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Monograph 1

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State and Federal Claims to Submerged Lands In the Mississippi Sound

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FOREWORD

With the discovery of natural gas in Mobile Bay, the development of additional drilling sites in Mobile Bay and the Mississippi Sound is a certainty. There exists, however, conflicting federal and state claims to ownership of some submerged lands in the Mississippi Sound. This booklet discusses the development of the law governing the ownership of submerged lands, and questions whether Alabama and Mississippi have a claim to the submerged land that pre-dates the federal claim.

The research and writing of this booklet is entirely the work product of Mr. George Simons. His dedication and hard work has provided this exhaustive study of federal and state claims to submerged lands in the Mississippi Sound.

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The Outer Continental Shelf Lands Act[1] as implemented by 43 C.F.R. 3301.3, authorizes the Bureau of Land Management of the United States Department of the Interior to request nominations for possible oil and gas leases in the submerged lands claimed and managed by the United States. These requests for nominations are published in the Federal Register in the form of notices of tentative sales.

On September 13, 1978, notice of Tentative Sale No. 62 was published at 43 Federal Register 40933. Among the submerged lands subject to this proposed sale of leases are submerged lands located with reference to OCS Official Protraction Diagram NH 16-4 Mobile. This diagram shows the submerged lands in the Gulf of Mexico lying adjacent to the states of Alabama and Mississippi claimed by the federal government. This diagram also shows the submerged lands considered by the federal government to be the property of the states of Alabama and Mississippi under the Submerged Lands Act.[2] All lands identified as submerged lands appertaining to the United States by OCS Diagram NH 16-4 Mobile are subject to the tentative sale. Among the lands so identified are four tracts of submerged lands that lie totally within the confines of the Mississippi Sound. Three of the tracts, one rather large and two relatively small, lie between Mississippi's lateral boundaries with Louisiana and Alabama. The fourth tract lying in the eastern end of the Mississippi Sound is divided into two portions by the lateral boundary between Mississippi and Alabama. The portion lying on the Alabama side of the lateral boundary is the larger of the two. OCS Diagram NH 16-4 Mobile shows these four

1. 43 U.S.C. §§ 1331-1343 (1953).

2. 43 U.S.C. §§ 1301-1315 (1953).

tracts of submerged land to be totally surrounded by state owned submerged lands. They are federally claimed enclaves of submerged lands lying in the midst of submerged lands that are without doubt the property of the states of Alabama and Mississippi. This unique and somewhat strange situation is the result of the interaction of two elements, the first being the geographical configuration of the Mississippi Sound and the second being the federal law governing the ownership of submerged lands.

The Mississippi Sound is a narrow body of tidal water extending 70 miles from east to west along the southern shores of Alabama and Mississippi. It is bounded on the north by the mainland, on the east by Mobile Bay, on the west by Lake Borgne and on the south by a chain of islands running east to west from Mobile Bay to the St. Bernard Peninsula in Louisiana. The Sound can best be described as a portion of a larger body of water, a bay complex, consisting of the Sound, Lake Borgne, and Mobile Bay. The water area of the bay complex is bounded by a line drawn from Mobile Point on the east along the low water mark on the shores of Mobile Bay, the Sound and Lake Borgne to the tip of the St. Bernard Peninsula on the west. Headlands at Mobile Point and Isle au Pitre on the St. Bernard Peninsula and the island chain that lies between those headlands mark the seaward limits of the indentation. There are six islands lying between the headlands creating seven entrances to the bay complex. The length of the individual islands limits the width of each entrance to a maximum of five nautical miles. The distance between the island chain and the mainland shore ranges between three and ten nautical miles and on the whole the Sound by itself does not deeply penetrate the mainland. The shallow penetration of the Sound gives rise to another possible geographical description. The Sound can be described as a body of water lying between the mainland and an offshore fringe of

islands. This description requires the indentation to be described as a mere curvature of the coast and ignores the presence of Mobile Bay, Lake Borgne, and the two headlands. This description also implies that the general line of the coast follows the mainland shore of the Sound. Actually it does not. The general line of the coast runs along the island chain from Mobile Point to Isle au Pitre. These islands are not set off from that general line as are the islands off the southern coast of California, but rather they form a portion of that general line. The first of the two descriptions appears to be correct. It best reflects the geographical realities of this coastal area and it does not require that geographical features be ignored. The Mississippi Sound is one portion of a bay complex forming a multi-mouthed, well marked indentation of the sea into the mainland.

The primary law governing the ownership of the submerged lands lying adjacent to the United States is found in the Submerged Lands Act[3] and the Outer Continental Shelf Lands Act.[4] The Submerged Lands Act establishes the seaward boundary of each coastal state as a line lying three geographical miles seaward of the state's coast line.[5] Each state has title to and the power to dispose of all of the lands underlying the navigable waters within its boundaries.[6] The location of a state's seaward boundary is dependent upon the location of its coast line.[7] The Submerged Lands Act defines the coast line as

3. 43 U.S.C. §§ 1301-1315 (1953).

4. 43 U.S.C. §§ 1331-1343 (1953).

5. 43 U.S.C. § 1312.

6. 43 U.S.C. § 1311 (A).

7. United States v. California, 381 U.S. 139, 148, 85 S. Ct. 1401, 1407 (1965).

> "the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters;"[8]

The Submerged Lands Act does not define "inland waters" and the United States Supreme Court has held that Congress by failing to define the term intended "to leave the meaning of the term to be elaborated by the courts, independently of the Submerged Lands Act."[9] For the purpose of defining "inland waters" for use with the Submerged Lands Act the Court in California adopted the definitions of "inland waters" contained in the Convention on the Territorial Sea and the Contiguous Zone, [1964] 15 U.S.T. (pt. 2) 1607, T.I.A.S. No. 5639.[10]

State ownership of a particular tract of submerged land is dependent upon whether the tract lies within the state's boundaries. The location of a state's boundaries is dependent upon the location of the state's coast line. Where the shore line is uniform the coast line is easily ascertained. It is the line of ordinary low water. Where the shore is not uniform, where there are islands and indentations, the location of the coast line will depend upon whether the water within an indentation or between an island and the mainland are inland waters under the definitions of the Convention on the Territorial Sea and the Contiguous Zone.[11]

The Department of the Interior's rights and powers with respect to the natural resources of the continental shelf are governed by the

8. 43 U.S.C. § 1301 (c).

9. United States v. California, 381 U.S. 139, 150-51, 85 S. Ct. 1401, 1408 (1965).

10. 381 U.S. at 165, 85 S. Ct. at 1415.

11. See United States v. California, 381 U.S. 139, 85 S. Ct. 1401 (1965), United States v. Louisiana, 394 U.S. 11, 89 S. Ct. 773 (1969).

Outer Continental Shelf Lands Act. In that Act Congress declared that it is

> "the policy of the United States that the subsoil and seabed of the Outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition . . ."[12]

The term "outer Continental Shelf" includes "all submerged lands lying seaward and outside of the area of lands beneath navigable waters" assigned to the states by the Submerged Lands Act.[13] The location of federally owned submerged lands is dependent upon the location of the states' seaward boundary and because of this the ownership of submerged lands in the continental shelf lying adjacent to the United States is determined by the location of the coast line.

In drawing Diagram NH 16-4 Mobile the Department of the Interior has used as the coast line the low water mark along the Alabama and Mississippi mainlands and the low water mark around each of the islands lying at the mouth of the indentation. As previously noted these islands lie off the mainland shores at a distance of 3 to 10 geographical miles. Consequently when the three mile state seaward boundary lines are drawn within the confines of the Mississippi Sound there are areas in which these boundary lines overlap and areas in which they do not. The federal enclaves are those areas in which the boundary lines do not overlap. These enclaves are outside of Alabama's and Mississippi's seaward boundaries and are thus considered to be subject to the jurisdiction and control of the United States within the provisions of the Outer Continental Shelf Lands Act.

The United States is asserting the power to lease the submerged lands lying within the federal enclaves in the Mississippi Sound by virtue of a statute entitled the Outer Continental Shelf Lands Act.

12. 42 U.S.C. § 1332 (A).

13. 43 U.S.C. § 1331 (A).

These enclaves lie totally surrounded by state owned lands within a body of water that is virtually landlocked. Can it be reasonably said that Congress in passing that Act intended this result? Throughout the unamended sections of the Act[14] the word "outer" is used to modify the term "Continental Shelf" a total of 28 times. Further, the term "Continental Shelf" never appears without that modifier. The remarks of Congressman Williams of Mississippi shed some light on the intended meaning of the term "outer Continental Shelf."

> "The measure presently before us [H.R. 4198] contains authority for leasing by the Federal Government of lands between the 3-mile historical boundary and the edge of the Continental Shelf."[15]

Congressman Cailer of New York said:

> "Title III [of the original bill, H.R. 4198] appertained to the minerals seaward from the state boundaries outward to the Continental Shelf. . . I repeat, Title III appertains to the mineral deposits in the lands seaward from the traditional state boundaries clear to the Continental Shelf."[16]

The following dialogue between Congressman Wilson of Texas and Congressman Yates of Illinois is also enlightening.

> Mr. Wilson. "Do I understand your question to be that if the State's historical boundary bill is held to be unconstitutional, this bill gives the Federal Government the right to move in and develop the area within the historical boundaries?"
> Mr. Yates. "That is correct."
> Mr. Wilson. "In my opinion, it certainly would not."
> Mr. Yates. "In other words, this bill deals only with the portion of the Continental Shelf outside that area?"
> Mr. Wilson. "Beginning at the outer edge of the historical boundary of the States, which is 3 miles

14. 43 U.S.C. §§ 1332-1343 (1953).

15. 99 Cong. Rec. 2583 (1953).

16. 99 Cong. Rec. 4877 (1953).

only except for the States of Texas and Florida, and on out."[17]

Senator Cordon of Oregon while reporting the findings of the Senate Committee on Interior and Insular Affairs said:

> "the recommendations of these Cabinet officers . . . included a suggestion for additional legislation to confirm the jurisdiction of and control by the United States of the resources in the seabed and subsoil of the Continental Shelf outside State boundaries and extending to the edge of the Continental Shelf."[18]

Perhaps the most revealing statement of Congressional intent was made by Senator Holland of Florida.

