



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



CONTINENTAL SHELF ACT, 2012

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
International Maritime Law at the IMO International Maritime Law
Institute**

Submitted By: Obiora Bede Anyikwa (Nigeria)

Supervisor: Dr. Norman Martinez

Academic Year 2011/2012

TABLE OF CONTENTS

	Table of Contents	i
	Dedication	ii
	Acknowledgement	iii
1	Introduction	1
1.1	The Legislative Lacunae in Nigeria on Continental Shelf Regime	2
1.2	Condition Precedent for the Establishment of the Extended Continental Shelf	3
1.3	Legal Basis for the Act	4
1.4	Procedure for Incorporating International Conventions into the Nigerian Law	5
1.5	Method of Presentation	6
2	Explanation of the Draft Text	7
3	Conclusion	8
4	Continental Shelf Act	10

DEDICATION

*To my wife, Chinyere, my heartbeat
To my children; Kamsy, Eloka and Daaluchukwu, my future*

ACKNOWLEDGEMENTS

I thank specially the Almighty God for His mercy, inspiration and guidance for the successful completion of this project, study and protection of my family.

I would like to express sincere gratitude to my supervisor, Dr. Norman Martinez, for his valuable assistance, suggestions and scholarly comments, without which this drafting project would not have been put in its present form. I am also grateful to the Director of IMLI, Professor David J Attard and other lecturers: Mr. Ruben Maceda, Ms. Elda Belja and Mr. Riyaz Hamza for their encouragement and advice.

I extend my appreciation to my nominating authority, the Nigerian navy, for the sponsorship of this programme. Thanks to my colleagues in IMLI especially Ayuba Mekaino Yakubu, Herbert Izimor Anyiam, Walter Antonio, Martha Sesay Amerlia and Naa Ayeley Akwei-Aryee for their support and assistance.

I shall however remain ever indebted to my family for enduring my absence throughout the period of this LL M. programme.

CONTINENTAL SHELF ACT 2012

EXPLANATORY NOTE

1. Introduction

Over the years, littoral nations of the world have regarded the sea as one of their greatest assets on which they depend for economic development. Indeed the needs of man have led him to exploit sea resources as a means of livelihood. The outcome of this exploitation has affirmed the importance of the maritime environment as a vital means of sustenance and projection of national interest. The requirement for States to govern the economic exploitation of the sea resources, management of marine pollution and sea transport have been recognized, culminating in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹

Nigeria being a State Party to UNCLOS² has a maritime domain over which it has certain rights and obligations in accordance with the Convention. These maritime zones include: internal waters,³ territorial sea,⁴ contiguous zone,⁵ exclusive economic zone (EEZ),⁶ continental shelf⁷ and subject to certain conditions extended continental shelf.⁸ These maritime domains are of vital importance for security and economic reasons to Nigeria, a State strategically located on the West Coast of Africa in the Gulf of Guinea. The importance of this is reflected in the specific provision in the Nigerian Constitution which provides that:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in,

¹ United Nations Convention on the Law of the Sea, Montego Bay, Jamaica, 10 December 1982. In force 16 November 1994, 162 ratifications, < <http://treaties.un.org/Pages/viewDetailsIII.aspx?sr=>> 16 February 2012.

² Nigeria became a State Party to UNCLOS on 14 August 1986.

³ Article 8, UNCLOS.

⁴ Article 3, Ibid.

⁵ Article 33(2), Ibid.

⁶ Article 57, Ibid.

⁷ Article 76(1), Ibid.

⁸ Article 76(6), Ibid.

*under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.*⁹

1.1 The Legislative Lacunae in Nigeria on Continental Shelf Regime

Presently, Nigeria has no comprehensive legislation that covers its maritime zones, instead it has pieces of legislation on some of the maritime zones. These legislations are: National Inland Waters Navigation Act 1997,¹⁰ Territorial Waters (Amendment) Act 1998,¹¹ Exclusive Economic Zone Act 1978¹² and Petroleum Act 1969.¹³ Nigeria has no legislation in respect of the continental shelf giving effect to the provisions of UNCLOS. The only provision in the Nigerian legislation on continental shelf is the Petroleum Act 1969 that describes the area in terms of depth in accordance with Article 2 of the 1958 Continental Shelf Convention.¹⁴ Section 15(1) of the Petroleum Act defines Nigeria continental shelf as follows:

Continental shelf means the seabed and subsoil of those submarine areas adjacent to the coast of Nigeria the surface of which lies at a depth no greater than two hundred meters (or, where its natural resources are capable of exploitation, at any depth) below the surface of the sea, excluding so much of those areas as lies below the territorial waters of Nigeria.

⁹ Section 44(3) of the 2011 Constitution of the Federal Republic of Nigeria (as amended) assented by the President on 4 March 2011.

¹⁰ Enacted on 1 January 1996, the Act in section 29 delineates Nigeria's internal waters in accordance with Article 8 (1) UNCLOS.

¹¹ Enacted on 8 April 1967, amended on 1 January 1997, the Act in section 1 (1) defines the territorial waters of Nigeria in line with Article 3 UNCLOS but failed to regulate other aspects like right of innocent passage.

¹² Enacted on 2 October 1978, the Act proclaims the Nigeria's EEZ in section 1 (1) in line with Article 57 UNCLOS while all minerals in the area was vested on Government of Nigeria. The Act did not regulate the rights and obligations of Nigeria in relation to other States under UNCLOS.

¹³ Enacted on 27 November 1969, the Act is for economic purposes only. This is reflected in its long title: "An Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable there from in the Federal Government and for all other matters incidental thereto"

¹⁴ Adopted in Geneva, Switzerland, on 29 April 1958, in force 10 June 1964 with 58 ratifications; <<http://treaties.un.org/Pages/viewDetails.aspx?sr>> 16 February 2012.

This definition in Nigerian legislation lacks the geographical and distance criteria of 200nm of the seabed and subsoil of the submarine areas provision of UNCLOS. Article 76 (1) of UNCLOS provides that:

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

The Nigerian description of its continental shelf is not only contrary to the UNCLOS provision but also customary international law. Although the continental shelf exists *ipso facto* and *ab initio* and does not need proclamation,¹⁵ there is need for legislation to regulate Nigeria's rights and duties over its continental shelf as well as its obligations to other States.

