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**florida's seaward boundaries**  
**- a dilemma**

**marshall s. scott**

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FLORIDA'S SEAWARD BOUNDARIES - A DILEMMA

Marshall S. Scott

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## PREFACE

The Sea Grant Colleges Program was created in 1966 to stimulate research, instruction, and extension of knowledge of marine resources of the United States. In 1969 the Sea Grant Program was established at the University of Miami.

The outstanding success of the Land Grant Colleges Program, which in 100 years has brought the United States to its current superior position in agricultural production, helped initiate the Sea Grant concept. This concept has three primary objectives: to promote excellence in education and training, research, and information services in sea related university activities including science, law, social science, engineering and business faculties. The successful accomplishment of these objectives, it is believed, will result in practical contributions to marine oriented industries and government and will, in addition, protect and preserve the environment for the benefit of all.

With these objectives, this series of Sea Grant Technical Bulletins is intended to convey useful studies quickly to the marine communities interested in resource development without awaiting more formal publication.

While the responsibility for administration of the Sea Grant Program rests with the National Oceanic and Atmospheric Administration of the Department of Commerce, the responsibility for financing the Program is shared by federal, industrial and University contributions. This study, Florida's Seaward Boundaries - A Dilemma, is published as a part of the Sea Grant Program and was made possible by Sea Grant support for the Ocean Law Program.

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FLORIDA'S SEAWARD BOUNDARIES -

A DILEMMA

CHAPTER I.            INTRODUCTION

Florida has the greatest tidal coastline of any mainland coastal state, approximately eight thousand <sup>1/</sup> four hundred and twenty-six statute miles.

The location of Florida's ocean boundaries awaits determination. The delineation of these boundaries should have a tremendous impact upon this state's ability to broaden its revenue base. To date Florida's oil production has been insignificant. The presence of oil deposits in offshore waters and inland has been confirmed. Economically, the exploitation of these finds has not been feasible as Florida's wells must be pumped; the oil doesn't flow of its own pressure. <sup>2/</sup>

The value of all minerals produced from Federal and State offshore waters during the period 1960 to 1967 exceeded six billion dollars. The value of petroleum

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1/ U. S. COAST AND GEODETIC SURVEY (current)

2/ The Miami Herald, Mar. 7, 1970, § A at 7.

production from 1960 through 1967 from the same sources exceeded five billion dollars.<sup>3/</sup>

It would appear that the financial future of this state is entwined with a pending lawsuit which should determine the precise delineation of Florida's seaward boundaries.<sup>4/</sup> This litigation will determine the exterior boundary line which separates state ownership of seabed under the Submerged Lands Act<sup>5/</sup> from Federal control under the Outer Continental Shelf Act.<sup>6/</sup>

In both international and domestic arenas the competency to claim ocean space and underlying ocean beds rests largely upon the proximity of that space to land. Generally sea boundaries are measured from a line which is considered the outer limit of the land "internal" waters (the international law term) and "inland" waters (the domestic law term). Internal or inland waters are the waters below the mean low-water line of the coast including ports, rivers, bays, estuaries and harbors.

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<sup>3/</sup> The second report of the President to Congress on Marine Resources and Engineering Development, 1968.

<sup>4/</sup> United States v. Me., et al, 395 U.S. 955 (1969).

<sup>5/</sup> 67 Stat. 29 (1953), 43 U.S.C. §§ 1301-15 (1964).

<sup>6/</sup> 67 Stat. 462 (1953), 43 U.S.C. §§ 1331-43 (1964)

[This is subsection III to The Submerged Lands Act].

Internationally this line is called the "base-  
line"<sup>7/</sup>; domestically the Submerged Lands Act uses the term  
"coastline"<sup>8/</sup>. The term "baseline" is the key to all zonation  
of water and seabed off the coast of a state or nation.

Concepts of international law when applied to  
State and Federal disputes over boundaries have a catalytic  
effect upon the distribution of power between State and  
Federal authorities. The basic problem is a collision be-  
tween two incompatible doctrines, the sovereignty of  
Federal authority representing the constituent elements of  
the Union and the individual state's lack of responsibility  
..... ■ ■ ■ ■ ■ authority in international affairs. ....

.....<sup>9/</sup> .....

The original Tidelands cases (a misnomer as this  
would more properly refer to inland waters) graphically  
demonstrate this paradox. These cases basically proceed  
upon the premise (many commentators think erroneously)  
". . . once low-water mark is passed the international  
domain is reached. Property rights then become so subordin

---

<sup>7/</sup> Convention on the Territorial Sea and Contiguous Zone.  
Art. 3, Part 2, 15 U.S.T. 1606 [1958] T.I.A.S. No. 56  
(1960) (in force 1964)

<sup>8/</sup> See note 5, supra.

<sup>9/</sup> See at 4, infra, note 11.

to political rights as in substance to coalesce and unite  
in the national sovereign."<sup>10/</sup> The premise that the low-  
water mark is the beginning of the international domain  
is questionable.

The application of this basic doctrine of the  
<sup>11/</sup>

jurisdiction case to the responsibility of Federal  
Department for International Affairs leads inevitably to  
conclusion that Federal interests, responsibilities  
rights are paramount and State rights are subordinate.

#### A. DEFINITIONS

<sup>12/</sup>

Figure numbered one is a diagrammatic presenta-  
tion of various terms which will appear in this manuscript.

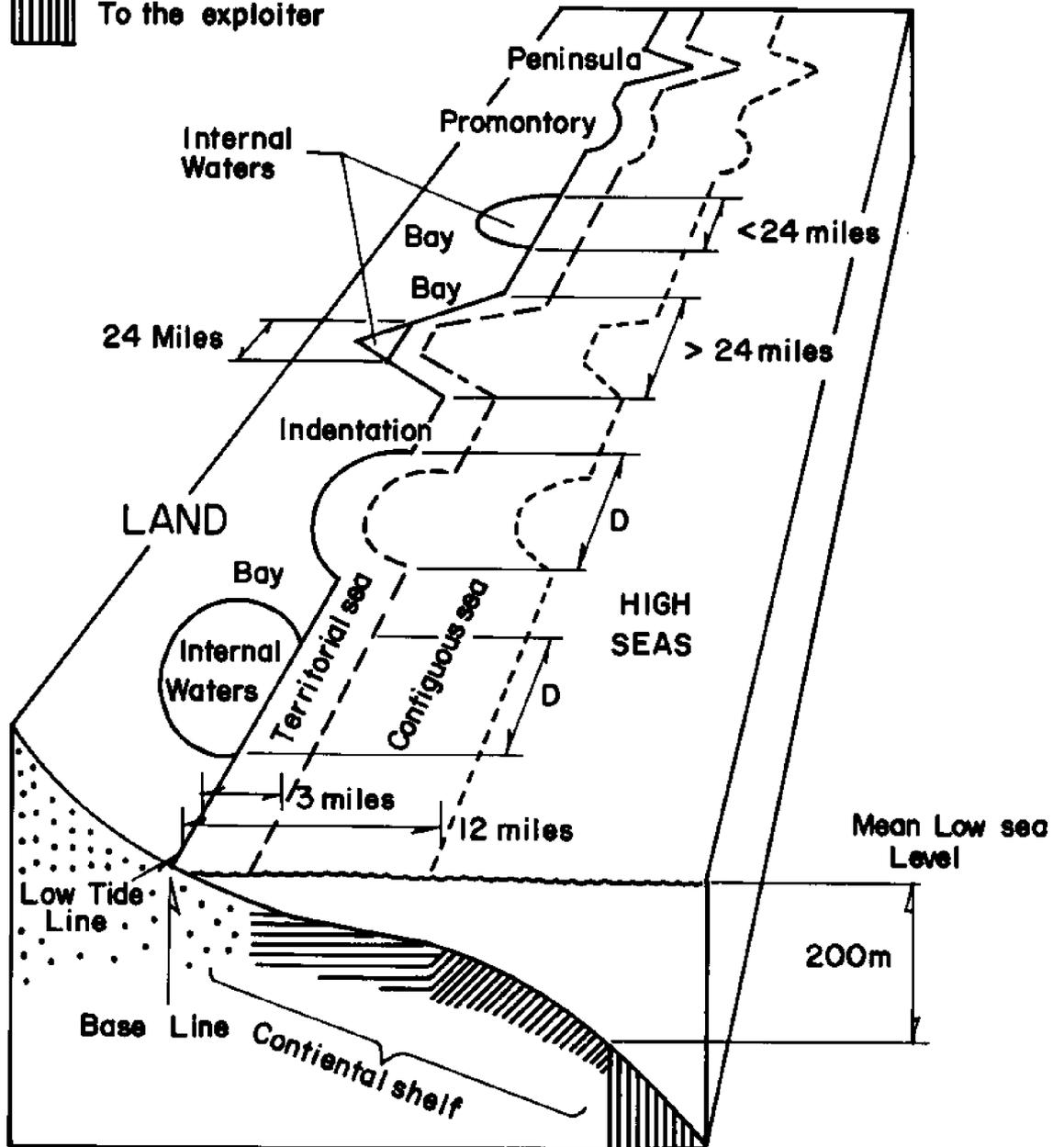
Baseline. The "baseline" commences generally at  
the low-tide line and separates inland (internal)  
waters from the exterior (territorial) waters. This line  
generally follows the mean low-water mark of the shore-  
line and goes straight across the mouths of rivers and  
bays. Dock or permanent harbor facilities in-  
cluding jetties become, in effect, an extension of the

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United States v. Tex., 339 U.S. 707, 719 (1950).  
United States v. Calif., 332, U.S. 19 (1947).  
See Figure 1, at 4(b).

<sup>10/</sup>  
<sup>11/</sup>  
<sup>12/</sup>

-  States
-  Federal
-  Federal 'sovereign' rights
-  To the exploiter



coastline.

2. Inland Waters - Territorial Waters. All waters on the landward side of the baseline are designated inland waters. Waters seaward of the same baseline are territorial waters. There has been no universal agreement to the width of territorial waters. The United States, Great Britain and most Continental Nations adhere to the three-mile rule (the so-called "cannon-shot" rule).<sup>13/</sup>

3. The Cannon-Shot Rule and Breadth of the Territorial Sea.

Judge Van Bynkershoek reasoned the seas should be designated as free to all mankind except for a narrow three-mile bed adjacent to each littoral nation's coastline. A number of Latin-American states, notably Peru, Chile and some other nations, are claiming a territorial sea ranging from three miles to two hundred miles.<sup>14/</sup>

4. Jurisdiction. The littoral states' inland waters for all intents and purposes are subject to the same jurisdiction and rights exercised by a sovereign nation over

---

<sup>13/</sup> Some commentators claim this theory was invented by Cornelius Van Bynkershoek, a Judge of the Supreme Court of Appeals of Holland in 1737.

<sup>14/</sup> See chart, 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, at 21-33 (1965).

dry land within its boundaries.<sup>15/</sup> Other nations do not have a right of "innocent passage" in another state's inland waters. However, other non-belligerent states or neutrals do have the customary international right in case of storm or other emergency to seek "safe haven" within inland waters.<sup>16/</sup>

Territorial waters stand upon a far different set of jurisdictional rights and claims than inland waters. It is generally agreed ships of foreign non-belligerent nations have a right of "innocent passage" across territorial waters so long as such passage does not infringe the littoral nation's laws including customs, immigration or sanitary rules. Presently a nation may enforce this type of jurisdiction within a twelve-mile area from the littoral state's baseline.<sup>17/</sup>

5. The Truman Proclamation. Additionally, the littoral state may prohibit fishing in the so-called Contiguous Zone, or may license fishing by nationals of other

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<sup>15/</sup> Supra note 7.

<sup>16/</sup> Id.

<sup>17/</sup> Id.

nations within its sole discretion.<sup>18/</sup>

It is generally accepted that the High Seas commence at the seaward boundary of inland or internal waters. The littoral states' jurisdiction and claims thereto are much less than within its territorial sea. However, the Geneva Convention for the Continental Shelf extended the littoral states' jurisdiction as to seabed and mineral resources therein to the two hundred meter isobath plus to a reasonably exploitable criterion.<sup>19/</sup>

6. The Arc of Circles. How does one measure a three-mile territorial sea so that each part of the seaward boundary will be equally distant from the coastline? The general practice today is use of a method of plotting known as the "envelope of arcs of circles." A noted United States geographer described this method as follows: "The outer limit of the territorial sea following the above rule, can be marked on a chart by constructing an envelope of arcs of circles . . . Arcs of circles with a

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~~2005, 10 Fed. Reg. 2559. Reclamation No. 2559. Reclamation No. 2559. Reclamation No. 2559. Reclamation No. 2559.~~  
coastal Fisheries in Certain Areas  
Sept. 28, 1945. 10 Fed. Reg.  
1948 Comp. p. 68.

~~with Respect to  
of the High Seas  
12304:3 DFR 19~~  
<sup>19/</sup> Supra note 7.

radii of three miles are swung from every point along the coast in order to project the outermost limit as far seaward as possible. In this way every point on the line denoting this limit is neither more than nor less than <sup>20/</sup> three miles from the closest coastal point."

B. BASIC PROBLEMS OF DELINEATION OF FLORIDA'S OCEAN BOUNDARIES BEYOND ITS COASTLINE.

Fundamentally, to determine precisely the location of Florida's seaward boundaries it is necessary to establish the baseline which divides inland waters from the territorial sea. The next step is to establish the breadth of this territorial sea.

That statement is deceptively simple, but the solutions are not. Following its 1947 ruling in the <sup>21/</sup> first California case the Supreme Court appointed a Special Master to consider seven specific segments of the California coast. His report was filed in 1952 and the <sup>22/</sup> Court rendered a supplementary opinion in 1965.

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<sup>20/</sup> Percy, Measurement of the U. S. Territorial Sea, XL Bulletin. Dept. of State, No. 1044, 963-964 (June 29, 1959).

<sup>21/</sup> Convention on the Continental Shelf, Art. 1, [1958], 15 U.S.T. 471, T.I.A.S. No. 5578 (1964).

<sup>22/</sup> United States v. Calif., 381 U.S. 139 (1965).

Litigation in the original California case is still continuing and to date the complete, precise delineation of the baseline which divides inland waters from California territorial sea has not been made.

A brief look at U. S. Coast and Geodetic Charts numbered 1111, 1112, 1113 and 1114 together with a Florida Road Map will illustrate graphically the problems in this area which confront Florida. (See Appendix.)

Biscayne Bay (if it is in fact a bay) under the geographical and mathematical tests that apply has an easterly boundary consisting of various sized islands, shoals, sandbars and reefs which are dry at low tide and partially awash or completely submerged at high tide. If the Court decides Biscayne Bay is not a bay, historically or otherwise, portions of the bay, where it is wider than six miles, would not be subject to ownership of the bay bottom by Florida. <sup>24/</sup> Shades of the Mad Hatter.

The Tampa Bay area presents additional problems. May offshore islands form part of the closing line of a bay? Do these offshore islands extend or reduce water

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23/ Supra note 11.

24/ L. CARROLL, ALICE IN WONDERLAND (1865)

area for the application of the mathematical test?

The Charlotte Harbor Complex, if the closing line of inland waters can be taken from Gasparilla Island, La Costa, North Captiva, Captiva and Sanibel Island, would enclose the maximum area of internal waters. If the Supreme Court should rule that this is not a true bay, the inland water area would be substantially reduced by following the sinuosities of the shoreline. Assuming the historic bay's factual situation could be established for this area, the geographic and mathematical test would not be applicable.

The Ten Thousand Islands area presents some interesting problems of baseline. Are these scattered islands to be treated as islands or are they and the intervening water areas a part of the mainland?

The Florida Keys and the Florida Bay areas are composed of numerous and various sized islands or keys (the word "key" meaning island) separated from the mainland and from each other by numerous water passages, none of which is capable of

~~being used for commercial water transportation of goods.~~

and or must a territorial sea  
vidual island? If the latter,  
ion of the seven-mile bridge

these keys a part of the ma  
area be drawn around each i  
theoretically the central p

would be high seas.\*

Many of the offshore islands or keys in the Florida Keys and the Florida Bay area are partially or wholly covered with mangroves, one of nature's most effective land builders. As a practical matter, it is extremely difficult to determine the mean low-water mark in a mangrove swamp as any engineer or surveyor who has worked in one will testify.