> "Mr. President, if Senators will give attention for a moment to the map which is placed in the rear of the Chamber, and which I believe reasonably and clearly outlines this situation, they will note that the map has a very narrow dark line surrounding the entire Nation on the Atlantic frontage and on the Gulf of Mexico frontage and on the Pacific Ocean frontage. That narrow line represents the areas which are covered by the joint resolution insofar as any grant of offshore lands to the States is concerned."
> "Mr. President, I call attention to this map simply because, in my opinion, it shows clearly that what is involved here insofar as any grant of offshore submerged lands to the States is concerned, is nothing more than a narrow shoe-string of land and water immediately adjoining our coast on all our outside salt-water frontages, and immediately affecting the local development of all the coastal communities, all the local coastal area of the States in the most vital way."
> As to the areas in white on the map, which lie just outside the narrow belt to which I have referred they represent the so-called outer Continental Shelf, or that portion of the

17. 99 Cong. Rec. 4889 (1953).

18. 99 Cong. Rec. 2616 (1953).

> Continental Shelf which lies beyond the State boundaries."[19]

These excerpts from the Congressional Record show that Congress is passing the Submerged Lands Act and the Outer Continental Shelf Lands Act intended to create a statutory scheme under which the ownership of the entire continental shelf is divided between the states and the federal government. In this scheme Congress divided the continental shelf into two mutually exclusive areas. The first area is assigned to the states and consists of "all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each . . . State."[20] This area includes tidelands, inland tidal waters, and the three mile marginal belt. This area might well be called the "inner continental shelf." It "is nothing more than a narrow shoestring of land and water immediately adjoining our coast on all our outside salt-water frontages."[21] Directly adjacent to state property on "our outside salt-water frontages" lie the lands of the "outer continental shelf" which consist of "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 1301" of the Submerged Lands Act.[22] It appears that Congress intended that there be but one line drawn around the entire "outside salt-water frontages" of the United States and that this one line divide state from federal property. Lands seaward of the line are assigned to the federal government and landward of the line those lands are assigned to the states. Now it is possible that a

19. 99 Cong. Rec. 2745 (1953).

20. 43 U.S.C. § 1301 (A) (2).

21. 99 Cong. Rec. 2745 (1953) (remarks of Sen. Holland).

22. 43 U.S.C. § 1331 (A).

state will own submerged lands lying seaward of that one line in the area identified as the "outer continental shelf". The islands lying off the southern coast of California illustrate this point. Some of those islands are 20 to 30 miles from the mainland. By using the low water mark on each island as its coast line, each island would have its own belt of state owned submerged lands.[23] This would be an enclave of state property in the midst of property owned by the federal government. With respect to the submerged lands within the Mississippi Sound the opposite situation occurs. The federal government is asserting that there are enclaves of federal property landward of the line dividing the "inner" and the "outer" continental shelf. When looking at Diagram NH 16-4 Mobile, if the water area of the Mississippi Sound is hypothetically treated as if it were a part of the continental land mass, it will be noted that an unbroken and fairly uniform three mile marginal belt lies immediately off the eastern portion of the coast line of Alabama and extends westward along the southern shores of the island chain until it reaches the area of submerged lands assigned to the state of Louisiana. The belt is solid and uniform. It conforms with the outlines of the Gulf Coast. All of the submerged lands lying between the high water mark on the mainland shores and the three mile boundary lying south of the island chain are without doubt the property of Alabama and Mississippi with the exception of the four enclaves claimed by the federal government. It can be said without difficulty that the three mile marginal belt running along the southern shores of the island chain constitutes a portion of "our outside salt-water frontages" and that all lands lying landward of its seaward most edge are part of the "inner" continental shelf.

23. United States v. California, 382 U.S. 448, 86 S. Ct. 607 (1965).

An additional point should be noted. The Mississippi Sound can be described as an indentation of the sea into the mainland. The federal government is asserting a claim to submerged lands lying within that indentation. Such an assertion is not in itself unusual when based on facts other than those presented by the geographical configuration of the Mississippi Sound. Cook Inlet in Alaska presents a prime example. Cook Inlet, located on the southern shores of Alaska, extends a great distance into the Alaskan mainland. At its entrance the distance between the opposite shorelines of the indentation is approximately 47 geographical miles. The United States Supreme Court has held that because of the width of the Inlet's entrance and the requirements of the Convention on the Territorial Sea and the Contiguous Zone the federal government is entitled to claim submerged lands lying within Cook Inlet.[24] Under this ruling, rather than extending across the entrance of the Inlet and thus forming the "seaward limits of inland waters" under § 1301 (c) of the Submerged Lands Act, the coast line follows the low water mark along each side of the Inlet to a point within the indentation where the opposite low water marks are separated by a distance of 24 geographical miles.[25] Federal submerged lands within Cook Inlet are nothing more than a continuous extension of the "outer" continental shelf into the confines of the indentation. There is only one coast line and only one continuous state seaward boundary in Cook Inlet. This is not the case in the Mississippi Sound. The federally claimed submerged lands are not mere extensions of the "outer" continental shelf into the confines of the indentation. They are separated from the great mass of lands in the "outer" continental shelf by intervening

24. United States v. Alaska, 422 U.S. 184, 95 S. Ct. 2240 (1975).
25. 422 U.S. at 186.

state owned submerged lands. There is not just one coast line and one seaward boundary, there are at least six coast lines fronting on the Mississippi Sound and four seaward boundaries lying within it. If one accepts the proposition that Congress intended to create only one continuous state seaward boundary along the "outside salt-water frontages" of the United States, can it be said that Diagram NH 16-4 Mobile asserts a federal claim that is consistent with that intention? The federal claims in Cook Inlet are consistent with that intention, but the claims in the Mississippi Sound are not.

If Congress did intend to create two separate areas in the continental shelf in passing the Submerged Lands Act and the Outer Continental Shelf Lands Act and if the southern shores of the island chain is the "outer salt-water frontage" of the United States, two questions arise. First, if the federal enclaves are within the "inner" continental shelf and if they cannot be assigned to the states of Alabama and Mississippi under the Submerged Lands Act, does the Department of the Interior's Bureau of Land Management have authority to issue oil and gas leases in those submerged lands under the Outer Continental Shelf Lands Act? Second, did Congress in creating an "inner" and an "outer" continental shelf and by granting and confirming title to submerged lands within the "inner" continental shelf to the states intend to retain in the federal government any of the submerged lands lying within the "inner" continental shelf?

As will be seen, the primary issue in any controversy between a state and the federal government concerning the ownership of lands underlying tidal waters is the location of the coast line, that is, whether the waters are either inland waters or waters within the three-mile belt adjacent to the coast line. This discussion, thus far, has not directly addressed that issue. A deliberate effort was made to avoid it in the hope of showing that the present assignment

of submerged lands in the Mississippi Sound is fundamentally uncertain and that the issues may run deeper than just whether the Mississippi Sound is or is not inland waters. This fundamental uncertainty may very well serve as an effective road block to the development of the oil and gas resources that may be present in the seabed within the federal enclaves. The rights of Alabama, Mississippi and the United States in the submerged lands underlying the waters of the Mississippi Sound should be adjudicated as soon as possible so that interested parties can proceed to acquire leases in these areas without fear of becoming a party to a lawsuit.

As the subject of the present inquiry is the ownership of specific lands, a concise historical survey of the ownership of the lands in question is in order.

Prior to 1803 the lands surrounding the Mississippi Sound were known as Spanish West Florida. Spanish West Florida was "that tract of country which is south of the Mississippi territory, east of the river Mississippi and island of New Orleans, and west of the Perdido river, and a line drawn with the general course thereof to the southern boundary of the said Mississippi territory."[26] In 1803 this land was claimed by the Republic of France under the Treaty of SAN ILDEFONSO signed October 1, 1800. Under this treaty Spain ceded the Louisiana Territory to France. There was some ambiguity with respect to the precise boundaries of Louisiana and although Spain retained possession of Spanish West Florida, France purported to own it as a part of Louisiana.

In 1803 the United States acquired ownership of the Louisiana Territory by treaty with the Republic of France, signed April 30, 1803, ratified October 21, 1803.[27] The United States considered Spanish

26. 2 Stat. 713, 714.

27. 57 Perry, The Consolidated Treaty Series, 27 (1969).

West Florida to be a part of the Louisiana Territory and evidenced its claim thereto when Congress authorized the President to establish Mobile as a port of entry and delivery.[28] Congress in 1812 enlarged the boundaries of the Louisiana Territory to include Spanish West Florida.[29] In May of 1812 Congress enlarged the Mississippi Territory to include Spanish West Florida.[30]

The Mississippi Territory was established by Congress in 1798.[31] The territory encompassed. . .

> all that tract of country bounded on the west by the Mississippi; on the north by a line to be drawn due east from the mouth of the Yasous to the Chatahouchee river; on the east by the river Chatahouchee; and on the south by the thirty-first degree of north latitude.

Under Section 5 of the Act the United States held this territory subject to the claims of the State of Georgia to the territory. "[T]he establishment of this [territorial] government shall in no respect impair the right of the State of Georgia, or of any person or persons either to the jurisdiction or the soil of the said territory. . ."[32] Note that this territory did not include Spanish West Florida which lay to the south of the thirty-first degree of north latitude.

In 1802 the State of Georgia by deed of cession to the United States released all claim to the Mississippi Territory. The deed of cessions 'expressly stipulated', "That the territory thus ceded shall form a State and be admitted as such into the Union . . . with the same conditions and restrictions, with the same privileges, and in the same

28. Act of Feb. 24, 1804, 2 STAT. 251, 254.

29. Act of April 25, 1812, 2 STAT. 713.

30. Act of May 14, 1812, 2 STAT. 734.

31. Act of April 7, 1798, 1 STAT. 549.

32. 1 STAT. 549, 550.

manner, as is provided in the ordinance of Congress of the 13th day of July, 1787, for the government of the north-western territory of the United States."[33] Congress no longer spoke of holding the Mississippi Territory subject to the claims of Georgia, but rather spoke of holding subject to the articles of agreement and cession with Georgia.[34]

In 1812 the agreement between the United States and Georgia was modified when Congress requested permission from Georgia to establish two states rather than just one state in the Mississippi Territory.[35]

In 1817 Congress passed the Mississippi Enabling Act of March 1, 1817[36] and in December of that same year Mississippi was admitted as a state.[37] The boundaries of the State of Mississippi were set out in the Enabling Act as follows:

> the territory included within the following boundaries, to wit; Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear Creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning.

