

No. 9, Original

Supreme Court, U. S.

FILED

JAN 17 1979

MICHAEL RODAK, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1979

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UNITED STATES OF AMERICA, PLAINTIFF

*v.*

STATES OF LOUISIANA, TEXAS, MISSISSIPPI,  
ALABAMA AND FLORIDA

(MISSISSIPPI BOUNDARY CASE)

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*ON CROSS-MOTIONS FOR A SUPPLEMENTAL DECREE*

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**CROSS-MOTION OF THE UNITED STATES FOR  
ENTRY OF SUPPLEMENTAL DECREE AND  
PROPOSED DECREE AND MEMORANDUM  
IN SUPPORT**

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WADE H. MCCREE, JR.  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*

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**CROSS-MOTION FOR ENTRY OF  
SUPPLEMENTAL DECREE**

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The United States of America moves that the Court enter a Supplemental Decree, in the form submitted herewith, identifying the coastline of the State of Mississippi.

Respectfully submitted.

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WADE H. MCCREE, JR.  
*Solicitor General*

JANUARY 1980



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## **PROPOSED SUPPLEMENTAL DECREE**

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This cause having come on to be heard on cross-motions and having been argued by counsel, and this Court having considered the positions of the respective parties as to the terms of this decree, it is ORDERED, ADJUDGED AND DECREED as follows:

1. For purposes of the Submerged Lands Act of 1953, 43 U.S.C. 1301 *et seq.*, the coastline of the State of Mississippi is the line of ordinary low water on the State's mainland and each of the barrier islands in Mississippi Sound.

2. As against the United States, the State of Mississippi is entitled to all the lands, minerals and other natural resources underlying Mississippi Sound and the Gulf of Mexico which are within three geographical miles of the coastline as described in paragraph 1.

3. The United States is entitled to all the lands, minerals and other natural resources underlying those areas of Mississippi Sound which are not within three geographical miles of the coastline as described in paragraph 1.

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## MEMORANDUM ON BEHALF OF THE UNITED STATES

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In an earlier stage of this litigation, the Court held that under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, the State of Mississippi is entitled only to those lands, minerals and natural resources underlying the Gulf of Mexico which are within three geographical miles of its coastline. The Court did not there determine the location of the coastline. Rather, the Court contemplated subsequent agreement or litigation and reserved jurisdiction. See *United States v. Louisiana*, 363 U.S. 1, 82, 364 U.S. 502, 504 (1960).



The State here seeks to establish that coastline as the mean low watermark on the seaward side of a series of barrier islands lying in Mississippi Sound parallel to the mainland, and closing lines connecting them. In its Memorandum in Support of its Motion for a Supplemental Decree, Mississippi contends that the entirety of the Sound constitutes inland water.

The United States disagrees. We believe Mississippi Sound is not juridical inland water because it does not satisfy the definition of a bay under Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. The barrier islands cannot qualify as “arms” of a bay and the area is not otherwise a well-marked indentation into the mainland. See *United States v. Louisiana*, 394 U.S. 11, 60-73 (1969). Nor do the State’s “historic bay” contentions appear well taken. None of the proffered examples of sovereignty exercised over these waters satisfy the stringent test established by the decisions of this Court. See *United States v. Alaska*, 422 U.S. 184, 197-200 (1975). In our view, the territorial seas extend seaward from the mainland and landward from each of the barrier islands, leaving certain areas of high seas—and outer continental shelf below—in between. And, accordingly, on September 5, 1978 and June 26, 1979, the Department of the Interior called for nominations of tracts within these areas for oil and gas leasing.

It follows that there is a genuine controversy between the parties and we agree with Mississippi that



resolution of the substantial dispute requires the invocation of this Court's continuing jurisdiction. Moreover, the historic bay claim presents factual issues which we believe make appropriate the reference of this case to a Special Master. We therefore eschew detailed argument at this time and join Mississippi in urging the Court to refer the cross-motions for a supplemental decree to a Master to be appointed. See, *e.g.*, *United States v. California*, No. 5, Orig., pending on exceptions to the Report of the Special Master in respect of cross-motions for a fourth supplemental decree.

Respectfully submitted.

WADE H. MCCREE, JR.  
*Solicitor General*

JANUARY 1980





