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Freezing the Boundary Dividing Federal and State Interests in Offshore Submerged Lands

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The Commission recommends that the Congress establish a National Seashore Boundary Commission to fix the baseline from which to measure the territorial sea and areas covered by the Submerged Lands Act of 1953. The boundary lines should be described in terms of geographic or plane coordinates for each State. The determination of the Boundary Commission should be subject to appropriate judicial review.

No matter how the seabed is divided between national and international claimants, the United States will still be faced with dividing its portion of the seabed between the federal government and the states. The Submerged Lands Act in 1953 granted to the States a portion of the United States seabed. However, since that grant, not one State has had the boundary separating State from federal interests completely delimited. One and one-half billion dollars has been impounded since 1956 in disputes between the United States and Louisiana over ownership of offshore lands. In 1969, the Supreme
Court after devoting sixty-three pages to delimitation of the coastline of Louisiana still had to refer portions of the dispute to a Special Master whose report will thereafter be reviewed by the Court. California, which was the focal point of the ownership controversy in 1946, still is doubtful as to where her submerged land boundaries are located with the result that exploitation of these lands is seriously impeded. Five hundred acres of valuable submerged lands off the California coast presently are disputed because of some offshore rocks. If these rocks are more dry than wet during low-tide, the disputed acreage goes to California; if more wet than dry, the federal government gets these lands. Neither the federal nor the state government, however, will get this acreage permanently because these rocks shift and sea level varies.

Maine has issued exploratory concessions in lands as far as eighty miles from her coast. A motion by the United States to file a complaint against the State of Maine in an original action before the Supreme Court has been granted. All Atlantic coastal states have been made parties to this action.

One commentator optimistically estimates that under present techniques it will take at least twenty more years to settle the submerged land boundaries of all States. However, the federal-state submerged land boundaries are drawn from the ambulating coastline. With constantly changing shorelines, "this painstaking work [of delimitation] cannot provide a means of marking the boundary for all time." Thus even twenty years from now, submerged land boundaries will not be settled.

This changing coastline with the resultant changing federal-state boundary evoked the following criticism from Justice Black:

A company having an oil lease now under ocean waters . . . gets no more than an ambulatory title; here today and gone tomorrow. And with its title, I suppose, will go all of its expensive investment in developing the lease. Stable business cannot be fostered that way. The ambulatory title, which the Court finds in the Submerged Lands Act, I think frustrates the just expectations Congress desired that oil companies have in the stability of their leases for exploitation of oil under the sea.9

The proposal of the Marine Science Commission would resolve the ambulatory boundary by fixing it "once and for all in terms of geographic coordinates that can be portrayed on maps, rather than in terms of distances from the coasts."10

The primary source material relied upon by the Commission of Marine Science, Engineering and Resources in formulating it conclusions was the Report of the Panel on Management and Development of the Coastal Zone11 which sets forth alternate solutions to the federal-state boundary problem.12 The Panel suggested federal-state recognition of each others' leases, by which each sovereign recognizes leases validly issued by the other, with payments apportioned between the two sovereigns according to the shifting boundary. Such an arrangement was instituted between the United States and Louisiana in 1956. This arrangement, however "was far from satisfactory, not only because it withholds needed revenues and requires very detailed accounting but also because of various problems that will confront lessees whose leases turn out to be divided by the boundary as ultimately established."13 Also suggested by the Panel was joint federal-state offshore leasing and use of straight baseline segments. The Panel, however, opted for, and the Commission adopted, a recommendation that Congress establish a "National seashore boundary commission, judicial in nature ... to hear and determine seashore boundary questions and controversies involving proprietary interests of the States under Federal grants to them."14 The Panel felt that a separate judicial commission to determine this boundary was essential because of deficiencies in the present system and to expedite determination of boundaries.15

9. Id. at 84 (Black, J., dissenting).
10. COMSER, supra note 1, at 62.
11. Id. at vii.
12. PANEL REPORT, supra note 2, at III-120.
14. PANEL REPORT, supra note 2, at III-121.
15. At present there is no procedure by which the federal government
The determination of state-federal submerged land boundaries recommended by this Commission was to be based on "present principles of coastal boundary determination." When fixed by this Commission, coastal boundaries would be defined in terms of geographical plane coordinates. Boundaries established by this Commission, or by the Supreme Court in the event of appeal, would be established permanently. The Panel recommended, but the Commission rejected, a proposal that this stabilization apply only to ownership of submerged lands or resources, "not to general political jurisdiction and authority."

Examination of the federal-state submerged land controversy will provide the "present principles of coastal boundary determination." International and domestic implications of establishing a fixed boundary will thereafter be explored.