Mississippi was admitted on condition:

> That the said convention shall provide, by an ordinance irrevocable without the consent of the United States

33. Pollard v. Hagan, 3 How. 212, 222 44 U.S. 1846.
34. See Act of March 3, 1803, 2 STAT. 229.
35. Resolution, June 17, 1812, 2 STAT. 786.
36. 3 STAT. 348.
37. Resolution of Dec. 10, 1817, 3 STAT. 472.

> that the people inhabiting the said territory do agree and declare that they forever disclaim all right or title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States.

In 1819 Congress passed the Alabama Enabling Act[38] and in December of the same year Alabama was admitted as a state.[39] The Alabama Enabling Act described Alabama's boundaries as follows:

> Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river: thence, east to the western boundary line of the state of Georgia: thence along said line, to the southern boundary line of the state of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence by a direct line, to the north-west corner of Washington county; thence, due south, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same to the beginning.

The Act also contained the following provision:

> And provided always, That the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States;

Alabama's constitutional convention passed the required ordinance. The text of the ordinance may be found in J. Aikin, Digest of the Laws of the State of Alabama, XLVI, (2nd ed. 1836).

It is clear that title to the lands underlying the Mississippi Sound was in the United States prior to the admission of Alabama and

38. March 2, 1819, ch. 47, 3 STAT. 489.

39. Resolution, December 14, 1819, 3 STAT. 608.

Mississippi into the Union. The question is now whether that title passed to Alabama and Mississippi at any time after admission.

In 1842 the United States Supreme Court in Martin et al. v. The Lessee of Waddell[40] announced the rule that gave rise to the principle that upon the admission of a state into the Union all lands underlying the navigable waters within that state's boundaries become the property of that state. At issue in Martin was the ownership of a tract of land underlying the Raritan River and Raritan Bay in New Jersey. Raritan Bay is an indentation of the sea that lies within the western most reaches of lower New York Bay. Raritan Bay is bounded on the north by Straten Island and on the south and west by the mainland of the state of New Jersey. Plaintiff claimed ownership under a land grant issued pursuant to the charters of government given by King Charles II of England to the Duke of York in 1664 and 1674. Defendant claimed title under a grant from the State of New Jersey. The Court held that the ownership of lands underlying navigable waters was an incident of sovereignty; that under the English law of the seventeenth century the sovereign was without power to vest title to those lands in a private individual; that when the Duke of York surrendered his sovereignty to the crown in 1704 title to the submerged lands re-vested in the crown; and that

> "[w]hen the Revolution took place the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government."[41]

The State of New Jersey was declared to be the owner of the lands underlying its navigable waters and the grant to the defendant was upheld.

40. 16 Pet. 367, 10 L. Ed. 997 (1842).

41. Martin et al. v. The Lessee of Waddell, 16 Pet, 367, 410, 10 L. Ed. 997, 1013 (1842).

The Court in Martin did not characterize Raritan River and Bay as inland waters or as waters of the marginal sea. They did, however, consistently refer to those waters as being within that class of navigable waters consisting of "rivers, bays, and arms of the sea". This is the same class of navigable waters that today could be classified as inland waters. Therefore, under Martin it may be said that the thirteen original states as an incident of sovereignty hold title to the lands underlying their inland waters. A much broader inference can be drawn from Martin, however. The Court in no way implied that "rivers, bays, and arms of the sea" were in any respect different from the sea itself. The Court also spoke in general terms when they said "the people of each State . . . hold the absolute right to all their navigable waters and the soils under them".[42] Further, in laying out the argument that the ownership of navigable waters and the lands thereunder is an incident of sovereignty the Court quoted Hale's Treatise de Jure Maris for the proposition that "the king is the owner of this great coast [England], and, as a consequence of his propriety, hath the primary right of fishing in the sea and creeks and arms thereof. . . ."[43] The king owns the sea along the coast and the creeks and arms of the sea as an incident of his sovereignty. The people of the original states after the Revolution assumed the sovereignty of the king. If ownership of the sea along the coast and the creeks and arms of the sea is an incident of sovereignty and if the people of the original states assumed that sovereignty, then the states own the seas along their coasts and the creeks and arms thereof. It must be remembered that this inference arises as dictum. The ownership of the marginal

42. 16 Pet. at 410, 10 L. Ed. at 1013.

43. 16 Pet. at 412, 10 L. Ed. at 1013.

sea was not in issue in the case and the Court did not address that question.

The Court expanded the coverage of the rule announced in Martin et al. v. The Lessee of Waddell to include states admitted after the formation of the Union in Pollard's Lessee v. Hagan.[44] In Pollard the plaintiff claimed title to a tract of land under a patent issued by the United States. The land in question was situated adjacent to the Mobile River in Mobile, Alabama. Prior to both the admission of Alabama into the Union and to the issuance of the patent the land was subject to daily flooding by the high tide. The land was situated between the high and the low water marks. After 1822 the influence of the tide was removed by artificially filling the land. Although the land was subject to the tide, it lies approximately thirty miles inland from the Gulf of Mexico and at the head of Mobile Bay. The Court held:

> "First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original states. Third. The right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in this case."[45]

Prior to the admission of Alabama the United States was the owner of the Mississippi Territory. It was argued that the United States retained ownership of the submerged lands under an ordinance passed by Alabama's Constitutional Convention that declared. . . .

> "that this convention, for and on behalf of the people inhabiting this State, do ordain, agree, and declare, that they forever disclaim

44. 3 How. 212, 11 L. Ed. 565 (1846).

45. 3 How. at 230, 11 L. Ed. at 574.

all right and title to the waste or unappropriated lands lying within this State; and that the same shall be and remain at the sole and entire disposition of the United States." [46]

The Court brushed aside this argument and went on to find that the United States had obtained ownership of the Mississippi Territory by deed of cession from Georgia in 1802 and by treaty with France in 1803. Further, the Court found that. . .

> "It was the intention of the parties [Georgia and the United States] to invest the United States with the eminent domain of the country ceded, both national and municipal, for the purpose of temporary government, and to hold it in trust for the performance of the stipulations and conditions expressed in the deeds of cession and the legislative acts connected with them. For a correct understanding of the rights, powers, and duties of the parties to these contracts, it is necessary to enter into a more minute examination of the rights of eminent domain, and the right to the public land. When the United States accepted the cession of the territory, they took upon themselves the trust to hold the municipal eminent domain for the new States, and to invest them with it, to the same extent, in all respects, that it was held by the States ceding the territories." [47]
>
> "When Alabama was admitted to the Union, on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of cession. . . Nothing remained to the United States, according to the terms of the agreement, but the public lands. And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty, and eminent domain to the United States, such stipulation would have been void and inoperative: because, the United States have no constitutional capacity to exercise municipal

46. 3 How. at 234, 11 L. Ed. at 576.

47. 3 How. at 222-223, 11 L. Ed. at 570.

jurisdiction, sovereignty, or eminent domain, within limits of a State or elsewhere, except, in the cases where it is expressly granted."[48]

> 'Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it before she ceded it to the United States. To maintain any other doctrine, is to deny that Alabama has been admitted into the Union on an equal footing with the original States. *** In the case of Martin et al. v. Waddell, the present Chief Justice * * * said: "When the Revolution took place, the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters, and the soils under them for their own common use, subject to the rights since surrendered by the Constitution". Then to Alabama belong the navigable waters, and soils under them, in controversy in this case. . .'[49]

It is to be noted that the Court placed no significance on the fact that the land in controversy was obtained from France and not from Georgia. This coupled with the language at 3 How. 223, 11 L. Ed. 571, that the United States had no "constitutional capacity to exercise municipal. . . sovereignty. . . within the limits of a State" suggests that the result of the case was not dependent upon the trust agreements embodied in the deed of cession from Georgia and that the holding of the case would be equally applicable to other newly admitted states.

Narrowly stated the Court held that Alabama having been admitted to the Union on an equal footing with the thirteen original states is the owner in fee simple of all the lands underlying the navigable waters situated within her territorial limits.

48. 3 How. at 223, 11 L. Ed. at 571.

49. 3 How. at 228-229, 11 L. Ed. at 573.

The Court just as it did in Martin failed to characterize the waters in question as being inland waters or waters of the marginal sea. It is, however, easy to see that the Mobile River would be today classified as inland waters for it is located at the head of a large bay nearly thirty miles inland from the Gulf of Mexico. Upon the facts of both cases the rule of state ownership of navigable waters and the lands underlying them does not apply to the marginal sea, but only to those waters that maybe characterized as inland waters. Even so, the Court again made no distinctions between navigable waters and again spoke of navigable waters in general terms. In Pollard there is an even stronger basis than in Martin for an inference that the states own the marginal sea. The Court said "although the territorial limits of Alabama have extended all her sovereign power [including the ownership of submerged lands] into the sea, it is there, as on the shore, but municipal power."[50] This statement is, of course, over broad in that the navigable waters in question were tidal river waters and not the sea. But even if the statement is dictum, it is a statement of what the Court thought Alabama's ownership in submerged lands should be and possible what it would have been had the question arose.

The holding of Pollard's Lessee v. Hagan,[51] the Pollard inland water rule, was applied to other states and was consistently re-affirmed and repeated throughout the remainder of the nineteenth and the first half of the twentieth centuries.[52]

50. 3 How. at 32, 11 L. Ed. at 574.
51. 3 How. 212, 11 L. Ed. 565 (1846).
52. E.g., Silas Mason Co., Inc. v. Washington Tax Commissioner, 302 U.S. 186, 58 S. Ct. 233 (1937) (Columbia River at the Grand Coulee Dam, Washington), United States v. Holt State Bank, 270 U.S. 49, 46 S. Ct. 197 (1925) (Mud Lake, Minnesota), Appleby v. City of New York, 271 U.S. 364, 46 S. Ct. 569 (1926) (Hudson River at New York City), Scott v. Lattig, 227 U.S. 229, 33 S. Ct. 242 (1912) (Snake River, Idaho), Shivily v. Bowlby, 152 U.S. 1, 14 S. Ct. 548 (1894) (Columbia River, Washington), Weber v. State Harbor Commissioners, 18 Wall. 57, 23 L. Ed. 59 (85 U.S. 1873) (San Francisco Bay), Smith v. Maryland, 18 How. 71, 15 L. Ed. 269 (59 U.S., 1855) (Chesapeake Bay).