Similarly, Article 76(8) of UNCLOS provides that a coastal State, subject to certain conditions, may claim a continental shelf up to 350nm. Nigeria being a coastal State,¹⁶ with a natural prolongation of its land territory to the outer edge of its continental margin could extend its continental shelf up to 350nm from the present 200nm. In order to accomplish this, there has to be an application to the United Nations Commission on the Limits of the Continental Shelf (UNCLCS) for the extension of Nigeria's continental shelf by an additional 150nm.

1.2 Condition Precedent for the Establishment of the Extended Continental Shelf

The coastal State shall delineate the outer limits of its legal continental shelf where that shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, by straight lines not exceeding 60 nautical miles in length,

¹⁵ Article 77 (3), UNCLOS provides that: "The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or any express proclamation."

¹⁶ The maritime States of Cameroon, Republic of Benin, Equatorial Guinea and Sao Tome & Principe surround Nigeria by virtue of its location.

connecting fixed points, defined by coordinates of latitude and longitude.¹⁷ Information on the limits of the continental shelf beyond 200nm from the baselines from which the maritime zones are measured shall be submitted by the coastal State to the UNCLCS set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to the coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.¹⁸ The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, permanently describing the outer limits of its continental shelf. The Secretary-General shall give publicity thereto.¹⁹

UNCLOS established the UNCLCS,²⁰ which consists of 21 members who are elected by State Parties to the Convention from their nationals having due regard for the need to ensure equitable representation.²¹ The functions of the Commission are:

- a. To consider the data and other material submitted by coastal States concerning the outer limits of the continental shelf in areas where those limits extend beyond 200nm, and to make recommendations in accordance with Article 76 and the statement of understanding adopted on 29 August 1980 by UNCLOS.
- b. To provide scientific and technical evidence, if requested by the coastal State concerned during the preparation of the data.²²

Where a coastal State intends to establish the outer limits of its continental shelf beyond 200nm, it shall submit particulars of such limit to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of the Convention for that State.²³ The Commission's recommendations

¹⁷ UNCLOS, Article 76 (7).

¹⁸ Ibid., Article 76 (8).

¹⁹ Ibid., Article 76 (9).

²⁰ Ibid., Article 76(8) and Annex II Article 1.

²¹ Ibid., Annex II Article 2(1).

²² Ibid., Annex II Article 3.

²³ Ibid., Annex II Article 4. The original deadline for submission by State was 15 November 2004, but this was extended to 12 May 2009, ten years after the Commission had adopted its scientific and technical guidelines. However, this strict compliance has been relaxed especially for developing States. This is contained in the decision [of the eighteenth meeting of States parties held in New York, 13-20 June 2008] regarding the workload of the UNCLCS and the ability of States, particularly developing States, to fulfill the requirements of Article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72

are to be submitted in writing to the coastal State that made the submission and to the Secretary-General of the United Nations which shall be final. Nigeria has submitted its application to the Commission in accordance with the provisions of UNCLOS.²⁴

1.3 Legal Basis for the Act

The main aim of this maritime legislation drafting project is to define Nigeria's continental shelf in line with the provisions of UNCLOS and customary international law. The Act aims to regulate the various activities as regards rights and obligations of Nigeria with other States and competent international organizations particularly in the light of contemporary developments relating to the exploration and exploitation of natural resources, legal status of the superjacent waters and air space as well as laying of submarine cables and pipelines. Other areas that will be regulated in the Act in line with UNCLOS are: artificial islands, installations and structures, protection of installation in designated areas, drilling, tunneling, safety of navigation and its enforcement. Particular emphasis will be placed on the protection and preservation of the marine environment, marine scientific research and delimitation with States opposite or adjacent to Nigeria's coast.

Furthermore, the Act shall delimit the Nigeria extended continental shelf, regulate the activities in the area especially on payments and contributions to the International Seabed Authority and publication of charts and list of geographical coordinates in line with the Convention. It is intended that the Act will provide the legal basis for the extended continental shelf in support of Nigeria's application before the UNCLCS.

1.4 Procedure for Incorporating International Conventions into the Nigerian Law

Nigerian legislative requirements are dualist in nature; therefore there is the requirement for separate domestic legal instrument, created by the National Assembly to give effect to

paragraph (a) and SPLOS/183, 20 June 2008. <<http://www.un.org/Depts/los/CLC-news/commission-submission.htm>> 29 October 2011.

²⁴ Nigeria submitted her application to the Commission on 7 May 2009. As of 7 October 2011, 57 submissions have been made to the Commission and the Commission had adopted 14 recommendations with regard to 16 coastal States.

an international convention, without which it cannot have the force of law. The position of Nigerian law on the application of international conventions or treaties is laid down by the Constitution. It provides that; “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”²⁵ Furthermore, it provides that, “The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative list for the purpose of implementing a treaty.”²⁶

The implication of the aforementioned provisions is that until a separate law is passed by both Houses of the Nigerian National Assembly, an international treaty shall remain unenforceable in Nigerian Courts. With regards to maritime conventions, Nigerian law²⁷ reposes general responsibility on the Minister of Transport to have the general superintendence on the matters relating to maritime conventions. The Minister of Transport after drafting the Bill will forward it to the Minister of Justice for the final scrutiny after which the Bill will be forwarded to both Houses of the National Assembly. The Bill will go through the first, second and third readings of the two Houses of the National Assembly. If the Bill does not encounter any opposition in the two Houses, a committee will be set up to look into the Bill. After the committee stage, there will be a public hearing where members of the public, stakeholders and other relevant government agencies will be invited to make their contribution to the Bill. Once this process is concluded, the Bill is passed into law and forwarded to the President for assent. An Act is passed when the president assents to the Bill, and comes into force on the date when the enactment was passed if there is no other provision to the contrary.²⁸ The Act is thereafter, published in the official Gazette and is applicable as part of the domestic laws of the Federal Republic of Nigeria.

1.5 Method of Presentation

²⁵ Section 12(1) of the Nigerian Constitution.

²⁶ Section 12(2), Ibid.

²⁷ Merchant Shipping Act 2007.

²⁸ Chapter 123, Section 2 of the Interpretation Act of the Federal Republic of Nigeria (1964 No. 1).