I. Present Principles

A. The California case

Beginning in 1921, California and several other coastal states under claim of ownership began granting oil and gas leases to certain agreements with the States except by concurrent legislation or consent decree. Swarth has made a similar observation stating "a boundary determination acceptable to federal officials at one time could be renounced by [different officials] later." Swarth, supra note 13, at 22. If the parties are in agreement, use of court proceedings is improper since there is no real controversy nor should the Supreme Court be asked or expected to exercise its original jurisdiction unless the controversy is of broad general importance. The Panel further recommended that Congress give its consent to State suits against the United States. States would then be allowed to initiate boundary cases before the Commission. PANEL REPORTS, supra note 2, at III-121.

Of the eighteen lateral boundaries between the States, only the line between Florida and Alabama is completely and unambiguously delimited while the lines between New Hampshire-Massachusetts, California-Oregon, and Oregon-Washington are substantially delimited. In other cases delimiting language is almost completely lacking. Griffin, Delimitation of Ocean Space Boundaries Between Adjacent Coastal States of the United States, Third Annual Law of the Sea Inst. 142 (1968). Therefore, the Panel, and thereafter the Commission, recommended that the National Seashore Boundaries Commission also determine lateral State boundaries. The Panel recommended that 28 U.S.C.A. § 1251(a) which gives the Supreme Court exclusive jurisdiction to hear and determine cases between States be amended. PANEL REPORT, supra note 2, at III-121.

16. PANEL REPORT, supra note 2, at III-121.
17. COMSER, supra note 1, at 63; PANEL REPORT, supra note 2, at III-121.
18. Id.
tain submerged lands lying off their coasts and levied taxes upon
interests in and improvements on these lands. The claim of State
ownership to these submerged lands was founded in part on an
1845 decision by the Supreme Court in Pollard’s Lessee v. Hagan
which held that the states owned lands underlying navigable
waters within their jurisdictions. That decision stated in dictum
that if State boundaries extended out from the coastline, State
ownership of submerged lands extended into the sea to these
boundaries. The federal government, after years of vacillation
about the propriety of State claims to oil and gas in these offshore
areas, on October 22, 1945, took action to have the federal-state
claims adjudicated. On that date, the motion of the United States
to file a bill of complaint against the State of California in an
original action was granted by the Supreme Court. The outcome
of this litigation, United States v. California was a 6-2 decision
finding that the federal government had “paramount rights” in
the three-mile territorial sea along the California coast, “an inci-
dent to which is full dominion over the resources of the soil under
that water area, including oil.” In finding that the State did
not have title to the submerged lands off their coasts, the Court
stated that California had not perfected any ownership rights prior
to entry into the Union nor did California obtain any rights by the
“equal footing” clause since California failed to establish that the

20. 44 U.S. (3 How.) 212 (1845).
21. Id. at 230. See Manchester v. Massachusetts, 139 U.S. 240, 264
(1891) where the Supreme Court said:
The extent of territorial jurisdiction of Massachusetts over the sea
adjacent to its coast is that of an independent nation; and, except
so far as any right of control over this territory has been granted
to the United States, this control remains with the State.
22. One month earlier, President Truman on September 28, 1945, pro-
claimed on behalf of the United States a unilateral claim to the natural
resources of the continental shelf contiguous to the coasts of the United
provides, “In all cases . . . in which a State shall be Party, the Supreme
Court shall have original jurisdiction.” U.S. Const. art. 3, § 2, cl.2.
24. 332 U.S. 19, 39 (1947). The order and decree entered subsequently
states inter alia:
1. The United States of America is now, and has been at all times
pertinent hereto, possessed of paramount rights in, and full do-
nominion and power over, the lands, minerals and other things under-
lying the Pacific Ocean lying seaward of the ordinary low-water
mark on the coast of California, and outside if the inland waters,
extending seaward three nautical miles and bounded on the north
and south, respectively, by the northern and southern boundaries of
the State of California. The State of California has no title thereto
or property interest therein, United States v. California, 332 U.S.
804, 805 (1947).
other states had perfected any ownership. The Court, therefore, felt free to determine whether the 1845 case enunciating state ownership of submerged lands ought to be interpreted as applying to lands lying seaward of the low-water mark. The Court found the three-mile territorial sea was vital to national security and commerce and that these interests were the responsibility of the federal government. California, the Court held, had qualified ownership of lands under “inland navigable waters such as rivers, harbors and even tidelands down to the low-mark,” but “national interests, responsibilities, and therefore national rights are paramount in waters lying seaward [of the low-water mark] in the three mile belt.”

In subsequent litigation by the United States against Texas and Louisiana, the Court made it clear that no exceptions to the California rule would be allowed. Louisiana, by statute, had enlarged her state boundaries in 1939 to extend twenty-seven miles into the Gulf from her coastline. In United States v. Louisiana, the Court reaffirmed its decision in the California case and found that if the three-mile territorial sea is in the “domain of the Nation,” it follows “a fortiori that the ocean beyond that limit also is.” The Court did not deal with the consequences of Louisiana’s boundary in relation to persons other than the United States, but held that the United States vis a vis Louisiana had paramount rights in resources underlying the Gulf of Mexico seaward of the low-water line and outside inland waters of Louisiana.