Throughout its life the Pollard rule, while it was consistently applied, was applied only to rivers, lakes and bays -- those waters that are traditionally thought of as inland waters. The Pollard rule was never applied to any body of water considered to be a part of the open sea or a part of the three-mile marginal belt.[53] It was assumed by all parties that the Pollard rule applied to all lands underlying navigable waters located within the territorial limits of a state regardless of whether those waters were inland waters or waters lying in the three-mile marginal belt.[54] The scope of the Pollard rule was not challenged until 1947 when the question of the ownership of the lands underlying the waters of the marginal sea was presented for the first time to the United States Supreme Court in United States v. California.[55] In California the Court held: that the Pollard rule did not apply to lands underlying the marginal seas;[56] that California had no property rights in those lands; and that

> "The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominions and power over, the lands, . . . underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters."[57]

The Court made it clear that the new California rule applied to other coastal states in United States v. Louisiana[58] and United States v.

53. United States v. California, 332 U.S. 19, 36, 67 S. Ct. 1658, 1667 (1947).

54. Id.

55. 332 U.S. 19, 67 S. Ct. 1658 (1947).

56. 332 U.S. at 36, 67 S. Ct. at 1667.

57. United States v. California, 332 U.S. 804, 805, 68 S. Ct. 20, 21 (1947), Order and Decree.

58. 339 U.S. 699, 70 S. Ct. 914 (1950).

Texas,[59] where it held that those two states as against the United States had no property rights in the continental shelf adjacent to their coast lines. The California rule replaced the Pollard rule as the instrument used to determine the ownership of submerged lands lying below the low water mark of tidal waters. In establishing the rule the Court introduced a new criteria for determining ownership -- where tidal waters are involved only those submerged lands underlying inland waters belong to the states.[60]

The California, Louisiana, and Texas decisions did not affect the location of those state's seaward boundaries. Each state asserted a claim to a boundary lying seaward of its coast line. California claimed a boundary lying three English miles from its coast.[61] Louisiana's seaward boundary was set by statute at a point 27 nautical miles from its shoreline.[62] In 1947 Texas extended its seaward boundary to the edge of the continental shelf.[63] In each decision the Court noted the location of the seaward boundaries, but in no instance did the Court hold that the boundaries were located elsewhere. In Louisiana the Court said

> "We intimate no opinion on the power of a State to extend, define, or establish its external territorial limits. . . . The

59. 339 U.S. 707, 70 S. Ct. 918 (1950).

60. United States v. California, 332 U.S. 804, 68 S. Ct. 20 (1947), Order and Decree, United States v. Louisiana, Texas, Mississippi, Alabama and Florida, 363 U.S. 1, 20, 80 S. Ct. 961, 974 (1960).

61. United States v. California, 332 U.S. at 23, 67 S. Ct. at 1660. Cal. Const. of 1849, Art. XII.

62. United States v. Louisiana, 339 U.S. at 703, 70 S. Ct. at 916, 6 DART. LA. GEN. STATS. (1939) §§ 9311.1-9311.4.

63. United States v. Texas, 339 U.S. at 720, 70 S. Ct. at 924, Act of May 23, 1947, L. Texas, 50th Leg., p. 451.

> matter of state boundaries has no bearing on the present problem."[64]

With respect to state ownership of submerged lands in the continental shelf, all that the Court held was that the Pollard inland water rule does not apply and that the states do not own the submerged lands lying between their coast lines and their seaward boundaries. The location of a state's seaward boundary prior to the passage of the Submerged Lands Act is no longer the determinative factor in deciding whether a particular tract of submerged lands is or not state property. The usefulness of the Pollard inland water rule as a tool for making that determination is now a thing of the past.

Under the Pollard inland water rule the location of Alabama's and Mississippi's seaward boundaries would determine whether or not the federal enclaves belong to the states. If those boundaries are located along the southern shores of the island chain or at a point further seaward, the question would be resolved in favor of the states. Under Pollard the submerged lands within the federal enclaves would have passed from the United States to Alabama and Mississippi when those states entered the Union.

In discussing the Pollard rule reference has been made to state boundaries. In that context the boundaries referred to are the state boundaries established by the Congressional legislation admitting each state into the Union without any consideration given to changes that the Submerged Lands Act might have made. This gives rise to a question of continuity. Are the state boundaries shown on Diagram NH 16-4 Mobile the same as those established by Congress in admitting Alabama and Mississippi into the Union? As previously noted the Court's decisions in California, Louisiana, and Texas did not affect the location of any state's seaward boundary. If Mississippi

64. 339 U.S. at 705, 70 S. Ct. at 917.

and Alabama had been parties to a similar suit, the location of their seaward boundaries presumably would have emerged unchanged. The Supreme Court in formulating the California rule effected no change in state boundaries. Did Congress in passing the Submerged Lands Act change any state's boundaries? The only provision for the re-location of state boundaries in the Submerged Land Act is found in section 1312. That section reads, in part, "Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line."[65] This is the only change the Congress intended. Senator Corden of Oregon during the Senate debate on the Submerged Lands Act said,

> "The boundaries of the States cannot be changed by Congress without the consent of the States. We cannot do anything legislatively in that field, and we have not sought to do so in this measure."[66]

Section 1312 is framed in permissive language. "Any State . . . may extend." The requisite element of state consent is present. The act of extension, itself, manifests state consent to the change. The seaward boundaries of a state under the Submerged Lands Act must conform with the boundaries established by Congress in admitting the state to the Union, unless section 1312 is applicable or another Congressionally approved change has been made.[67] If Diagram NH 16-4 Mobile does not reflect the boundaries established by Congress in admitting Alabama and Mississippi and if the boundary extension provisions of section 1312 do not apply, the federal government in claiming the enclaves has changed the location of Alabama's

65. 43 U.S.C. § 1312.

66. 99 Cong. Rec. 2634 (1953).

67. See United States v. Louisiana, Texas, Mississippi, Alabama and Florida, 363 U.S. 1, 76, 80 S. Ct. 961, 1003 (1960).

and Mississippi's seaward boundaries by creating boundaries that heretofore did not exist. The question now concerns the scope of federal power and not just whether the Sound is or is not inland waters. Did the Submerged Lands Act and the Outer Continental Shelf Lands Act give the executive branch of the federal government the power to change state boundaries and remove lands from the territorial jurisdiction of the states?

The question of the location of Alabama's and Mississippi's seaward boundary arose in United States v. Louisiana, Texas, Mississippi, Alabama, and Florida.[68] The Submerged Lands Act

> "makes two entirely separate types of grants of submerged lands to the States. The first is an unconditional grant allowing each coastal State to claim a seaward boundary out to a line three geographical miles distant from its 'coast line'. The second is a grant conditioned upon a State's prior history. It allows those States bordering on the Gulf of Mexico, which at the time of their entry into the Union had a seaward boundary beyond three miles, to claim this historical boundary 'as it existed at the time such State became a member of the Union', but with the maximum limitation that no State may claim more than 'three marine leagues'."[69]

In United States v. Louisiana, et al.[70] the Court was asked to determine whether the historical boundaries of Alabama and Mississippi entitled those states to take under the conditioned grant. The seaward portion of Mississippi's historical boundaries is described as follows:

> "thence due south to the Gulf of Mexico, thence westwardly, including all the islands within six leagues of the shore, to the most eastern

68. 363 U.S. 1, 80 S. Ct. 961, (1960).

69. United States v. Louisiana, 389 U.S. 155, 156, 88 S. Ct. 367, 368 (1967).

70. 373 U.S. 1, 80 S. Ct. 961 (1960).

junction of the Pearl River with Lake Borgne." [71]

The description for Alabama is similar and reads:

> "thence due south, to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido River." [72]

The Court held that Alabama and Mississippi are not entitled to take under the conditioned grant and that their seaward boundaries are located three geographical miles from their coast lines. The Court did not rule on the location of those coast lines.[73] As to the boundary descriptions, the Court said,

> "[A]n Act of Admission which refers to all islands within a certain distance of the shore does not appear on its face to mean to establish a boundary line that distance from the shore, including all waters and submerged lands as well as all islands." [74]

The Court did not specifically state, but did strongly imply that the seaward boundaries of Mississippi and Alabama were located at the low water mark on the mainland and at the low water mark on each island. If this is so, then Alabama's and Mississippi's seaward boundaries did not embrace any submerged lands below the low water mark in the Gulf of Mexico, the Mississippi Sound, and, possibly, Mobile Bay. Further, whatever submerged lands Alabama and Mississippi hold in those areas are held by virtue of section 1312 of the Submerged Lands Act. Section 1312 authorizes the extension of Alabama's and Mississippi's seaward boundaries to a point three geographical miles distant from their coast lines. Section 1311 of the Act recognizes, confirms, establishes, and vests in the states

71. 363 U.S. at 81, 80 S. Ct. 1006, Resolution of December 10, 1817, 3 STAT. 472.

72. 363 U.S. at 82, 80 S. Ct. at 1006, Resolution of December 14, 1819, 3 STAT. 608.

73. 363 U.S. at 82 nn. 135 + 139, 80 S. Ct. at 1006.

74. 363 U.S. at 81, 80 S. Ct. 1006.

of Alabama and Mississippi "title to and ownership of the lands beneath navigable waters within" their boundaries.[75] As noted earlier in this discussion, the location of Alabama's and Mississippi's seaward boundaries is dependant upon the location of the coast line. In turn, the location of the coast line in this instance would be dependent upon whether the Mississippi Sound qualifies as inland waters under the definitions of the Convention on the Territorial Sea and the Contiguous Zone. If the Mississippi Sound qualifies as inland waters, all the submerged lands lying within its confines will be the property of the States of Alabama and Mississippi.

The Convention on the Territorial Sea and the Contiguous Zone is a multilateral treaty embodying the principal that "the sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea."[76] The United States became a signatory to the Convention in March, 1961.

In United States v. California[77] the Court noted that since "inland waters" would be used in determining the international boundaries of the United States, the definition of that term should be taken from international law. The Convention was adopted because it provides a "settled international rule defining inland waters" and because it "establishes a single coast line for both the administration of the Submerged Lands Act and the conduct of our future international relations."[78] The Court also held that the definitions of "inland

75. 43 U.S.C. § 1311 (A).

76. Article 1 (1).

77. 381 U.S. 139, 85 S. Ct. 1401 (1965).