There is a difference of opinion in legal circles as to whether the Supreme Court will insist that Florida's baseline in the Gulf of Mexico be pegged to its 1868 coastline or its modern ambulatory coastline. There exist few Coast and Geodetic Charts published prior to 1869 and their coverage of this area is limited to scattered portions of the coastline. Texas solved a similar problem in the Gulf area by agreement with the United States as to the location of its coastline in 1845. The compromise appears to have been principally a horse-trading type of agreement rather than historic proof of

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\* This matter can have serious international implications as witness a 1971 fiasco involving the jurisdiction of the State of Florida or the United States Coast Guard to arrest and try poaching Cuban fishermen.

25/  
the 1845 coastline.

The determination of the mean low-water line along Florida's east and west coasts is far from simple and its determination promises to be an expensive undertaking.

Is the Florida east coast seaward boundary fixed as the edge of the Gulf Stream? 26/ (This boundary line would be extremely flexible since the Gulf Stream's western as well as eastern, edge is subject to daily and seasonal fluctuations.) The Federal Government contends with considerable logic in support of its position that Florida's eastern boundary is subject to the three-mile limitation contained in the Submerged Lands Act. 27/

What is the boundary line between the Gulf of ~~the~~ Mexico ~~(which is an arm of the Atlantic Ocean)~~ and the Atlantic Ocean? The determination of this boundary line holds much significance for Florida. The Supreme Court has already ruled that Florida is entitled to a nine-28/ nautical-mile territorial sea in the Gulf of Mexico. If

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25/ United States v. La., 389 U.S. 155 (1967).  
26/ FLA. CONST. art. I (1868).  
27/ 43 U.S.C. § 1301-15 (1964).  
28/ United States v. Fla., 363 U.S. 121 (1960).

the Court subsequently determines Florida's Atlantic Coast territorial sea claims are limited to three nautical miles, the dividing boundary line between the Gulf of Mexico and the Atlantic Ocean assumes major importance.

The Marquesas and Dry Tortugas areas present additional problems. Are these islands geographically and physically a part of the mainland or are they separate islands each with its own territorial sea? What effect must be given to the existence of a natural deep water channel eastward of the Tortugas group which is and has been used by international shipping? Is this legally an international strait?\*

Fortunately, the decisions of the Supreme Court in the so-called Tidelands Cases have begun to blaze a trail through the maze of offshore boundary problems. (A trail should not be confused with our modern interstate highway system.)

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\* Even the cannon range of the three nautical mile rule could effectively close this strait as it is considerably less than three miles across.

CHAPTER II.      PROCESS OF CLAIM, LEGAL AND HISTORICAL

"Public money is like holy water, everyone helps himself to it."<sup>29/</sup>

Oil, black gold, set off the Tidelands controversy. The first offshore drilling operations (drilling in coastal waters beyond the mean low-tide mark) commenced in 1897 in the Summerland Field near Santa Barbara, California.

The majority of legal talent had concluded from the Supreme Court's ruling in Pollard's Lessee v. Hagan<sup>30/</sup> and its progeny, that the individual states owned the submerged lands seaward of inland waters. All of those cases dealt with factual situations involving inland waters (basically fresh or non-tidal matters).

It was not until the 1930's that the Federal Government,<sup>31/</sup> conceding the validity of the Pollard Rule as to truly inland waters, began to dispute this rule's applicability to submerged lands seaward of mean low

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<sup>29/</sup> H. G. BOHM, FOREIGN PROBLEMS, at 101 (1959).

<sup>30/</sup> Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 258 (1845).  
Martin v. Waddel, 41 U.S. (16 Pet.) 234 (1842).

<sup>31/</sup> Infra note 33.

32/

water and claimed ownership of these lands. Some cynics have suggested that the lure of oil royalties was responsible for the Federal Government's belated interest in this area.

The struggle for ownership of offshore oil reserves generated considerable political activity within the Federal Government's various departments, Congressional halls, the Navy Department, the Interior Department and various State agencies. An excellent law review article deals with the political background of this dispute, detailing the various chessboard moves up to presidential elections of 1952.<sup>33/</sup>

In September of 1945, President Truman entered the struggle issuing a Presidential Proclamation and Executive Order,<sup>34/</sup> dealing with the jurisdiction of the United States over natural resources of the Continental Shelf located under the high seas contiguous to the

~~United States and its territories and possessions~~

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<sup>32/</sup> United States v. La., 363 U.S. 1,1,7 (1960).

<sup>33/</sup> W. Metcalfe, The Tidelands Controversy; A Study in Development of a Political Legal Problem.

4 SYRACUSE L. REV. 39 (1952).

<sup>34/</sup> PROC. NO. 2667, 10 C.F.R. 12303 (1945); EXEC. ORDER NO. 9633, 10 C.F.R. 12305 (1945).

stressed the fact that the character of the claim to the high seas and the waters above the Continental Shelf was in no way intended to affect other nations and freedom of passage according to international law.

The Executive Order <sup>35/</sup> emphasized that neither the order nor the proclamation would or should affect the determination by legislation or judicial decree of any issue between the Federal Government and the individual states as to the ownership or control of the seabed and subsoil of the Continental Shelf within or outside of the traditional three-mile limit.

A White House press release issued September 28, 1945, stressed the fact that the policy proclaimed did not involve the question of Federal versus State control but was concerned only with establishing the jurisdiction of the United States from an international aspect. The release stated that submerged lands contiguous to the United States mainland and covered by not more than 100 fathoms (600 feet) of water are considered part of the United States Continental Shelf. <sup>36/</sup>

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at 485 (1945).

<sup>35/</sup> 1945, DEPT. OF STATE, BULL. XIII NO. 10.

<sup>36/</sup> DEPT. OF STATE, BULL. XIII NO. 10.

In May, 1945, the United States Attorney General filed a trespass action in the United States District Court of California against one of the larger oil operators in the California offshore area. <sup>37/</sup> This suit was subsequently dismissed at the Federal Government's request.

On October 13, 1945, the United States Attorney General, The Honorable Tom Clark, filed a motion with the

~~United States Supreme Court for leave to file a complaint against the State of California. Original jurisdiction was based on Article III, section 2 of the Constitution of the United States which gives exclusive jurisdiction to the Supreme Court of disputes involving the Federal Government and the individual state or states. There can be no doubt that this action was contrary to the temper of the majority of Congressmen and Senators.~~

Finally, in July of 1946, the states' rights supporters managed to pass through Congress a Tideland quitclaim bill. President Truman promptly vetoed the bill and returned the bill to Congress with a tart note to the

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<sup>37/</sup> United States v. Pacific Western Oil Co., U.S. Dist. Ct. S.D. Calif. (1945).

effect that the ownership of the Tidelands was a legal question which was already before the Supreme Court in the first California case.<sup>38/</sup> The states' rights supporters were unable to muster enough votes to override the presidential veto.

## PART ONE

### EXTENT OF THE JURISDICTION OF THE UNITED STATES COASTAL STATES OVER OFFSHORE WATERS AND SEABED RESOURCES

#### CHAPTER III. GENERAL JUDICIAL FINDING THAT THE COASTAL STATES HAVE LIMITED JURISDICTION BEYOND THEIR COASTLINE (THE TIDELANDS' CASES)

##### (a) The First California Case.

The fears of a minority of the states' rights groups and counsel for the petroleum operators who were working in the offshore area turned into a nightmare. On June 24, 1947, the Supreme Court in a landmark case held that the State of California had "no title to" or "property interest" in the submerged lands seaward of the ordinary low-water

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<sup>38/</sup> 92 CONG. REC. 10770 (1946).

mark of the California coast.<sup>39/</sup>

The majority of the Court, in an opinion rendered on bill and answer by Justice Black, summarily disposed of two technical arguments. The first: that the matter did not constitute a case or controversy under Article III, Section 2, of the Constitution. The second: that the Attorney General of the United States had no power or authority to file or maintain the suit in question.<sup>40/</sup>

The majority opinion was that the basic question on the merits was more than "who owns the bare title to the lands." The rights the United States was asserting were rights in a capacity "transcending those of a mere property owner." The United States claimed "power and dominion" both as the national sovereign and as a "member of the family of nations."<sup>41/</sup> (emphasis ours)

The majority opinion is based upon a historic and legal theory as to where the dominion of the British Crown's claim to seacoast stopped as of 1776. The majority opinion found that there was no established inter-

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<sup>39/</sup> United States v. Calif., 332 U.S. 19 (1947).

<sup>40/</sup> Id. at 24-29.

<sup>41/</sup> Id. at 29.

national custom as to the existence of a three-mile belt of territorial sea. The original thirteen colonies acquired ~~and sovereignty rights to offshore submerged lands~~ from the British Crown by reason of their successful revolution. The British Crown did not, until 1876, claim ownership of such lands and the Crown's domain stopped at the line of mean low tide. This assumption has been attacked by a number of distinguished attorneys and law professors.

~~The opinion built on various facts such as~~ freedom of the seas, the doctrine of self-protection, revenue collections, and more powers to support the Federal claim and stated: ". . . insofar as the nation asserts its rights under international law, whatever of value may be discovered in the sea next to its shores and within its protective belt will be appropriated for its use."<sup>42/</sup>

The Court rejected as inapplicable California's arguments, based upon estoppel, or laches, arising from the acquiescence of Federal agencies in the claims of the

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<sup>42/</sup> Id. at 35.

individual states to the submerged lands adjacent to their coastlines.<sup>43/</sup>

Mr. Justice Black, speaking for the majority, acknowledged that in some respects under dual federalism (used in the sense there is a Federal government and a State government) the individual states have police powers

underlies, but the Federal Government's power within their waters

sea was supreme.<sup>44/</sup> The Court did not <sup>45/</sup> overrule cases and its progeny, but re- a rule beyond strictly inland or in-

power in the margin  
not overrule the  
refused to extend su  
ternal waters.

denied California's estoppel, or cite the many years' practice of vari- cles which had acquiesced in the no- ual states had a claim to the tide- ir coastlines. The Court simply

The Court  
laches, argument of  
ous governmental a  
tion that the indi  
lands adjacent to  
held neither estop

nor laches applied to this situation.<sup>46/</sup>

Reed dissented, observing that the ed the seabed to the three-mile limit;

Mr. Just  
original colonies

---

Calif., 381 U.S. 139 (1965).  
Calif., 332 U.S. 19 (1947).

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43/ Id. at 35.  
44/ Id. at 36.  
45/ United States  
46/ United States

therefore, California, under the "equal footing" doctrine, had the same rights to the seabed as the original colonies. He pointed out that the Federal Government's powers and responsibilities were the same over all areas of the United States, submerged or emerged.<sup>47/</sup>

Mr. Justice Frankfurter (generally acknowledged to have the finest legal mind on the Court as then constituted), in a brief and penetrating dissent, pointed out certain essential weaknesses in the majority opinion. The original complaint sought, among other remedies, an injunction to prevent California from trespassing upon the disputed area. An injunction in such a situation normally presupposes property rights. The majority granted the in-

from absence of ownership in California to ownership by  
the United States.<sup>48/</sup> Mr. Justice Frankfurter opined that  
the area in dispute was unclaimed land and the determina-  
tion to claim it should be a political decision and not  
a legal determination.<sup>49/</sup>

The Court's supplemental opinion struck from the  
Federal Government's proposed decree the words "of pro-  
prietorship."<sup>50/</sup> The decree the Court entered reads in  
part as follows: "The United States of America is now and  
has been at all times pertinent hereto possessed of para-  
mount rights (note: "of proprietorship" was deleted) in  
and full dominion over . . ." \*

(b) The First Louisiana Case.

This case invoked the least dissent from the Supreme  
Court. Mr. Justice Douglas wrote the majority opinion  
joined by five justices. Messrs. Jackson and Clark did  
not participate and Mr. Justice Frankfurter wryly noted  
his disagreement with the majority opinion.<sup>51/</sup>

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<sup>48/</sup> Id. at 45.

<sup>49/</sup> Id.

<sup>50/</sup> United States v. Calif., 332 U.S. 804 (1947).

<sup>51/</sup> United States v. La., 389 U.S. 155 (1967).

\* "Oh, what a tangled web we weave, when first we practice  
to deceive.", W. SCOTT, (1771-1832), LOCHINVAR, st. 17,  
(1808).

The complaint followed the pattern of the first California case litigation except for the fact that Louisiana was claiming a twenty-seven-mile territorial sea.

Louisiana asked for a jury trial which was denied and the case was argued on bill and answer on March 27, 1950.

~~The Court held the first California case controlled the instant case. The majority stated this type of litigation does not turn on title or ownership in the conventional sense. Louisiana, like the original thirteen colonies, had never acquired ownership of the territorial sea adjacent to its land boundaries.~~ <sup>52/</sup> The majority opinion found no material differences in the preadmission or post-admission history of Louisiana that made her case stronger than the California case. <sup>53/</sup>

<sup>54/</sup> The supplemental decree of December 11, 1950, followed the first California case and again referred to the fact that the United States had complete authority over the three-mile territorial sea. The magic word, "propriatorship" is missing from the decree.

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<sup>52/</sup> Id. at 704.

<sup>53/</sup> Id. at 705.

<sup>54/</sup> United States v. La., 304 U.S. 898 (1950).

(c) The First Texas Case.

This case proved a much harder nut for the Court to

crack than either the first California or first Louisiana

cases.

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v. La., 339 U.S. 699 (1950).

55/ United St

all the riches which it held. Of the land underneath it,  
and all of the riches which it held."<sup>56/</sup>

The "equal footing" clause relied upon by California in the original Tideland case became a two-edged sword. The majority reasoned that when Texas entered the Union it became a sister state on an equal footing with all other states. Magically, it would seem this doctrine involved a relinquishment of some of her former sovereignty, particularly her title and claim to a territorial sea and its seabed. The Court declared that when Texas was admitted to the Union, the United States took Texas' place as a sovereign power and took over the authority and duties of foreign commerce and relationships, waging of war, making international treaties, and that one incident of the transfer of sovereignty was that Texas relinquished her claim to the territorial sea.<sup>57/</sup>

Two of the dissenters, Messrs. Justice Reed and Minton, argued a distinction of the instant case from the first California case. The Texas case presented a variation which required a different result.<sup>58/</sup> The

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<sup>56/</sup> Id. at 723.

<sup>57/</sup> Id. at 717, 718.

<sup>58/</sup> Id. at 720.

dissenting Justices observed that, formerly, the equal footing doctrine embraced only political rights or rights considered necessary attributes of national sovereignty.<sup>59/</sup> Equal footing heretofore had brought to the individual states political rights considered necessary attributes of state sovereignty.<sup>60/</sup> The same doctrine had brought to coastal states ownership of upland land within such states' boundaries, but never had the doctrine been used to take away from a state property which it previously had owned.<sup>61/</sup>

The dissenters pointed out several flaws in the reasoning of the majority. The argument that international sovereignty and responsibilities compelled the holding in the first California case was examined. However, as Texas had at one time been a Republic, the reasoning of the first California case could not logically apply to Texas unless Texas had specifically ceded the territorial sea and submerged lands.<sup>62/</sup> The dissent found no evidence of this.

The dissent observed that the necessity of defending

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<sup>59/</sup> Id. at 722.

<sup>60/</sup> Id. at 722.

<sup>61/</sup> Id. at 722.

<sup>62/</sup> Id. at 723.

this area and the handling of foreign relationships was not enough to transfer property rights in the marginal seas from Texas to the Federal Government. "Federal sovereignty is paramount within national boundaries, but

Federal ownership depends upon possession, as the California

case holds; or consent, as in the case of plains

for Federal use; or purchase, as in the case of Alaska

or the territory of Louisiana."<sup>63/</sup> The dissenters concluded by pointing out the needs of national defense

international relations are no greater in the submerged

lands area than in any other portion of American territory.

<sup>64/</sup>

(emphasis ours)

Mr. Justice Frankfurter in effect threw up

hands in bewilderment and said he was unable to understand

how the shift in proprietorship from the Republic

of Texas to the Federal Government of the submerged

occurred upon Texas' admission to the Union.<sup>65/</sup>

(d) Critique

The reaction of the legal world to the first California

case was far from unanimous as to approval of

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<sup>63/</sup> Id. at 723.

<sup>64/</sup> United States v. La., 304 U.S. 898 (1950).

<sup>65/</sup> Id. at 724.

result or the grounds assigned by the majority.