The Continental Shelf Act is drafted in a manner that reflects the arrangement of legislation in Nigeria. This maritime legislation drafting project comprises of ten parts with thirty five sections. The main parts cover the general provisions on exploration and exploitation of natural resources, protection and prevention of the marine environment, marine scientific research and the delimitation of continental shelf with opposite and adjacent States. Part VI establishes the Nigeria continental shelf up to 350 nautical miles with the publication of the geographical coordinates and charts in the schedule. The Act is accompanied by an explanatory memorandum, model of Attestation by the Clerk of the National Assembly and the Presidential Assent.

2. Explanation of the Draft Text

Part I deals with the preliminaries of the Continental Shelf Act. It specifies the short title and the date of entry into force of the Act. In addition, this part provides for the definition of the main terms used as well as the scope of application of the Act.

Part II is the general provisions which regulate the exploration and exploitation of the natural resources which is the exclusive sovereign rights of Nigeria in line with Article 77 of UNCLOS. This part of the Act enacted most of the part VI on the legal regime of continental shelf under UNCLOS like the legal status of the superjacent waters and airspace, the rights and freedoms of other States, the construction, authorization and the regulation of construction of artificial islands, installations and structures. Under this part, provisions are made for the protection of installations in the designated areas, drilling as well as tunneling.

Part III incorporates Part XII UNCLOS on the protection and preservation of the marine environment. It deals with the exploration of natural resources pursuant to the duty to

protect and preserve the marine environment which covers areas such as discharge or leakage of oil, defence and obligation to report such leak or discharge. It deals with measures relating to any maritime casualty and action to mitigate the damage in case of occurrence. Due to the importance of protection and preservation of marine environment, this part specifically provides penalties for the violations.

Part IV domesticated Part XIII of UNCLOS on marine scientific research. It provides for the obligation for Nigeria to grant its consent for marine scientific research and the circumstances where such consent shall be withheld. This part imposes a duty on other States or competent international organizations to provide certain information, the conditions for suspension of the research, discretion of the Nigerian Government and a fine in the event of non compliance.

Part V deals with maritime boundary delimitation of States that are opposite or adjacent to Nigeria.

Part VI proclaims the Nigerian Extended Continental Shelf in accordance with Article 76(6) of UNCLOS. It deals with the publication of charts and lists of geographical coordinates which are published in the schedule to the Act. The payments and contributions to the International Seabed Authority are covered in this part.

Part VII covers offences under the Act and the punishment in the event of conviction. It also provides for the type of the court that has jurisdiction for the effective enforcement of the Act.

Part VIII provides for the enforcement powers involving actions for the violations of the Act.

Part IX gives power to the Minister of Marine Transport or appropriate authority to make regulations for the effective administration of the Act.

Part X is the final part of the legislation which provides for some miscellaneous acts like relief from prosecution for the maritime enforcement officer, or any other person

designated to perform of any duty under the Act, repeals and amendments and importantly, supremacy of the Act to any existing maritime zone legislation in the event of inconsistency.

3. Conclusion

Nigeria is a coastal State having five maritime zones²⁹ which are provided for under the 1982 UNCLOS. These maritime areas serve several purposes for Nigeria; providing the resources for sustenance of its economy especially gas and petroleum resources, at the same time a means for transportation of goods and services inter alia. Despite the importance of these maritime zones, Nigeria has no comprehensive maritime legislation that governs these maritime areas.

There is no existing legislation on the continental shelf except the provisions in the Petroleum Act of 1969 that defines the continental shelf, and grants the Minister of Petroleum the power to grant a licence for petroleum exploration and exploitation. These provisions based on the 1958 Continental Shelf Convention are obsolete and incapable of meeting the present demands. It is observed that the existing law has been superseded by the later international convention, 1982 UNCLOS to which Nigeria is a Party. In addition, Nigeria has submitted an application to the UNCLCS for the extension of its continental shelf to 350 nautical miles without a legal framework for the application.

In order to remedy these anomalies, Nigeria will need to review the existing maritime laws and enact a new legislation providing the framework for the incorporation of relevant provisions of UNCLOS in respect of the continental shelf. This Continental Shelf (draft) Act is therefore intended to provide the juridical bases for the continental shelf of Nigeria in line with the UNCLOS.

²⁹ The five maritime zones are: internal waters, territorial waters, contiguous zone, exclusive economic zone and continental shelf.

CONTINENTAL SHELF ACT 2012

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

1. Short Title.
2. Commencement.

3. Interpretation.
4. Scope of application.

PART II

GENERAL PROVISIONS

5. Exploration and exploitation of continental shelf.
6. Legal status of the superjacent waters and air space.
7. Artificial islands, installations and structures.
8. Protection of installations in designated areas.
9. Drilling in the continental shelf.
10. Tunnelling.

PART III

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

11. Exploitation of natural resources.
12. Discharge or leakage of oil.
13. Defence of discharge or leakage of oil.
14. Obligation to report discharge or leak.
15. Measures relating to any maritime casualty.
16. Action to mitigate damage.
17. Violations.

PART IV

MARINE SCIENTIFIC RESEARCH

18. Consent required for marine scientific research.
19. Right to withhold consent.
20. Duty to provide certain information.
21. Duty to comply with certain conditions.
22. Suspension or cessation of marine scientific research.
23. Discretion of Government.
24. Fine.

PART V

DELIMITATION OF CONTINENTAL SHELF

25. Delimitation of continental shelf with States opposite or adjacent coasts.

PART VI

EXTENDED CONTINENTAL SHELF

26. Delimitation of the outer limit of the continental shelf.
27. Charts and list of geographical coordinates.
28. Payments and contributions to the International Seabed Authority.

PART VII

OFFENCES AND JURISDICTION

29. Offences and penalties.

30. Jurisdiction.

PART VIII

ENFORCEMENT

31. Enforcement.

PART IX

IMPLEMENTATION OF THE PROVISIONS OF THE ACT

32. Power to make regulations.

PART X

MISCELLANEOUS

33. Relief from Prosecution.

34. Repeals and amendments.

35. Supremacy of the Act.

Schedule

Explanatory memorandum

Model of attestation

Notification

Presidential Assent

ACT NO. OF 2012
OF THE FEDERAL REPUBLIC OF NIGERIA

CONTINENTAL SHELF ACT

BE IT ENACTED BY THE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC
OF NIGERIA AND THE AUTHORITY OF SAME AS FOLLOWS:

*AN ACT TO MAKE PROVISION AS TO THE EXPLORATION AND EXPLOITATION
OF THE CONTINENTAL SHELF, THE PREVENTION OF POLLUTION IN*

*CONSEQUENCE OF WORKS IN CONNECTION WITH THE CONTINENTAL SHELF,
PROCLAMATION OF THE EXTENDED CONTINENTAL SHELF, AND FOR MATTERS
CONNECTED WITH THOSE PURPOSES*

**PART I
PRELIMINARY**

1. Short title

This Act shall be cited as the Continental Shelf Act, 2012.

