PART THREE.

FLORIDA'S COASTAL ZONE PLANNING:
A STUDY IN GOVERNMENTAL RELATIONS

Section 1. INTRODUCTION

Many of the legal issues in modern coastal zone management and planning involve questions of governmental authority and governmental relations. Although the federal government's commerce power has been very expansively interpreted, Congress is generally reluctant to interfere in the states' traditional regulation of land use and natural resources. Coastal zone management issues have produced paradoxical problems of the federal government claiming preemption in one area while praising the "new federalism" and urging state control in other areas. At the state level, most state planning and zoning power has been delegated to local governments, making comprehensive planning for coastal areas virtually impossible without a significant restructuring of priorities, major changes in the decision-making process and, in many cases, a redistribution of authority.

A first step in understanding the governmental relationships in the coastal zone is to look at the "proprietary" interests of the state and federal governments in the coastal zone. As in the case of the dividing line between state and private ownership, the boundary is not the ultimate arbiter of rights or authority. It is only a starting point in the analysis.

Section 2. FEDERAL AND STATE BOUNDARIES

THE TIDELANDS CONTROVERSY

The popular name given to the dispute between the federal and state governments over the control of the land, water and resources of the territorial sea, the Tidelands Controversy, is technically a misnomer. As the cases in Chapter 2 indicate, there has been no question concerning state ownership of the wet sand area, the area between the low and high tide lines. The major dispute that arose in the late 1930's and 1940's involved the lands seaward of the low tide mark.
Prior to the 1930's there had seemed to be little doubt that the submerged lands and resources of the territorial sea were "owned" by the adjacent states. Actions of the federal and state governments, as well as a century of court decisions, reinforced this commonly held perception. In the late 1930's, however, several factors led the federal government to assert an exclusive claim to the territorial sea. Overfishing by Japan off the country's west coast and national defense from enemy submarines were offered as reasons for the federal government's assertion of jurisdiction, but the primary basis for the change of position was the growing importance of oil and gas linked with the development of technology to exploit offshore petroleum resources. California had been leasing off-shore areas for oil development under the authority of a 1921 California leasing act. In May 1945 the Justice Department filed suit against California successfully challenging the state's ownership of resources in the territorial sea.

The United States claimed a 3-mile territorial sea, and it was known at that time that the oil resources of the continental shelf were not limited to that restricted area. There was no basis in international law for the United States to regulate or exclusively control oil exploitation beyond its territorial sea. The issue of the U. S. claim to the resources of the continental shelf vis-a-vis other countries was as important as the issue of federal control of the territorial sea. Following a national marine resources policy study by the Departments of Interior and State, the United States formalized its position concerning jurisdiction of the continental shelf and marine fisheries. The 1945 Truman Proclamation on the Continental Shelf stated:

"Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected."

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A White House press release issued the same day, September 28, 1945, contained the following commentary:

"The policy proclaimed by the President in regard to the jurisdiction over the continental shelf does not touch upon the question of Federal versus State control. It is concerned solely with establishing the jurisdiction of the United States from an international standpoint. It will, however, make possible the orderly development of an underwater area 750,000 square miles in extent. Generally, submerged land which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf."

Although the U. S. claim to the continental shelf had no basis in international law, there was little international objection to the claim, and the Proclamation became the starting point of the international law of the continental shelf. The United States v. California litigation, however, was only the starting point of more than three decades of litigation and legislation attempting to define the relative rights of the federal and state governments in the adjacent seas and submerged lands.

UNITED STATES v. CALIFORNIA
332 U.S. 19 (1947)

MR. JUSTICE BLACK delivered the opinion of the Court.