Texas, attempting to avoid application of the California decision, argued in United States v. Texas that she was a sovereign prior to annexation into the Union and that she had perfected ownership of lands seaward of the low-water line to a distance of three leagues. The Supreme Court held that when Texas came into the Union on an

25. United States v. California, 332 U.S. 19, 29–39 (1947). The Court essentially said neither the United States nor California had established that States did or did not own submerged lands off their coast; therefore, the States lose. This is an obvious shifting of the burden of proof from that enunciated in Manchester v. Massachusetts, 139 U.S. 240, 264 (1891), quoted supra note 21.
26. Id. at 30, 36.
27. 6 LA. GEN. STAT. §§ 9311, 1-9311.4 (Dart 1939).
29. Id. at 706. Decree entered, 340 U.S. 899 (1950).
“equal footing” with the other States “any claim that Texas may have had to the marginal sea was relinquished to the United States.” Clearly, the Court would not honor any State claims to lands seaward of the low-water mark. The States owned the lands underlying inland waters and tidelands to the low-water mark. The United States had paramount rights to lands seaward of the low-water mark and outside inland waters.

B. Submerged Lands Act of 1953

Congress, however, did not agree with the Court’s conclusion that United States’ security and commerce interests required federal right to the resources of these submerged lands. In 1952, a bill was sent to the President which relinquished all federal interests in lands lying outside of inland waters or beyond the low-water mark to the adjacent coastal states. President Truman vetoed this legislation and no attempt was made to override. However, on May 22, 1953, President Eisenhower approved the Submerged Lands Act of 1953 which recognized a limited State interest in offshore lands.

This Act relinquished to the coastal States all rights of the United States to “lands beneath navigable waters within state boundaries.” By defining these terms, the Act confirmed State ownership of lands beneath internal waters and lands between the high and low-tide lines. The definitional section further granted to the States lands from the low-water line or the line marking the seaward limit of inland waters seaward three geographical miles. Furthermore, a State could claim beyond three miles if it had a greater boundary at the time the State became a member of the Union or if Congress had approved a boundary in excess of three miles prior to May 22, 1963, “but in no event shall the term ‘boundary’ or the term ‘lands beneath navigable waters’ be interpreted as extending from the coastline more than three geographical miles into the Atlantic or Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.” The constitutionality of this Act was challenged by both Alabama and Rhode Island asserting that these submerged lands were inherent to national sovereignty and could not be parceled out to the States. In a per curiam decision, the Court found that the Act was constitutional, stating that the power the Constitution confers on

Congress to dispose of property belonging to the United States is without limitation. ³⁶

Subsequently, the United States attempted to clarify ownership of submerged land resources in the Gulf of Mexico by instituting suit against all five Gulf States seeking a declaration that the United States had superior rights to all natural resources from lands underlying the Gulf more than three geographical miles seaward from the coast of each State. In United States v. Louisiana, decided in 1960, the Court held that Mississippi, Alabama and Louisiana were entitled under the Act to only three miles of land underlying the Gulf measured “from the line of ordinary low-water and the outer limit of inland waters.”³⁷ Texas, however, was entitled to the resources of lands lying three marine leagues from the line of ordinary low-water or the outer limit of inland waters.³⁸ Florida also was entitled under the Act to three marine leagues underlying the Gulf measured from her coastline as defined above.³⁹

C. Base line defined

Subsequent litigation centered upon determining the base line from which to measure the three-mile or three-league grants to the States. In United States v. California⁴⁰ the Court was faced with defining the coastline and the term “inland waters.” The Submerged Lands Act gave California rights to seabed resources at a breadth of three miles measured from “the seaward limit of inland waters” ³⁴¹ but nowhere did the Act define inland waters. A review of the legislative history of the Act demonstrated to the Court that the intent of Congress was that the Court should define the term “inland waters.” The Court sought the “best and most workable definitions available” to determine the seaward limit of inland waters and adopted the definitions set forth in the Convention on the Territorial Sea and the

³⁷. 363 U.S. 1, 83 (1960).
³⁸. Id. at 84.
⁴⁰. 381 U.S. 139 (1965).
Contiguous Zone. Utilizing the Convention's terms, the Court found that the Convention authorized nations to use straight base lines, but did not require it. Since the United States had not utilized this method for purposes of delimiting the territorial sea, the individual States could not use straight base lines to delimit inland waters for purposes of the Act. To determine whether a body of water qualified as a bay, the twenty-four mile closing rule together with the semicircle test were to be used. States may establish that bodies of water are historic inland waters even though opposed by the federal government, but California did not present sufficient evidence of continuous exclusive assertion of dominion. Anchorages which are beyond outer harbor works of harbors are not to be considered inland waters. Open roadsteads used for loading, unloading and anchoring ships are considered in Article 9 of the Convention as territorial waters and not inland waters for drawing base lines. Outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention are part of the coastline.