One of the more colorful objections to that decision, taking issue with the Court's historical explanation as to what the English Common Law considered the limits of the Crown's claim to offshore waters, came from Professor Manley O. Hudson. He commented: "All of them are gods, and, of course, I take my law from them. But, I don't take my history from them."<sup>66/</sup>

Professor D. P. O'Connell, commenting upon the decision, flatly stated that the majority opinion was based less upon precedent than upon high policy and that views on policy will differ according to the prevalence of federalist or states' righters upon the bench. He further observed that the majority opinion's thesis that submerged lands rights coalesce in the Federal Government as an incident of sovereign power gives a new and novel twist to the doctrine of federalism.<sup>67/</sup>

The Court's employment of the doctrine of federal paramount rights and authority over submerged lands

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<sup>66/</sup> Joint Hearing on S.B. 1988 and Similar House Bills Before the Comm. on The Judiciary, 80th Cong., 2d Sess. 255 (1948).

<sup>67/</sup> O'Connell, *Brit. Y.B. Int'l. L.*, 199 (1958).

has drawn the severest criticism. Formerly the Federal Government had acquired property through recognized means - treaty, purchase, cession, eminent domain and the like. In the instant case the Federal Government acquired domain over tremendous areas of submerged lands by the fact of its existence as a sovereign nation and its constitutional duties with reference to foreign affairs and the nation's defense.

The idea that property rights coalesce and unite in the Federal Government as an instance of sovereignty is novel and without historic or legal precedence according to one commentator.<sup>68/</sup>

Another commentator noted that in three original Tidelands opinions<sup>69/</sup> the Court carefully avoided any direct finding that the Federal Government has any title to or ownership of the submerged lands. These decisions do not turn upon any theory of orthodox property law, but rather a new, court-devised concept of property. If the Court meant to say that rights which had heretofore been iden-

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<sup>68/</sup> Elliq., Offshore Lands Paramount Rights, 14 U. OF PA. L. REV. 10 (1952).

<sup>69/</sup> United States v. Calif., 332 U.S. 19 (1947).

tified with ownership may develop from the undisputed fact of the Federal Government's responsibility to protect that area, it has brought into being a new and potentially dangerous species of property law.

One writer noted that in the first California and first Louisiana cases criticism of the majority opinion is not so much the fact that littoral states were deprived of tideland resources, but the frightening possibility of the extension of the doctrine that there is a federal power which is superior to well established property rights.<sup>70/</sup>

Another commentator writing prior to the Court's decision in the first California case concluded that there was no settled law which the Court need consider binding with regard to the submerged areas in dispute. That writer suggested it would be preferable for the Court to leave the matter open for Congressional action.<sup>71/</sup>

The legal basis could be that the disputed

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<sup>70/</sup> Delay, Relation of Federal and State Governments Title of United States to Tidelands, 50 MICH. L. REV. 114 (1951).

<sup>71/</sup> Comment, Conflicting State and Federal Claims of Title in Submerged Lands of the Continental Shelf, 56 YALE L.J. 356 (1947).

lands have been the unoccupied common property of all nations of the world and the property of none. The Court could reason that one undisputed attribute of sovereignty is the power to acquire title to unoccupied land. The acquisition of new territory involves foreign relations and such authority is within the constitutional powers of the Federal Government, not the individual states. The Executive and Legislative Departments, not the Judicial Department of the Federal Government, have the power to declare such an extension of sovereignty. Congress had not acted. The Court could consider the Presidential Proclamation of 1945 <sup>72/</sup> to be the first time that it was recognized that title to the submerged continental shelf, including the traditional three-mile territorial sea, had vested in the Federal Government. Such a conclusion would avoid the difficulty of finding a fiction to account for where and in whom the title to these areas had vested during the many years the submerged lands were considered valueless and no nation or individual had sought to assert a claim of title to them.

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72/ Supra note 34.

If the Executive Branch acquires a fee or other color of title to property whether it be submerged or upland areas, it then becomes the duty of Congress to make rules and regulations for their use and ultimate disposal. Congress is better equipped to handle the many subsidiary problems that may arise than the Judiciary.<sup>73/</sup>

The states' rights forces were unable to muster sufficient force during the remainder of 1947 to pass a quitclaim bill returning a portion of the submerged lands to the individual coastal states. The upset election of President Truman continued the Democratic Party's control of Congress. In December of 1948, President Truman instructed the Attorney General of the United States, the Honorable Tom Clark, to file motions in the Supreme Court for leave to file complaints against Texas and Louisiana. The purpose of the suit was to determine ownership of the submerged lands and to settle the question as to whether the states or the Federal Government was entitled to the golden bonanza of increasing oil royalties and leases derived from offshore oil production.

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<sup>73/</sup> Supra note 71.

The Supreme Court in the first California case<sup>74/</sup> concluded that any rights the original thirteen colonies acquired from the English Crown by virtue of their successful revolution did not include ownership of the marginal three-mile territorial sea.<sup>75/</sup> Historically, the majority stated there was no settled understanding or customary international law rule that each littoral nation claimed a three-mile territorial sea at the time the colonies won their independence.<sup>76/</sup> They characterized such a notion as "nebulous". The majority cited an English case The Queen v. Keyn<sup>77/</sup> as indicating that the concept of a territorial sea did not exist in English Common Law prior to 1876.

The brief of the State of Texas filed in opposition to the United States' motion for judgement on bill and answer in the first Texas case<sup>78/</sup> contained a chart prepared by Charles C. Hyde (a former professor of International Law at Columbia, a former Solicitor General

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<sup>74/</sup> United States v. Calif., 332 U.S. 19 (1947).  
<sup>75/</sup> Id. at 31.  
<sup>76/</sup> Id. at 32.  
<sup>77/</sup> [1876] L.R. 2 Ex. (English 63).  
<sup>78/</sup> United States v. Tex., 339 U.S. 707 (1950).

for the State Department and a universally recognized authority in the field of international law). This chart notes the comments and references of publicists in the area of international law from 1670 to 1950. The question to which the comments apply was whether or not various nations, particularly Great Britain, had laid claim to a marginal sea prior to 1670 and, if not, at what time was such a claim advanced.

The chart shows that from a period of time commencing in 1670 to 1776 three British publicists, three German publicists, one Dutch, one Swiss, one French and one Danish publicist agreed that the littoral states without exception had claimed sovereignty over the marginal three-mile sea and that the claims included ownership.

The same Texas brief <sup>79/</sup> quoted from a decision of Lord Chancellor Halsburry and Judge John B. Moore of the World Court that Queen v. Keyn <sup>80/</sup> was an aberrant and discredited decision. They pointed out that very shortly after the opinion was handed down, the English Parliament

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<sup>79/</sup> Brief for Defendant at 109-116, United States v. Tex., 339 U.S. 707 (1950).

<sup>80/</sup> United States v. Calif., 332 U.S. 19 (1947).

reversed the decision upon the ground that the opinion was not and had never been the law of Great Britain.

Eleven leading American and Continental professors, jurists and attorneys filed a joint amicus curia brief in support of the Texas motion for rehearing. They were Joseph W. Bingham, C. John Colombos, Gilbert Gidel, Manley O. Hudson, Charles C. Hyde, Hans Kelsen, William E. Masterson, Roscoe Pound, Stefan A. Riesenfeld, Felipe Sanchez Roman and William W. Bishop, Jr.

These eminent authorities concluded independently that the majority opinion's conclusion, that once the low-water mark is passed the international domain is reached and property rights are so subordinate to political rights that they become absorbed in the national sovereign, is not the law.<sup>81/</sup> They stated that there is no accepted authority in international law supporting such a theory or result.

They stated that there was complete agreement in the international law field prior to 1776 that the territorial marginal sea and adjacent soil and resources

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<sup>81/</sup> United States v. Tex., 339 U.S. 707,719 (1950).

within such boundaries are under the full sovereignty of the littoral nation subject only to the accepted international practice of innocent passage and safe haven in cases of distress.

The memorandum contended that the international domain does not begin at the low-water mark but to the contrary, the area between high and low water mark and the seaward limit of the marginal belt is for all intents and purposes in the same category as inland waters, uplands and other territory within a nation's boundaries.

The authors of the memorandum stated that they were not aware of any authority in international law to support the Court's reasoning that property rights in the marginal sea must be subordinate to political rights of the nation and that such rights in a dual federal system must coalesce and unite in the national sovereign.

Quite to the contrary, they contended both international and domestic law since 1776 recognized that (imperium) political rights are separate and severable from property rights (dominium) in the subsoil and minerals of the marginal sea belt to the same extent as any other portion of a national's territory. The exercise and responsibility of foreign commerce, defense and international relations, they pointed out, does not depend

upon the economic use and profits of the marginal seas subsoil any more than such federal responsibilities apply to nations' uplands, or land-locked lakes, or inland waters.

The memorandum took issue with the majority <sup>82/</sup> Texas opinion which reasoned that a transfer of marginal seas, subsoil and minerals could be implied in a transfer of sovereignty from an independent Republic to a federal system of government. These experts contended that such a result must be supported by an express cession or unambiguous terms indicating a transfer of proprietary rights. They found neither in the record of history of Texas' admission to the Union.

The Supreme Court appears not to have been unduly impressed with the arguments contained in the memorandum, the Texas petition and supporting amicus curiae brief. Rehearing was denied promptly on October 16, 1950. <sup>83/</sup>

<sup>84/</sup> Dean Roscoe Pound in a law review article said,

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<sup>82/</sup> Id. at 716.

<sup>83/</sup> United States v. Tex., 340 U.S. 848 (1950).

<sup>84/</sup> Pound, Critique on the Texas Tidelands Case, 3 BAYLOR L. REV. 120, 129 (1951).

"It is a startling proposition to tell Americans that sovereignty, which we have thought of as political, must be proprietary as well and must include ownership of the soil."\*

## PART TWO

### DELINEATION OF THE BASELINE FROM WHICH FEDERAL AND STATE JURISDICTION IS MEASURED

#### CHAPTER IV. LEGISLATIVE RESTORATION OF COASTAL STATES' JURISDICTION TO A MINIMUM OF THREE GEOGRAPHICAL MILES

##### (a) Historical and Legal Background of the Submerged Lands Act.

The battle as to who should own the offshore submerged lands, the State or the Federal Government, moved temporarily from the hallowed halls of the Supreme Court to the floors of Congress. States' rights forces mustered enough votes to pass another Tidelands Quitclaim Bill. <sup>85/</sup> President Truman promptly vetoed the bill and returned it to

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\* This sentiment has alarmed many others.  
85/ S.J. RES. 20, 82d CONG., 2d SESS., 98 CONG. REC.  
6251 (1952).

Congress with a curt note to the effect that the Supreme Court had settled the matter.

The Special Master in the first California case <sup>86/</sup> filed his report in 1952, but otherwise the tidelands problems remained ominously quiet.

The Presidential election of 1952 rekindled action on the tidelands front. General Eisenhower came out in support of a Tidelands Quitclaim Bill. The Democratic hopeful, Adlai Stevenson, late in August, stated publically that he was opposed to the bill.

The subsequent Republican victory at the polls assured the states' rights forces of administration support of a Tidelands Quitclaim Bill with no Presidential veto.

President Eisenhower signed House Resolution 4198 on May 22, 1953. This resolution became Public Law 31, 83rd Congress, 1st Session (popularly known as <sup>87/</sup> The Submerged Lands Act). Generally, the bill granted the coastal states ownership and proprietary powers of

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<sup>86/</sup> United States v. Calif., 344 U.S. 872 (1952).

<sup>87/</sup> 43 U.S.C. §1301 et. seq. (1953).

of lands under navigable waters for a distance of three miles in the Atlantic and Pacific Oceans, or three marine leagues (nine nautical miles) in the Gulf of Mexico (if certain conditions were met).

The purpose of the bill was clearly spelled out by its backers who bluntly stated, "The purpose of this legislation is to write the law for the future as the Supreme Court believed it to be in the past that the states shall own and have proprietary use of all land under navigable waters within their territorial jurisdiction, whether inland or seaward, subject only to the governmental powers delegated to the United States by the Constitution."<sup>88/</sup>

Section 2 of the bill defines "coastline" as 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.

Section 3 is the quitclaim and reservations<sup>89/</sup> section.

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<sup>88/</sup> H. R. REP. NO. 133, 83d CONG., 1st SESS. 7, 60-61 (1953).

U.S. Cong. Code & Adm. Serv. Vol. 2 at 1481 (1953).  
<sup>89/</sup> 43 U.S.C. §1311 (1953).

Section 4 approves a boundary of each original coastal state at three miles from its coastline, or in the case of Great Lakes littoral states at the international boundary line separating the United States and Canada. The Supreme Court subsequently found this section confusing and arrived at some unusual conclusions when litigation required construction of the same.

The Act itself is not a model of legislative clarity and some commentators felt that the Act created more problems than it solved.<sup>90/</sup>

(b) Constitutional Challenge of the Submerged Lands Act.

The apparent happy state of affairs concerning the tidelands dispute did not last. In September, 1953, Alabama filed in the Supreme Court a motion for permission to file a suit against Texas, Louisiana, Florida and California, the secretaries of Treasury, Navy, and Interior to test the constitutionality of the Act.<sup>91/</sup>

Basically, the motions for permission to file

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<sup>90/</sup> Shalowitz, Boundary Problems Raised by the Submerged Lands Act, 54 COLUM. L. REV. 1021 (1954).

<sup>91/</sup> A similar motion was filed by Rhode Island in December of 1953. The Court consolidated the two suits.

a complaint, and the complaints themselves, raised two principal questions as to the constitutionality of the Act. The first was that Congress had no power to dispose of public lands since the submerged lands and resources therein were held in trust for the people. The second, that the Act violated the equal footing clause which guarantees equal rights to all states upon admission to the Union. The argument was made that the Act did not give equal treatment to all coastal states as it permitted Alabama only a three-mile (nautical, not statute) grant in the offshore waters of the Gulf while making a possible three-league grant to other Gulf Coastal States.<sup>92/</sup>

On March 15, 1954, the Supreme Court denied the motions of Alabama and Rhode Island for leave to file the complaints in a brief per curiam opinion.<sup>93/</sup>

The majority opinion stated that the power of Congress to dispose of property belonging to the United States was virtually unlimited. Congress not only has legislative power over the public domain, it also exer-

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<sup>92/</sup> Ala. v. Tex., 347 U.S. 272 (1954).

<sup>93/</sup> Id.

cises proprietary papers therein.<sup>94/</sup> It would appear that the Court finally admitted that the doctrine of "paramount rights" announced in the first California case is a species of property rights. In effect the Court deferred to the Legislative Branch concluding it is not a judicial function to determine how the public trust is administered.<sup>95/</sup> This is a somewhat surprising statement in view of the Court's action in prior tidelands cases and diametrically opposed to the Court's position in subsequent litigation.

Justice Reed wrote an interesting concurring opinion. He reasoned the requirements of equal footing calls for parity as respects political standing and sovereignty, not economic diversities. Paramount rights are an incident of property rights and Congress has unlimited power to dispose of them. The cession of property rights does not affect the sovereign's responsibility for international affairs or self defense and that type of Congressional determination is not subject to judicial review.<sup>96/</sup> \*

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<sup>94/</sup> Id. at 273.

<sup>95/</sup> Id. at 274.

<sup>96/</sup> Id. at 277.

\* This proposition also upset certain constitutional strict constructionists.

One wonders why such legal pronouncements were not equally applicable to the Texas claim and her admitted, once sovereign, ownership of submerged lands as an independent Republic.

Justice Black dissented. He warned of the possible dangers of extending the concept of State ownership of inland waters to ocean areas and felt that the petitioners should have their day in court in view of the seriousness of the issues.<sup>97/</sup> \*

Mr. Justice Douglas dissented in the strongest terms. He stated that the rationale of the Texas case was that the "equal footing" doctrine prevents one state from laying claim to a part of the National Domain from which other states are excluded. He seemed to feel the equal footings doctrine applied to both political and

powerful political  
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property rights. He concluded, "Today forces are marshalled to wipe out both<sup>98/</sup> for the benefit of a favored few."

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the subsequent

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<sup>97/</sup> Id. at 281.

\* Justice Black will be sorely missed in litigation by states' righters.

<sup>98/</sup> Id. at 283.

servation is not often found in the opinions of our highest court. Not only does it offend accepted norms of judicial good taste but indicates there may be validity to the charge that the Supreme Court sits as a continuous constitutional convention.

(c) Critique.

One commentator concluded that the Alabama, Rhode Island Case must stand for the principle that the power of Congress over public lands is so complete that it can separate ownership from sovereignty and dispose of ownership.<sup>99/</sup>

The passage of the Submerged Lands Act stimulated an increase in offshore drilling and exploration as it gave a temporary degree of stability to such operations.