2. Commencement

This Act shall come into operation on the xx of xx 2012.

3. Interpretation

In this Act unless the context otherwise requires:

“appropriate authority” means the Federal Government of Nigeria or any of its Agencies so designated;

“baselines” has the same meaning as is assigned to it by the National Inland Waters Act;

“Convention” means the United Nations Convention on the Law of the Sea signed at Montego Bay on the 10 December, 1982 and its subsequent amendments and Protocols;

“continental shelf” means the seabed and subsoil of the submarine areas that extend beyond Nigeria’s territorial sea throughout the natural prolongation of Nigeria’s land territory to the outer edge of the continental margin, or to distance of 200 nautical miles from the baselines from which the breadth of Nigeria’s territorial sea is measured where the outer edge of the margin does not extend up to that distance;

“Federal High Court” is the Federal High Court established under section 6 subsection (5)(c) of Constitution of Nigeria 2011;

“installation or structure” includes-

- (a) any offshore drilling unit, production platform, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredger, floating crane, pipelining or other barge or pipeline, anchor, anchor cable or rig pad used in connection therewith;
 - (b) any ship, anchor, anchor cable or rig pad used in connection therewith;
- and

(c) any other work or works as may be prescribed;

“maritime casualty” means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage or imminent threat of material damage to a vessel or cargo;

“Minister” means Minister of Marine Transport;

“natural resources” means-

- (a) the mineral and other non-living resources of the seabed and subsoil;
- (b) living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the sub soil; and
- (c) living and non-living resources found within the continental shelf, and the activities for the economic exploitation and exploration of the shelf, such as the production of energy from the water, currents and winds;

“nautical mile” means the International Nautical Mile of 1852 meters;

“Nigeria” has the meaning as is assigned to it by section 2 of the Constitution of the Federal Republic of Nigeria;

“oil” means:

- (a) Crude oil, diesel oil, fuel oil or lubricating oil; or
- (b) Any other description of oil which is prescribed by the Minister of Petroleum by order in the Gazette to be oil for the purposes of this Act;

“pollutant” means any substance which, if introduced into the sea, is liable to create hazards to human health or to harm living resources in the sea or other marine life, or to damage amenities or interfere with other legitimate uses of the sea and, without limiting the generality of the foregoing, includes any substance that is prescribed by the Minister of Environment by order in the Gazette to be a pollutant for the purposes of this Act;

“ship” includes every description of vessel, boat, hydrofoil boat, air cushion vehicle, submersible and floating craft of any type used or capable of being used solely or partly for navigation in, on, through or immediately above water without regard to methods or lack of propulsion;

“waste” includes:

- (a) any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted, deposited or dumped in the marine environment in such volume, composition or manner as to cause an alteration of the environment; or
- (b) any matter which is prescribed by the Minister of Environment by order in the Gazette to be waste for the purposes of this Act.

4. Scope of application

1. This Act shall apply to-
 - (a) the continental shelf as defined in section 3 of this Act;
 - (b) all the activities in the continental shelf; and
 - (c) regulations made by the appropriate authority or any person designated in accordance with Part IX of this Act.
2. The outer limits of the continental shelf beyond 200nm established in Part IV and published in the Schedule to this Act shall be governed by the Convention and customary international law.

PART II

GENERAL PROVISIONS

5. Exploration and exploitation of continental shelf

1. Nigeria has sovereign and exclusive rights over its continental shelf for the purpose of exploring and exploiting its natural resources.
2. The rights referred to in section 5 (1) are exclusive in the sense that if Nigeria does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the Federal Government of Nigeria and such power shall be exercised by such appropriate authority as the Government may designate in that behalf either generally or in any specific case.
3. The application of the provisions of subsection (1) of this section may be modified by Nigeria by virtue of any 'Treaty', Convention or Agreement to which Nigeria is a Party.

6. Legal status of the superjacent waters and air space

1. The rights of Nigeria over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. Nigeria's rights 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 the Convention.

7. Artificial islands, installations and structures

1. For the purposes of exploring and exploiting the natural resources both living and non-living and other economic purposes in the Nigeria's continental shelf, the appropriate authority shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
 - (a) artificial islands;
 - (b) installations and structures for the purposes provided for in section 5 subsection (1) of this Act and other economic purposes;
 - (c) installations and structures which may interfere with the exercise of the rights of other States in the continental shelf.
2. Due notice shall be given of the construction of such artificial islands, installations or structures.
3. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation.
4. Such removal of disused or abandoned installations or structures shall be subject to the need for the protection of fishing, marine environment and the rights and duties of other States.
6. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.

8. Protection of installations and structures in designated areas

1. The appropriate authority may, for the purposes of protecting any installations and structures in designated areas, by order published in the Federal Government Gazette, prohibit ships, subject to any exceptions provided in the order, from entering without its consent such part of that area as may be specified in the order.
2. If any ship enters any part of a designated area in contravention of an order made under this section, her owner or master shall be liable on conviction to a fine of one million naira unless he proves that the prohibition imposed by the order was not, and would not on reasonable enquiry have become known to the master.

3. In this section, “designated area” means any area of the continental shelf so designated by the appropriate authority or for the purposes of subsection (1) of this section.
4. Any order made under this section may be varied or revoked by a subsequent order, and any order may be annulled by the National Assembly.

9. Drilling in the continental shelf

Nigeria shall have the exclusive right to authorize, permit or regulate drilling for all purposes on its continental shelf.

10. Tunnelling

Nigeria for all purposes shall have the exclusive right to exploit, permit or regulate the exploitation of tunneling in its continental shelf, irrespective of the depth of water above the subsoil.

PART III

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

11. Exploitation of natural resources

The sovereign right to exploit the natural resources in the continental shelf shall be made pursuant to the Nigerian environmental policies including international rules for the protection and preservation of marine environment.