As to the term "line of ordinary low water" used in the Submerged Lands Act, the Court found that Article 3 in the Convention used "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State." The Court stated that the lines referred to in the Act and the Convention "were meant to conform" and noting that on the Coast and Geodetic Survey coastal charts "lower low water" is marked, the Court adopted lower low water.

Although not expressly stated in the Convention, the Court found that artificial structures "were clearly recognized in international
law to change the coastline. Thus, the coastline from which to measure the three-mile grant is to be “taken as heretofore or hereafter modified by natural or artificial means” resulting in an ambulatory base line. The Court recognized that artificial accretion would add seabed resources to state jurisdiction that previously were under federal control but stated that the United States “could protect itself through its power over navigable waters.” Further, negotiations by the United States with foreign nations would be complicated if such negotiations lead to different definitions than contained in the present territorial sea convention with the result that States gained additional resource rights to submerged lands. To prevent such a handicap to future negotiations, the Court held that the definitions in the present territorial sea convention would control regardless of future changes to the Convention.

The ambulatory coastline resulting from this decision led to further litigation between the United States and Texas. In United States v. Louisiana, Texas contended that her coastline, for purposes of her three-league grant, extended from the seaward edge of artificial jetties. The Court rejected the claim stating that Texas’s three-league grant was “conditioned” upon her prior history, unlike California’s “unconditional” three-mile grant. Texas’s boundary was to be as it existed at the time she became a member of the Union; therefore, the coastline for measuring the three leagues was to be as it was in 1845. This decision denying Texas the benefit of accretion, natural or artificial, led Texas to believe that she would not be penalized by erosion. Since the coastline for measuring her three-league grant did not move seaward with accretion giving her additional submerged lands, Texas believed it did not move inland with erosion depriving her of previously granted submerged lands. The Supreme Court, however, had other ideas.

49. Id. at 176.
51. United States v. California, 381 U.S. 139, 177 (1965). This rationale has been criticized since it might make the federal government reluctant to acquiesce in state and local construction projects. Griffin, Coastal States’ Offshore Boundaries: Status and Problems, Off. Proc. of the Conf. on the Sea and the States 6, 15 (1968).
53. 389 U.S. 155 (1967). This litigation is captioned United States v. Louisiana since it was considered a continuation of the 1950 and 1960 litigation of that title.
In *United States v. Louisiana, The Texas Boundary Case*, the Court held that when Congress stated that in no event should the boundaries of submerged lands granted to the States in the Act be “as extending from the coastline . . . more than three marine leagues into the Gulf of Mexico,” it meant not more than three marine leagues from the modern, ambulatory coastline. Therefore, if through erosion the Texas coastline had moved inland, the three-league grant was to be measured from this present eroded coastline. The Court recognized that its prior decision deprived Texas of the benefit of post-1845 accretion and this decision penalized Texas regarding post-1845 erosion, but deemed “any alleged inequitable results” to be the outcome of the Congressional scheme; “thus Texas must look to Congress for relief.”

On the same day the Court announced its decision in *The Texas Boundary Case*, it also announced its decision in *United States v. Louisiana, The Louisiana Boundary Case*. Louisiana urged that the line marking the seaward limit of inland waters should not be determined on the basis of definitions contained in the Convention on the Territorial Sea and the Contiguous Zone as the Court held in the second *California* case. Rather, Louisiana argued, when Congress had directed diverse federal agencies over a period of years since 1895 to draw a line indicating where maritime navigation was subject to inland, rather than international, rules of the road, this determined the seaward limit of inland waters. The Court rejected use of this “Inland Water Line” as the relevant “coastline” for measuring Louisiana's three-mile grant. Nothing the Court found in the legislative history of the Submerged Lands Act required use of this navigational boundary as the relevant coastline. The Court further refused to accept this navigational line as establishing traditional inland waters or “historic bays” since the United States never “treated this line as a territorial boundary.” The Court also was unwilling to use its Congressionally authorized right, as determined by the Court, to interpret “inland waters” to abandon the ambulatory coastline which resulted from use of the Convention on the Territorial Sea and the Contiguous Zone in favor of a stable base line which would result

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55. Id. at 5-6.
57. The inland rules are codified at 33 U.S.C.A. §§ 152-232; the international rules at 33 U.S.C.A. §§ 1051-1094. The chronology of federal agencies tasked with establishing this “Inland Water Line” is set forth in 394 U.S. at 18 n.15.
from use of the "Inland Water Line." The Court then proceeded to resolve interpretations of various portions of the Convention, holding that dredged channels are not part of "a harbor system" as used in Article 8 of the Convention and, therefore, are not inland waters. Low-tide elevations, the Court said, situated in the territorial sea as measured from bay-closing lines (rather than the mainland as the United states had argued) are part of the coastline from which to measure the three-mile grant of the Submerged Lands Act. Islands do not seal off one part of an indentation from the rest for purposes of the semicircle test. Where islands intersected by a closing line between the mainland headlands create multiple mouths to a bay, the bay should be closed by lines between the natural entrance points on the islands, even if those points are landward of the direct line between the mainland entrance points. Islands should be designated as headlands of bays if they are so integrally related to the mainland that they are realistically parts of the coast.