The Louisiana offshore area turned out to be particularly productive and offshore operations increased in shallow Gulf waters well past the traditional three-mile boundary.

In 1956, the Federal Government decided to get

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<sup>99/</sup> 1 A. SHALOWITZ, SHORE AND SEA BOUNDARIES, 129 (1962)

a court definition of the extent of Louisiana's territorial sea. The Attorney General filed suit against Louisiana to obtain a decision as to where Louisiana's territorial sea ended and where Federal rights to oil royalties commenced. On June 14, 1957, the Supreme Court found the same issues related to the other Gulf Coastal States and permission was granted to Alabama, Florida, Mississippi, and Texas to intervene in the 100/ litigation.

In 1960, the cases came before the Supreme Court on the United States' motion for judgement on the pleading and the states' motion for dismissal. The Court handed down two separate opinions. The first involved Louisiana, Mississippi, Alabama, and Texas, hereinafter referred to as the Second Louisiana Case. 101/ The second opinion involved only Florida, hereinafter referred to as the First Florida Case. 102/

(d) The Second Louisiana Case.

Mr. Justice Harlan wrote the majority opinion in

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100/ United States v. La., 354 U.S. 515 (1957).

101/ United States v. La., 363 U.S. 1 (1960).

102/ United States v. Fla., 363 U.S. 121 (1960).

the Second Louisiana Case. He pointed out that the Submerged Lands Act did not impair the validity of the prior California, Louisiana, and Texas cases, but merely raised the question of the geographical extent to which the statute ceded to the Gulf States submerged lands. <sup>103/</sup> This pronouncement would seem to foretell the future of some Atlantic Coastal States' claim to seaward boundaries in excess of three miles.

Mr. Justice Harlan found that the Gulf States' contention that preadmission boundaries standing alone does not meet the requirements of the statute. <sup>104/</sup> Turning to the problem raised by the three marine league grant in the Gulf, which raised the possibility that state ownership of submerged lands might extend beyond the traditional three-mile limit, the opinion demonstrated some facts regarding work. It pointed out that Mr. Jack B. Tate, Deputy Legal Advisor to the State Department and author of the Tate Letter of May 19, 1952, had testified in the submerged lands hearings that the exploitation of submerged lands involved a special sort

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<sup>103/</sup> United States v. La., 363 U.S. 1 (1960).

<sup>104/</sup> Id. at 79.

of jurisdiction of a very special and limited character.

There was no conflict with United States policy as to  
with international territorial waters and no conflict  
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of the United States law as a startling concession in

Ireland cases. He  
States had already  
regarding Continental  
and to what extent  
exercised rights in  
domestic concern  
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Governmental objection  
of three miles  
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and the Spanish custom  
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territorial waters.

Government's suggestion  
y of a three-mile

States' position in the original  
further testified that the United  
asserted exclusive rights to the  
Shelf and the question of whether  
Federal Government or the states  
this area was purely a question  
which Congress had the power to

Turning to the second  
to the effect that grants in exc  
would embarrass the United States  
relations, the Court in a somewhat  
to an indefinite exception based  
the Gulf Continental Slope Waters  
of claiming three-marine-leagues

The Court said that the  
that it refer to the Executive P

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1 (1960).

105/ 26 DEP'T. STATE BULL. 984  
106/ United States v. La., 363 U.S.  
107/ Id. at 82.

limitation was not well taken, in view of the purely domestic purposes of the Act. The Court saw no irreconcilable conflict between the Executive Policy and the historic events claimed to have fixed seaward boundaries greater than three miles.<sup>108/</sup>

Some states' righters may have hoped that these concessions or statements by the Court indicated a tactical retreat by the Court from its inflexible pronouncements of past tidelands cases.

After an exhaustive examination of the post-admission history of Texas and the events surrounding the 1848 Treaty of Guadalupe Hidalgo,<sup>109/</sup> Justice Harlan concluded that the Annexation Resolution of 1848 established the Texas seaward boundary at three marine leagues from its coastline for domestic purposes. He cautioned that the Court was not expressing any opinion as to the effectiveness of the boundary against other sovereign nations.<sup>110/</sup>

The Louisiana, Mississippi, and Alabama seaward boundaries were held to be three miles from their coast-

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<sup>108/</sup> *Id.* at 82.

<sup>109/</sup> Feb. 2, 1848, 9 Stat. 922 (1848), T.S. 207.

<sup>110/</sup> 363 U.S. at 64.

lines. The postadmission histories of these states did <sup>111/</sup> not establish a maritime boundary in excess of three miles.

Mr. Justice Black, in a separate opinion concurred and dissented in part. He concurred as to the Texas portion of the opinion and dissented to the denial of the Louisiana, Mississippi and Alabama claims. <sup>112/</sup>

Mr. Justice Douglas dissented in part. Essentially he disagreed with the conclusion that the Treaty of Guadalupe Hidalgo affected the determination of the Texas maritime boundary. He stated all Gulf States should be given the same benefit of the doubt granted Texas and stated the Florida claim met with his approval as a reasonable standard for it and for Texas. <sup>113/</sup>

(e) The First Florida Case.

The Court, on the same day the Louisiana opinion was handed down, released its opinion in the First Florida Case. <sup>114/</sup> Mr. Justice Black wrote the majority opinion allowing Florida a three-marine-league boundary on its Gulf Coast offshore waters.

Mr. Justice Black concluded that the 1868

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<sup>111/</sup> Id. at 68.

<sup>112/</sup> Id. at 85.

<sup>113/</sup> Id. at 119, 120.

<sup>114/</sup> United States v. Fla., 363 U.S. 121 (1959).

Florida Constitution which was approved by Congress as a condition precedent to Florida readmission to the Union was sufficient under the Submerged Lands Act to constitute Congressional approval of Florida's claim to three-marine-leagues on the Gulf coastline. <sup>115/</sup>

Justices Frankfurter, Brennan, Whitaker and Stewart ~~and~~ ~~concur~~ ~~in~~ ~~separate~~ ~~concurring~~ ~~opinion~~ (written by Justice Frankfurter) applying to both the Florida and Second Louisiana Case held it was unnecessary to find a formal and explicit statement by Congress of the Florida boundary claim. Congressional approval was sufficient. <sup>116/</sup>

Mr. Justice Harlan dissented. He reasoned that a readmission boundary should not be on a different legal footing than an original admission boundary. The presumption he thought should be that Congress intended to adopt whatever marine boundary the political entity had prior to its admission as a state. Therefore, Florida's boundary-based original admission to the Union would be no greater than three miles. <sup>117/</sup>

The snail-like progress of the Tidelands or

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<sup>115/</sup> Id. at 123, 124.

<sup>116/</sup> Id. at 132.

<sup>117/</sup> Id. at 139

Submerged Land cases recalls the old saying "That the mills of justice grind exceedingly slowly."\* As of calendar year 1960, fifteen years had elapsed since the filing of the original California case and still no inland water baseline had been completely defined for any coastal state and the width of territorial sea had been established for only five states. The width of Florida's territorial sea had been established only for its Gulf of Mexico sea coast at three-marine-leagues.

(f) The Geneva Conventions of 1958.

The Geneva Convention on the Territorial Sea and Contiguous Zone was held in 1958 and it became effective in 1964 upon ratification of the required number of nations. 118/ Its significance was realized by the international law fraternity, but is doubtful that all of those in the legal field connected with the Tidelands cases realized the significance this treaty held for them.

(g) California Revisited - The Second California Case.

The Submerged Lands Act as a practical matter settled for a reasonable period of time the disputes between

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\* "The mill cannot grind with water, that's past",  
C. HERBERT, (1593-1633) JACULA PRUDENTUM, (1651).  
118/ Sept. 15, 1958, [1964] Part 2, 15 U.S.T. 1606,  
516 U.N.T.S. 205.

the Federal Government and California over oil royalties in the offshore area. By 1963, drilling techniques had greatly improved and exploration was commencing in a substantial fashion in deeper offshore areas. It became necessary to know exactly the limits of California's territorial sea. This precipitated the establishment of a baseline delineating California internal waters.

The Attorney General of the United States filed an amended complaint in the original action reviving the Special Master Report and redefining the issues as modified by the Submerged Lands Act. California filed new exceptions to the report. The proceeding then reached the state where further Court action was required. <sup>119/</sup>

Basically the United States contended that the Submerged Lands Act moved the line of demarcation (the seaward-end of California's territorial sea) three miles from the land established by the first California case. Therefore, the Special Masters Report was still relevant and with a few modifications the line drawn by the Special Master should be taken as the coastline referred

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<sup>119/</sup> United States v. Calif., 382 U.S. 889 (1965).  
[Ironically this is a simple per curium opinion.]

to in the Act.

California vigorously denied this and contended the Special Master had delineated inland waters on the same basis the United States would have claimed for international boundary purposes, whereas the Act used the term "coastline" in the domestic law sense.

Mr. Justice Harlan and four justices formed the majority. They considered the focal point of the case to be the correct interpretation of the term "inland waters" as used in the Submerged Lands Act. The Act does not define the term.<sup>120/</sup>

The majority quickly disposed of California's contention as to the meaning of the term "inland waters". It reasoned that the removal of the definition of that term in the later stages of Congressional debate plus the addition of the provision limiting historic state boundary claims to three miles in the Atlantic and the Pacific and three-marine-leagues in the Gulf of Mexico clearly indicated Congress did not intend the words "inland waters" to mean those areas which the states had historically claimed as such.

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<sup>120/</sup> 43 U.S.C. §§ 1301-15 (1964).

Mr. Justice Harlan and the majority placed the next cornerstone in their tower of Babel by concluding that Congress intended the definition of the term "inland waters" should be left to the Court. <sup>121/</sup> It is doubtful that a majority of Congress was enchanted by this construction of their legislative labors.

The Court concluded the best definition and international law guide were the definitions set forth in the Convention on the Territorial Sea and Contiguous Zone <sup>122/</sup> (hereinafter referred to as the Convention).

California argued concerning the so-called subsidiary issues that it had the right to draw so-called straight baselines on the authority of the Anglo-Norwegian Fisheries Case. <sup>123/</sup> The Court accepted the Federal Government's argument that the decision to draw straight baselines involved the international arena and the option rested solely with the Federal Government, which elected in this case not to employ that method of boundary de- <sup>124/</sup> lineation.

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<sup>121/</sup> Id. at 119.

<sup>122/</sup> 43 U.S.C. § 1331-43 (1964).

<sup>123/</sup> I.C.J. Reports 116,132 (1951).

<sup>124/</sup> Supra note 119 at 16-18.

The twenty-four mile bay closing rule and semi-circle test of the Convention was applied to the California coast. Monterrey Bay met the test and was inland waters, <sup>125/</sup> while none of the other coastal segments met the test.

California lost its argument that Santa Barbara Channel was a fictitious bay because the opening at both ends of the channel between the islands were less than twenty-four miles. The Court held fictitious bays were in the same category as straight baselines and their use <sup>126/</sup> was a prerogative of the Federal Government.

The Historic Bay Argument ran afoul of the fact, so said the majority, that the evidence of continuous and exclusive dominion was so questionable that the United States disclaimer was effective. <sup>127/</sup>

Harbors and roadsteads were given the same definition as was provided by the Convention.

The line of ordinary low-water mark should be determined by taking an average of the lower low tides. California has two low tides a day, one of which is generally lower than the other. The former is the line on

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<sup>125/</sup> Id. at 169, 170.

<sup>126/</sup> Id. at 172.

<sup>127/</sup> Id. at 175.

coastal charts of the California coast published by the United States Coastal and Geodetic Service which is the line provided for by the Convention.

Concerning artificial accretions, the Court ruled these belonged to California and extended the base-line seaward. The United States through the Army Engineers could protect itself by exercising its power over navigable water.

...dissented... Mr. Justice Black and Douglas

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...Submerged Lands Act

...all submerged lands

...was entitled to its

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Mr. Justice Black after

of the legislative history of the

concluded California was entitled

within its historic boundaries and

day in court to prove their limit

The dissenters agreed w

suasiveness that two things about

Act were clear. First, Congress

the way the Court decided the First

Secondly, Congress did not approve

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128/ Id. at 176.

129/ Id. at 177.

130/ Id. at 210.

law tests to determine purely domestic law disputes of title. The formula used by the majority was an international Convention which became effective in 1964 some eleven years after the passage of the Submerged Lands <sup>131/</sup> Act.

California's petition for rehearing was promptly <sup>132/</sup> denied. A supplemental decree spelling out in some detail the baseline for California inland waters was entered <sup>133/</sup> in January of 1966. To date, the complete baseline has <sup>134/</sup> not been delineated by the Court.

The United States Coastal and Geodetic Department in 1967 speaking of the "nitty-gritty" of water boundary line determination problems in the tidelands dispute said, "The more one studies the subject of boundaries in the sea, the more one is impressed with the number of technical questions that arise and the extent of judgement required. This is not a criticism of the Submerged Lands Act and the Convention. The most they can

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<sup>131/</sup> Id. at 210.

<sup>132/</sup> United States v. Calif., 382 U.S. 889 (1965).

<sup>133/</sup> United States v. Calif., 382 U.S. 448 (1966).

<sup>134/</sup> Id.

do is to provide the principles for the delineation of sea boundaries; they cannot provide the answer to every technical problem which will arise in laying out sea boundaries in the presence of an almost infinite variety of physical factors. This will require agreements and cooperation between the State and Federal Government and probably some litigation."<sup>135/</sup>

(h) The Texas Jetties Case.

The Second California Case and supplemental decree spelled out clearly that the term "coastline" as used in the Submerged Lands Act and the Convention means the modern ambulatory shoreline as modified by natural or artificial means. The same rule is to be applied to permanent harbor works which form an integral part of a harbor system.<sup>136/</sup>

The tidelands disputes pot boiled over very quickly necessitating in the United States opinion an emergency ruling. The harbor entrance jetties in Galveston, Texas extended a considerable distance seaward from

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<sup>135/</sup> Establishing Tidal Datum Lines for Sea Boundaries,  
67-212 U.S. COASTAL AND GEODETIC DEPT., 17 (1967).

<sup>136/</sup> Supra note 119 at 121.

the coastline. The south jetty extends seaward 10,820 feet, and the northern jetty extends 24,800 feet (over four and one-half miles seaward).

The Texas General Land Office advertised an oil lease sale covering an area three-marine-leagues (10 1/2 miles) from the ends of the two jetties. The Federal Government shortly after the advertisement filed a motion for injunctive relief and a supplemental decree defining the rights of Texas and the United States in this area. <sup>137/</sup>

The case was argued in October, 1967, and the opinion handed down December 4, 1967. Justice Black joined by four judges wrote the majority opinion. Justice Stewart concurred in a separate opinion and Justice Harlan <sup>138/</sup> dissented.

The majority opinion held the United States was entitled to the injunctive relief asked for. The Submerged Lands Act they reasoned, makes two separate and distinctive types of grants. The first, an unconditional grant of three marine miles to each Gulf Coast State. The second,

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<sup>137/</sup> Martin, Supplement to Texas Statement, The Sea and the States, at 53, Conference, Miami, Fla., Nov. 1968 (pub. by International Oceanographic Foundation).

<sup>138/</sup> United States v. La., 389 U.S. 155 (1967).

a grant of historic boundaries not to exceed three marine <sup>139/</sup> leagues.

The United States argued that the Texas three-league claim must be measured from the Texas coastline as it existed in 1845, when that state was admitted to the Union. The majority found the latter contention was correct. <sup>140/</sup> Texas, they said, should not be permitted to combine the best features of both grants and this was <sup>141/</sup> purely a domestic dispute.

Subsequent developments caused the United States to take an opposite tack and perhaps some red faces on the Court.\*

Justice Stewart's concurring opinion claimed the difference between the majority and dissenting opinions turned on the narrow question of whether the word "boundaries" in the first alternative definition in section 2 (3) of the Act refers to an operative definition or a line. He admitted boundaries in the ordinary sense means

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<sup>139/</sup> Id. at 156.

<sup>140/</sup> Id. at 160.

<sup>141/</sup> Id. at 161.

\* This thesis is not intended to be sarcastic but the "can of worms" presented by the Tidelands Cases didn't lend themselves to easy or quick judicial pronouncements by a court of both original and final jurisdiction.

a line, but when appended to the words "as they exist",  
it emphasizes line not an operative definition. <sup>142.</sup> There-  
fore, the Second California Case was not applicable be-  
cause California's grant was not dependent upon its ad-  
mission history.