The United States by its Attorney General and Solicitor General brought this suit against the State of California invoking our original jurisdiction under Article III, sec. 2, of the Constitution which provides that "In all Cases . . . in which a State shall be party, the Supreme Court shall have original jurisdiction." The complaint alleges that the United States "is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California." It is further alleged that California, acting pursuant to state statutes, but
without authority from the United States, has negotiated and executed numerous leases with persons and corporations purporting to authorize them to enter upon the described ocean area to take petroleum, gas, and other mineral deposits, and that the lessees have done so, paying to California large sums of money in rents and royalties for the petroleum products taken. The prayer is for a decree declaring the rights of the United States in the area as against California and enjoining California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

California has filed an answer to the complaint. It admits that persons holding leases from California, or those claiming under it, have been extracting petroleum products from the land under the three-mile ocean belt immediately adjacent to California. The basis of California’s asserted ownership is that a belt extending three English miles from low water mark lies within the original boundaries of the state, Cal.Const.Art.XII (1849); that the original thirteen states acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a state on an “equal footing” with the original states, California at that time became vested with title to all such lands. The answer further sets up several “affirmative” defenses. Among these are that California should be adjudged to have title under a doctrine of prescription; because of an alleged long-existing Congressional policy of acquiescence in California’s asserted ownership; because of estoppel or laches; and, finally, by application of the rule of res judicata.

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The crucial question on the merits is not merely who owns the bare legal title to the lands under the marginal sea. The United States here asserts rights in two capacities transcending those of a mere property owner. In one capacity it asserts the right and responsibility to exercise whatever power and dominion are necessary to protect this country against dangers to the security and tranquility of its people incident to the fact that the United States is located immediately adjacent to the ocean. The Government also appears in its capacity as a member of the family of nations. In that capacity it is responsible for conducting United States relations with other nations. It asserts that proper exercise of these constitutional responsibilities requires that it have power, unencumbered by state commitments, always to determine what agreements will be made concerning the control and use of the marginal sea and the land under it. See McCulloch v. Maryland, 4 Wheat., 316, 403-408; United States v. Minnesota, 270 U.S. 181, 194. In the light of the foregoing, our question is whether the state or the Federal Government has the paramount right and power to determine in the first instance when, how, and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

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At the time this country won its independence from England there was no settled international custom or understanding among
nations that each nation owned a three-mile water belt along its borders. Some countries, notably England, Spain, and Portugal, had, from time to time, made sweeping claims to a right of dominion over wide expanses of ocean. And controversies had arisen among nations about rights to fish in prescribed areas. But when this nation was formed, the idea of a three-mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion. Neither the English charters granted to this nation’s settlers, nor the treaty of peace with England, nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership. Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean’s bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality. Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world, although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See The Queen v. Keyn, 2 Ex. D. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. Cunard Steamship Co. v. Mellon, 262 U.S. 100, 122-124. And this assertion of national dominion over the three-mile belt is binding upon this Court. See Jones v. United States, 137 U.S. 202, 212-214; In re Cooper, 143 U.S. 472, 502-503.

Not only has acquisition, as it were, of the three-mile belt been accomplished by the National Government, but protection and control of it has been and is a function of national external sovereignty. See Jones v. United States, 137 U.S. 202; In re Cooper, 143 U.S. 472, 502. The belief that local interests are so predominant as constitutionally to require state dominion over

1. (16) Secretary of State Jefferson in a note to the British minister in 1793 pointed to the nebulous character of a nation’s assertions of territorial rights in the marginal belt, and put forward the first official American claim for a three-mile zone which has since won general international acceptance. Reprinted in 4 Ex. Doc. No. 324, 42d Cong., 2d Sess. (1872) 553-554. See also Secretary Jefferson’s note to the French Minister, Genet, reprinted in American State Papers, I Foreign Relations (1833), 183, 184; Act of June 5, 1794, 1 Stat. 381; 1 Kent, Commentaries, 14th Ed., 33-40.

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lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favor of state control over any part of the ocean or the ocean’s bottom. This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations. The country’s adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government’s power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. See Minea v. Davidowitz, 312 U.S. 52, 62-64; McCulloch v. Maryland, supra. The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars waged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See United States v. Belmont, 301 U.S. 324, 331-332. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. See Chy Lung v. Freeman, 92 U.S. 275, 279. The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with resources which might be of national and international importance.

