No. 7, Original

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR MODIFICATION OF DECREE AND BRIEF IN SUPPORT OF MOTION

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MOTION FOR MODIFICATION OF DECREE

This Court having entered its decree in this cause on December 11, 1950, declaring the United States to be entitled to the submerged lands and resources of the Gulf of Mexico extending seaward twenty-seven marine miles from the coast of Louisiana, enjoining the State and its grantees from interfering therewith, and requiring the State to account for all sums derived therefrom by it after June 5, 1950; and

The United States, by the Submerged Lands Act of May 22, 1953, having relinquished to the several States the lands and resources under navigable waters within their boundaries as those boundaries existed when the States entered the Union, or as since approved by Congress, and all

money claims arising out of operations in such areas; and

It appearing that the Submerged Lands Act necessitates a modification of the decree and injunction now in effect in this cause, to relieve the State of so much thereof as relates to the rights relinquished by the Submerged Lands Act, and necessitates as a part of such modification the determination and location by this Court of the state boundary delimiting the relinquished area; and

It appearing that Congress in enacting that statute did not intend to, and did not, approve or adopt any particular location of the boundary of Louisiana as there referred to, or make any change in that boundary, but intended and contemplated that this Court should determine and locate the boundary of Louisiana, according to the law and the facts, as it existed when the State entered the Union or as later approved by Congress, and intended merely to relinquish the lands and resources lying within the legal boundary as it should be so determined and located; and

It appearing that the seaward boundary of Louisiana at the time it entered the Union was three nautical miles from shore and from the outer limit of inland waters, and it further appearing that the United States, consistently with its long-established support of the principle of

freedom of the seas, has not approved for the State of Louisiana a boundary extending more than three miles from shore and from the outer limit of inland waters:

Now, therefore, the United States of America respectfully moves this Court to ascertain the distance from the coast in the Gulf of Mexico of the boundary of the State of Louisiana as it existed when the State entered the Union or as subsequently approved by Congress, and to modify the decree heretofore entered in this cause on December 11, 1950, so as to exclude from its scope all submerged lands lying landward of that boundary, other than lands excepted from the operation of the Submerged Lands Act by Section 5 of that Act.

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MAY 1955.

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF IN SUPPORT OF MOTION FOR MODIFICATION OF DECREE

JURISDICTION

By paragraph 4 of its decree entered herein on December 11, 1950, this Court reserved jurisdiction to enter such further orders as might from time to time be deemed advisable or necessary to give full force and effect to the decree. 340 U. S. 899, 900.

QUESTION PRESENTED

Under the Submerged Lands Act, which relinquished to the several States the lands under navigable waters within their respective boundaries, is the boundary of Louisiana to be considered as located seaward from the coast a distance of three nautical miles, as asserted by the United States, or three leagues, as claimed by Louisiana?

STATUTES INVOLVED

Relevant portions of the following statutes are set out in the Appendix, pages 45–55, *infra:*

Act to enable the people of the Territory of Orleans to form a constitution and state government, etc., approved February 20, 1811, 2 Stat. 641; *infra,* p. 45.

Submerged Lands Act, Public Law 31, 83d Congress, approved May 22, 1953, 67 Stat. 29; *infra,* p. 46.

Act 55 of 1938, approved June 30, 1938, Louisiana Acts 1938, p. 169; *infra,* p. 49.

Louisiana Act 33 of 1954, approved June 21, 1954; *infra,* p. 52.