Mr. Justice Harlan championed the Texas argu-  
ment and pointed out the majority opinion freezing the  
Texas boundary at its 1845 location seemed contrary to  
law and was highly unworkable even if it was possible to  
determine its location which he doubted. <sup>143/</sup>

Perhaps Justice Harlan knew or had perhaps some  
premonition of the quandary the United States and the  
Court found themselves in when it subsequently developed  
that by using a compromise 1845 coastline due to erosion  
Texas gained a total acreage far beyond its expectations.

1. Critique - Texas Jetties Case.

One commentator pointed out that in the Texas Jetties  
Case the Court had three alternative coastlines from which  
the baseline for determining the seaward end of Texas'

present ambulatory coastline without reference to permanent harbor works; second, the present ambulatory coastline as defined in the Convention; third, the coastline as it existed in 1845 upon Texas' admission to the Union. That writer suggests that the majority, in picking the 1845 coastline, failed to consider the distinction between "boundary line" and "boundary" as those terms are used in section 1301(a) (2) of the Submerged Lands Act. He reasoned that the definition of the term "boundary" to mean a zone is consistent with the Act's treatment of the word "coastline" in section 1301(b). "Coastline" in section 1301(c) is given only one definition. Boundary is the zone still three miles from the coast as it existed in 1845. The writer theorizes that the majority opinion requires two different coastlines be used in ascertaining the seaward limits of the two possible grants while the language of the statute requires a unitary treatment of the term "coastline."

Other writers have suggested that the majority opinion is both non-practical and non-consistent with the Second California Case.<sup>145/</sup>

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<sup>145/</sup> Browning, Jurisdictional Problems on the Shelf, at 89, The Law of the Sea, 3d Annual Conference of the Law of the Sea Institute, U. of R.I. (1968) and 62 AM. JUR. INTERNATIONAL LAW, § 970 (1968).

Regardless of the conclusion one draws from the Texas Jetties Case, the practical results of the 1845 coastline rule very shortly returned to test the ingenuity of the Court.

(i) Return to the Second Texas Case Baseline Rule.

The sequel to the Texas Jetties Case was argued in November of 1968. Texas and the United States filed a stipulation with the Court agreeing to the location of the 1845 Texas coastline. It was discovered that extensive erosion and minor accretions to modern Texas coastline gave Texas several thousands of acres of submerged land. To apply the Texas Jetties Case would result in Texas gaining control of several thousand acres of offshore seabed.

The United States "switched horses in mid-stream" and now claimed that because of the limitation of section 2(b) in the Submerged Lands Act the three-marine-league territorial sea must be measured from the modern ambulatory coastline. A real Philadelphia lawyer's approach.

Texas agreed the three league grant must be measured from its 1845 coastline as decided in the First Texas Jetties Case.

The decision was rendered March 3, 1969.<sup>146/</sup>

Mr. Justice Brennan joined by four other justices wrote the majority opinion. He adopted the United States' argument that the term, "coastline" as used in section 4 of the Act approves a three-marine-mile grant from the baseline for each coastal state. However, a Gulf Coast state may prove its boundary, if it existed when admitted to the Union, or as approved by Congress, extended more than three marine miles, it may claim such extended boundary subject to the express limitations of section 2(b).<sup>147/</sup>

The majority adopted the argument that based upon the Second California Case<sup>148/</sup> to the effect that coastline means the modern ambulatory coastline.<sup>149/</sup> This establishes a single unitary coastline for administration of the Submerged Lands Act. Texas, they said, suggested no alternative ground. If this results in raising havoc with offshore production the relief must come from Congress, not the Court.<sup>150/</sup>

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<sup>146/</sup> United States v. La., 394 U.S. 1 (1969).

<sup>147/</sup> Id. at 4.

<sup>148/</sup> United States v. Calif., 381 U.S. 139 (1965).

<sup>149/</sup> United States v. La., 394 U.S. 1 (1969) at note 3.

<sup>150/</sup> Id. at 5, 6.

Mr. Justice Black, in a tart dissenting opinion,<sup>151/</sup> championed the Texas Argument. He commented if accretion builds up new land, Texas seaward boundaries are not extended, but remain fixed at the 1845 boundary line, while erosion results in reducing Texas' seaward boundary. He commented, "It is a game of heads I win, tails you lose."<sup>152/</sup>

Mr. Justice Black observed that the Court is not a suitable place to decide the details of State versus Federal water boundaries. Ironically, Justice Black wrote the opinion in the First California Case.<sup>153/</sup>

The labors of the Court with regard to the Texas seaward boundary and baseline are still not completed.

(j) The Louisiana Boundary Case Continued.

The cross motions of Louisiana and the United States brought before the Court the problem of designating the precise water boundaries of Louisiana in the Gulf of Mexico.

The first question was the determination of the baseline which separates inland waters from Louisiana external sea.<sup>154/</sup>

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<sup>151/</sup> Id. at 7, 8, 9.

<sup>152/</sup> Id. at 9.

<sup>153/</sup> United States v. Calif., 332 U.S. 19 (1947).

<sup>154/</sup> United States v. La., 394 U.S. 11 (1969).

Mr. Justice Stewart wrote a scholarly and exhaustive majority opinion concurred in by four other justices. Much of the opinion sheds considerable light upon the present Atlantic Coastal States litigation.

Louisiana contended that the inland water line which governs the application of inland rules of the road as opposed to the international rules of the road should be used as the seaward boundary of Louisiana's inland waters. The rules themselves are promulgated by the United States Coast Guard under a Federal statute of 1864.<sup>155/</sup>

This line, which Louisiana contended should be its baseline, was drawn in 1953. The majority pointed out that such a line marking the seaward boundary of inland waters could not be considered historic inland waters as reasonable regulation of navigation near a state's coastline alone is insufficient to establish the exercise of dominion.<sup>156/</sup>

Coast Guard officers responsible for drawing the inland rules line have consistently maintained that the purpose of such line is solely concerned with naviga-

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<sup>155/</sup> Navigation and Navigable Waters Act, 33 U.S.C. 151 (1964).

<sup>156/</sup> United States v. La., 394 U.S. 11 (1969) at 24.

tion and shipping and does not affect or define Federal or State water boundaries. A number of qualified publicists have similarly construed the purpose of the line 157/ in question.

The Court held that dredged channels in the shallow Gulf waters leading to inland waters and harbor and dock facilities do not constitute an integral part of permanent harbor works. 158/

The Court concluded that low tide elevations which lie within three miles of the baseline across the mouth of a bay, but more than three miles from any point on the mainland or an island are part of the coastline from which the three-mile grant of the Act extends. 159/

In several areas along the Louisiana Coast the problem was raised as to what extent indentations within, or a tributary to another indentation, can be included in the area of the latter for purposes of the semicircle test of the Convention. Outer Vermillion Bay 160/ does not qualify since the closing point from

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157/ Id. at 32.

158/ Supra note 7.

159/ 394 U.S. at 40.

160/ See United States Coast and Geodetic Chart No. 1273.

Tiger Point to Point au Fer far exceeds the twenty-four  
mile closing limit of the Convention. <sup>161/</sup>

The Ascension Bay Area <sup>162/</sup> does include the  
Barataria Bay. The Caminada Bay Complex meets the semi-  
circle test and islands within the bay area are to be  
treated as part of the water area. <sup>163/</sup> \*

The Lake Pelto-Terrebonne Bay-Timbalier Bay  
Complex <sup>164/</sup> raised the question of between which points  
on the islands the closing lines are to be drawn. Also,  
should the closing line be drawn landward of a direct  
point between the entrance points of the mainland? The  
Court found that when a string of islands cover a large  
percentage of the distance between mainland entrance  
points, the island openings are distinct mouths outside  
of which coastal waters cannot be inland. <sup>165/</sup> Islands  
intersected by a direct closing line between mainland  
headlands create multiple mouths to a bay and the bay  
must be closed by lines between the natural entrance

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<sup>161/</sup> United States v. La., 394 U.S. 11 (1969) at 52.

<sup>162/</sup> See United States Coast and Geodetic Chart No. 1274.

<sup>163/</sup> Id.

\* See Appendix for charts covering this whole general area.

<sup>164/</sup> United States v. La., 394 U.S. 11 (1969).

<sup>165/</sup> The Geneva Convention on the Territorial Sea and  
Contiguous Zone, Art. III (3) (1958).

points on the island even if such points are landward of <sup>166/</sup> the direct line between the mainland entrance points.

The Court considered the problem of whether or not an island could be the headland of a bay. This matter is of considerable interest to Florida in the Atlantic Coastal States litigation. <sup>167/</sup> The Court found no language in the Convention that excludes all islands from being the natural entrance point of a bay. The land-water mark around the shore delineates a bay and there is no requirement that the low-water mark be continuous. <sup>168/</sup>

The Court considered a peculiarity of the Louisiana coast. A large portion is of a marshy character riddled with canals, waterways, and numerous small clumps of land entirely surrounded by water. An example is the western shore of the Lake Pelto-Terrebone- <sup>169/</sup> Timbalier Bay indentation. The Federal government conceded these were a part of the mainland. This concession would seem equally applicable to certain portions of Florida's coastline.

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<sup>166/</sup> 394 U.S. at 60.

<sup>167/</sup> United States v. Me., et al., 395 U.S. 955 (1969).

<sup>168/</sup> 394 U.S. at 61.

<sup>169/</sup> United States Coast and Geodetic Chart No. 1274.

Generally, bays are indentations in the mainland and islands in the offshore are not headlands but, at the most, create multiple mouths to a bay.

The Court stated the test to determine whether a particular island is to be treated as a part of the mainland will depend upon factors such as size, distance from the mainland, depth and utility of intervening waters, shape, relationship to configuration or curvature of the coast, and other factors not enumerated. The Court left the initial determination to a Special Master which the Court indicated it would appoint. <sup>170/</sup> These tests will be applicable to portions of the Florida Keys, Ten Thousand Islands, and the Bay of Florida.

Louisiana has a number of offshore areas which have water areas of varying size between the mainland and fringes or chains of islands. The problem is whether or not such areas are inland waters or exterior waters. Louisiana argued under the Convention, Article VII, these areas are inland waters. Alternative straight baselines should be drawn as provided by the Convention, Article IV,

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170/ 394 U.S. at 66.

as provided in the Anglo-Norwegian Fisheries Case.<sup>171/</sup>

The Court concluded that Article VII of the Convention does not include bays formed in part by islands which cannot realistically be considered a part of the mainland. Bays are defined in the Convention as "indentations in the coast"<sup>172/</sup>, a term which is used in contrast with the term "islands"<sup>173/</sup>.

The Court found that the language of Article IV of the Convention relating to such insular formations should be governed by the straight baseline method. Such island formations are not to be treated differently than any other island unless the coastal nation elects to draw straight baselines.<sup>174/</sup> The Court in United States v. Calif.,<sup>175/</sup> held the election to use straight baselines (assuming the area in question meets the test) rests with the Federal Government, not the individual states, the government having opposed this method despite the fact that such a method is designed precisely for coastal formations similar to the Mississippi River Delta Area.<sup>176/</sup>

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<sup>171/</sup> 158 I.C.J. 116 (1950).

<sup>172/</sup> The Convention, Article VII, § 2.

<sup>173/</sup> Id. at 67.

<sup>174/</sup> Id. at 71.

<sup>175/</sup> United States v. Calif., 332 U.S. 19 (1947).

<sup>176/</sup> Supra note 172 at 72.

The majority held in a somewhat ironic note that the determination of inland water boundaries (in the instant case, state water boundaries) since (now the opinion does not explain except in glittering generalities) is governed by international law rules.<sup>177/</sup>

Some legal authorities find the above conclusion confusing in view of the Court's opinion in the Second Louisiana Case that the three-marine-league grant to Texas did not conflict with international law as it was solely a matter of domestic concern in view of the fact that the United States has already asserted exclusive rights to the Continental Shelf.<sup>178/</sup>

The majority opinion closed with a reference to the Louisiana argument that whether or not the waters of the Mississippi River Delta and East Bay<sup>179/</sup> were historic waters within the meaning of Article VII of the Convention raised factual questions which would be left to the original determination by the Special Master. The Court stated that the United States disclaimer could not prevent recognition of the historic title concept. The evidence

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<sup>177/</sup> Id. at 73.

<sup>178/</sup> 43 U.S.C. §§ 1331-43 (1964).

<sup>179/</sup> United States Coast and Geodetic Chart No. 1274.

in the instant case, contrary to the Second California Case, was not so questionable that the disclaimer was not 180/ conclusive.

The Court cautioned the Special Master that in applying the Convention's recognition of historic bays in the instant case " . . . to treat the claim of historic waters as if it were being made by the national sovereign 181/ and opposed by another nation."

#### CHAPTER V. CRITIQUE

Some states rights groups believe this might be an indication of a new dawn in the Tidelands dispute. The recognition of such a principle in the past Tidelands litigation would have expanded water areas of state jurisdiction.

Mr. Justice Black, a leading dissenter commencing with the Second California Case, joined by Mr. Justice Douglas, dissented. To apply the standard of the Convention to Louisiana where coastal formations are completely different from California will bring about "chaos and confusion." 182/ They urged that the practical baseline for

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180/ 43 U.S.C. §§ 1331-43 (1964).

181/ Id. at 77.

182/ Id. at 79.

Louisiana's seaward baseline separating inland and external waters should be the line established by the Coast Guard which divides inland navigation rules of the road from the international navigation rules of the road.

The dissenters reasoned that the acceptance of

this line as a boundary line would put to a stop the state

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<sup>183/</sup> Id. at 168.

<sup>184/</sup> Id. at 81.

185/  
exploration business.

Mr. Justice Black referred to the seemingly eternal litigation that the use of the Convention was bringing to the Tidelands litigation. He noted that both parties agreed this is a most complex project, involving surveyors, cartographers, photographers, oceanographers, a detailed knowledge of tides, higher mathematics, etc. The Justice concluded that he could not believe Congress intended the Court to perform such unjudicial labor. 186/ Louisiana's petition for rehearing was promptly denied. 187/

### PART THREE

#### FLORIDA'S OFFSHORE ATLANTIC COASTAL CONTROVERSY

#### CHAPTER VI. THE ATLANTIC COASTAL STATES LITIGATION

In 1969 the spotlight of the Tidelands litigation moved to the Atlantic Coastline.

During the latter part of 1968 the State of Maine granted what amounted to exclusive mineral, oil, and

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185/ Id. at 84.

186/ Id. at 85.

187/ United States v. La., 382 U.S. 889 (1965).

gas exploratory and exploitation rights covering approximately 3.3 million acres of submerged land in an area seaward of the external water boundary of Maine's three-mile territorial sea.

The Federal Government's reaction was prompt and took the form of a motion for leave to file a complaint and brief in support thereof.<sup>188/</sup>

The Court granted the motion on June 16, 1969. The defendants, the thirteen Atlantic Coastal States, have filed answers to the complaint. In the instant case, the Federal Government seeks a decree declaring the rights of the United States as against the defendants in the subsoil, seabed and natural resources underlying the Atlantic Ocean and Straits of Florida lying more than three geographical miles seaward from the coastal states' baseline of inland waters to the edge of the Continental Shelf.<sup>189/</sup>

Florida's answer was filed in September, 1969. The answer demonstrates another facet which has contrib-

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<sup>188/</sup> United States v. Me., 395 U.S. 955 (1969).

<sup>189/</sup> United States Brief in support of motion for leave to file complaint p. 10, United States v. Me., 395 U.S. 955 (1969).

uted to the success of the United States Attorney General and Solicitor General in past Tidelands litigation. The fact of the matter being that few State Attorneys General have the type and size of staff which permits expertise in Tidelands litigation.\*

Politics today, even in the south, involves at least two parties, Republican and Democratic. Florida's Attorney General is not a political appointee, but he is an elective official and in 1971, Florida will have a new Attorney General and probably a new staff of assistants.

The present occupant of that post in Florida is a Democrat and that office has not been occupied by a Republican since Reconstruction Days. Unfortunately or otherwise, he is currently running for election as Governor of the State of Florida. Our antiquated election laws used to permit an office holder to retain his or her present elective office while running for another post.

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\* See Brief as Amicus Curiae on behalf of the Florida Council of 100, Inc. as contrasted to the State of Florida's original Brief.