* * *

The question of who owned the bed of the sea only became of great potential importance at the beginning of this century when oil was discovered there. As a consequence of this discovery, California passed an Act in 1921 authorizing the granting of permits to California residents to prospect for oil and gas on blocks of land off its coast under the ocean. Cal. Stats. 1921, c. 303. This state statute, and others which followed it, together with the leasing practices under them, have precipitated this extremely important controversy, and pointedly raised this state-federal conflict for the first time. Now that the question
is here, we decide for the reasons we have stated that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

We hold that the United States is entitled to the relief prayed for.

THE SUBMERGED LANDS ACT of 1953
43 U.S.C.S. 1311-1314
Section 1311. Rights of the States

(a) Confirmation and establishment of title and ownership of
lands and resources; management, administration, leasing,
development, and use. It is hereby determined and declared to be
in the public interest that (1) title to and ownership of the
lands beneath navigable waters within the boundaries of the
respective States, and the natural resources within such lands
and waters, and (2) the right and power to manage, administer,
lease, develop, and use the said lands and natural resources all
in accordance with applicable State law be, and they hereby,
subject to the provisions hereof, recognized, confirmed
established, and vested in and assigned to the respective States
or the persons who were on June 5, 1950, entitled thereto under
the law of the respective States in which the land is located,
and the respective grantees, lessees, or successors in interest
thereof;

(b) Release and relinquishment of title and claims of United
States; payment to States of moneys paid under leases. (1) The
United States hereby releases and relinquishes unto said States
and persons aforesaid, except as otherwise reserved herein, all
right, title, and interest of the United States, if any it has,
in and to all said lands, improvements, and natural resources;
(2) the United States hereby releases and relinquishes all claims
of the United States, if any it has, for money or damages arising
out of any operations of said States or persons pursuant to State
authority upon or within said lands and navigable waters; and (3)
the Secretary of the Interior or the Secretary of the Navy or the
Treasurer of the United States shall pay to the respective States
or their grantees issuing leases covering such lands or natural
resources all moneys paid thereunder to the Secretary of the
Interior or to the Secretary of the Navy or to the Treasurer of
the United States and subject to the control of any of them or to
the control of the United States on the effective date of this
Act [enacted May 22, 1953], except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

** Section 1312. Seaward boundaries of States **

The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. (Emphasis added.)

** Section 1314. Rights and powers retained by the United States; purchase of natural resources; condemnation of lands. **

(a) The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 3 of this Act [43 USCS § 1311].

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

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MR. JUSTICE BLACK delivered the opinion of the Court.

This controversy involves the interests of all five Gulf States -- Florida, Texas, Louisiana, Mississippi and Alabama -- in the submerged lands off their shores. The Court heard the claims together, but treats them in two opinions. This opinion deals solely with Florida's claims. The result as to the other States is discussed in [a separate] opinion, ante, p. 1. All the claims arise and are decided under the Submerged Lands Act of 1953.

The Act granted to all coastal States the lands and resources under navigable waters extending three geographical miles seaward from their coastlines. In addition to the three miles, the five Gulf States were granted the submerged lands as far out as each State's boundary line either "as it existed at the time such State became a member of the Union," or as previously "approved by Congress," even though that boundary extended further than three geographical miles seaward. But in no event was any State to have "more than three marine leagues into the Gulf of Mexico." This suit was first brought against Louisiana by the United States, United States v. Louisiana, 350 U.S. 990, invoking our original jurisdiction under Art. III, 2, cl. 2, of the Constitution, to determine whether Louisiana's boundary when it became a member of the Union extended three leagues or more into the Gulf, as Louisiana claimed, so as to entitle it to the maximum three-leagues grant of the Submerged Lands Act. After argument on the Government's motion for judgment against Louisiana, we suggested that the interests of all the Gulf States under the Act were so related, "that the just, orderly, and effective determination" of the issues required that all those States be before the Court. United States v. Louisiana, 354 U.S. 513, 516. All are now defendants, each has claimed a three-league boundary and grant, which the United States denies, and the issues have been extensively briefed and argued by the parties. As stated, this opinion deals only with the United States-Florida controversy.