78. 381 U.S. at 164-165, 85 S. Ct. at 1415-1416.

waters" are to be "frozen" according to then-existing definitions and that future changes in international law would have no effect. This holding means that the ownership of submerged lands will not depend upon the future position of the United States with respect to foreign nations.[79] The Convention definitions are to be uniformly applied to all portions of the United States coast for purposes of administering the Submerged Lands Act. The predominant policy consideration is uniformity in application and the Court does not feel that the Act itself has left the Court free to give precedence to policies calling for non-uniform application.[80]

Article 3 of the Convention provides that the breadth of the territorial sea is to be measured from a baseline consisting of "the low water line along the coast as marked on large scale charts officially recognized by the coastal state."[81] The Convention definitions of inland waters are essentially the rules governing the location of the baseline where islands, rivers, bays, and other geographic irregularities preclude a uniform, well-marked coast line. By applying the Convention to the administration of the Submerged Lands Act, the "Convention baseline" for measuring the territorial sea serves as the coast line under the Act for the purpose of measuring the seaward boundaries of the states. The terms coast line and baseline are synonymous. The coast line under the Act consists of "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 limits of inland waters."[82] The baseline con-

79. 381 U.S. at 167, 85 S. Ct. at 1416.

80. United States v. Louisiana, (The Louisiana Boundary Case), 394 U.S. 11, 34, 89 S. Ct. 773, 787, (1969).

81. Article 3 (1).

82. 43 U.S.C. § 1301 (c).

sists of "the low water line along the coast as marked on large scale charts",[83] and that portion of the baseline, the closing line, determined by reference to the Convention definitions of inland waters.[84]

Under the provisions of the Submerged Lands Act as they are defined by the Convention, waters lying landward of the baseline are inland waters and the lands underlying them belong to the states.[85] In general there are four circumstances under the Convention in which a baseline encloses inland waters: (1) where waters meet the geographical requirements of a bay under Article 7; (2) where waters qualify as a historic bay under Article 7 (6); (3) where straight baselines may be drawn as governed by Article 4; and (4) where a river flows directly into the sea as provided by Article 13. Of these four only the first three are relevant to this discussion. As noted in this discussion's openning remarks the Mississippi Sound can be described as a portion of a bay complex, therefore, Article 7 applies. It was also noted that the Sound could be described alternatively as a body of water lying between the mainland and an offshore fringe of islands. In such a case the requirements of a historic bay are discussed to show that body of water which does not meet the Article 7 tests may, nevertheless, qualify as inland waters under the Convention. It was also noted that the Mississippi Sound could also be described as a body of water lying between the mainland and an offshore fringe of islands. In such case Article 4 on straight baselines would be applicable.

83. Article 3 (1).

84. United States v. Louisiana (The Texas Boundary Case), 349 U.S. 1, 4-5, 89 S. Ct. 768, 770-771 (1969), United States v. Louisiana (The Louisiana Boundary Case), 394 U.S. 11, 35, 89 S. Ct. 773, 787 (1969).

85. 43 U.S.C. §§ 1301 (A) (2), 1301 (c), 1311 (A); Convention of the Territorial Sea and the Contiguous Zone, Article 5 (1).

The Article 7 geograhpic tests for bays.

> "For the purposes of these articles, a bay is a well marked indentation whose penetration is in such proportions to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of the indentation."[86]

Article 7 (2) sets out two geographic tests that a body of water must meet before it will be considered a bay. It must be a "well-marked indentation" and it must be "landlocked". A body of water must meet both tests.[87]

The first test requires that the indentation be "well-marked" so as to "constitute more than a mere curvature of the coast". Basically, there must be identifiable points or headlands that mark the mouth or the entrance of the indentation.[88] These headlands mark the natural entrance points of the indentation and if the indentation qualifies as a bay, "a closing line may be drawn between" those two points.[89]

In United States v. Louisiana, it was held than an island or a group of islands could be the headland of an indentation or a bay if they "are so integrally related to the mainland that they are realistically parts of the 'coast' within the meaning of the Convention".[90] Bays are usually understood to be indentations in the mainland and, generally, a headland will be a part of the mainland itself, but "there is nothing in the history of the Convention or of the international law

86. Article 7 (2).

87. United States v. Louisiana, 394 U.S. 11, 54 89 S. Ct. 773, 797 (1969).

88. Id.

89. Article 7 (4).

90. 394 U.S. 11, 66, 89 S. Ct. 773, 803 (1969).

of bays which establishes that a piece of land which is technically an island can never be the headland of a bay".[91] Whether an island is "integrally related to the mainland" depends upon "its size, its distance from the mainland, the depth and utility of the intervening waters, the shape of the island, and its relationship to the configuration or curvature of the coast".[92]

The second test for a bay requires that the indentation be landlocked. The water area within the indentation must be "as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of the indentation". This is the semi-circle test. It is a measurement of water area. For the purpose of the test "the area of an indentation is that lying between the low water marks of its natural entrance points".[93] The semi-circle test ignores the presence of islands lying within "the area of an indentation". The land area of such an island does not operate to decrease the water area. Such islands are treated as if they were water areas.[94]

Generally, the diameter of the semi-circle is equal to the length of the closing line drawn directly across the mouth of the indentation between the mainland headlands. This direct closing line, however, will not be used for measuring the diameter of the semi-circle where islands create more than one entrance into the indentation. Where this occurs lines are drawn across each entrance and the sum of the lengths of those lines is used as the diameter of the semi-circle.[95] This rule also applies where a low-tide elevation creates multiple entrances to the indentation. Article 11 (1) defines a low-tide elevation

91. 394 U.S. at 61-62, 89 S. Ct. at 801.

92. 394 U.S. at 66, 89 S. Ct. at 803.

93. Article 7 (3).

94. Id.

95. Id.

as "a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high-tide". In this instance a low-tide elevation is treated as if it were an island.[96] Where these islands are intersected by the "direct closing line between the mainland headlands . . . the bay should be closed by lines between the natural entrance points on the islands even if those points are landward of the direct line between the mainland entrance points."[97] These closing lines "are to be baselines for all purposes".[98] Where an island is treated as a mainland headland the area of the indentation is determined by the low-water mark from the island headland around the perimeter of the indentation to the opposite headland on the mainland. "There is no 'mouth' between the island and the mainland", and the width of the opening between the island and the mainland is not added to the width of the mouth of the bay.[99] Applicability of this multiple entrance rule reduces the size of the semi-circle and thereby reduces the area that an indentation must have to qualify under the semi-circle test. An indentation with a wide entrance between its mainland headlands and a penetration shallow in comparison to the width of its headland to headland entrance may satisfy the semi-circle test due to the presence of islands creating multiple entrances. This reduction in the size of the semi-circle is justified by the rationale "that the presence of islands at the mouth of an indentation tends to link it more closely to the mainland".[100]

96. 394 U.S. 11, 60 n. 80, 89 S. Ct. 773, 800.

97. 394 U.S. at 60, 89 S. Ct. at 800.

98. 394 U.S. at 55, 89 S. Ct. at 797-798.

99. 394 U.S. at 62 n. 83, 89 S. Ct. at 801.

100. 394 U.S. at 58, 89 S. Ct. at 799.

When a body of water qualifies as a true bay under Article 7 (2) all of the waters within the bay that are landward of the closing line drawn across the natural entrance of the bay are inland waters, unless Article 7 (5) applies.

> "Where the distance between the low water marks of the natural entrance points of a bay exceeds twenty-four miles, a straight baseline of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length."[101]

Article 7 (5) places a limitation upon the area within a qualified bay that may be regarded as inland waters. The closing line across the entrance to a bay cannot exceed 24 miles and where it does so, the closing line is moved landward into the bay to a point where the width of the bay does not exceed 24 miles.[102] This 24 mile test is applied at the entrance of the bay and the measure that must be within the rule is the measure of the distance from headland to headland or, where applicable, the aggregate lengths of the closing lines drawn between islands that create multiple entrances to a bay.[103] Failure to satisfy the 24 mile closing rule does not mean that a body of water cannot qualify as a geographic bay. It means only that some of the waters within the geographic confines of the bay do not qualify as inland waters.[104]

A bay complex occurs where there is a large primary indentation with tributary indentations emptying into it. In such instances if the body of water, including both primary and tributary indentations, "can reasonably be deemed a single indentation" the entire water

101. Article 7 (5).

102. United States v. Alaska, 422 U.S. 184, 95 S. Ct. 2240 (1975).

103. United States v. Louisiana, 394 U.S. 11, 55 n. 7, 89 S. Ct. 773, 798 (1969).

104. 394 U.S. at 54, 98 S. Ct. at 797.

area of the bay complex will be used for purposes of the semi-circle test. The failure of the bay complex to meet the semi-circle test will not, however, preclude the tributary indentations from qualifying as bays if they are well-marked and meet the semi-circle test on an individual basis.[105]

Mississippi Sound can easily be classified as a portion of a bay complex. It is part of a body of water that "can reasonably be deemed a single indentation" that lies landward of two readily identifiable headlands, Mobile Point on the east and Isle au Pitre on the west. While this writer does not profess to have the skills necessary to apply the semi-circle test, a glance at the map shows that the combined water areas of Lake Borgne, the Mississippi Sound, and Mobile Bay far exceed the area of a semi-circle whose diameter is equal to the sum of the distances between each island in the chain. Assuming that the bay complex is a well-marked indentation whose water "area is as large as, or larger than, that of a semi-circle whose diameter is a line drawn across the mouth of the indentation," it must also pass the 24 mile closing line test. If the aggregate width of the bay complex's entrances exceeds 24 miles, closing lines may not be drawn across each entrance. In other words, a line consisting of the low water mark on the southern shores of each island and a closing line drawn between each island cannot be used as the coast line. A rough measurement of each entrance show that the aggregate closing line exceeds 24 miles by approximately five miles. This does not mean that the bay complex is not an Article 7 bay. It means only that the entire bay complex does not qualify as inland waters. Under Article 7 (5) closing lines that do not exceed 24 miles in length must be drawn somewhere within the bay complex. The United States has

105. 394 U.S. at 52-53, 89 S. Ct. at 796-797.

chosen to draw them across the entrance of Lake Borgne and the entrances of Mobile Bay, thus excluding the Mississippi Sound from inland waters.[106] One has to wonder if this result is consistent with the rationale that allows the reduction of the size of the semi-circle -- "the presence of islands at the mouth of an indentation tends to link it more closely to the mainland," and whether this rationale has any effect on the 24 mile closing rule or upon the location of the closing lines within the bay complex. As will be seen, the Convention provides an escape clause that allows a nation to claim a bay as inland waters when the bay does not meet the Article 7 tests. The use of that provision might be appropriate in this instance.