STATEMENT

By its opinion of June 5, 1950 (*United States* v. *Louisiana,* 339 U. S. 699), and the decree entered on December 11, 1950 (340 U. S. 899), this Court determined that the United States rather than the State was entitled to the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters, extending seaward twenty-seven marine miles and bounded on the east and west, respectively, by the eastern and western boundaries of the State of Louisiana. The Court also held that the United States should have an accounting of all sums derived by the State from that area after June 5, 1950. By the Submerged Lands Act (Public Law

31, 83d Cong., 67 Stat. 29) the United States relinquished to the several States the lands under navigable waters within their respective boundaries, as there defined, and all claims for money or damages arising out of any operations upon or within said lands and waters. It is apparent that the decree in this case should be modified accordingly, to exclude from its scope those submerged lands which lie within the boundary of the State of Louisiana, as defined by the Act, and to relieve the State of the requirement that it account for moneys derived from those lands since June 5, 1950. Such modification, to be effectual, must include a determination of where the state boundary, as referred to in the Submerged Lands Act, is located. Louisiana has taken the position that its boundary is located three leagues from the low-water mark and outer limit of inland waters, the maximum relinquished by Section 2 (b) of the Submerged Lands Act. See Act 55 of 1938, approved June 30, 1938, Louisiana Acts of 1938, p. 169, Appendix, *infra,* p. 49; Louisiana Act 33 of 1954, approved June 21, 1954, Appendix, *infra,* p. 52. The United States takes the position that the boundary of Louisiana is and has always been three geographic miles from the low-water mark and outer limit of inland waters. This motion seeks a resolution of that conflict.

SUMMARY OF ARGUMENT

I

The Submerged Lands Act grants to the several States the lands beneath navigable waters within the boundaries of the respective States, but does not itself determine where those boundaries are located, except to the extent that it limits them, for the purposes of the Act, to three geographical miles from the seacoast or to boundaries existing when the States entered the Union, or later approved by Congress, and extending not more than three miles into the Atlantic or Pacific or three leagues into the Gulf of Mexico. The purpose of the Act neither to change the location of the state boundaries nor to accept any particular contention regarding their location appears both from the language of the Act and from the congressional debates on it. Therefore, to determine the extent of the grant made to Louisiana by the Submerged Lands Act, this Court must make an extrinsic determination of where the boundary of Louisiana was and is located in the Gulf of Mexico.

II

1. Louisiana's claim to a marginal belt of three leagues in the Gulf of Mexico rests on the terms of the State's Enabling Act, which described the State to be formed as "including all islands within three leagues of the coast." However, that language does not appear on its face to mean "in-

cluding all water within three leagues of the coast", and similar language used in other territorial descriptions has not been so construed. Such language has commonly been understood to be merely a convenient method of identifying islands, and should be so construed here.

2. This construction conforms to the settled policy of the United States, which from its earliest beginnings has firmly and consistently adhered to the policy of limiting to three miles its own claims of territorial waters, and of recognizing no greater claims by other nations, as part of the doctrine of freedom of the seas.

III

In political questions, and particularly in matters of foreign affairs, the courts follow the determinations formally and officially made by the political branches of the Government, legislative or executive, to which such matters are entrusted under our form of government. The extent to which the United States has asserted jurisdiction over the seas adjoining its shores is such a question. The political branches of the Government have clearly and consistently, during the periods in question and thereafter, fixed three miles as the limit of American jurisdiction over its bordering ocean waters which is controlling as to the coast of Louisiana. This Court should follow and give effect to that determination.

ARGUMENT

I. THE SUBMERGED LANDS ACT GRANTED TO LOUISIANA THE SUBMERGED LANDS WITHIN ITS BOUNDARY BUT DID NOT DETERMINE THE LOCATION OF THAT BOUNDARY

A. ON ITS FACE, THE ACT NEITHER CHANGES NOR DECLARES THE LOCATION OF THE LOUISIANA BOUNDARY

Section 3 of the Submerged Lands Act grants to the several States the "lands beneath navigable waters within the boundaries of the respective States." 67 Stat. 30; Appendix, *infra,* p. 47 "Boundaries" are defined by Section 2 (b):

> The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico.