The determination of whether to use the straight base line method for islands fringing a coast is not a judicial function, the Court said. Louisiana, however, it not to be precluded from presenting evidence that the United States uses this method to the Special Master who was subsequently appointed. The United States, the Court found, does not have the same complete discretion to block a claim of historic inland waters based on state actions as it possesses to decline to draw straight base lines. Evidence of historic state claims may be presented to the Special Master. Several other particularized disputes were also referred to the Special Master.

D. Principles

This review of the submerged lands controversy provides the following relevant principles:

60. Id. at 32-35.
61. Id. at 36-40.
62. Id. at 40-47.
63. Id. at 48-53.
64. Id. at 54-60.
65. Id. at 60-66.
66. Id. at 66-73. Walter P. Johnson of Memphis, Tennessee was appointed Special Master by the Court. 395 U.S. 901 (1969).
67. Id. at 74-78.
1. The three mile (or three league) grants from the federal government to the State governments under the Submerged Lands Act are to be measured from the line marking the seaward limit of inland waters and the line of ordinary low-water;

2. The seaward limit of inland waters is to be determined in accordance with the provisions of the present Convention on the Territorial Sea and the Contiguous Zone; and

3. The line of ordinary low-water shall be the line of mean lower low-water (or the line used by the Coast and Geodetic Survey in charting the State's coastline).

Under the Commission proposal, the present principle that the federal-state submerged land boundary changes with accretion (except for Texas and the Gulf coast of Florida) and erosion of the coastline will not apply since the boundary will be fixed in terms of geographic coordinates portrayed on maps. A determination must be made of the international implications of establishing this fixed federal-state submerged land boundary.

II. INTERNATIONAL IMPLICATIONS

A. Convention on the Continental Shelf

In the second Louisiana case, the Court addressed the international implications arising from recognition of Gulf State seabed boundaries beyond the three mile territorial sea and the exercise of rights by the Gulf States in those areas. After examining the legislative history of the Submerged Lands Act, the Court found that granting to the States rights to the resources of the shelf beyond three miles would not cause any international difficulties or confusion. The Court examined the 1953 Congressional testimony of the Deputy Legal Adviser of the State Department, Mr. Jack B. Tate, who stated that jurisdiction over the submerged lands of the continental shelf was of a "special and limited character" and "since the United States had already asserted exclusive rights to the continental shelf as against the world, the question to what extent those rights were to be exercised by the Federal Government and to what extent by the States one of wholly domestic concern within the power of Congress to resolve."8 Although the State Department was not opposed to a grant by the Federal Government to the States of rights to resources of the U.S. continental shelf beyond the three mile territorial sea, the

State Department adamantly opposed recognition of other juridical State boundaries beyond three miles. The State Department spokesman noted that the federal government is supreme in the field of foreign relations and that the establishment and recognition of State boundaries beyond three miles would affect foreign relations. Since the federal government had established its territorial boundary at three miles, State boundaries over activities other than exploitation and exploration of the resources of the shelf must be limited to three miles from the coastline.69

A similar argument was advanced to the Court by the United States alleging that the consistent refusal of the State Department to recognize boundaries in excess of three miles precluded any State from establishing a "historical" boundary beyond United States' territorial waters. The Court rejected this argument stating that the purpose of the Act was purely domestic and not affecting international relations. Congress is authorized to establish State boundaries and in the Act it established them over the seabed and the subsoil of the continental shelf at distances greater than territorial waters. The jurisdiction conferred upon the States over these lands is far less, the Court continued, than the jurisdiction claimed by the United States in the three mile territorial belt.70 The Court concluded that Texas' maritime boundary was historically "established at three leagues from its coast for domestic purposes. Of course, we intimate no view on the effectiveness of this boundary as against other Nations."71

Subsequently, the Convention on the Continental Shelf, signed at Geneva, entered into force for the United States on June 10, 1964.72 Article 2 of the Convention confers on the coastal nation exclusive rights to explore and exploit the natural resources of its continental shelf. Continental shelf is defined as "the seabed and subsoil of submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admit of exploitation of the natural

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69. 363 U.S. at 32 n.54.
70. Id. at 33-36.
71. Id. at 64.
resources of the said areas. Even though the extent of the continental shelf to which the adjacent state has exclusive rights is the subject of present negotiations and a future conference, if the boundary dividing federal-state rights to submerged lands is drawn on that area of the seabed to which the U.S. has exclusive exploration and exploitation rights, the world community would have no interest in where it is drawn. The Court's conclusion in the 1960 Louisiana case that this is purely a matter of domestic concern has not been altered by the present Convention on the Continental Shelf.