Historic Bays. A coastal nation may claim a historic bay as inland waters.[107] The Convention while recognizing historic bays does not define them and does not specifically state that they may be claimed as inland waters. Article 7 (6) excludes them from the Article 7 technical tests, thereby leaving the Convention silent concerning their indentification. To fill this void the Court has adopted pre-Convention rules of international law and has set forth three requirements that must be met in order for a nation to claim a body of water as a historic bay. First, the coastal nation must assert the power to exclude foreign vessels from the waters in question.[108] Second, the nation must have asserted this power continuously.[109]

106. NOAA Chart No. 11376 (1978), NOAA Chart No. 11371 (1978).

107. United States v. Alaska, 422 U.S. 184, 95 S. Ct. 2240 (1975), United States v. Louisiana, 394 U.S. 11, 89 S. Ct. 773, (1969), United States v. California, 381 U.S. 139, 85 S. Ct. 1401 (1965).

108. United States v. Alaska, 422 U.S. 184, 197, 95 S. Ct. 2240, 2250 (1975).

109. 422 U.S. at 189, 95 S. Ct. at 2246.

Finally, foreign governments must have acquiesced in the assertion of that power. The assertion of the power must be of a nature sufficient to give foreign governments notice of the assertion. Acquiescence without notice is insufficient.[110]

The Court has not held that an actual, physical exclusion of foreign vessels is required but the Court has held that there must be an unambiguious assertion of the right to do so.[111] Unambigiuous assertions of the power to exclude foreign vessels do <u>not</u> include: a state "legislative declaration of jurisdiction without evidence of further active and continuous dominion over the waters" claimed;[112] the reasonable regulation of navigation;[113] and the enforcement of fish and wildlife regulations.[114]

Regardless of whether the claim of historic inland waters is being asserted against the United States by a state or against a foreign nation by the United States, the sufficiency of the claim is measured on an international rather than a domestic level.[115] If a claim asserted by a state against the United States could be successfully asserted by the United States on an international level, the state should prevail. Due to the international character of the subject matter a state claim of historic inland waters against the United States is also a claim by the United States to those waters against foreign nations. While a state may not normally extend the boundaries of the United States into international territory without the consent of the United States,[116]

110. 422 U.S. at 200, 95 S. Ct. at 2251.

111. 422 U.S. at 203, 95 S. Ct. at 2253.

112. <u>United States v. California</u>, 381 U.S. at 174, 85 S. Ct. at 1420.

113. <u>United States v. Louisiana</u>, 394 U.S. at 24, 89 S. Ct. at 781.

114. <u>United States v. Alaska</u>, 422 U.S. at 197, 95 S. Ct. at 2250.

115. <u>United States v. Alaska</u>, 422 U.S. at 203, 95 S. Ct. at 2253.

116. <u>United States v. California</u>, 381 U.S. at 168, 85 S. Ct. at 1417.

the United States cannot prevent the extension of its boundaries by historic state action when that action forms the basis of a claim to historic inland waters. State activities in the claimed waters may be asserted against the United States to the extent that the United States would rely upon them in an action against a foreign nation.[117]

The United States cannot block a substantiated state claim to historic inland waters by asserting that it does not wish to recognize or assert the claim on an international level.[118] If the state claim satisfies the above mentioned requirements, the waters in question are as a matter of international law historic inland waters and are thus within the boundaries of the United States.

> "The national responsibility for conducting our international relations obviously must be accommodated with the legitimate interests of the States in the territory over which they are sovereign. Thus a contraction of a State's recognized territory imposed by the Federal Government in the name of foreign policy would be highly questionable."[119]

> "it is one thing to say that the United States should not be required to take the novel, affirmative step of adding to its territory by drawing straight baselines. It would be quite another to allow the United States to prevent recognition of historic title which may already have ripened because of past events but which is called into question for the first time in a domestic lawsuit. The latter, we believe, would approach an impermissible contraction of territory against which we cautioned in United States v. California."[120]

117. United States v. Louisiana, 394 U.S. at 78, 89 S. Ct. at 809.
118. 394 U.S. at 77, 89 S. Ct. at 809.
119. United States v. California, 381 U.S. at 168, 85 S. Ct. at 1417.
120. United States v. Louisiana, 394 U.S. at 77 n. 104, 89 S. Ct. at 809.

As just noted a historic bay is not required to meet the Article 7 tests. If for some reason the Mississippi Sound does not qualify as inland waters under Article 7, it may still be classified as inland waters if historic title to those waters can be established. Establishing historic title is essentially an evidentiary problem in which the sufficiency of any evidence presented will be the determinative factor.

Straight Baselines:

> "In localities where the coast line is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured." [121]

Article 4 of the Convention places in treaty form a principle of international law recognized by the International Court of Justice in United Kingdom v. Norway.[122] Article 4 allows a coastal nation to claim as inland waters those waters lying between the mainland and offshore island fringes. Those waters are enclosed by drawing straight baselines from the mainland to the fringe of islands and along the outer parameter of the islands and then back to the mainland. The circumstances in which a coastal nation may draw straight baselines are limited. The straight "baseline must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked" to the mainland so as to appear to be inland waters.[123] These limitations presumably prevent the use of straight baselines to enclose waters between the mainland and islands that are too remote

121. Article 4 (1).
122. [1951] I.C.J. 116.
123. Article 4 (2).

from the mainland. Also low-tide elevations may not be used in drawing straight baselines unless some structure is built upon them that remains permanently above sea level.[124]

No nation is required to use straight baselines. Their use is entirely optional.[125] The use of straight baselines is an extension of national boundaries and sovereignty and the decision to use them on the United States coast is one that must be made by the United States. That decision cannot be made by the individual states on behalf of the United States.[126] The United States by disclaiming any intent or desire to use straight baselines may conclusively preclude their use by a state or by the Court in adjudicating the rights of a state _vis a vis_ the United States. This is true even where their use is particularly well suited to the coastal configuration in question. The use of straight baselines is a political question and the Court has stated that it is unwilling to review or overturn the United States' decision not to use them.[127] This rule also applies to the use of a "fictitious bay" which is "merely the configuration which results from drawing straight baselines from the mainland to a string of islands along the coast".[128]

Although the United States cannot be required to use straight baselines the conclusive effect of a disclaimer of an intent to use them may be avoided if it can be shown that the United States has in the past "actually drawn its international boundaries in accordance with the principles and methods embodied in Article 4."[129] This

124. Article 4 (3).

125. _United States v. Louisiana_, 394 U.S. 11, 70-71, 89 S. Ct. 773, 805-806 (1969).

126. _United States v. California_, 381 U.S. 139, 168, 85 S. Ct. 1401, 1417 (1965).

127. _United States v. Louisiana_, 394 U.S. at 72-73, 89 S. Ct. at 807.

128. 394 U.S. at 72 n. 96, 89 S. Ct. at 806.

129. 394 U.S. at 73 n. 97, 89 S. Ct. at 807-808.

is closely linked to the concept of historic bays. If the United States has drawn straight baselines consistently in the past and has thus claimed the enclosed waters as inland waters, it may be precluded from denying that claim in the future or from disclaiming any intent to use straight baselines.[130] As indicated earlier, the Court has seriously questioned the idea that the federal government could contract a state's territory in the name of foreign policy.[131]

With respect to island fringes the Court in United States v. Louisiana concluded "that Article 7 does not encompass bays formed in part by islands which cannot realistically be considered part of the mainland" and "that such insular formations were intended to be governed solely by the provision in Article 4 for straight baselines".[132] If the coastal nation does not wish to use straight baselines to enclose waters lying landward of an island fringe Article 10 of the Convention controls.[133] Article 10 (2) states "[t]he territorial sea of an island is measured in accordance with the provisions of these articles". In other words the low water line on each island is used as a baseline for measuring a territorial sea for each island.

If the Mississippi Sound is classified as a body of water lying between the mainland and an offshore fringe of islands, Article 4 is applicable. In such case those waters will qualify as inland waters only if the United States chooses to draw straight baselines along the outer perimeter of the island chain or if the United States has in the past drawn the international boundary in that area in a manner con-

130. Id.

131. See United States v. Louisiana, 394 U.S. at 77 n. 104, 89 S. Ct. at 809, United States v. California, 381 U.S. at 168, 85 S. Ct. at 1417.

132. 394 U.S. at 67-68, 89 S. Ct. at 804.

133. 394 U.S. at 71, 89 S. Ct. at 806.

sistent with the provisions of Article 4. If drawn along the island chain, a straight baseline would meet the Article (2) requirement that any such line "not depart to any appreciable extent from the general direction of the coast." If a straight line were drawn along that portion of Alabama's coast line lying between the Perdido River and Mobile Point and extended westward, it would be seen that the island chain lies closer to that imaginary line than does the low water mark on the mainland immediately adjacent to the Mississippi Sound. Further, the enclosed nature of the Sound makes its waters "sufficiently closely linked to the land domain to be subject to the regime of internal waters."[134] While straight baselines might not be the appropriate method of enclosing the Mississippi Sound, if it is in fact a part of a bay complex, there is nothing other than that fact to prevent the United States from using them in order to claim the Mississippi Sound as inland waters.