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Florida's position as taken from its answer  
alleges (1) the case of United States v. Florida,<sup>191/</sup> upheld  
Florida's historic boundary on the Atlantic Coast, based  
on its 1868 Constitution approved by Congress upon her re-  
admission to the Union, this boundary being the Gulfstream  
and Florida Reefs. (The contention is not accurate; the  
cited case determined only a three-marine-league grant  
in the Gulf of Mexico.) (2) The Straits of Florida are in  
Gulf Coast waters. The boundary between the Gulf and the  
Atlantic Ocean occurs at Palm Beach and extends therefrom  
in a southeasterly direction. (To date no authorities for  
this statement have been cited.) (3) The Court in the  
first Florida case reserved jurisdiction to determine the  
questions involved. Therefore, Florida should be dismissed  
as a defendant.

The United States, following tactics that have  
brought an almost unbroken line of victories in the Tide-  
lands litigation, moved for judgement on the pleadings al-  
leging there is nothing but a legal question involved.<sup>192/</sup>

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<sup>190/</sup> Answer, State of Florida (Sept. 1969). United States v. Me., 395 U.S. 955 (1969).

<sup>191/</sup> United States v. Florida, 365 U.S. 1210 (1960).

<sup>192/</sup> United States motion for judgement on the pleadings,  
United States v. Me., 395 U.S. 955 (1969).

The Federal Government's brief basically alleges;

(1) the term "boundaries" as used in the Submerged Lands Act 194/ limits state claims to three nautical miles in the Atlantic Ocean. (Many ardent states' righters are not taking even money bets that the Court will disagree.) (2) There is no substance to Florida's plea, that the issues were settled in the first Florida case. 195/ (3) A plea to the Court to keep Florida in the present litigation in the interests of keeping common issues of the Atlantic States in one 196/ suit. (4) Two comparatively recent cases in other nations are cited as approving the Court's prior Tidelands decisions. Re: Offshore Mineral Rights of British Columbia; Canada L. Rep. (S.Ct.) 792 (1967) and Bonser v. La Macchia, 43 Aust. L. Rep. 411, (August 1969) (opinion not yet reported.)

The government brief suggests a procedural schedule as follows: June for the defendant briefs; a United States reply brief September, and oral argument 197/ before the Court on the opening of the new term. \*

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193/ Brief of United States in support of motion for judgement, United States v. Me., 395 U.S. 955 (1969).  
194/ H.R. REP. NO. 133 83d CONG., 1st SESS. 7, 60-61 (1953).  
195/ Id. at 15.  
196/ Id. at 17.  
197/ Supra note 193 at 19, 20.

\* Obviously the schedule was optimistic or the Court was otherwise occupied.

Assuming the Court adopts the suggested procedural schedule, the basic question of the width of the ~~Atlantic States' territorial base (the Atlantic Ocean)~~ will be settled this year, and Jimmy Snyder, the Greek, (the Las Vegas odds maker for sporting events) would probably give a states' rights better odds of ninety-to-one that the Court will uphold the government's argument that three miles is the correct figure.

No matter what happens, it seems reasonably certain that this basic issue will be settled sometime but not in a hurry.

CHAPTER VII. THE CRYSTAL BALL APPROACH TO THE SECOND FLORIDA BOUNDARY LINE CASE

United States Coast and Geodetic Charts numbered 1111, 1113, and 1114 (see appendix p.104) illustrate a number of the problem areas which will be encountered in the second Florida Tidelands case.<sup>198/</sup>

1. Bays.\*

(a) Biscayne Bay. The eastern boundary consists of various sized islands or keys, shoals, sandbars and reefs

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<sup>198/</sup> United States v. Me., 395 U.S. 955 (1969).

\* A detailed examination of the above cited charts will pinpoint the problems involved.

which are wholly or partially dry at mean low tide and partially or completely awash at mean high tide.

The Geneva Convention on the Law of the Sea in 1958 consisted of four conventions: (1) Convention of the High Seas, (2) Convention of the Territorial Sea and Contiguous Zone, (3) Convention on Fishing and Conservation of Living Resources, and (4) Convention on the Continental Shelf. These Conventions were ratified by a majority of two-thirds of the eighty-six nations participating.<sup>199/</sup> Professor McDuggal of Yale University has been quoted as saying these Conventions generally represented a major disaster for the United States of America.

The Convention defines a bay as "an indentation<sup>200/</sup> in the coast." Biscayne Bay probably meets the indentation requirement. It also appears to meet the mathematic tests (the twenty-four mile closing line)<sup>201/</sup> as well as the semicircle water area test.<sup>202/</sup>

The Court in the second Louisiana case held

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<sup>199/</sup> CONVENTION ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE, [1958] part 2 15 U.S.T. 1606, T.I.A.S. No. 5639, (1964).

<sup>200/</sup> Id. Art. 7 (2).

<sup>201/</sup> Id.

<sup>202/</sup> Id.

that the test to determine whether an island (most islands in southern Florida are referred to as keys, a corruption of the Spanish noun "cayo" meaning island or coral reef) or key may be a headland of a bay or make up one side of a bay consists of many factors: (1) size; (2) distance from the mainland; (3) depth and utility of intervening waters; (4) shape; (5) relationship to configuration and curvature of the coast and (6) other factors specifically enumerated.<sup>203/</sup>

Florida would appear to have an even money chance of securing a Supreme Court decision<sup>204/</sup> that Biscayne Bay meets the test of the above paragraph as well as the geographical and mathematic tests of the Convention.<sup>205/</sup>

There would appear to be an outside chance, depending upon the results of thorough historical search, of establishing that Biscayne Bay meets the historical test of the Convention.<sup>206/</sup> The Convention does not define "historic bays".

It has been established beyond doubt that if a bay is a historic bay, it need not meet the other tests of the Convention.

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<sup>203/</sup> United States v. La., 394 U.S. 11 at 60-66 (1969).

<sup>204/</sup> United States v. Me., 395 U.S. 955 (1969).

<sup>205/</sup> Supra note 199.

<sup>206/</sup> Supra note 199 at Art. 7 § 6.

Significantly, the Court in the second Louisiana case held the evidence of Louisiana's claim to certain historic bays was not "clear beyond doubt" . . . . "neither are we in a position to say that it is so 'questionable' <sup>207/</sup> that the United States disclaimer is conclusive."

The determination of this question was left to the Special Master whom the Court cautioned, "The only fair way to apply the Convention's recognition of historic bays to this case, then, is to treat the claim of historic waters as if it were being made by the national sovereign, <sup>208/</sup> and opposed by another nation."

Perhaps a small dim light is beginning to gleam through the maze of prior Tidelands decisions. Recognition of the unfairness and illogical judicial thinking which applies international law tests to purely domestic situations is a step in the right direction.

If Biscayne Bay does not qualify as a legal bay under the above described steps, portions of the bay which are in excess of six miles wide from the eastern to western boundaries will be subject to the control, juris-

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<sup>207/</sup> Supra note 198, 77.

<sup>208/</sup> Id. at 77, 78.

diction and paramount rights of the Federal Government.

A somewhat absurd result?

Query: Does the baseline for determining Florida's Gulf Coast seaward boundary of three marine leagues (nine geographical miles) run from the 1868 coastline or the modern ambulatory shoreline, or the seaward limit of the Everglades National Park?

Obviously the same problem exists with regard to Biscayne National Monument which runs from just south of Boca Chica Key to approximately Broad Creek on the south. <sup>209/</sup>

(b) Florida Bay.

This so-called bay <sup>210/</sup> covers a large shallow water area which is not suitable to commercial shipping or navigation, and is used today principally by professional fishermen, illicit commercial shrimpers (operating in the shrimp nursery grounds in that area) and sportsmen in nur-

ss, pompano and other game fish.

ay, a noted geographer posited

ly a bay where twenty-four mile

suit of tarpon, channel

Mr. G. Etzel

that Florida Bay was le

.S.C. 450 22 (1968).

<sup>209/</sup> PUB. L. NO. 90, 1  
<sup>210/</sup> See Appendix.

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closing line ran from Vaca Key to East Cape.

Mr. Justice Stewart, the author of the majority opinion in the second Louisiana boundary case was not impressed with this theory. He said, "Only one authority appears to assume, without discussion, that a bay formed by islands would be governed by the provisions of Article 7. Percy, supra note 78, at 965. (The area in question was that between the coast of Florida and the chain of keys curving to the south and east. The United States points out that they are linked by a permanent highway and therefore may be considered as part of the mainland."<sup>212/</sup>

(emphasis ours)

Mr. Justice Stewart summarized that the employment of the concept of a "fictitious bay" is that of Federal Government alone and the option of the use of straight baselines is solely at the election of the Federal Government. Again, the unexplained application of international law to a purely domestic dispute (State v. Federal Government boundary dispute).<sup>213/</sup>

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<sup>211/</sup> DEPT. OF STATE, BULL. NO. 40 at 963 (1959).

<sup>212/</sup> Supra note 198, 72. See also PARKS, THE RAILROAD THAT DIED AT SEA, Stephen Green Press (1968).

<sup>213/</sup> Id. at 72, 73.

There is an additional complicating problem in the Florida Bay area. Generally the water boundaries of the Everglades National Park run from Jewfish Creek on the north down the Intercoastal Waterway to a point approximately due north of Key Vaca. Thence northwesterly to Sandy Key in the Florida Bay area, thence northwesterly to Cape Sable and northwesterly offshore to a point northwest of Naples, Florida.<sup>214/</sup>

(c) Whitewater Bay.

If Florida upholds its contention as to Key Biscayne, logically the Ponce de Leon Bay, Whitewater Bay Complex (see appendix) in the Cape Sable area, is an even stronger case for a legal bay under the Convention.

(d) Charlotte Harbor Complex.

This Bay Complex consisting of San Carlos Bay, Pine Island Sound and Gasparilla Sound as tributaries under the rule of the second Louisiana case<sup>215/</sup> is one bay which meets the indentation rule and the two mathematical rules. The bay closing line authorized by that case should be drawn from the mainland to Sanibel Island,

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<sup>214/</sup> 508 Stat. 394 (1944), 16 U.S.C. 410 (1944).

<sup>215/</sup> Id. at 48-53.

Captiva Island, Northern Captiva Island, La Costa Island, <sup>216/</sup> Gasparilla Island and thence to the mainland. (see appendix)

(e) Tampa Bay.

The United States, in the interest of reducing the ultimate trial on the merits, might for the same reasons set forth in subsection (d) above, concede this bay area is Florida inland waters.

(f) Apalachee Bay.

This bay (see appendix) does not meet either the geographical or semicircle test. It appears the Court may, if confronted with the question, hold this alleged bay is <sup>217/</sup> not an indentation in the coast as required by the Convention. Commander Strohl, in his work entitled "The International Rule of Bays", flatly states: "Next is a sketch of Apalachee Bay in Florida which is truly a mere curvature of the coast . . . " <sup>218/</sup>

(g) Appalachicola Bay, Choctawhatchee Bay and Pensacola Bay.

These three Bay Complexes meet the geographical,

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<sup>216/</sup> Id. at 71 n 95.

<sup>217/</sup> Supra note 199.

<sup>218/</sup> M. STROHL, THE INTERNATIONAL LAW OF BAYS, 1st Ed. (1963) at 72-74.

mathematical and semicircle tests discussed in subparagraphs (1) (a) and (b) above.

(h) The Florida Keys.

The Florida Keys generally refer to an area running from Soldiers Key (see appendix) on the north to Dry Tortugas on the south (see appendix). These keys, from Soldiers Key on the north, run in a generally south-westerly direction some 160 miles.

Ponce de Leon described them in this manner, " . . . Los Martiris." These keys and coral reefs off the Florida Keys curve in a protecting arc around Cape Sable and " . . . looked like agonized men skewered on stakes in martyrdom."<sup>219/</sup>

The Keys along their easterly and southerly boundaries are guarded by a bewildering and ever shifting maze of coral reefs, coral heads and low-tide elevations in which low and high tides can be greatly affected by winterly northerlies.

The names of certain of these reefs and a string of lighthouses which were constructed commencing

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<sup>219/</sup> BROOKFIELD and GRISWALD, THEY ALL CALLED IT TROPICAL, The Data Press, 7th Ed. (1964) at 19.

in the early eighteen hundreds own their names to various English and Spanish men of war and commercial ships who left their bones on this inhospitable coast. For example, Carysfort Light owes its name to His English Majesty's frigate Carysfort which struck the reef and floundered in 220/ 1770.

In 1852, Carysfort Light was replaced by its present structure, the first of a chain of lighthouses from Fowey Rock to Loggerhead Key was completed by the 221/ turn of the century.

The Key Largo Coral Reef Preserve, more popularly known as the John Pennecamp Park for a crusading Miami Herald editor, comprises the most northern growing 222/ coral reef.

Part of this park lies outside the admitted three mile territorial sea of Florida and this is gov- 223/ erned by the Outer Continental Shelf Lands Act of 1953. Does the domain of the United States over this area expand or contract Florida's East Coast Seaward Boundary?

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220/ Id.

221/ Id. at 19-27.

222/ PRES. PROC. NO. 3339, 25 C.F.R. 2352 (1960).

223/ 67 Stat. 462 (1953), 43 U.S.C. §§ 1301-15 (1964).

A Fort Lauderdale attorney, in an address delivered before a group of scientists, attorneys, businessmen and laymen who attended the First Conference of the Sea and the States, co-sponsored by the Florida Commission on Marine Sciences and Technology and the newly renamed Rosenstiel School of Marine and Atmospheric Sciences, took the following positions on the question of "Florida's <sup>224/</sup> Ocean Boundaries". The publication of these remarks was made possible by a gift from Edward Link to the International Oceanographic Institute, a non-profit organization.

(1) The dividing line between the Gulf of Mexico and the Atlantic Ocean should be the boundary line suggested by the International Hydrographic Bureau. That line would consist of a line drawn from Cape Antonio in Cuba to Dry Tortugas, thence eastward to Rebecca Shoal to the mainland of the Florida Keys at the western end of Florida Bay. Unfortunately, the Hydrographic Bureau is not empowered to fix boundary lines. They merely set boundaries to classify international projects such as

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224/ W. Dover, Florida's Ocean Boundaries, Conference, The Sea and The States I.O.F. (1968) at 68-76.

Notice to Mariners.

(2) The straight baseline method should be used in the keys and their offshore reefs. The Court has clearly spelled out in previous decisions that option rests solely with the Federal Government.

(3) The Florida Atlantic boundary as provided in the 1868 Constitution of Florida and its present Constitution of Florida <sup>225/</sup> is the western edge of the Gulfstream or three miles, whichever is the longest. Gambling enthusiasts probably would not make book on Florida's chances of upholding this contention. Florida amended its Constitution in 1962 and described its boundary as three miles in the Atlantic Ocean. The Florida Constitution of 1969 restated the Gulfstream or three geographical miles, whichever is the greatest, as the Atlantic Sea Boundary.

Estoppel?

(4) The Court, in the second California and Louisiana Tidelands cases, indicated rather strongly that the wording of Submerged Lands Act <sup>226/</sup> in the definitions

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<sup>225/</sup> FLA. CONST. Art. II, § 1.

<sup>226/</sup> 43 U.S.C. §§ 1301-15 (1964).

section of the Act limits state offshore claims to not more than three miles in the Atlantic or Pacific Ocean.<sup>227/</sup>  
A number of commentators adhere to the same view.<sup>228/</sup>

## CHAPTER VIII. CONCLUSION

The first California Tidelands case was filed October 19, 1945.<sup>229/</sup> Today, almost twenty-six years have sped by and California's seaward boundaries in the Pacific Ocean are still not completely delineated.\*

Twelve suits involving the Tidelands or the Submerged Lands Act of 1953 have been before the Supreme Court and no coastal state's seaward boundaries has been completely defined.

Mr. Justice Black, who wrote the majority opinion in the first California Tidelands case, pointed out

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<sup>227/</sup> Id. at 1301.

<sup>228/</sup> William Griffin, former Legal Consultant to U.S. Coast & Geodetic Survey; George S. Swarth, Asst. Chief for Offshore Matters, U.S. Dept. of Justice.

<sup>229/</sup> The case was filed in the Supreme Court of the United States because Article III, Section 2 of the Constitution of the United States gives exclusive jurisdiction to the Supreme Court of disputes involving the Federal Government and the individual state or states.

\* "The mill cannot grind with the water that's past."  
C. HERBERT (1593-1633), JACULA PRUDENTUM, at 153, (1651).