B. Convention on the Territorial Sea and Contiguous Zone

The Convention on the Territorial Sea and the Contiguous Zone as applied by the Supreme Court complicates, but does not preclude, establishing a fixed federal-state submerged land boundary. This Convention resulted from the 1958 Geneva Conference and entered into force for the United States on September 30, 1962. In the second California case, the Supreme Court was tasked with defining "inland waters" as used in the Act. The Court viewed this litigation as a continuation of the first California case in which it had appointed a Special Master. His task was to define the low-water mark and the seaward limit of inland waters which under the first California decision was all the submerged lands to which California was entitled. The Special Master drew upon international law to determine whether areas were inland waters or open seas. Finding this law unclear, he adopted the definitions of inland waters as used by the United States in its foreign affairs as of the date of the original California decree.

In the second California case, the position of the United States was that the Submerged Lands Act had simply moved the line of demarcation out three miles from the line established by the California decree entered in the first case. Therefore, the determination of the Special Master as to the location of the seaward limit of inland waters would be the "coastline" from which the grant made to the

73. Id. at Art. 1.
74. 15 U.S.T. 471, T.I.A.S. No. 5578. Ratification of this Convention was advised by the Senate on May 26, 1960. On March 24, 1961, the President ratified the Convention thereafter depositing the ratification with the Secretary General of the United Nations on April 12, 1961. The Convention was proclaimed by the President on May 25, 1964.
States by the Act would be measured.  The Court, however, viewed its 1947 decision as requiring that "inland waters" have an international content since the outer limit of inland waters would determine the United States' coastline. Rather than utilizing the standard set forth by the Special Master and urged by the United States, the Court felt that the Convention on the Territorial Sea and the Contiguous Zone provided the best and most workable definitions available. Furthermore, use of these definitions would provide the salutary result, in the Court's view, of a single coastline for international affairs and for administration of the Submerged Lands Act.

Utilization of the definitions of the Convention on the Territorial Sea and the Contiguous Zone to define the terms of the Submerged Lands Act may be desirable; however, it is not required. "Inland waters" could have vastly different meanings for purposes of determining the coastline from which to measure the States' portion of the United States continental shelf than the meaning given these words by the Convention governing the international determination of the base line for measuring the territorial sea. Justice Harlan, delivering the opinion of the Court in the second California case, obfuscated this distinction when he stated that California could not use the straight base line which was authorized by the Territorial Seas Convention "to extend our international boundaries beyond their traditional international limits." Certainly, California's use of straight base lines for purposes of measuring the extent of the Congressional grant need not result in an extention of the United States' maritime boundary.

This distinction was recognized in the 1967 Texas artificial accretion case. There the Court repeated that Congress had left the definition of "coastline" to the Court and in the second California case, the Court had "borrowed the international definition of 'coast line' used in the Convention on the Territorial Sea and the Contiguous Zone." If the Convention had applied, Texas would have been entitled to use artificial accretions as her "coastline" from which to measure her three league grant. However, the Court refused to apply to Convention, stating:

[i]t cannot be ignored that the application of the Convention here

78. Id. at 162-65.
79. Id. at 168.
would allow Texas, unlike all other States except Florida, to extend its own state boundaries beyond the congressional limitation simply because of a rule governing the relationship between maritime nations of the world. This is a domestic dispute which must be measured by the Congressional grant.\textsuperscript{80}

Clearly, wherever the United States chooses to draw the line between federal and state rights to the submerged lands of the continental shelf of the United States is not dictated by the Convention on the Territorial Sea and the Contiguous Zone.\textsuperscript{81}

Article 3 of the Territorial Sea Convention may be viewed as troublesome since it states “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.”\textsuperscript{82} Congressional action detailing the coast line from which the permanent federal-state boundary is to be measured could be misconstrued as establishing the base lines for measuring the territorial sea.\textsuperscript{83} It is doubtful, however, that such Congressional action could create any greater danger of misconstruction by foreign nations than the Supreme Court created in the second California case:

\begin{quote}
We interpret the two lines thus indicated [line of ordinary low-water used in the Submerged Lands Act and “low-water line along the coast as marked on large-scale charts officially recognized by the territorial seas Convention] to conform, and on the official United States coastal charts of the Pacific Coast prepared by the United States Coast and Geodetic Survey, it is the lower low-water line which is marked.\textsuperscript{84}
\end{quote}

