

No. 35, Original

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

UNITED STATES OF AMERICA,
PLAINTIFF

v.

STATE OF MAINE, ET AL.

JOINT MOTION FOR ENTRY OF A DECREE,
PROPOSED DECREE, AND MEMORANDUM FOR THE
UNITED STATES IN SUPPORT OF MOTION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOSEPH E. BRENNAN,
Attorney General,
State of Maine,
Augusta, Maine 04333.

DANIEL R. MCLEOD,
Attorney General,
State of South Carolina,
Columbia, South Carolina 29202.

ARTHUR K. BOLTON,
Attorney General,
State of Georgia,
Atlanta, Georgia 30334.

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MOTION FOR ENTRY OF A DECREE

The United States of America and the States of Maine, South Carolina, and Georgia jointly move that the Court enter a decree in the form and manner of the attached proposed decree, which is explained in an accompanying memorandum.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JOSEPH E. BRENNAN,
Attorney General,
State of Maine.

DANIEL R. MCLEOD,
Attorney General,
State of South Carolina.

ARTHUR K. BOLTON,
Attorney General,
State of Georgia.

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PROPOSED DECREE

For the purpose of giving effect to the decision and opinion of this Court announced in this case on March 17, 1975, U.S. , it is ordered, adjudged and decreed as follows:

1. As against the defendant States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, the United States is entitled to all the lands, minerals, and other natural resources underlying the Atlantic Ocean more than 3 geographic miles seaward from the coastlines of those States and extending seaward to the edge of the continental shelf. None of the defendant States is entitled to any interest in such lands, minerals, and resources. As used in this decree, the term "coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

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

3. Jurisdiction is reserved by this Court to entertain such further proceedings, including proceedings to determine the coastline of any defendant State, to enter such orders, and to issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree. The United States or any defendant State may invoke the jurisdiction so reserved by filing a motion in this Court for supplemental proceedings.

In the Supreme Court of the United States

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MEMORANDUM FOR THE UNITED STATES IN SUPPORT OF JOINT MOTION FOR ENTRY OF A DECREE

On March 17, 1975, this Court sustained the position of the United States in this case that (slip op., p. 1):

The United States is now entitled, to the exclusion of the defendant State[s], to exercise sovereignty rights over the seabed and subsoil underlying the Atlantic Ocean, lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limits of inland waters on the coast, extending seaward to the outer edge of the Continental Shelf, for the purpose of exploring the area and exploiting the natural resources.

On May 12, 1975, the Court granted the United States' motion that the Court reserve jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to the decision of March 17, 1975. The proposed decree submitted

herewith would, if entered by the Court, properly effectuate the decision of March 17, 1975, and the order of May 12, 1975.

Paragraph 1 defines the rights of the United States as against the several defendant States in language similar to that used by this Court in the analogous provision of the decree in *United States v. Louisiana*, 364 U.S. 502. (The respective rights determined with regard to the Gulf of Mexico in that case were, for all purposes relevant to the proposed decree, identical to those determined with regard to the Atlantic Ocean in this case.) However, the proposed decree does not provide for injunctive relief against interference with the rights of the United States, in the manner of the *Louisiana* decree, for the United States has not requested such relief in this case. In accordance with the Special Master's recommendation (Report, p. 82), and in conformity with the *Louisiana* decree (364 U.S. at 503), paragraph 1 of the proposed decree sets forth the definition of "coastline" contained in Section 2(c) of the Submerged Lands Act, 43 U.S.C. 1301(c).

Paragraph 2 defines the rights of the defendant States, as against the United States, in language substantially identical to that used in the *Louisiana* decree (364 U.S. at 503).

Paragraph 3 provides for reservation of the Court's jurisdiction over further proceedings, specifically including proceedings to determine the coastline of any of the defendant States. The first sentence of paragraph 3 is, with the exception of the clause relating to proceedings to determine coastlines, substantially identical to the language used by this Court in providing for a reservation of jurisdiction in similar decrees in the past. See, e.g., *United States v. Louisiana*, No. 9, Original, decree entered June 16, 1975; *United States v. California*, 382 U.S. 448, 453;

United States v. Texas, 340 U.S. 900, 901. The clause relating to proceedings to determine coastlines has been included to give effect to this Court's order of May 12, 1975, which specifically requested that the proposed decree make provision for such proceedings.

Paragraph 3 also makes explicit that any defendant State, as well as the United States, will be entitled to invoke this Court's reserved jurisdiction by filing a motion for supplemental proceedings. Prior decrees in similar cases have not contained an analogous provision, but it has been the practice under such decrees that the Court's reserved jurisdiction could be invoked by any party. See, e.g., *United States v. Louisiana*, 409 U.S. 17. The provision has been included in the proposed decree to reflect the understanding of the parties concerning the rule that will govern the institution of supplemental proceedings.

The proposed decree makes no more specific provision for proceedings to establish the coastlines of the defendant States. The reason for this is that the parties cannot now foresee the extent to which disputes requiring such proceedings will arise. Early in this litigation, on June 23, 1971, the United States distributed to counsel for each of the defendant States maps indicating the federal government's understanding of the location of that State's coastline. The maps were part of a set of 155 maps that described the 3-mile territorial sea and the 12-mile contiguous zone of the United States and also, where it was relevant to the determination of the 3-mile limit, the outer limit of inland waters.

To date, Massachusetts is the only defendant State that has indicated disagreement with the coastline described on those maps. Counsel for Massachusetts and the United States have agreed that the issue raised by that disagreement will be presented to this Court by joint motion for supplemental proceedings following the Court's entry of a decree in this case. The parties anticipate that a similar procedure would be followed if and when any other defendant State determines that it disagrees with the coastline described by the federal government's maps.

The States of Maine, South Carolina, and Georgia join with the United States in the motion for entry of a decree. The United States has been authorized to state that the other defendant States have no objection to the language of the proposed decree.

It is therefore respectfully submitted that a decree should be entered in the form herein proposed.

ROBERT H. BORK,
Solicitor General.

JULY 1975.