12. Discharge or leakage

1. If any oil, mixture containing oil or pollutant is discharged or leaked into the Nigeria’s continental shelf from any vessel, land-based source, installation, device or aircraft, from or through the atmosphere or by dumping:
 - (a) the owner or master of the vessel, if the discharge or leak is from a vessel;
 - (b) the owner or occupier of the place on land, if the discharge or leak is from land;
 - (c) the owner or person in charge of the installation or device, if the discharge or leak is from an installation or device; or
 - (d) the owner or pilot of the aircraft, if the discharge or leak is from an aircraft, shall each be guilty of an offence and shall be liable on conviction to a fine of one million naira.

2. Where the act or omission of a person other than any person referred to in subsection (1) caused the discharge or leak referred to in that subsection, then such other person shall also be guilty of an offence and shall be liable on conviction to a fine of five hundred thousand naira.
3. Subsection (2) shall not operate to absolve or relieve the persons referred to in subsection (1) from liability for an offence under subsection (1).
4. Notwithstanding the provisions of this section, dumping of wastes or other matter may be carried out under a licence issued by the Minister Responsible for the Environment and subject to such conditions as he may impose.

13. Defence of discharge or leakage of oil

Where a person is charged with an offence under section 12, it shall be a defence to prove that the discharge or leak of the substance referred to in subsection (1) of that section was caused for the purpose of securing the safety of the vessel, the place on land, the installation, device or aircraft concerned, or for the purpose saving life but a defence under this section shall not operate if the court is satisfied that the discharge or leak was not necessary for the alleged purpose or was not a reasonable step to take in the circumstances.

14. Obligation to report discharge or leak

1. If any oil, mixture containing oil or pollutant is discharged or leaks into the continental shelf from any vessel, land-based source, installation, device or aircraft, the owner or master of the vessel, the owner or occupier of the place on land, the owner or person in charge of the installation or device or the owner or pilot of the aircraft, as the case may, shall immediately report the occurrence of such discharge or leak to the Minister Responsible for the Environment.
2. Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not less than one million naira.

15. Measures relating to any maritime casualty

1. The Government of Nigeria may specify measures in relation to the continental shelf which are necessary to protect Nigeria's coastline or any segment or element of the environment or related interest, from pollution or threat of pollution following upon a maritime casualty or acts relating to such casualty, which may reasonable be expected to result in major harmful consequences.

2. The measures referred to in subsection (1) of this section shall be proportionate to the actual or threatened damage to the coastline or segment or element of the environment or related interests.

16. Action to mitigate damage

1. Where Nigeria's coastline or any segment or any element of the environment or related interests is damaged or threatened to be damaged as a result of any discharge or leak of any substance referred to in section 12, the Minister Responsible for the Environment may issue such regulations or take any action as is necessary to remove, disperse, destroy or mitigate the damage or threat of damage.
2. Any person who fails to comply with any regulation given by the Minister Responsible for the Environment under subsection (1) of this section shall be guilty of an offence and shall be liable to fine not exceeding one million naira.
3. The owner and the master of the vessel, the owner and the occupier of the place on land, the owner and the person in charge of the installation or device, or the owner and the pilot of the aircraft, as the case may be, from the substances referred to in section 12 of this Act was discharged or leaked shall be liable jointly and severally for all costs and expenses incurred in carrying out all or any of the work required under subsection (1) of this section to remove, disperse, destroy or mitigate the damage or the damage, and such costs and expenses shall be a first charge on any property or interest held by such person.

17. Violations

1. Where there are clear grounds for believing that a vessel navigating in the waters above the continental shelf of Nigeria, has committed a violation of applicable international rules and standards for the prevention, reduction, and control of pollution from vessels or laws and regulations of Nigeria conforming and giving effect to such rules and standards, Nigeria may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.
2. Where there are grounds for believing that a vessel navigating in the waters above continental shelf of Nigeria has committed a violation referred in subsection (1) of this section resulting in a substantial discharge or threatening significant pollution

- to the continental shelf of Nigeria, it may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justifies such inspection.
3. Where there is an evidence that a vessel might be navigating in the waters above continental shelf of Nigeria, and in the said waters, commits a violation referred to in subsection(1) of this section resulting in a discharge causing major damage or threat of major damage to the coastline or related interest of Nigeria, the Government of Nigeria may, subject to section 17 (4) of this Act, provided that the evidence so warrants, institute proceedings, including the detention of the vessel, in accordance with its laws.
 4. If any vessel which has been detained proceeds to sea without being released under subsection (3) of this section, the owner or master of the vessel or any other person who causes the vessel to proceed to sea shall be guilty of an offence and shall be liable to a fine not exceeding two million naira.
 5. Where the owner or master of such vessel or any other person found guilty of an offence under this section is unable to pay the fine or cost and expenses incurred in carrying out the work under subsection (1) of section 12, the court shall on the application of the Minister Responsible for the Environment, order the sale of such vessel and the application of the proceeds of the sale towards the payment of the fine and the costs and expenses incurred.

PART IV

MARINE SCIENTIFIC RESEARCH

18. Consent required for marine scientific research

No marine scientific research shall be conducted on the continental shelf of Nigeria without the express consent of or subject to condition imposed by the Government of Nigeria by whatever means or form in which the condition is imposed.

19. Right to withhold consent

The Minister of Science and Technology may however, in his discretion, withhold his consent for the conduct of a marine scientific research project by any person,

State or competent international organization on the continental shelf, if he has reason to believe that the project:

- a) Is of direct significance to the exploration and exploitation of natural resources;
- b) Involves drilling into the seabed or subsoil of the continental shelf, the use of explosives or the introduction of pollutants into the marine environment;
- c) Involves the construction, operation or use of artificial islands, installations or structures
- d) Contains information communicated pursuant to section 20 of this Act regarding the nature and objectives of the project which is inaccurate or if the researching state or competent international organization has outstanding obligation to Nigeria from a prior research project; or
- e) Might interfere with activities undertaken by Nigeria in the exercise of its sovereign rights and jurisdiction provided for under this Act or international law.