67 Stat. 29; Appendix, *infra,* p. 47.

Section 4 of the Submerged Lands Act confirms the seaward boundaries of the original States as three miles from the coast, and approves past or

future extensions to the same distance by other States. It then provides,

> Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

67 Stat. 31; Appendix, *infra,* p. 48.

It is thus apparent that the Act does not change the location of the State boundary. The submerged lands granted to the State, as defined by Section 2 (b), are those lying within the boundary as it existed when the State entered the Union, or as since approved by Congress, not extending, however, more than three leagues into the Gulf of Mexico. Neither does the Act express any opinion as to the location of the boundary. Boundaries claimed to lie more than three miles from the coast are not among those "approved and confirmed" by Section 4, but on the other hand that section provides that it is not to be construed as "questioning or in any manner prejudicing" such boundaries. The Court, then, must look beyond the face of the Act to discover the scope of the grant made by it.

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B. THE LEGISLATIVE HISTORY OF THE ACT SHOWS THAT CONGRESS INTENDED NEITHER TO CHANGE NOR TO DECLARE THE LOCATION OF THE BOUNDARIES OF ANY STATE

The apparent meaning of the Submerged Lands Act in this respect, as discussed above, is amply supported by the legislative history of the Act.

Throughout the debates in the Senate, where the Act in its present form originated,[1] it was repeatedly pointed out that the bill did not in any way approve or disapprove the claim of any Gulf State to three leagues, but rather left that question wholly at large and subject to future determination to the same extent as if the Act had not been passed.

This point, that the Act neither endorsed nor prejudiced the claims of the Gulf States, but left them free to make what proof they could as to their boundary locations, was particularly emphasized by Senator Cordon, acting chairman of the Senate Committee on Interior and Insular Affairs, who explained the bill to the Senate when it was reported out by that committee; and many others made statements to the same effect. The following excerpts from the debates are typical:

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[1] As passed, the Act is designated as H. R. 4198, 83d Congress. However, the language of the original House bill was replaced by a Senate amendment, which substituted, with only minor changes, the provisions of S. J. Res. 13 as reported by the Committee on Interior and Insular Affairs. See S. Rept. No. 133, 83d Cong., 1st Sess., pp. 2–5; 99 Cong. Rec. 4487–4488 (1953).

> Mr. CORDON. * * * The States of the United States have legal boundaries. It is not a part of the power or the duty of Congress to make determination with reference to those boundaries, or where those boundaries should lie. It is a matter for the courts to determine, or for the United States, through Congress and the legislative organizations of the several States, to reach an agreement upon. The pending bill does not seek to invade either province. It leaves both exactly where it finds them. Whenever a question arises as to a boundary, it will be determined exactly as any question in law is determined, and the boundary will be established.
>
> The pending measure does not seek to prejudge that issue, or to determine it. [99 Cong. Rec. 2620.][2]

Senator Holland of Florida, who was the author of S. J. Res. 13,[3] also stated categorically that it was not the purpose of the Act to determine the location of any State boundary:

> Mr. HOLLAND. * * * If it were proposed by the pending measure to extend the line beyond the 3 geographical miles, the Senator from Illinois [Mr. Douglas] would be justified in having concern. The real fact is that the joint resolution does not make any such proposal. It merely provides with complete clarity that no State which

---

[2] See also 99 Cong. Rec. pp. 2621, 2632, 2633, 2694, 2696, 2699, 2755, 2756–57, 2896, 2916, 2923, 2933, 2975, 3035, 3037.

[3] See Footnote 1, *supra*.

> claims to have had a constitutional boundary going beyond 3 geographic miles at the time it was admitted to the Union, or claims to have a boundary that goes beyond that distance, and has been approved by the Congress since the time of its admission to the Union, will have those claimed rights affected in any way by this joint resolution. * * *
>
> * * * * *
>
> * * * all that is done under this measure, by means of the only provisions of it that apply to this question, is to preserve in status quo the exact rights, whatever they may be, of the State of Florida and, likewise, of the State of Texas or any other State to be heard upon this question.
>
> The action taken by Congress in approving the so-called Holland joint resolution and this particular provision of it does not in itself operate to extend any boundaries for Florida, Texas, or any other State beyond the 3-geographic-mile limit. It simply preserves in status quo the rights of any States which may claim to bring themselves under this provision of the joint resolution. [99 Cong. Rec. 2621–2622.]