The Convention on the Continental Shelf establishes in ambiguous terms the outermost limit of the continental shelf to which a coastal Nation has exclusive natural resource rights. If the federal-state submerged land boundary is established on the coastal side of this outermost limit, no adverse international implications would result. Similarly, the definitions contained in the Convention on the Territorial Sea and the Contiguous Zone can be helpful but need not be

\begin{footnotes}
\item[81] But see, United States v. Louisiana, 394 U.S. 11, 72-73 (1969) where the Court said:
\begin{quote}
While we agree that the straight baseline method was designed for precisely such coasts as the Mississippi River Delta area, we adhere to the position that the selection of this optional method of establishing boundaries should be left to the branches of Government responsible for the formulation and implementation of foreign policy.
\end{quote}
This result comports with the Court's decision in the second California case, supra note 79 and accompanying text.
\item[83] COMSER, supra note 1, recommended that the coast line be fixed for the territorial sea also.
\item[84] United States v. California, 381 U.S. 139, 175-76 (1965).
\end{footnotes}
adhered to when used solely for delimitation of baseline from which to draw this submerged land boundary. Article 3 of the Territorial Sea Convention should not complicate establishing a permanent boundary. Under the Commision proposal, the boundary delimiting State interests in the shelf would be established permanently but the coastline itself could remain ambulatory. Therefore, the U.S. territorial sea baseline would be as it exists “on large-scale charts officially recognized” by the United States. No adverse international implications need result from permanently establishing the federal-state submerged land boundary.

III. Domestic Aspects

The major domestic argument against establishing, or freezing, the federal-state submerged land boundary is that such establishment might constitute a taking of state lands. A State’s territory can not be taken from it by Congress without the State’s consent. It is clear that States own the tidelands within their boundaries to the low-water mark. Equally clear is the rule that accretion belongs to the riparian owner. Consequently, a federal-state boundary drawn along the actual coastline would constitute a taking if subsequent accretion did not alter the boundary to the State’s benefit. But is a boundary permanently drawn three miles (or three leagues) seaward of the low-water mark, beyond the reach of accretion, a taking of state property?

The nature of the State’s interest in lands beyond the low-water mark determines whether establishing a permanent offshore boundary would constitute a taking. In the pre-Act California, Louisiana and Texas cases, the Supreme Court held that the State’s had neither title to nor property interest in submerged lands seaward of the line marking low-water along the coast and inland waters. The Court in interpreting the subsequent Submerged Lands Act stated that this Act “did not impair the validity of the California, Louisiana and Texas cases,” leaving for the Court’s determination “only the geographic extent to which the statute ceded to the States the federal rights established by those decisions.” Therefore, the interests

of the States in submerged lands beyond the low-water mark or seaward limit of inland waters are only those rights granted by the federal government to the States in the Act.

The Supreme Court's interpretation of the Act is that the grant to the States is to be measured from the modern, ambulatory coastline. The Court's selection of the ambulatory coastline to measure the extent of the Congressional grant cannot be viewed as vesting a right in the States to an ambulatory grant. Since Congress is the only branch of the federal government authorized to dispose of public lands, amendment of the Submerged Lands Act to provide not only for determination of the relevant coastline from which the three mile, or three league, grant is to be measured but also to provide that boundary once established would be permanent would not constitute a taking. This view is bolstered by the dictum of the Supreme Court in the Louisiana Boundary Case: Finally, we note that if the inconvenience of an ambulatory coastline proves to be substantial, there is nothing in this decision which would obstruct resolution of the problems through appropriate legislation or agreement between the parties. Such legislation or agreement might, for example, freeze the coastline as of an agreed-upon date.

The one conceivable difficulty that might arise from freezing the coastline and projecting seaward therefrom the permanent boundary is that accretion might build beyond the fixed boundary, for example in the Mississippi River Delta. This possibility need not prevent the boundary from being permanently established, but would require language stating that this fixed submerged land boundary does not prejudice the right of the States to accretion beyond that boundary. There appears to be, therefore, no domestic legal impediment to Congressional freezing of the federal-state submerged land boundary.

CONCLUSIONS

To freeze the federal-state submerged land boundary requires a

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91. U.S. Const. art. 4, § 3, cl. 2.
92. It is not suggested, nor is it deemed likely from a political point of view, that the extent of the grant to the States be decreased.
two-step process. First the base line, that is low-water mark along the coast and the seaward limit of inland waters, must be determined. The seaward boundary must then be projected from this previously determined base line.

To establish the base line, Congress could authorize the proposed National Seashore Boundary Commission, perhaps in conjunction with the Coast and Geodetic Survey, to chart the coastline of the United States. Alternately, Congress might wish to use charts already prepared, for example, the most recent Coast and Geodetic Survey Charts of a State's coastline. For delimiting inland waters, Congress should set forth in an amendment to the Submerged Lands Act those definitions in the Convention on the Territorial Sea and the Contiguous Zone, and the interpretations of the Supreme Court, that it deems appropriate.

After the base line is established, the seaward submerged land boundary should be delimited by means of an envelope line which is defined as a "line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the [Congressional grant]." The envelope line is formed by a continuous series of intersecting arcs which are farthest seaward of all possible arcs with the same radius that can be drawn from the base line. Under envelope line principle, "only one line can be drawn from a given coast-line." Minor variations in the baseline will not be reproduced in the envelope line because every point on such line must be at the given distance from the nearest point on the base line and at least that distance away from every point on the base line. The proposed Boundary Commission should have authority, up to a specified distance, to straighten curvatures in the envelope line to simplify geographic description of the line.