20. Duty to provide certain information

Any person, State or competent international organization which intends to undertake marine scientific research on the continental shelf of Nigeria shall, not less than 6 months in advance of the expected starting date of the marine scientific research project provide the Government of Nigeria with a full description of:

- a) The nature and objectives of the project;
- b) The method and means to be used, including name, tonnage, type and class of vessels, and a description of scientific equipment;
- c) The precise geographical areas in which the project is to be conducted;
- d) The expected date of first appearance and final departure of the research vessels, or deployment of the equipment and its removal as appropriate;
- e) The name of the sponsoring institution, its director, and the person in charge of the project; and
- f) The extent to which it is considered that Nigeria should be able to participate or to be represented in the project.

21. Duty to comply with certain conditions

Any person, State or competent international organization undertaking scientific research on the continental shelf shall comply with the following conditions:

- a) Ensure the rights of the Government of Nigeria, if it so desires to participate or to be represented in the marine scientific research project, especially on board the said vessels, and other crafts or scientific research installations, and without obligation to contribute towards the cost of the project;
- b) Provide the Government of Nigeria with preliminary report, as soon as practicable, and with the final result and conclusions after the completion of the research;
- c) Undertake to provide access to the Government of Nigeria at its request, to all data and samples derived from the project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value;
- d) If requested, provide the Government of Nigeria with an assessment of such data, samples, and with such results, or provide assistance in their assessment or interpretation;
- e) Ensures, unless otherwise specified by the Government of Nigeria that the research results are made internationally available through appropriate national or international channels, as soon as practicable;
- f) Inform the Government of Nigeria immediately of any major change in the research program; or
- g) Unless otherwise agreed, remove the scientific research installations or equipment once the research is completed.

22. Suspension or cessation of marine scientific research

1. The Government of Nigeria may order the suspension of any marine scientific research activities in progress within its continental shelf if:
 - a) The research activities are not being conducted in accordance with information provided under section 20 of this Act upon which the consent of the Government of Nigeria was based; or
 - b) The State or competent international organization conducting the research activities fails to comply with the provisions of section 21 of this Act.

2. The Government of Nigeria may order the cessation of any marine scientific research activities:
 - a) Which in deviating from the information provided under section 20 of this Act have amounted to a major change in the research project or research activities; or
 - b) If any of the situations contemplated in subsection 1 of this section are not rectified within a reasonable period of time, as determined by the Government of Nigeria.
3. Following notification by the Government of Nigeria of the order of suspension or cessation, the State or competent international organization shall immediately terminate all or any of the marine scientific research activities that are subject of such notification.

23. Discretion of Government

For the purposes of section 22 sub section 2(a) of this Act, the Government of Nigeria shall have the exclusive discretion to determine what will amount to a major change in any project.

24. Fine

Any person, who fails to comply with any of the provisions of this Part IV of this Act, shall be guilty of an offence and shall be liable to a fine not less than two million naira.

PART V

DELIMITATION OF CONTINENTAL SHELF

25. Delimitation of continental shelf with States opposite or adjacent coasts

1. Notwithstanding anything contained in any other provision of this Act:
 - (a) the delimitation of the continental shelf between Nigeria and any other State whose coast is opposite or adjacent to that of Nigeria shall be effected by agreement on the basis of international law in order to achieve an equitable solution.

- (b) pending the agreement referred to in section 25 subsection (1)(a), Nigeria and such State shall make provisional arrangements taking into account the said principles for delimitation of the continental shelf.
- 2. Every agreement referred to in clauses (a) and (b) of subsection (1) of section 25 shall, as soon as may be after it is entered into, be published in the official Gazette.

PART VI

EXTENDED CONTINENTAL SHELF

26. Delimitation of the outer limit of the continental shelf

- 1. Notwithstanding the provisions of section 3 of this Act, the outer limit of the continental shelf of Nigeria shall not exceed 350 nautical miles from the baselines from which the maritime zones are measured or shall not exceed 100 nautical miles from the 2,500 metre isobaths, which is a line connecting the depth of 2,500 metres. This section does not apply to submarine elevations that are natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs.
- 2. For the purposes of this section, the continental margin comprises the submerged prolongation of the land mass of Nigeria which consists of the seabed and subsoil of the continental shelf, the slope and the rise excluding the deep ocean floor with its oceanic ridges or the subsoil thereof.
- 3. The outer edge of the continental margin from the baselines from which the maritime zones are measured is a line delineated by the formula defined by four outermost fixed points at which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope as contained in Figure 1 to the schedule of this Act.
- 4. The outer limit of Nigeria's continental shelf beyond 200 nautical miles from the baselines of the territorial sea shall be measured by straight lines not exceeding 60 nautical miles in length, connecting fixed points, defined by coordinates of latitude and longitude as contained in Table 1 to the schedule of this Act.

27. Notice and publication of charts

The list of geographical coordinates of points specifying the geodetic datum and the base map indicating the lines of outer limit delimitation of the Nigeria's extended continental shelf are published in the schedule and form part of this Act.

28. Payments and contributions to the International Seabed Authority

1. This section applies to-
 - (a) Every license granted by the Minister of Petroleum in respect of the exploitation of the non-living resources of continental shelf beyond 200 nautical miles from the baselines from which the maritime zones are measured; and
 - (b) Every permit granted in respect of the exploration or prospecting for or the mining of petroleum in the seabed and subsoil of the continental shelf beyond 200 nautical miles from the breadth of which the maritime zones are measured.
2. The Minister of Petroleum shall impose in every license to which this section applies the condition that the licensee pays to the Federal Government of Nigeria royalties at the rate specified in the license.
3. The Minister of Petroleum shall impose in every permit to which this section applies the condition that the holder of the permit pays to the Federal Government of Nigeria royalties at the rate specified in the permit.
4. In specifying the rate of royalties for the purposes of this section, the Minister of Petroleum shall have regard to Nigeria's rights and obligations under Article 82 of the Convention.
5. The Federal Government of Nigeria shall make all payments or contributions in kind required to be made to the International Seabed Authority from time to time under the terms of Article 82 of the Convention.

PART VII

OFFENCES AND JURISDICTION

29. Offences and penalties

1. Whoever contravenes any provision of this Act, or any regulations made thereunder shall, without prejudice to any action which may be taken against such person under any other law, is guilty of an offence.