Senator Long of Louisiana concurred in this construction in language which prophesied the issue now pending before the Court:

> Mr. LONG. * * * I submit to the Senator that the State of Louisiana has a right under the joint resolution only to establish what its boundary is and what its bound-

> ary has always been from the time it entered the Union, and that Florida and Texas have that right. The pending measure does not give to Texas, Florida, or Louisiana anything more than a boundary 3 miles out. It merely gives them the right to prove, if prove they can, that the boundary goes beyond 3 miles. [99 Cong. Rec. 2896.]

Significantly, Senators from both California and Texas, States benefiting from the Submerged Lands Act, were of the same opinion:

> Mr. KUCHEL. * * * One other question which has arisen in these debates is the California boundary statute adopted by my State in 1949. * * *
>
> * * * * *
>
> The point here, however, is that the pending joint resolution has no effect on the 1949 act. It neither validates nor invalidates it. The effect of this act of the State of California awaits judicial determination. California, like every other State, will have an equal opportunity to establish the location of its own coastline and historic boundary. This is the basic, underlying equity of the resolution. [99 Cong. Rec. 2985.]
>
> * * * * *
>
> Mr. DANIEL. The joint resolution does not undertake to fix the historic boundaries of any State, but it limits them all to the

boundaries as they existed at the time each State entered the Union. [99 Cong. Rec. 2976.]

* * * * *

I may say to the distinguished Senator from New Mexico that I do not know of any fairer way to treat all the States than to confirm their titles to the lands that were beneath the navigable waters within their boundaries at the time they entered the Union. Those are the words used, or "as heretofore approved by the Congress of the United States." When we do that, we are not fixing new boundaries, and we are not changing any boundaries. The boundaries would stand as they have always stood.

They must have existed at the time Texas entered the Union at 3 leagues in the gulf, or this measure will not restore the proprietary rights to that distance; and Florida's boundaries must have been heretofore approved by Congress not hereby approved, but heretofore approved, or Florida would not receive lands under this bill to that distance. [99 Cong. Rec. 4174–4175.]

In the light of the foregoing there is no room for doubt that by the Submerged Lands Act Congress did not purport to grant to Louisiana the submerged lands to any particular distance from the shore, but rather granted such lands within the actual boundary of the State, wherever it

might be located, as it existed for purposes of ordinary political jurisdiction when the State entered the Union or as thereafter approved by Congress (but not over three leagues in any event). As the Senate debate unequivocally recognized, a mere *claim* to three leagues would not be enough; the decisive factor is the actual legal boundary and not the State's claim or demand. Accordingly, it is necessary to ascertain the actual political boundary of Louisiana when it became a State to fix the scope of the grant.

II. THE GULFWARD BOUNDARY OF LOUISIANA WAS AND IS THREE MILES FROM THE LOW-WATER MARK AND OUTER LIMIT OF INLAND WATERS

A. LOUISIANA'S ENABLING ACT DID NOT PURPORT TO GIVE THE STATE A MARGINAL BELT OF THREE LEAGUES

The Louisiana Enabling Act described the new State to be formed as "including all islands within three leagues of the coast." Act of February 20, 1811, 2 Stat. 641; Appendix, *infra,* p. 45. The Act of Admission repeated the same description. Act of April 8, 1812, 2 Stat. 701. That provision, that the State should include all *islands* within three leagues of the coast, is construed by the State as meaning that it was to include all *waters* and *submerged* lands within that distance. Thus, Act 55 of 1938, approved June 30, 1938, by which the State of Louisiana purported to extend its maritime boundary to a line twenty-seven

miles from shore, contains among its preliminary recitals the following:

> Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;"
>
> Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore * * *.