134. Article 4 (2).

CONCLUSION

Conflicting federal and state claims to submerged lands is a problem that has plagued this nation for over a century. In the first half of the nineteenth century the Court set forth a rule that seemed to settle the problem for all time.[135] That rule provided that all lands underlying the navigable waters within the boundaries of a state are the property of that state. The Pollard rule was well suited to a time during which fish and oysters were the most valuable resources of the sea. At a time when airplanes, submarines, long-range naval bondardments, and world wars were a thing of the future and isolationism the key word in foreign policy, direct federal control of the coast line may not have been felt necessary. But times change and with them the law must also change. When put to the test, the Pollard rule was found inadequate. Stronger federal control of the nation's coastal areas was deemed necessary. The Court restricted the scope of the Pollard rule and declared that only those lands underlying inland waters belonged to the states and that those submerged lands lying seaward of the low water mark on our coasts and outside the limits of inland waters were subject to the paramount right of the United States to control and dispose of them.[136] Under the California rule no state had property rights in submerged lands lying seaward of the coast line. Congress accepted this new rule,[137] and then motivated by a desire to settle the controversy for all time and a desire to restore to the states those lands that were thought to be theirs under the Pollard rule, Congress passed the Submerged Lands Act.[138] In that Act Congress attempted to set forth a firm rule under

135. Pollard's Lessee v. Hagan, 3 How. 212, 11 L. Ed. 565 (1846).

136. United States v. California, 332 U.S. 19, 67 S. Ct. 1658 (1947).

137. See Alabama v. Texas et al., 347 U.S. 272, 74 S. Ct. 481 (1954).

138. See, Senate Report No. 133, 83rd Cong. 1 Sess., reprinted in [1953] U.S. Code Cong. & Ad. News 1474.

which all the lands underlying the navigable waters of the continent and continental shelf of the United States would be assigned to either the states or the federal government. Congress knew that there was a major problem, the identification of inland waters, and they knew that they could not solve it through legislation.[139] Congress deliberately left inland waters to be defined and identified by the courts.[140] The Court accepted that duty and held that the Convention on the Territorial Sea and the Contiguous Zone would provide the necessary definitions.[141] The Court has also accepted the task of identifying inland waters and locating the coast line.[142]

It is now submitted that Congress in passing the Submerged Lands Act merely initiated a process through which the rights of the states _vis a vis_ the United States in the submerged land lying adjacent to their coasts are to be determined, and that, as a part of that process, Congress intended that the Court judicially determine the location of the coast line on a case by case basis. If this is so, the process, to the extent that it concerns the location of the coast line of Alabama and Mississippi, is incomplete and will remain incomplete until the propriety of the federal enclaves in the Mississippi Sound is determined. There are only two other alternatives, acceptance with the possibility that Alabama and Mississippi are being deprived of lands rightfully

139. See 99 _Cong. Rec._ 2621 (remarks of Senator Holland), 99 _Cong. Rec._ 2629 (remarks of Senator Corden).

140. _United States v. California_, 381 U.S. 139, 85 S. Ct. 1401 (1965).

141. _United States v. California_, 381 U.S. 139, 85 S. Ct. 1401 (1965); _United States v. Louisiana_, 394 U.S. 11, 89 S. Ct. 773 (1969).

142. E.g., _United States v. Florida_, 425 U.S. 791, 96 S. Ct. 1840 (1976); _United States v. California_, 436 U.S. 32, 98 S. Ct. 1662 (1978); _United States v. California_, 432 U.S. 40, 97 S. Ct. 2915 (1975); _United States v. California_, 382 U.S. 448, 86 S. Ct. 607 (1966).

theirs or stagnating uncertainty. It is hoped that this discussion has outlined the relative positions of Alabama, Mississippi, and the United States under the law and set forth just a few of the questions that should be asked and answered.

APPENDIX

In researching the topics of submerged lands, the Submerged Lands Act, and the Convention on the Territorial Sea and the Contiguous Zone over one hundred connected case citations to the principal United States Supreme Court decisions were discovered. These citations are listed in the appendix below and it is hoped that this appendix will:

(1) aid in the future research of these topics:

(2) show the enormous amount of litigation that these topics have generated in the past 35 years; and

(3) give some insight to the procedural complexity of adjudicating controversies that arise in these areas.

<u>United States</u> <u>v.</u> <u>California</u>	332 U.S. 19, 67 S. Ct. 1658 (1947), opinion
326 U.S. 688, 66 S. Ct. 94 (1945), mem.,	United States' motion for leave to file the bill of complaint is granted.
66 S. Ct. 226 (1945), mem.,	California's motion for extension of time to answer granted, no "U.S." cite.
66 S. Ct. 518 (1946), mem.,	Answer of California received and filed, no "U.S." cite.
327 U.S. 764, 66 S. Ct. 524 (1946), mem.,	Massachusett's motion for leave to intervene denied.
66 S. Ct. 954 (1946), mem.,	California ordered to file a concise statement of issues of law and fact, no "U.S." cite.
66 S. Ct. 1335 (1946), mem.,	California's motion for leave to file answer is granted, no "U.S." cite.
329 U.S. 689, 67 S. Ct. 478, mem.,	Motion of Robert E. Jordan for leave to intervene denied.
67 S. Ct. 618 (1947), mem.,	Case reassigned for argument on March 12, no "U.S" cite.
67 S. Ct. 974 (1947), mem.,	Robert E. Jordan's motion for leave to file amicus curiae brief granted, no "U.S." cite.
67 S. Ct. 1747 (1947), mem.,	New Jersey's motion for leave to file amicus curiae brief denied, no "U.S." cite.

332 U.S. 19, 67 S. Ct. 1658 (1947).	Opinion.
332 U.S. 804, 68 S. Ct. 20 (1947), Per Curiam.	Order and decree.
332 U.S. 787, 68 S. Ct. 37 (1947), mem.,	Petition for rehearing denied.
332 U.S. 806, 68 S. Ct. 103 (1947), mem.,	The motion of Lauren D. Cherry and Earl G. Sinclair for leave to file a motion to strike a portion of a stipulation entered into between the United States and California is denied.
68 S. Ct. 103 (1947), mem.,	Motion of Norman L. Littell for leave to file amicus curiae brief granted, no "U.S." cite.
332 U.S. 828, 68 S. Ct. 200 (1947), mem.,	Motion of Robert E. Jordan for leave to file additions to the final decree denied.
68 S. Ct. 342 (1948), mem.,	Motion for leave to withdraw grant to two members of California's counsel, no "U.S." cite.
334 U.S. 825, 68 S. Ct. 1327 (1948), mem.,	Motion of the Campo band of Indians to intervene denied.
334 U.S. 855, 68 S. Ct. 1517 (1948), mem.,	Special Master ordered to be appointed
335 U.S. 897, 69 S. Ct. 298 (1948), mem.,	United State's motion for clarification of the scope of the Special Master's inquiry denied.
337 U.S. 952, 69 S. Ct. 1520 (1949), mem.,	Report of Special Master ordered to be filed.
337 U.S. 952, 69 S. Ct. 1520 (1949), mem.,	Special Master's appointment ordered to be continued.
70 S. Ct. 181 (1949), mem.,	Parties ordered to pay Special Master's compensation and expenses.
339 U.S. 975, 70 S. Ct. 1016 (1950), mem.,	Motion of Harold S. Iches for leave to file suggestions denied.
341 U.S. 946, 71 S. Ct. 1003 (1951), mem.,	Special Master's report ordered filed.
342 U.S. 884, 72 S. Ct. 172 (1951), mem.,	Compensation and expenses awarded to the Special Master.
342 U.S. 891, 72 S. Ct. 198 (1951), mem.,	Special Master's appointment order continued, specific questions listed.

344 U.S. 872, 73 S. Ct. 168 (1952), mem.,	Special Master's report ordered filed.
United States v. California	381 U.S. 139, 85 S. Ct. 1401 (1965).
381 U.S. 139, 85 S. Ct. 1401 (1965),	Opinion
382 U.S. 448, 86 S. Ct. 607 (1966),	Per Curiam, first supplemental decree, modifies order and decree entered October 27, 1947, 332 U.S. 804, 68 S. Ct. 20 (1947).
382 U.S. 889, 86 S. Ct. 159 n. (1965) mem.,	Petition for rehearing denied.
432 U.S. 40, 97 S. Ct. 2915 (1977),	Second supplemental decree.
436 U.S. 32, 98 S. Ct. 1662 (1978),	Opinion
U.S. 99 S. Ct. 556 (1978),	Third supplemental decree.
United States v. Louisiana,	339 U.S. 699, 70 S. Ct. 914 (1950)
335 U.S. 901, 69 S. Ct. 399 (1949), mem.,	Louisiana's motion for leave to appose the motion for leave to file complaint granted.
69 S. Ct. 598 (1949), mem.,	Case assigned for oral argument on the motion for leave to file complaints, no "U.S." cite.
336 U.S. 958, 69 S. Ct. 887 (1949), mem.,	Motion of Annie C. and Agnes E. Lewis for leave to intervene denied.
337 U.S. 902, 69 S. Ct. 1040 (1949), mem.,	United States granted leave to file complaint.
337 U.S. 928, 69 S. Ct. 1490 (1949), mem.,	Petition for rehearing denied. Louisiana ordered to answer complaint.
338 U.S. 806, 70 S. Ct. 36 (1949), mem.,	Motion to dismiss on jurisdictional grounds denied.
338 U.S. 807, 70 S. Ct. 37 (1949), mem.,	Motion of Agnes E. Lewis for leave to intervene denied.
339 U.S. 699, 70 S. Ct. 914 (1950),	Opinion
71 S. Ct. 16 (1950), mem.,	Motion of Frank J. Looney for leave to file amicus curiae brief denied, no "U.S." cite.

340 U.S. 856, 71 S. Ct. 75 (1950), mem.,	Petition for rehearing denied.
340 U.S. 899, 71 S. Ct. 275 (1950), mem.,	Decree
340 U.S. 907, 71 S. Ct. 276 (1950), mem.,	Motion for leave to file second petition for rehearing denied.
340 U.S. 939, 71 S. Ct. 939 (1951), mem.,	Petition for rehearing denied.
350 U.S. 812, 76 S. Ct. 43 (1955), mem.,	United States' motion for a modification of the decree denied.

United States v. Louisiana, Texas, Mississippi, Alabama, and Florida, 363 U.S. 1, 80 S. Ct. 961 (1960).

The following cases are essentially continuations of the 1960 case:
United States v. Louisiana, 389 U.S. 155, 88 S. Ct. 367 (1967),
United States v. Louisiana, (The Texas Boundary Case), 394 U.S. 1, 89 S. Ct. 768 (1969),
United States v. Louisiana, (The Louisiana Boundary Case), 394 U.S. 11, 89 S. Ct. 773 (1969).

350 U.S. 990, 76 S. Ct. 541 (1956), mem.,	Motion for leave to file complaint granted.
351 U.S. 946, 76 S. Ct. 842 (1956), mem.,	Louisiana ordered to reply to United States' motion for an injunction.
351 U.S. 978, 76 S. Ct. 1043 (1956), mem.,	Louisiana njoined from further prosecution of Louisiana v. Anderson-Prichard Oil Corporation.
352 U.S. 812, 77 S. Ct. 28 (1956), mem.,	Motion to dismiss on jurisdictional grounds denied. Louisiana ordered to file answer.
352 U.S. 885, 77 S. Ct. 124 (1956), mem.,	Motion by United States to dismiss motion made by Anderson-Prichard Oil Corporation granted.
352 U.S. 921, 77 S. Ct. 218 (1956), mem.,	United States granted 10 days in which to file reply to Louisiana's answer.
352 U.S. 979, 77 S. Ct. 380 (1957), mem.,	Hearing set for motions by Louisiana and United States.
353 U.S. 903, 77 S. Ct. 660 (1957), mem.,	Motion by Parish of St. Bernard, Louisiana for leave to intervene denied.
353 U.S. 928, 77 S. Ct. 716 (1957), mem.,	Motion for reconsideration of denial of St. Bernard Parish's motion denied.
353 U.S. 980, 77 S. Ct. 1278 (1957) mem.,	Texas' motion to file amicus curiae brief granted.