2. Where a person is found guilty of an offence under this section, he shall on conviction be liable to imprisonment of not more than 1 year or a fine of not more than two million naira or both.
 3. Where a body corporate is guilty of an offence under this section and the offence is proved to have been committed with consent and connivance of, or to be attributed to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, the person, with the body corporate shall on conviction be liable:
 - (a) for body corporate to pay a fine of 5 million naira;
 - (b) for a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such capacity imprisonment not more than 1 year or a fine of not more than 2.5 million naira or both.
- 30. Jurisdiction**
1. Offences committed under this Act shall be tried by the Federal High Court.
 2. The prosecution of offences under this section shall be at the instance of the Attorney-General of the Federation.

PART VIII

ENFORCEMENT

31. Enforcement

For the purpose of ensuring compliance with this Act, any maritime enforcement officer may if he has reason to believe that an offence has been committed under this Act, take any appropriate action necessary.

PART IX

IMPLEMENTATION OF THE PROVISIONS OF THE ACT

32. Power to make regulations

1. Without prejudice to the generality of the abovementioned provisions, the Minister of Marine Transport or appropriate authority may make regulations to implement, partially or wholly, any provisions of this Act.
2. In particular and without prejudice to the foregoing power, regulations made under subsection (1) of this section, may provide for:
 - (a) the regulation of the conduct of any person in the continental shelf;
 - (b) the regulation of the exploration and exploitation of the natural resources in the continental shelf;
 - (c) the regulation of the construction, maintenance of the artificial islands, offshore terminals, installations and other structures and devices;
 - (d) the preservation and the protection of the marine environment and the prevention and control of marine pollution;
 - (e) the regulation and conduct of marine scientific research;
 - (f) the fees in relation to licenses; and
 - (g) any matter supplementary or incidental to the matters specified in this Act.

PART X MISCELLANEOUS

33. Relief from prosecution

No action shall lie against any maritime enforcement officer or any other person appointed or authorized in that capacity to perform or in performance of any duty or authority imposed on him under this Act or any regulations made thereto.

34. Repeals and amendments

1. The provisions of these enactments are repealed:
 - (a) section 15(1) of the Petroleum Act 1969;

(b) section 1(1) National Inland Waters Act 1997.

2. Following the enactment of this Act, consequential amendment shall be made to all existing maritime related legislations in Nigeria as necessary and determined from time to time in conformity with this Act.

35. Supremacy of this Act

Any provisions of any existing laws with respect to any of the maritime zones of Nigeria that are inconsistent with any provisions of this Act shall be read subject to the provisions of this Act.

SCHEDULE TO THE CONTINENTAL SHELF ACT 2012

1. Table 1 – List of coordinates of latitude and longitude of the points that define the outer limit of the continental shelf.
2. Figure 1 - Map showing formula defined by four fixed point of the continental slope and the constraint line determined at a distance of 350 nautical miles.
3. Figure 2 – Map showing the outer limits of the continental shelf beyond 200 nautical miles from the baselines of the breath of the territorial sea.

EXPLANATORY MEMORANDUM

This Act enacts Continental Shelf Act that provides for the protection, exploration and exploitation of Nigeria's Continental Shelf, establishment of the outer limit of the continental shelf to 350 nautical miles, the prevention and preservation of the marine environment, conditions for marine scientific research in the area and for matters connected therewith.

MODEL OF ATTESTATION

I, CERTIFY IN ACCORDANCE WITH SECTION 2(1) OF THE AUTHENTICATION ACT, CAP 4, LAWS OF THE FEDERATION OF NIGERIA 1990 THAT IT IS A TRUE COPY OF THE BILL THAT WAS PASSED THROUGH BOTH HOUSES OF THE NATIONAL ASSEMBLY

CLERK OF THE NATIONAL ASSEMBLY
..... DAY OF 2012

THE MINISTER OF MARINE TRANSPORT

Short Title of the Act	Long Title of the Act	Summary of the Content of the Act	Date passed by the Senate	Date passed by the House of Representatives

Continental Shelf Act 2012.	An Act to make Provision as to the Protection, Exploration and Exploitation of the Continental Shelf, the prevention of pollution in consequence of works in connection with the Shelf, proclamation of the Extended Continental Shelf, and for matters connected with those purposes.	This Act define the Nigeria Continental Shelf in line with Article 76(1) of the Convention, proclaim the Extended Shelf to the limit of 350nm in line with Article 76(6) of the Convention, make provision for the protection and preservation of the marine environment, marine scientific research and matters related therewith.	11 April 2012	16 April 2012

I, certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found to be true and correct decision of the two Houses and in

accordance with the provisions of the Authentication Act Cap 4 Laws of the Federation of Nigeria 1990.

Clerk of the National Assembly

.... Day of 2012

I ASSENT

President of the Federal Republic of Nigeria

..... Day of 2012

SCHEDULE

Table 1. List of coordinates of latitude and longitude of the turning points determined in accordance with paragraph 7 of Article 76 that define the outer limit of the continental shelf of the Republic of Nigeria beyond 200 nautical miles in the Gulf of Guinea, the distance between those points not exceeding 60 nautical miles.

Turning Points defining the Outer Limit of the continental shelf	Latitude N	Longitude E	Distance between successive turning points nautical miles
OL-NGA-1	2° 57' 19.80"	2° 43' 04.58"	48.7375
OL-NGA-2	2° 29' 27.51'	2° 03' 01.61"	28.9548
OL-NGA-3	2° 02' 46.23"	2° 14' 33.08"	49.3790
OL-NGA-4	2° 10' 56.93'	3° 03' 12.04"	18.0936
OL-NGA-5	2° 01' 27.11"	3° 18' 36.76"	16.8486
OL-NGA-6	1° 56' 11.88"	3° 34' 36.62"	