94. The envelope line has been recommended by Shalowitz for delimiting the exterior boundary. 1 S. SHALOWITZ, SHORE AND SEA BOUNDARIES § 1621 (c) (1962). He also discusses the replica line which is a line resulting from transferring the low-water line seaward the requisite distance and laying it down parallel to its former position. The irregularities which result from this procedure, among other things, renders this technique unsatisfactory. Id. § 1621(a). A conventional line, also discussed and rejected by Shalowitz, is a relatively smooth, straight or curved, line based on some adopted principles. The location of the line becomes a matter of individual judgment; considerable differences may be obtained even by two experts. Id. § 1621(b).

95. Id. § 1621(c).
The Commission on Marine Science, Engineering and Resources recommended that the coastline be fixed not only for purposes of drawing the submerged land boundary but also for measuring the limit of the territorial sea.\textsuperscript{96} The flexibility gained by the present United States' position on its territorial sea base line should not be lost lacking a demonstrated need. Article 6 of the Convention on the Territorial Sea and the Contiguous Zone provides that the outer limit of the territorial sea is the "line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea."\textsuperscript{97} This describes an envelope line.\textsuperscript{98} A navigator who has plotted his position on a chart can draw an arc with the radius equal to the breadth of the territorial sea. If the arc crosses land or inland waters, he is in territorial waters. The Convention's definition of the outer limit of the territorial sea, therefore, provides a practical way for a navigator to determine whether he is within territorial waters. The base line for purposes of the territorial sea should remain the ambulatory "low-water line along the coast as marked on large-scale charts officially recognized by the coastal State."\textsuperscript{99}

The recommendation of the Commission on Marine Science, Engineering and Resources that submerged land boundaries be stabilized by the proposed National Seashore Boundary Commission clearly has great merit. The impediment to full utilization of the natural resources off the coasts of the United States would be diminished because the uncertainties as to whether a portion of submerged lands is in federal or state jurisdiction will be eliminated. The establishment of a semi-judicial commission tasked with fixing the boundary, subject to judicial review, would remove from the Supreme Court's original jurisdiction the minutiae of delimitation, a task the Court is ill-suited to perform. Rather than a twenty-year process which even then would be subject to change by accretion and erosion, a more rapid delimitation of boundaries, fixed for all time, should result from the Commission's proposal.

A risk always exists when international terms are used to settle purely domestic disputes. The interpretation given those terms may

\textsuperscript{96} COMSER, supra note 1. The Commission also recommended that the lateral boundaries between States be delimited by the proposed National Seashore Boundary Commission. Shalowitz recommends that the principle of equidistance be used for such delimitation. 1 S. SHALOWITZ, SHORE AND SEA BOUNDARIES § 1622 (1962).

\textsuperscript{97} U.N. Doc. A/Conf. 13/L. 52.

\textsuperscript{98} 1 S. SHALOWITZ, SHORE AND SEA BOUNDARIES § 1621(c) n.147 (1962).

\textsuperscript{99} Article 3, Convention on the Territorial Sea and the Contiguous Zone, supra note 97.
be viewed by others as establishing the international position of the United States. It is preferable that the substance to be accorded international terms be supplied by the executive in dealing with foreign nations rather than by the judiciary in settling domestic disputes. Early settlement of the existing uncertainties based on a statute of Congress, rather than an international convention, will reduce the risk of misinterpretation by other nations.

Rejection of a frozen territorial sea base line destroys the unity of submerged lands and territorial sea base lines urged by the Supreme Court and the Commission. Different considerations clearly apply in delimiting the domestic submerged land boundary than apply in delimiting the international territorial sea boundary which negates the necessity for a unified base line. The fears are unfounded that two similar lines marking different interests will appear on the charts and result in confusion. The submerged land boundary will be described by geographic coordinates and need not be charted. The outer limit of territorial waters also need not be charted since a navigator under the Territorial Sea Convention definition need merely draw an arc from his plotted position using the breadth of territorial sea as his radius to determine whether he is within territorial waters. The freezing of the base line for delimitation of the submerged land boundary need not be carried over in delimitating the territorial sea. Congress should not permanently establish the base line of the territorial sea unless a clear need is demonstrated and those tasked with the conduct of foreign relations unequivocally support such action.

Attempts to amend the Submerged Lands Act of 1953 in all probability would lead to renewed claims by the coastal States for additional grants. Certainly, it is reasonable to expect the three mile states to petition Congress for the three leagues now enjoyed by Texas and Florida in the Gulf. States may even seek out to the twelve mile fishing zone now claimed by the United States. Those recalling the heated, and often bitter, debates of the “tidelands controversy” may simply feel that it is not worth reopening the issue. However, the real question is, what are the costs of continuing under the present system.