Florida contends that the record shows it to be entitled under the Act to a declaration of ownership of three marine leagues of submerged lands, because (1) its boundary extended three leagues or more seaward into the Gulf when it became a State, and (2) Congress approved such a three-league boundary for Florida after its admission into the Union and before passage of the Submerged Lands Act. Since we agree with Florida's latter contention, as to congressional approval, we find it unnecessary to decide the boundaries of Florida at the time it became a State.

Florida claims that Congress approved its three-league boundary in 1868, by approving a constitution submitted to Congress as required by a Reconstruction Act passed March 2,
1867. 14 Stat. 428. That constitution carefully described Florida's boundary on the Gulf of Mexico side as running from a point in the Gulf "three leagues from the mainland" and "thence northwesterly three leagues from the land" to the next point. The United States concedes that from 1868 to the present day Florida has claimed by its constitutions a three-league boundary into the Gulf. The United States also admits that Florida submitted this constitution to Congress in 1868, but denies that the Gulf boundary it defined was "approved" by Congress within the meaning of the Submerged Lands Act. This is the decisive question as between Florida and the United States.

The 1868 Florida Constitution was written and adopted by Florida pursuant to the congressional Act of March 2, 1867 as supplemented by a second Act of March 23, 1867.

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Congress not only approved Florida's Constitution which included three-league boundaries, but Congress in 1868 approved it within the meaning of the 1867 Acts.

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The voluminous references to the Reconstruction debates fail to show us precisely how closely the Southern States' Reconstruction Constitutions were examined. We cannot know, for sure, whether all or any of the Congressmen or Senators gave special attention to Florida's boundary description. We are sure, however, that this constitution was examined and approved as a whole, regardless of how thorough that examination may have been, and we think that the 1953 Submerged Lands Act requires no more than this. Moreover, the Hearings and the Reports on the Submerged Lands Act show, as the Government's brief concedes, that those who wrote into that measure a provision whereby a State was granted up to three leagues if such a boundary had been "heretofore approved by Congress," had their minds specifically focused on Florida's claim based on submission of its 1868 Constitution to Congress. When Florida's claims were mentioned in the hearings it was generally assumed that Congress had previously "approved" its three-league boundaries. The Senate Report on a prior bill, set forth as a part of the report on the 1953 Act, pointed out that "In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico." S. Rep. No. 133, 83d Cong., 1st Sess. 64-65.

The language of the Submerged Lands Act was at least in part designed to give Florida an opportunity to prove its right to adjacent submerged lands so as to remedy what the Congress evidently felt had been an injustice to Florida. Upon proof that Florida's claims met the statutory standard -- "boundaries ... heretofore approved by the Congress" -- the Act was intended to "confirm" and "restore" the three-league ownership Florida had claimed as its own so long and which claim this Court had in effect rejected in United States v. Texas, 339 U.S. 707; United States v. Louisiana, 339 U.S. 699; and United States v. California, 332 U.S. 19. As previously shown, Congress in 1868 did approve Florida's claim to a boundary three leagues from its
shores. And, as we have held, the 1953 Act was within the power of Congress to enact. Alabama v. Texas, 347 U.S. 272. See also United States v. California, 332 U.S. 19, 27.

We therefore deny the United States' motion for judgment. We hold that the Submerged Lands Act grants Florida a three-marine-league belt of land under the Gulf, seaward from its coastline, as described in Florida's 1868 Constitution. The cause is retained for such further proceedings as may be necessary more specifically to determine the coastline, fix the boundary and dispose of all other relevant matters. The parties may submit an appropriate form of decree giving effect to the conclusions reached in this opinion.

It is so ordered.

NOTES

1. The Submerged Lands Act of 1953 was the Congressional response to United States v. California and its progeny. Although the Act declared state ownership of the submerged lands and resources within 3 miles of the coast, it by no means ended the federal-state conflict in the marginal seas. Note that the federal grant to the states took the form of a "quitclaim" and was without prejudice to state claims beyond 3 miles. Rather than finally settling the issue of the state-federal boundary, the Submerged Lands Act signaled the beginning of another series of disputes concerning state claims beyond 3 miles.

