate. If there is an associated area in which restrictions apply, this must be shown, if required, by the symbol for a restricted area (N2.1) on the largest scale charts, with the actual restrictions (for example: anchoring prohibited; fishing prohibited) symbolized in the usual way within or adjacent to the area, for example:



An explanatory note may be added, in magenta, if required, for example:

HISTORIC WRECKS

The sites of historic wrecks are protected from unauthorised interference. Diving, fishing, anchoring and salvage are prohibited.

B-422.1

Large scale charts. Where the scale is large enough, the outline of a wreck must be shown as a continuous line if the hull never covers, dashed line if it covers and uncovers, or danger line if it is always submerged, together with the abbreviation '*wk*'. Heights above height datum, or drying heights above Chart Datum, may be shown in brackets, and depths may be shown within the danger line. Land, intertidal or blue tint must be shown within the outline as appropriate.



K20

Legal Status of warship wrecks

- Warship get sovereign immunity? = Yes
- Is warship wreck the same as warship? = No
- Does warship wreck still meet the definition of active warship? = No
- Is the status of sovereign immunity still owned by the Warship Wrecks? =?
- Are warship wrecks archaeological and historical objects? = Need further assessment.

Resume

Warship wrecks are not active warships, so they do not have sovereign immunity status (UNCLOS does not explain ship wrecks status)

If the Indonesian government determines that the wrecks are archaeological and historical objects, the private rights to these wrecks become the property of the flag State

Protection towards warship wrecks can be in the form of Maritime Conservation Areas, Cultural Heritage, Notice to Mariners, Navigation Notices, etc

The Indonesian government may impose national legal provisions on warship wrecks, except as otherwise determined by UNCLOS.



Thank YOU

Terimakasih

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