La. Acts, 1938, p. 169; Appendix, *infra*, p. 50.[4] The substance of Section 1 of that Act, codified as Section 1 of Title 49, Louisiana Revised Statutes of 1950, has now been amended by Act 33 of 1954, approved June 21, 1954, which recites that "the United States Congress admitted Louisiana as a State into the Union in April, 1812, and

[4] It is unnecessary here to consider the affirmative provisions of that act, purporting to extend the boundary of the State into the Gulf twenty-seven miles from shore. It is not contended that that enactment has been approved by Congress. The grant made by the Submerged Lands Act does not extend to boundaries more than three miles from shore, unless such greater boundaries existed when the State entered the Union, or have since been approved by Congress, and in any event does not extend beyond three leagues into the Gulf of Mexico. Secs. 2 (b), 4, Appendix, *infra*, pp. 47, 48. Act 33 of 1954 has again reduced the State's claim to three leagues. Appendix, *infra*, p. 52.

fixed its gulfward boundary at 3 leagues from coast." Appendix, *infra,* p. 52. The same contention was made by the State before this Court in *Louisiana* v. *Mississippi,* 202 U. S. 1, 22, where counsel, referring to the Enabling Act, said, "The act grants all islands within three leagues of the coast and Louisiana therefore owns the islands and waters lying north of the St. Bernard peninsula and within nine miles from its coast." The Court found it unnecessary to deal with that contention under the circumstances of that case. 202 U. S. at 52.

It is submitted that there can be no justification for construing the boundary described in the Enabling Act as including three leagues of water and submerged land. On its face, "including all islands within three leagues of the coast" does not appear to mean "including all waters and submerged lands within three leagues of the coast," and similar language in other boundary descriptions has not been so construed. For example, the Treaty of Paris of September 3, 1783, by which Great Britain recognized the independence of the United States, after describing the landward boundary of the United States, from the mouth of the St. Croix river in the Bay of Fundy to the mouth of the St. Mary's river between Georgia and Florida, added:

> comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to

> be drawn due east from the points where the aforesaid boundaries between Nova-Scotia on the one part, and East-Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic ocean; excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia.

8 Stat. 80, 82. That has never been understood as meaning that the boundary of the United States was a line twenty leagues from shore in the sea; on the contrary, the United States has consistently taken the position that its boundary in the sea is three nautical miles, or one league, from the shore.[5]

Similarly, the Treaty of March 18/30, 1867, by which Russia ceded Alaska to the United States, described the ceded area as:

> all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: * * *
>
> The western limit within which the territory and dominion conveyed, are contained, passes through a point in Behring's straits * * * and proceeds due north, without limitation, into the same Frozen ocean. The same western limit, beginning at the same initial point, proceeds thence

[5] This point is developed in detail, *infra*, pp. 23–35.

> in a course nearly southwest through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

15 Stat. 539. In the Bering Sea Fur Seal Arbitration between the United States and Great Britain, the United States conceded that the foregoing provisions only served to identify the islands conveyed, and were not a conveyance of the water area within the described line. XII *Fur Seal Arbitration. Proceedings of the Tribunal of Arbitration at Paris, 1893.* Oral Argument for the United States, 107–110. To the same effect was the statement made by Mr. Peirce, the American delegate at the arbitration of the whaling and sealing claim of the United States against Russia, held at the Hague in 1902. He there said:

> In the first session the arbitrator asked me, "What is the extent of jurisdiction which the United States claim to-day in

> Bering Sea?" and I replied that the American Government now claims an extent of 3 miles. I wished that this reply might be sustained by the Secretary of State, Mr. John Hay. I am now in receipt of a dispatch, and in accordance with the authority which I have received from the Secretary of State of the United States, dated July 3, 1902, I repeat that the Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States alone are affected by the agreement.

Foreign Relations of the United States, 1902, Appendix I, 440.

It is submitted there is neither reason nor authority for construing the language of the Louisiana Enabling Act as meaning other than what it says: that islands located within three leagues of the coast are part of the State of Louisiana.