2. The first series of cases involved the states bordering the Gulf of Mexico. Only Florida and Texas established the right to a 3 league boundary. The Supreme Court rejected the claims of Mississippi, Alabama and Louisiana to territorial seas beyond 3 miles.

3. The 1960 Florida boundary case, supra, settled only the Florida boundary in the Gulf of Mexico. In the 1970's, Florida and the other Atlantic states asserted claims beyond 3-miles in the Atlantic Ocean. In United States v. Maine, 420 U.S. 515 (1975), the Supreme Court rejected the claims of the states that made up the original thirteen colonies. Florida's claim was also rejected, United States v. Florida, 420 U.S. 511 (1975), resulting in Florida having a 3-mile territorial sea in the Atlantic Ocean and a 3-league territorial sea in the Gulf of Mexico. The final issue to be resolved, of course, was to determine where the Atlantic ends and the Gulf begins.
UNIVERSITY v. FLORIDA
425 U.S. 791 (1976)

DECREE

The joint motion for entry of a decree is granted.

For the purpose of giving effect to the decision and opinion of this Court announced in this case on March 17, 1975, 420 U.S. 531, and to the Supplemental Report of the Special Master filed January 26, 1976, it is ORDERED, ADJUDGED, AND DECREE AS FOLLOWS:

1. As against the State of Florida, the United States is entitled to all the lands, minerals, and other natural resources underlying the Atlantic Ocean more than 3 geographic miles seaward from the coastline of that State and extending seaward to the edge of the Continental Shelf, and the State of Florida is not entitled to any interest in such lands, minerals, and resources. As used in this decree, the term "coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, as determined under the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606.

2. As against the United States, the State of Florida is entitled to all the lands, minerals, and other natural resources underlying the Atlantic Ocean extending seaward from its coastline for a distance of 3 geographic miles, and the United States is not entitled, as against the State of Florida, to any interest in such lands, minerals, or resources, with the exceptions provided by Section 5 of the Submerged Lands Act, 43 U.S.C. 1313.

3. As against the State of Florida, the United States is entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico more than 3 marine leagues from the coastline of that State; the State of Florida is not entitled to any interest in such lands, minerals, and resources. Where the historic coastline of the State of Florida is landward of its coastline, the United States is additionally entitled, as against the State of Florida, to all the lands, minerals, and other natural resources underlying the Gulf of Mexico more than 3 marine leagues from the State's historic coastline (but not less than 3 geographic miles from its coastline), and the State of Florida is not entitled to any interest in such lands, minerals, and resources. As used in this decree, the term "historic coastline" refers to the coastline as it existed in 1868, as to be determined by the parties.
4. As against the United States, the State of Florida is entitled to all the lands, minerals, and other natural resources underlying the Gulf of Mexico extending seaward for a distance of 3 marine leagues from its coastline or its historic coastline, whichever is landward, but for not less than 3 geographic miles from its coastline; the United States is not entitled, as against the State of Florida, to any interest in such lands, minerals, or resources, with the exceptions provided by Section 5 of the Submerged Lands Act, 43 U.S.C. 1313.

5. For the purpose of this decree, the Gulf of Mexico lies to the north and west, and the Atlantic Ocean to the south and east, of a line that begins at a point on the northern coast of the Island of Cuba in 83 degrees west longitude, and extends thence to the northward along that meridian of longitude to 24 degrees 34' north latitude, thence eastward along that parallel of latitude through Rebecca Shoal and the Quickands Shoal to the Marquesas Keys, and thence through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys, and Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

6. There is no historic bay on the coast of the State of Florida. There are no inland waters within Florida Bay, or within the Dry Tortugas Islands, the Marquesas Keys, and the lower Florida Keys (from Money Key to Key West), the closing lines of which affect the right of either the United States or the State of Florida under this decree.