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in the sequel to the Texas baseline case that, (1) it had been a mistake for the Court to have advanced the view that offshore boundaries should be settled in the Supreme Court; and (2) the most expeditious way to settle offshore boundary disputes would be to designate a governmental agency to undertake the complex problems involved.

Our forefathers who drafted one of the world's truly great documents, the Constitution of the United States of America, can scarcely be criticized for not realizing that the Supreme Court is not equipped to handle such disputes as both the original and final court of jurisdiction. The fact of the matter is that the eighteenth century man had no real concern with the oceans except to use them as highways of commerce, exploration and aggression. Defense of the littoral state's seashore was also important. However, the idea that the oceans, which cover approximately 70% of the earth's surface, were usable as sources of minerals and other types of fuel had not flowered, much less germinated.

Under the United States' concept of dual federalism and because of the governing provision of the

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230/ United States v. La., 394 U.S. 1 (1969).

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Constitution, the seaward boundaries of individual states can be established only by one of two exclusive measures: First, by decree of the United States Supreme Court; or secondly, by Congressional approval of a state or state's prior legislative act.

It is doubtful that Congress, having once approved a state's constitutional definition of boundaries, land or offshore, can unilaterally reduce such boundaries without consent of the state involved.

Another possible solution which would not involve a Constitutional amendment, is to have the State or Federal Government stipulate the matter would originally be determined by a governmental body, preferably a new administrative agency staffed with the various types of 232/ expertise: geologists, surveyors, cartographers, photographers, oceanographers, historians, and others.

Several governmental bodies have some of the needed qualifications: the United States Navy, Coast Guard, and the United States Coast and Geodetic Survey Department.

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231/ U. S. CONST., Art. III, § 2.

232/ Baxter, An Annotated Checklist of Florida Maps,  
1 TEQUESTA 107 (1941).

If an individual state's legal department, usually the State's Attorney General's Department, is to compete on equal terms with the United States Attorney General's Department, many things are needed. Adequate funds will be required to prepare the defense, including fees of witnesses and for historical research as well as for competent counsel who have had practical or academic experience with Tidelands and Submerged Lands Act cases.

The father of a renowned Supreme Court Justice once said, "The sea is *ferae naturae* . . . It is feline . . . The sea drowns out humanity and time: it has no sympathy with either, for it belongs to eternity."<sup>233/</sup> Those who disagree with the Supreme Court's track record to date in the Tidelands cases may find solace in those thoughts.

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<sup>233/</sup> O. W. HOLMES, THE AUTOCRAT OF THE BREAKFAST TABLE, ch. 11 (1857).

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Some Commentators claim this theory was invented by  
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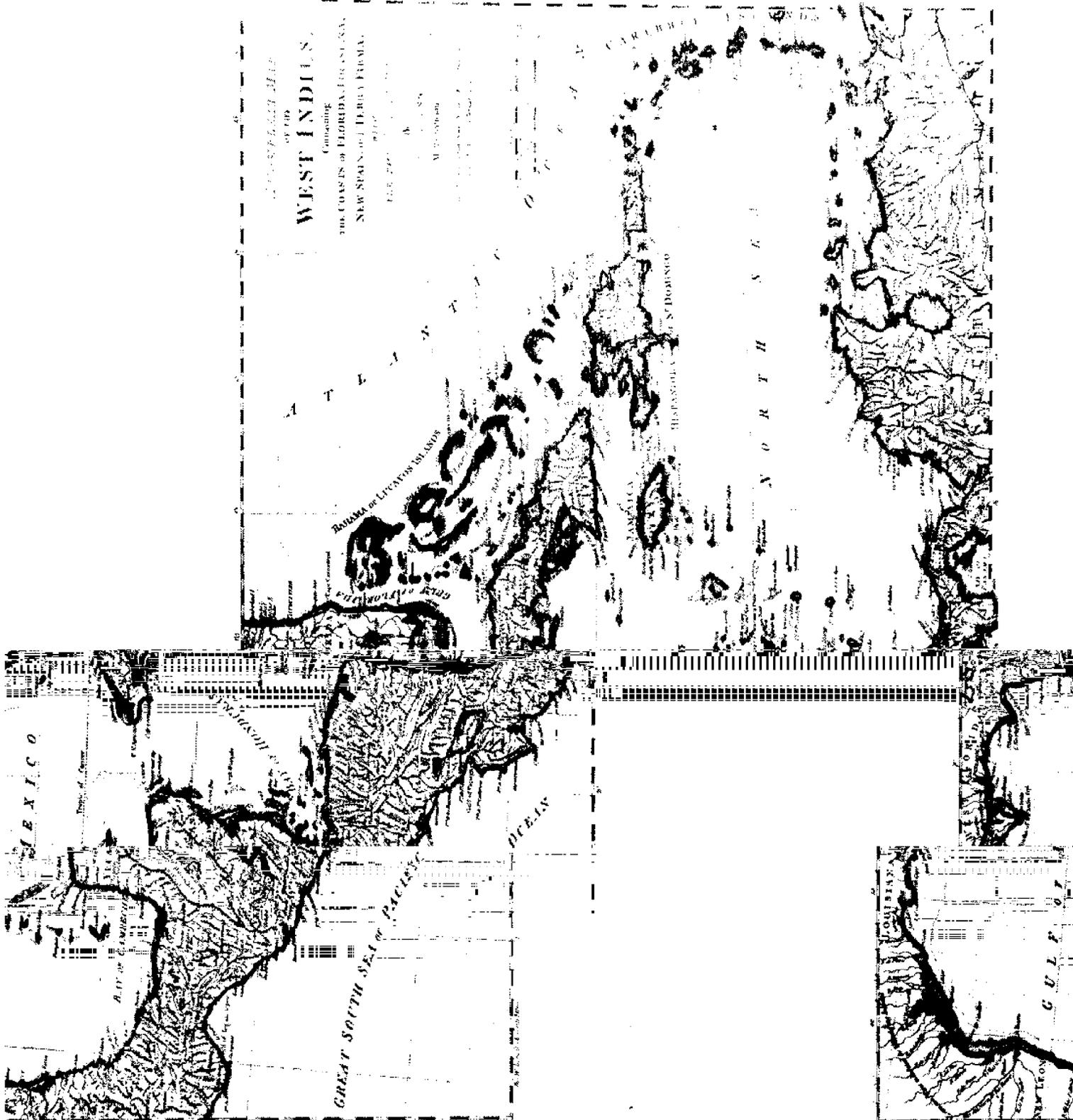
Florida map of 1636.

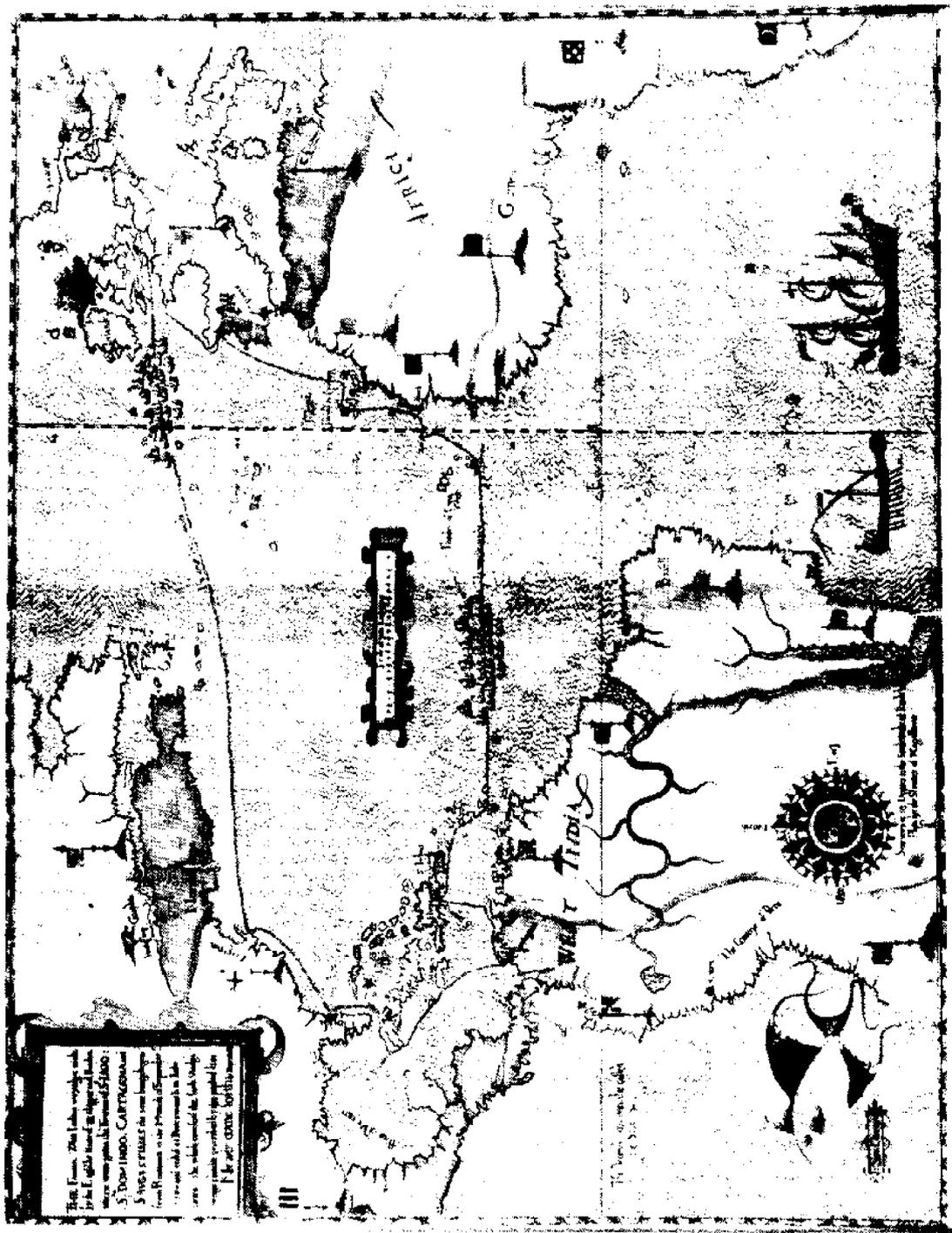
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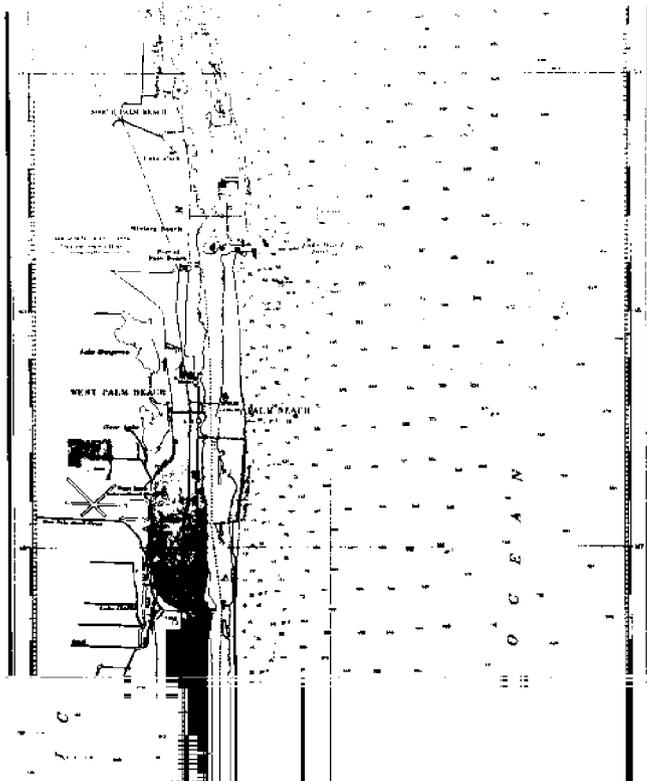
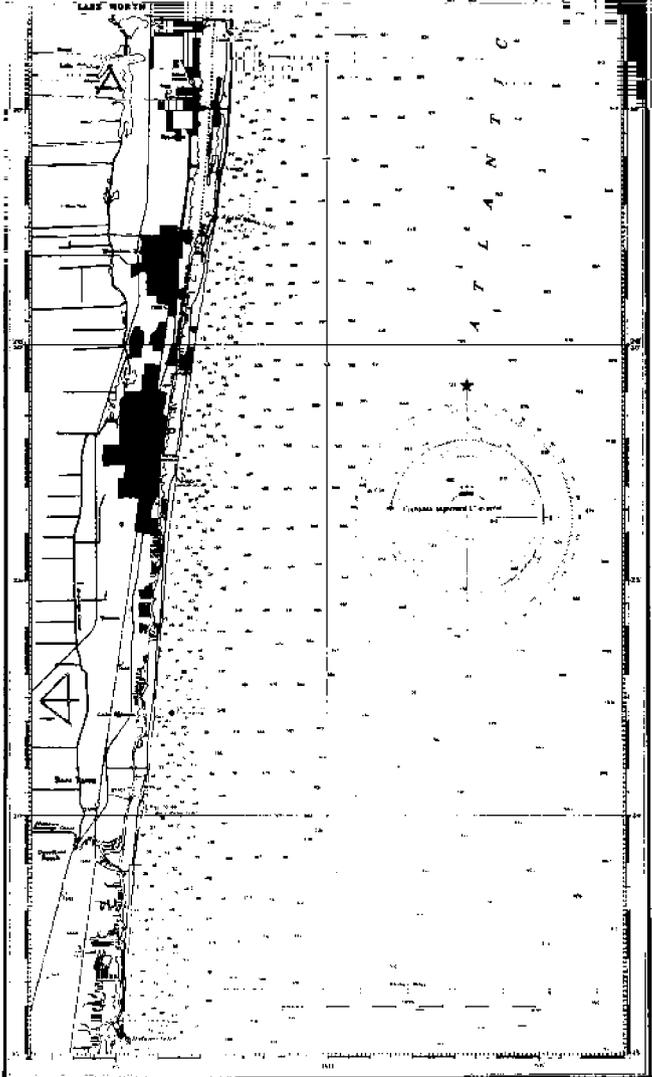
An examination of the Florida Road Map and the United States Coast and Geodetic Charts numbered 1111, 1112, 1113, and 1114 will make a consideration of Florida Seaward Boundary Problems easier. These charts are reduced because of their bulk.

The attached United States Coast and Geodetic Charts will aid in understanding the majority opinion in United States v. La., 394 U.S. 1, (1969).

History buffs will find their hobby is a fascinating entree into some of the problems in this most interesting Tidelands "can of worms" and a special Florida section is therefore included.