B. IT WOULD HAVE BEEN INCONSISTENT WITH THE POLICY OF THE UNITED STATES EVER SINCE 1793, IN FURTHERANCE OF THE PRINCIPLE OF FREEDOM OF THE SEAS, TO HAVE CLAIMED FOR LOUISIANA MORE THAN THREE MILES OF MARGINAL SEA

As has been shown, the Louisiana Enabling Act clearly established the southern boundary of Louisiana as the Gulf of Mexico, the boundary description being "to the Gulf of Mexico; thence *bounded by the said Gulf* to the place of beginning;" that is, to the *"mouth of the river Sabine."* [Emphasis supplied.] However, the State of Louisiana asserts that the language "including all islands within three leagues of the coast" should be construed as meaning a marginal belt of three leagues. We shall now show that such a construction is contrary to the foreign policy of the Federal Government which had been, was and is to limit its marginal belt and external boundary to three miles in the Gulf of Mexico as well as on its other coasts. There was no provision in the constitution or laws of Louisiana prior to or at the time it became a member of the Union purporting to be contrary to such foreign policy of the Federal Government, nor was any action by Congress theretofore taken to extend Louisiana's seaward boundary beyond three geographical miles. Such foreign policy in the circumstances of this case is conclusive as to the location of Louisiana's seaward boundary.

The concept of a marginal belt of territorial water, subject to the jurisdiction of a coastal nation, is an encroachment upon the general

principle of freedom of the seas. When Louisiana became a State in 1812, the policy of the United States was already well settled to claim jurisdiction over no more than three miles of marginal sea and to recognize no greater claims by other nations. This policy had its beginning in the administration of George Washington, when Thomas Jefferson, then Secretary of State, on November 8, 1793, wrote to George Hammond, the British minister, and to Edmond Genet, the French minister:

> The character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation as any nation whatever. Reserving, however, the ultimate extent of this for future deliberation, the President gives instructions to the officers acting under his authority, to consider those heretofore given them as restrained for the present to the distance of one sea-league or three geographical miles from the seashores.

Letter to Mr. Hammond, 16 H. Exec. Docs., 42d Cong., 2d Sess., No. 324, p. 553; Letter to Mr. Genet, American State Papers, I Foreign Relations, p. 183.

On September 2, 1796, Timothy Pickering, then Secretary of State under President Washington, wrote to the Lieutenant Governor of Virginia,

> Our jurisdiction * * * has been fixed (at least for the purpose of regulating the conduct of the government in regard to any events arising out of the present European war) to extend three geographical miles (or nearly three and a half English miles) from our shores * * *.

I Moore, *Digest of International Law* (1906), p. 704.

In those times, the range of a cannon shot was considered equivalent to three miles,[6] and an early American treaty embodying the same principle was in those terms. The treaty of November 19, 1794, with Great Britain, provided:

> Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose *territorial rights* shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for

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[6] See Secretary of State Jefferson's letter of November 8, 1793, to Mr. Hammond, the British minister: "* * * the smallest distance, I believe, claimed by any nation whatever, *is the utmost range of a cannon ball*, usually stated at one sea league." I Moore, *Digest of International Law* (1906) 702; emphasis in original. See also the letter of January 23, 1849, from Secretary of State Buchanan to Mr. Jordan, *infra*, p. 27.

> the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

Art XXV, 8 Stat. 116, 128 (emphasis added).

These actions, all taken before 1812, show that the policy of the United States to claim and recognize territorial waters of three miles and no more was well established before Louisiana became a State. Moreover, twice within six years after Louisiana became a State, the Federal Government reiterated its foreign policy in this regard. Article 11 of the Treaty with Algiers, of June 30 and July 6, 1815, provided,

> If a vessel of either of the contracting parties shall be attacked by an enemy within cannon-shot of the forts of the other, she shall be protected as much as is possible.