353 U.S. 515, 77 S. Ct. 1373 (1957)	Per Curiam, Alabama, Mississippi, Texas, and Florida granted leave to intervene and United States granted leave to file amended or supplemental complaints.
355 U.S. 859, 78 S. Ct. 90 (1957), mem.,	United States granted additional time to file amended or supplemental complaint.
355 U.S. 945, 78 S. Ct. 528 (1958), mem.,	Case set for argument.
356 U.S. 928, 78 S. Ct 772 (1958) mem.,	Parties assigned hours for oral argument.
359 U.S. 901. 79 S. Ct. 576 (1959), mem.,	Case set for argument.
361 U.S. 872, 80 S. Ct. 49 (1959), mem.,	Louisiana's motion for leave to file a reply brief granted. Texas granted leave to file a memorandum, United States granted leave to file a supplemental memorandum.
361 U.S. 872, 80 S. Ct. 136 (1959), mem.,	Texas granted leave to file a supplemental brief.
363 U.S. 1, 121. 80 S. Ct. 961 (1960),	Opinion, United States v. Louisiana, Texas, Mississippi, Alabama, and Florida.
364 U.S. 856, 81 S. Ct. 36 (1960), mem.,	Alabama, Mississippi and Louisiana granted leave to file petitions for rehearing.
364 U.S. 502, 81 S. Ct. 258 (1960)	Decree
382 U.S. 288, 86 S. Ct. 419 (1965)	Supplemental decree.
389 U.S. 155, 88 S. Ct. 367 (1967)	Opinion, United States v. Louisiana (1967)
389 U.S. 1059, 88 S. Ct. 757 (1968), mem.,	Petition for rehearing denied.
391 U.S. 910, 88 S. Ct. 1800 (1968), mem.,	Oral argument on motion for entry of supplemental decree set.
393 U.S. 811, 89 S. Ct. 79 (1968), mem.,	Oral argument on supplemental decree set.
394 U.S. 1, 89 S. Ct. 768 (1969),	Opinion, United States v. Louisiana (Texas Boundary Case).
394 U.S. 11, 89 S. Ct. 773 (1969),	Opinion, United States v. Louisiana (Louisiana Boundary Case).
394 U.S. 994, 89 S. Ct. 1451 (1969),	Louisiana Boundary Case, petition for rehearing denied.

United States v. Texas	339 U.S. 707, 70 S. Ct. 918 (1950).
335 U.S. 901, 69 S. Ct. 399 (1949), mem.,	Louisiana granted leave to oppose the United States' motions for leave to file the complaint.
69 S. Ct. 598 (1949), mem.,	Case assigned for oral argument on the motion for leave to file complaints, no "U.S." cite.
336 U.S. 958, 69 S. Ct. 887 (1949), mem.,	Annie C. and Agnes E. Lewis denied leave to intervene.
337 U.S. 902, 69 S. Ct. 1040 (1949), mem.,	United States grant leave to file the complaint.
338 U.S. 806, 70 S. Ct. 37 (1949), mem.,	Motion to dismiss denied.
338 U.S. 807, 70 S. Ct. 37 (1949), mem.,	Agnes E. Lewis denied leave to intervene.
339 U.S. 707, 70 S. Ct. 918 (1950),	Opinion
340 U.S. 900, 71 S. Ct. 276 (1950),	Decree
340 U.S. 907, 71 S. Ct. 277 (1950), mem.,	Petition for rehearing denied.

Alabama v. Texas, et al.,	347 U.S. 272, 74 S. Ct. 481 (1954)
346 U.S. 862, 74 S. Ct. 102 (1953), mem.,	Defendants granted leave to file objections to plaintiff's motion for leave to file the complaint.
346 U.S. 933, 74 S. Ct. 373 (1954), mem.,	Case set for hearing on the motion for leave to file the complaint.
347 U.S. 272, 74 S. Ct. 481 (1954),	Per Curiam, motion for leave to file complaint denied, opinion.
347 U.S. 950, 74 S. Ct. 674 (1954), mem.,	Petition for rehearing denied.

United States v. Alaska,	
352 F. Supp. 815 (D. Alaska, 1972),	Opinion
497 F. 2d 1155 (9th Cir., 1974),	On appeal affirmed, opinion.
419 U.S. 1045, 95 S. Ct. 616 (1974), mem.,	Petition for writ of certiorari granted.

420 U.S. 1001, 95 S. Ct. 1442 (1975), mem.,	Respondent's motions for divided argument is granted.
422 U.S. 184, 95 S. Ct. 2240 (1975),	Opinion, reversed and remanded.
423 U.S. 885, 96 S. Ct. 159 (1975), mem.,	Petition for rehearing denied.
519 F. 2d 1376 (9th Cir. 1975), mem.,	Reversed and remanded to the district court.

United States v. Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida, 420 U.S. 515, 95 S. Ct. 1155 (1975).

395 U.S. 955, 89 S. Ct. 2095 (1969), mem.,	Leave to file complaint is granted.
398 U.S. 947, 90 S. Ct. 1864 (1970), mem.,	Special Master appointed.
400 U.S. 914, 91 S. Ct. 170 (1970), mem.,	Motion of Florida for severance referred to the Special Master.
403 U.S. 949, 91 S. Ct. 2272 (1971), mem.,	Florida's motion for severance is granted, case consolidated with case against Florida, United States v. Louisiana et al., 403 U.S. 950, 91 S. Ct. 2271.
404 U.S. 953, 92 S. Ct. 305 (1971), mem.,	Leave granted to Florida Council of 100 to file amicus auriae brief.
408 U.S. 917, 92 S. Ct. 2474 (1972), mem.,	Motion of Massachusetts for a preliminary injunction denied.
412 U.S. 936, 93 S. Ct. 2768 (1973), mem.,	Motion of Massachusetts for a preliminary injunction denied.
419 U.S. 814, 95 S. Ct. 29 (1974), mem.,	Special Master's report received and filed.
419 U.S. 1087, 95 S. Ct. 674 (1974), mem.,	Leave granted to the Speical Committee on Tidelands of the National Association of Attorney Generals to file amicus curiae brief.
419 U.S. 1102, 95 S. Ct. 771 (1975), mem.,	Leave granted to Associated Gas Distributors to file amicus curiae brief.
420 U.S. 904, 95 S. Ct. 822 (1975), mem.,	Oral argument set for exceptions to Special Master's report.
420 U.S. 918, 95 S. Ct. 1110 (1975), mem.,	United States' motion for reallocation of time for oral argument granted.

394 U.S. 836, 89 S. Ct. 1614 (1969),	Per Curiam, <u>supplement decree,</u> supplements decree entered 364 U.S. 502, 81 S. Ct. 258 (1960) and gives effect to the opinions entered at 389 U.S. 155, 88 S. Ct. 367 (1967); 394 U.S. 1, 89 S. Ct. 768 (1969); and 394 U.S. 11, 89 S. Ct. 773 (1969).
395 U.S. 901, 89 S. Ct. 1737 (1969), mem.,	Special Master appointed pursuant to opinion in the <u>Louisiana Boundary Case,</u> <u>394 U.S. 11, 89, S. Ct. 773 (1969).</u>
403 U.S. 950, 91 S. Ct. 2271 (1971), mem.,	Joint motion of United States and Florida for supplemental proceedings granted, Special Master appointed, consolidation with United States v. Florida granted.
404 U.S. 932, 92 S. Ct. 265 (1971), mem.,	Motion for supplemental decree as to Louisiana set for argument.
404 U.S. 988, 92 S. Ct. 528 (1971), mem.,	Louisiana's motion for Rule 60 (B) FRCP relief denied.
404 U.S. 388, 92 S. Ct. 544 (1971).	<u>Supplemental decree.</u>
409 U.S. 909, 93 S. Ct. 213 (1972), mem.,	Louisiana's motion for entry of a supplemental decree is granted.
409 U.S. 17, 93 S. Ct. 1478 (1972),	<u>Supplemental decree.</u>
419 U.S. 814, 95 S. Ct. 29 (1974), mem.,	Special Master's report received and filed.
419 U.S. 990, 95 S. Ct. 299 (1974), mem.,	Additional time granted for oral arguments.
420 U.S. 904, 95 S. Ct. 822 (1975), mem.,	Oral argument set for exceptions to the Special Master's report.
420 U.S. 529, 95 S. Ct. 1180 (1975),	<u>Decree</u>
421 U.S. 972, 95 S. Ct. 1970 (1975), mem.,	Petition for rehearing denied.
422 U.S. 13, 95 S. Ct. 2022 (1975),	<u>Supplemental decree.</u>
421 U.S. 1008, 95 S. Ct. 2412 (1975), mem.,	Special Master awarded costs and compensation
423 U.S. 909, 96 S. Ct. 211 (1975), mem.,	First accounting filed by Louisiana.

420 U.S. 515, 95 S. Ct. 1155 (1975),	Opinion
421 U.S. 958, 95 S. Ct. 1945 (1975), mem.,	Court retains jurisdiction to entertain further proceedings.
423 U.S. 1, 96 S. Ct. 23 (1975),	Decree
U.S. 97 S. Ct. 2994 (1977), mem.,	Special Master appointed.
United States v. Florida,	420 U.S. 531, 95 S. Ct. 1162 (1975).
404 U.S. 998, 92 S. Ct. 558 (1971), mem.,	Report of Special Master on the motion by the United States to dismiss Florida's counterclaim and deny Florida's demand for a jury trial received and filed.
415 U.S. 905, 94 S. Ct. 1399 (1974), mem.,	Special Master's report received and filed.
416 U.S. 814, 95 S. Ct. 29 (1974), mem.,	Oral arguments set for exceptions to Special Master's report.
420 U.S. 918, 95 S. Ct. 1111 (1975), mem.,	United States' motion for reallocation of time for oral argument is granted.
420 U.S. 531, 95 S. Ct. 1162 (1975),	Per Curiam, opinion.
423 U.S. 1084, 96 S. Ct. 874 (1976),	Supplemental report of Special Master received and filed.
425 U.S. 791, 96 S. Ct. 1840 (1976),	Decree