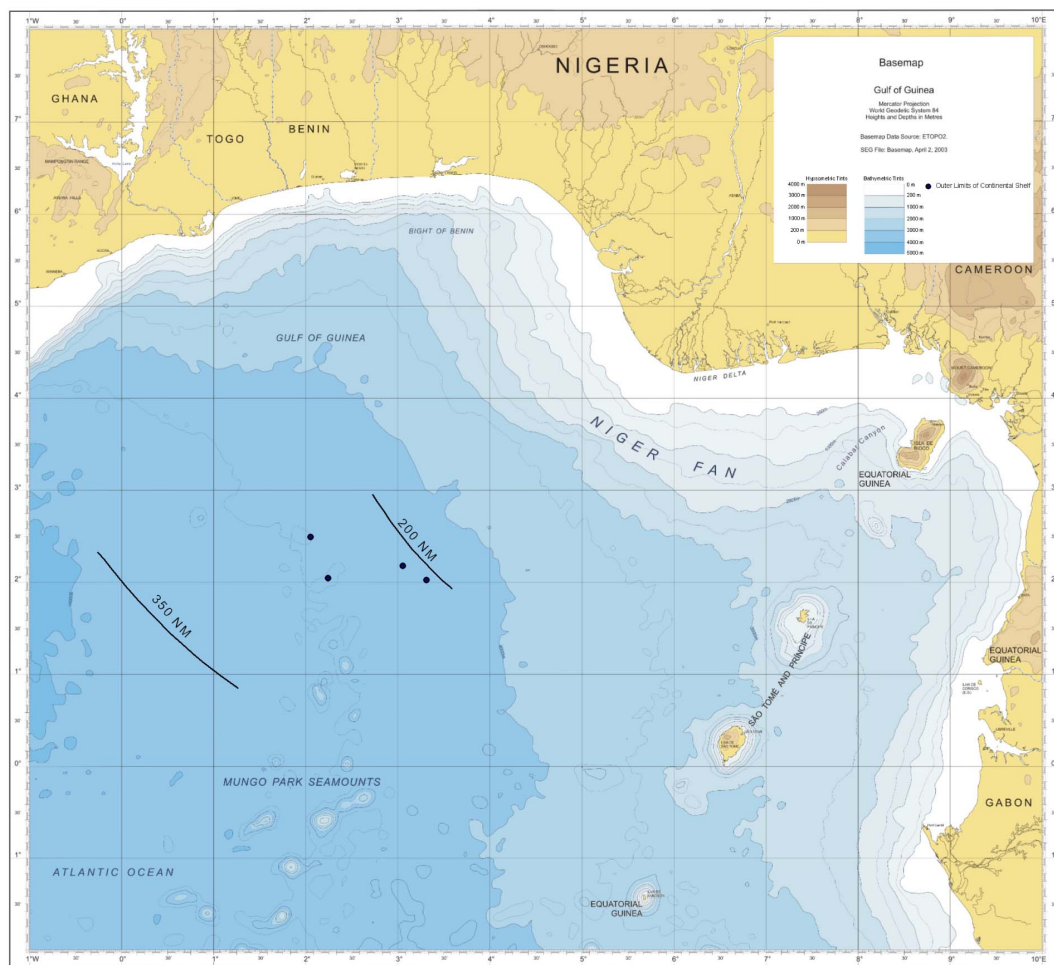


Figure 1. The formula defined by four fixed points at which the sediment thickness is at least 1% of the shortest distance from such point to the foot of the continental slope; and the constraint line determined at a distance of 350 nautical miles from the baselines from which the breadth of the territorial sea is measured.

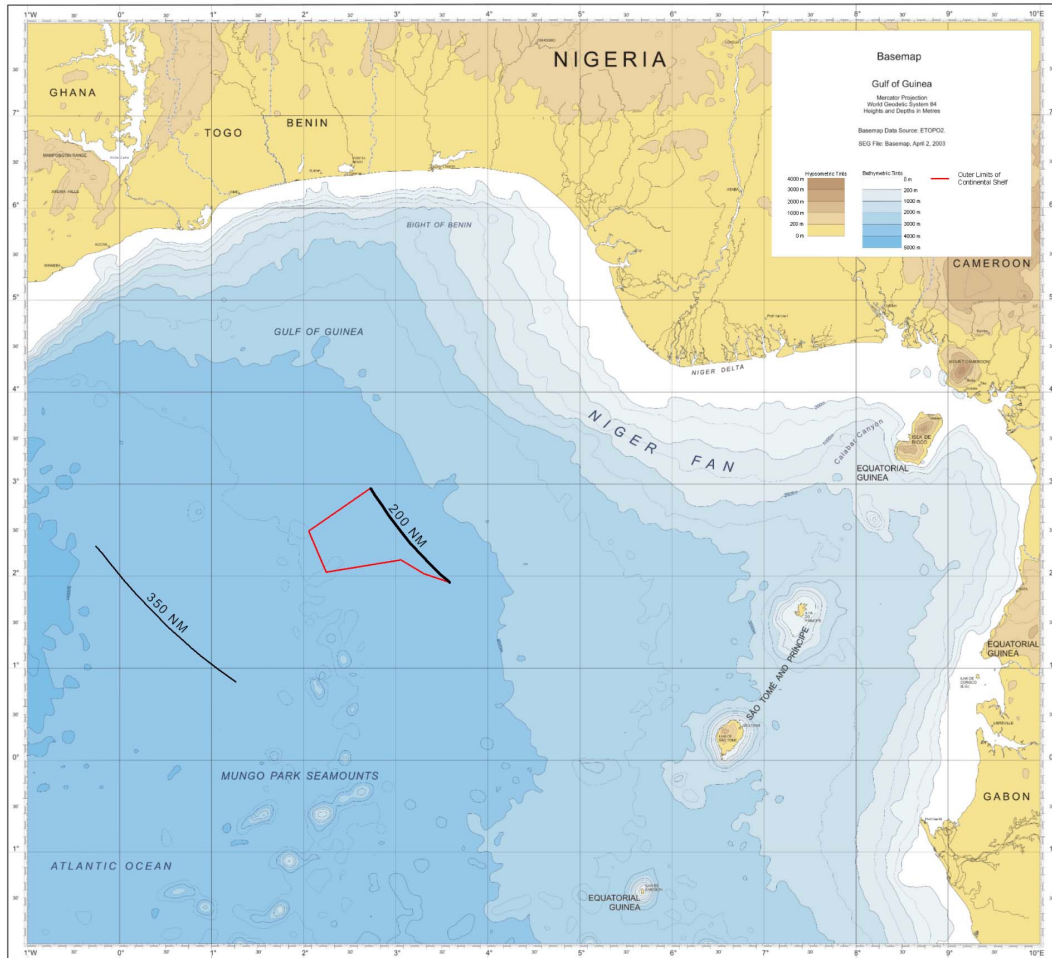


Figure 2. The outer limits of the continental shelf of the Republic of Nigeria beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