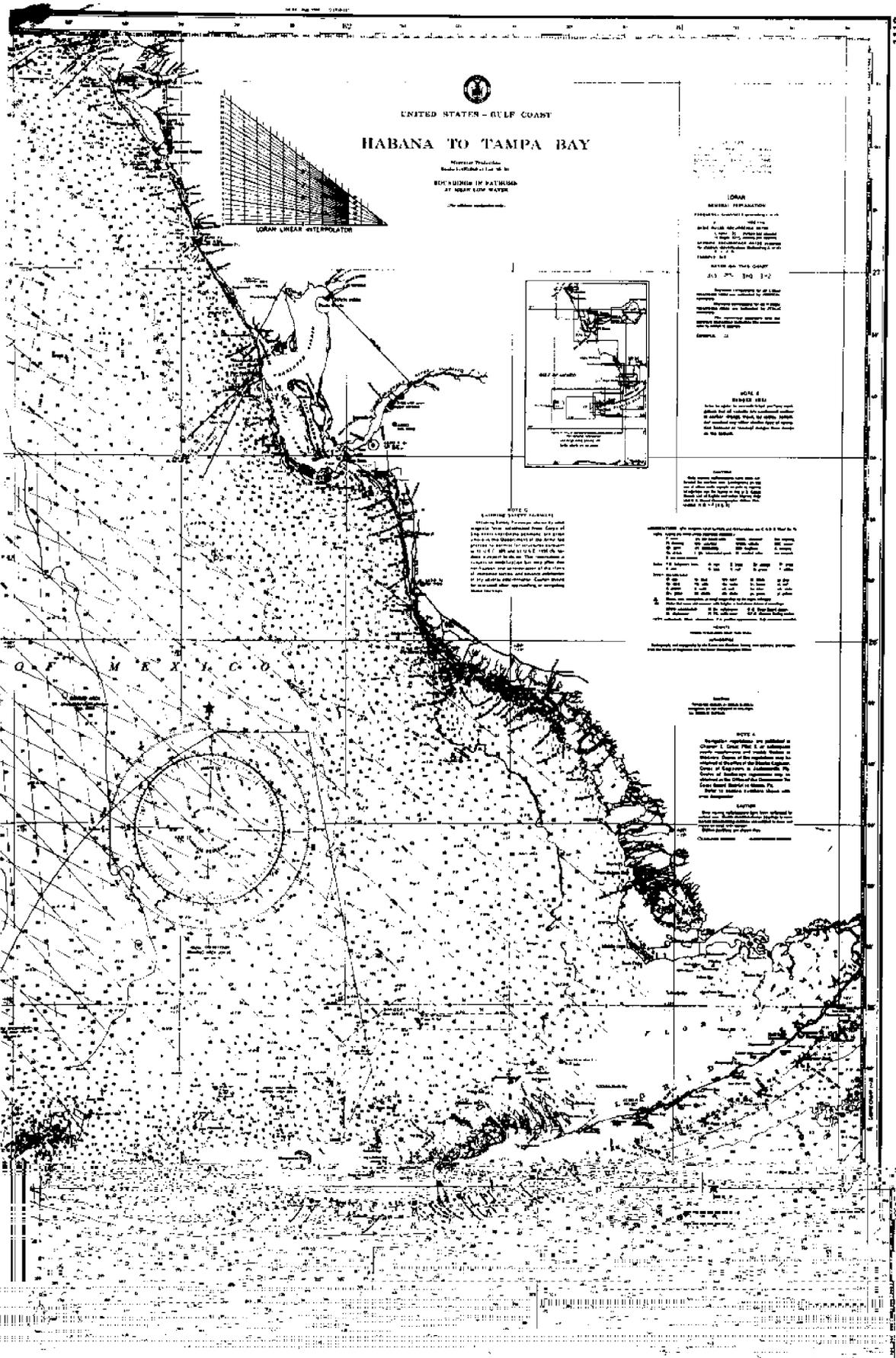


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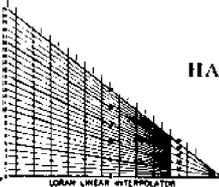




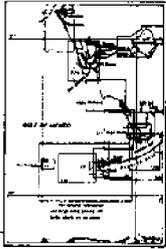
UNITED STATES - GULF COAST

# HABANA TO TAMPA BAY

Minimum Publication  
Scale 1:62,500 (Lat. 26 to 27  
EQUINOXIAL IN PARALLEL  
AT MEAN LOW WATER



**LOAN**  
REVISION: REVISIONS TO THIS CHART  
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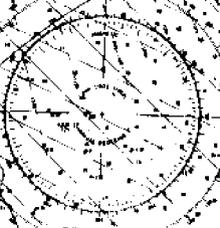


**NOTE A**  
This chart is based on the  
SOUNDING DATA  
COLLECTED BY THE  
U.S. NAVY AND THE  
U.S. COAST AND GEODETIC  
SURVEY  
FROM 1850 TO 1980  
AND FROM 1981 TO 1990  
AND FROM 1991 TO 2000  
AND FROM 2001 TO 2010  
AND FROM 2011 TO 2020

**NOTE B**  
SOUNDING DATA  
COLLECTED BY THE  
U.S. NAVY AND THE  
U.S. COAST AND GEODETIC  
SURVEY  
FROM 1850 TO 1980  
AND FROM 1981 TO 1990  
AND FROM 1991 TO 2000  
AND FROM 2001 TO 2010  
AND FROM 2011 TO 2020

| Chart No. | Scale    | Year | Author    | Editor    |
|-----------|----------|------|-----------|-----------|
| 11111     | 1:62,500 | 1954 | J. H. ... | J. H. ... |
| 11111     | 1:62,500 | 1955 | J. H. ... | J. H. ... |
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| 11111     | 1:62,500 | 2013 | J. H. ... | J. H. ... |
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| 11111     | 1:62,500 | 2016 | J. H. ... | J. H. ... |
| 11111     | 1:62,500 | 2017 | J. H. ... | J. H. ... |
| 11111     | 1:62,500 | 2018 | J. H. ... | J. H. ... |
| 11111     | 1:62,500 | 2019 | J. H. ... | J. H. ... |
| 11111     | 1:62,500 | 2020 | J. H. ... | J. H. ... |

**NOTE C**  
SOUNDING DATA  
COLLECTED BY THE  
U.S. NAVY AND THE  
U.S. COAST AND GEODETIC  
SURVEY  
FROM 1850 TO 1980  
AND FROM 1981 TO 1990  
AND FROM 1991 TO 2000  
AND FROM 2001 TO 2010  
AND FROM 2011 TO 2020









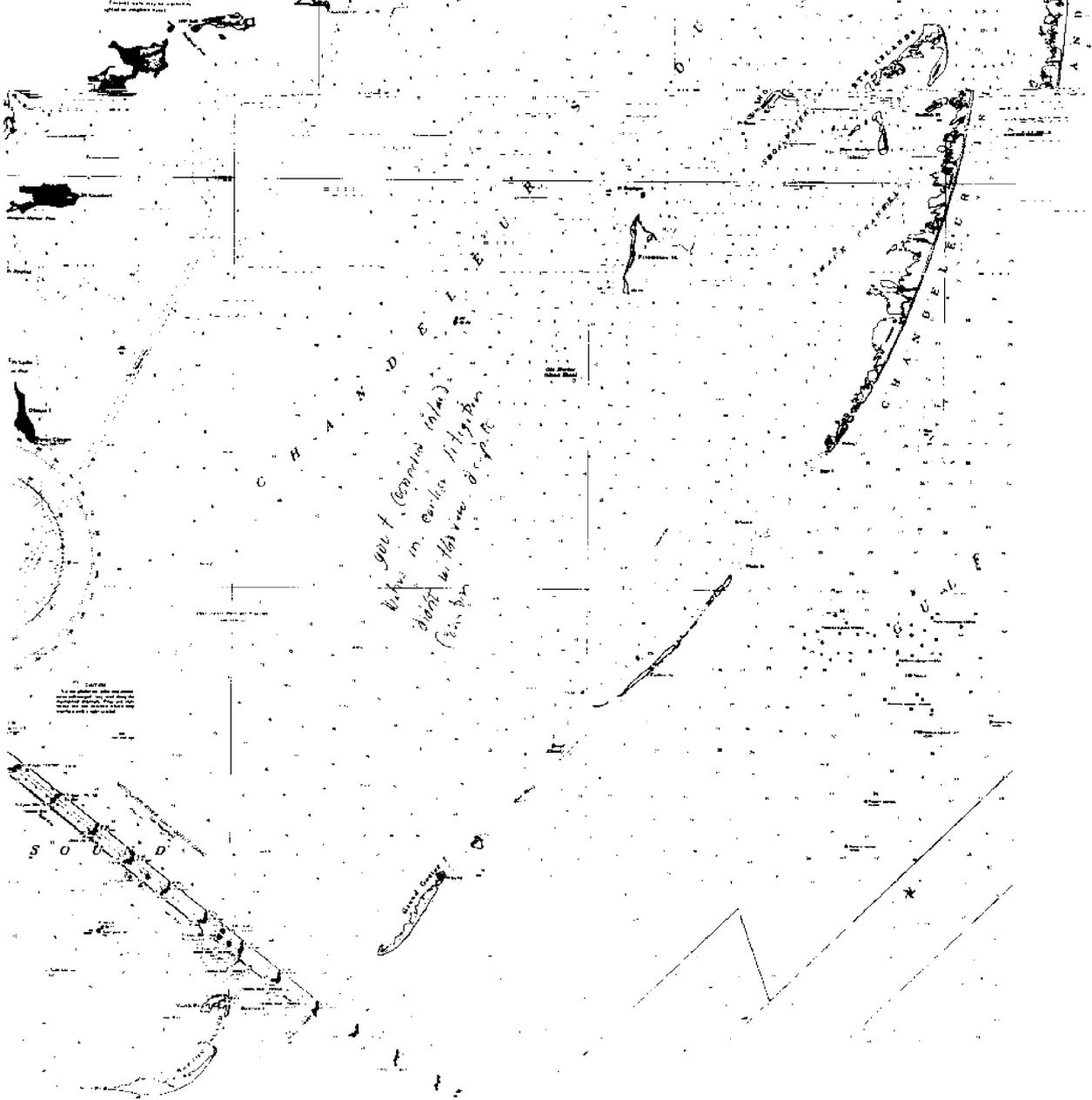
TAYES - GULF COAST  
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### ND BRETON SOUNDS

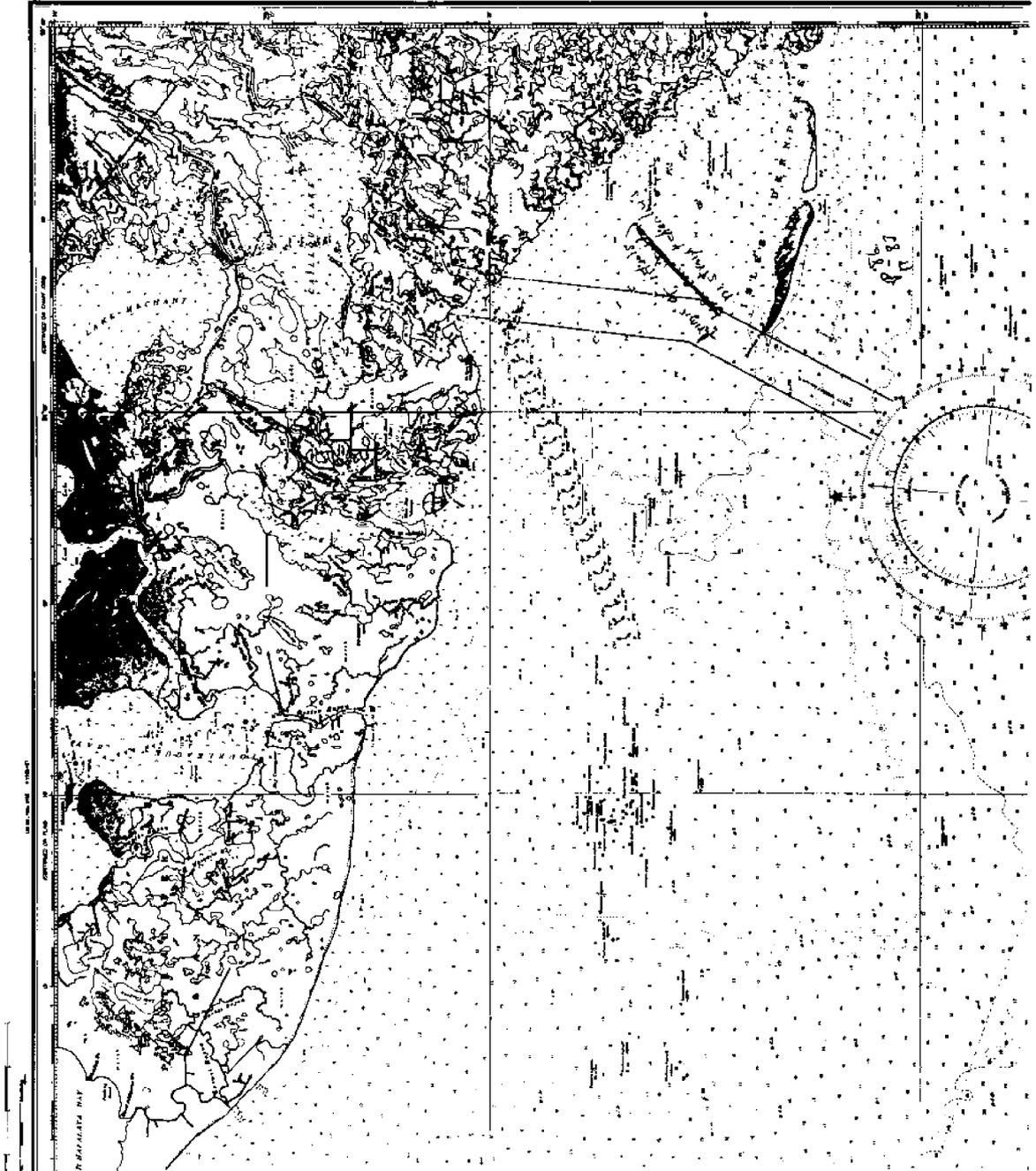
UNDESIGNS IN FEET  
MEAN LOW WATER

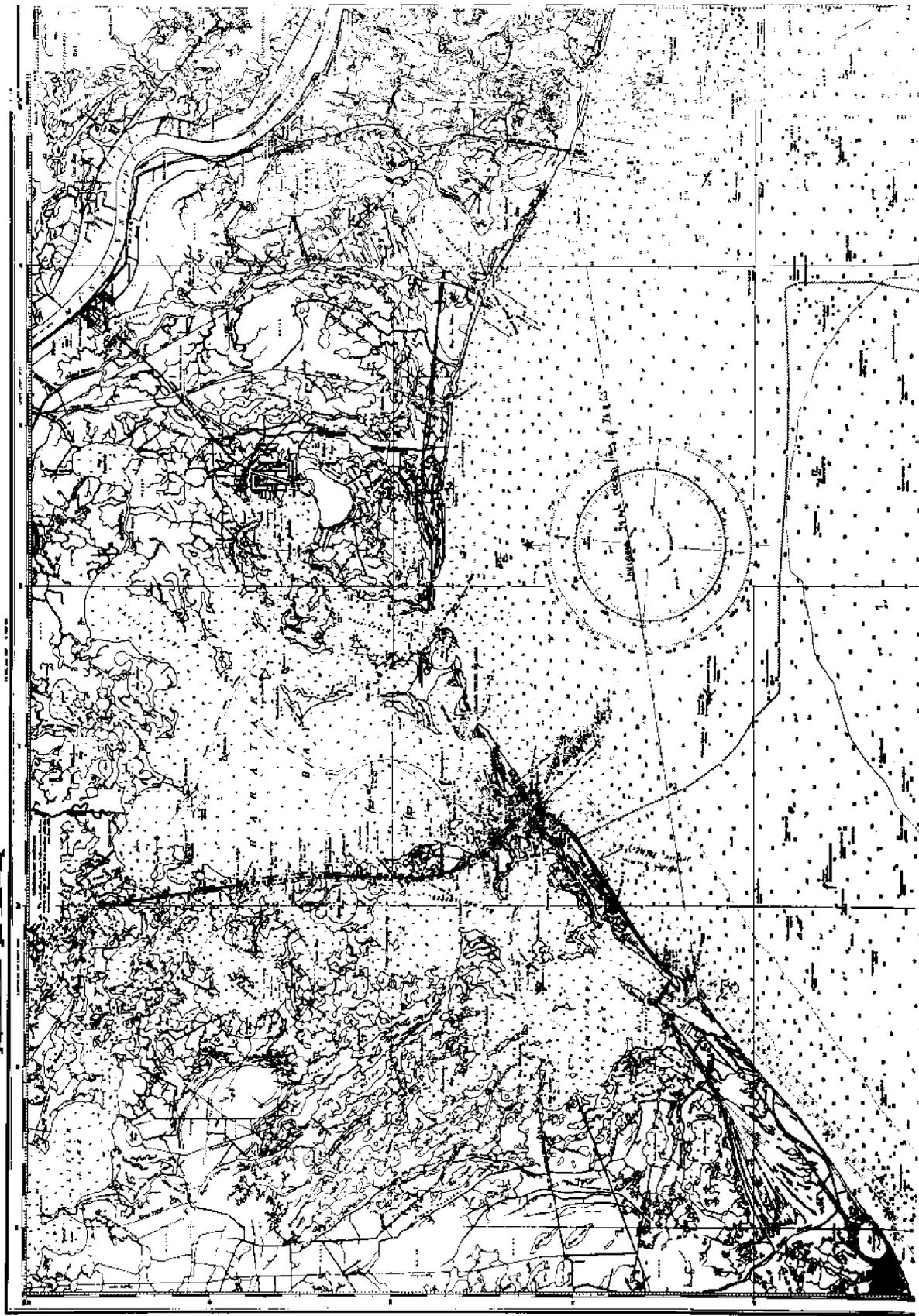
UNDESIGNS IN FEET  
MEAN LOW WATER

UNDESIGNS IN FEET  
MEAN LOW WATER



*see t. (Breton Inlet)  
depth in water 11 fms  
from shore. depth  
from shore.*





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