7. Jurisdiction is reserved by this Court to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree.
NOTES

1. Although it is now well settled that the federal government, not the states, "owns" the submerged lands beyond the 3-mile territorial sea, the actual boundary lines are still in dispute. Cases like United States v. Maine, United States v. California, and United States v. Louisiana continued for years in an attempt to determine the location of the 3-mile boundary. For states with large oil reserves offshore or with a major interest in inshore fisheries, the determination of the exact extent of state jurisdiction is considered extremely important. Irregular coastlines, bays, rivers and islands created delimitation problems not addressed by the Submerged Lands Act. In order to deal with these issues, the Supreme Court in United States v. California, 381 U.S. 139 (1965), adopted the definitions an international treaty, the Convention on the Territorial Sea and Contiguous Zone, done at Geneva, April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, to deal with the boundary delimitation issues left unresolved by the Submerged Lands Act.

2. Waters within bays, the mouths of rivers, and between fringe islands and the coast are internal or inland waters, not part of the territorial sea. The limit of the territorial sea must be measured from closing lines, not from the low water line. The figures below from Shalowitz, Boundary Problems Raised by the Submerged Lands Act, 54 Colum. L. Rev. 1021 (1954), illustrate some of the terminology and definitions involved in territorial sea delimitation.

![Figure 1.—Terminology.](image-url)
The Supreme Court adopted the Convention on the Territorial Sea and Contiguous Zone's semi-circle, twenty-four mile closing line rule for bays. [Art. 7(4)] In order to qualify as a bay, a body of water must have an area larger than a semicircle, the closing line of the bay representing the diameter. In no event, however, can the closing line be more than twenty-four miles. In the diagram below, coastline B represents a true bay. Coastline C only has an indentation that does not constitute a bay.

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An open and a closed bay by the semicircular method.
Note that the territorial sea is not measured by a line running parallel to the coast, but is enclosed by an "envelope of arcs." This envelope of arcs method assures that the territorial sea boundary is always three miles from the nearest point on the coastline.

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Principle of the envelope line and its use by the navigator.
3. The United States v. Florida decree, supra page 196, stated that the Bay of Florida was not a historic bay. Historic bays are an exception to the 24-mile closing line/semicircle rule. In United States v. Louisiana, 394 U.S. 11 (1969), the Supreme Court set out the test for a historic bay:
- continuous exercise of authority and dominion over the area claimed.
- acquiescence by foreign nations.
See also United States v. Alaska 422 U.S. 184 (1975).

4. A majority of coastal nations claim a territorial sea of 12 miles or more, as compared to the U.S. claim of 3 miles. The Third United Nations Conference on the Law of the Sea (UNCLOS III) recently concluded a comprehensive Law of the Sea Treaty (which the U.S. did not sign) which recognizes the legality of a 12 mile territorial sea. From time to time legislation has been introduced in Congress to expand the territorial sea to 12 miles. If the U.S. territorial sea were expanded to 12 miles, what would be the effect on federal and state jurisdiction under the Submerged Lands Act? Note that the Submerged Lands Act grants states title to a limit of three miles, not to the territorial sea.

5. The United States offshore jurisdiction is not limited to a 3 mile territorial sea and the continental shelf. The U.S. also claims a 12 mile contiguous zone, a 200 mile fishery conservation zone (1976) and a 200 mile exclusive economic zone (1983). For an overview of U.S. claims and boundaries, see Feldman and Colson, The Maritime Boundaries of the United States, 75 Am. J. Int'l Law 729 (1981).

6. While the federal-state boundary dispute raged, there was actually very little conflict over lateral boundaries, the boundaries between states in the territorial sea. The Texas-Louisiana boundary became important because of the oil involved, but most states saw little reason to even negotiate a territorial sea boundary line with their neighbors. Federal legislation, however, has ended the days of amicably shared territorial waters. First, the Coastal Energy Impact Program and now the proposed Revenue Sharing Act base allocation of funds to the states on a formula related to oil leasing and production on the "adjacent" continental shelf. "Adjacent" shelf is determined by extending state territorial sea boundaries. Now the interstate war is on. See, Christie, Coastal Energy Impact Program Boundaries on the Atlantic Coast: A Case Study of the Law Applicable to Lateral Seaward Boundaries, 19 Va. J. Int’l L. 841 (1980).