And, the Treaty of October 20, 1818, with Great Britain reverted to the more specific terms of three miles:

> And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours, of his Britannic Majesty's dominions in America, not included within the abovementioned limits * * *.

8 Stat. 248, 249.

By a long succession of subsequent actions, from 1849 to the present time, this policy has been continuously maintained.

On January 23, 1849, James Buchanan, Secretary of State under President Polk, wrote,

> The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of sea inclosed by headlands; and, also, to the distance of a marine league, or as far as a cannon shot will reach from the shore along its coasts.

Letter to Mr. Jordan, I Moore, *Digest of International Law* (1906), p. 705.

In 1856, when Spain claimed jurisdiction over a belt of six miles around Cuba, Secretary of State William Marcy, at the direction of President Pierce, replied that the United States could not concede the extension of Spanish sovereignty beyond three miles. See letter of Secretary of State Seward to Gabriel Tassara, December 16, 1862, I Moore, *Digest of International Law* (1906) 706, 708.

William Seward, Secretary of State under President Lincoln, wrote on August 4, 1862, to Gideon Welles, Secretary of the Navy,

> This Government adheres to, recognizes, and insists upon the principle that the maritime jurisdiction of any nation covers a full marine league from its coast, and that acts of hostility or of authority within a marine league of any foreign country by

> naval officers of the United States are strictly prohibited * * *.

I Moore, *Digest of International Law* (1906) 705.

In 1874 Lord Derby, the British foreign minister, inquired as to the attitude of the United States toward the Spanish claim of two leagues. *Foreign Relations of the United States,* 1875, Pt. I, 641–642. To that inquiry Hamilton Fish, Secretary of State under President Grant, replied, in part:

> In reply I have the honor to inform you that this Government has uniformly, under every administration which has had occasion to consider the subject, objected to the pretension of Spain adverted to, upon the same ground and in similar terms to those contained in the instruction of the Earl of Derby.
>
> We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast.
>
> This opinion on our part has sometimes been said to be inconsistent with the facts that, by the laws of the United States, revenue-cutters are authorized to board vessels anywhere within four leagues of their coasts, and that by the treaty of Guadalupe Hidalgo, so called, between the United States and Mexico, of the second of February, 1848, the boundary line between the dominions of the parties begins in the Gulf of Mexico, three leagues from land.

It is believed, however, that in carrying into effect the authority conferred by the Act of Congress referred to, no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign government of the trespass by a commander of a revenue-cutter upon the rights of its flag under the law of nations.

In respect to the provision in the treaty with Mexico, it may be remarked that it was probably suggested by the passage in the act of Congress referred to, and designed for the same purpose, that of preventing smuggling. By turning to the files of your legation, you will find that Mr. Bankhead, in a note to Mr. Buchanan on the 30th of April, 1848, objected on behalf of Her Majesty's government, to the provision in question. Mr. Buchanan, however, replied in a note of the 19th of August, in that year, that the stipulation could only affect the rights of Mexico and the United States, and was never intended to trench upon the rights of Great Britain, or of any other power under the law of nations.

Letter of January 22, 1875; *Foreign Relations of the United States,* 1875, Pt. I, 649–650.

When an Italian royal decree of August 6, 1914, undertook to fix the limits of Italian territorial waters at six nautical miles, Robert Lans-

ing, then Acting Secretary of State under President Wilson, wrote to the Italian ambassador di Cellere, in part as follows:

> I am compelled to inform Your Excellency of my inability to accept the principle of the Royal Decree, in so far as it may undertake to extend the limits of the territorial waters beyond three nautical miles from the main shore line and to extend thereover the jurisdiction of the Italian Government.
>
> An examination into the question involved leads me to the conclusion that the territorial jurisdiction of a nation over the waters of the sea which wash its shore is now generally recognized by the principal nations to extend to the distance of one marine league or three nautical miles, that the Government of the United States appears to have uniformly supported this rule, and that the right of a nation to extend, by domestic ordinance, its jurisdiction beyond this limit has not been acquiesced in by the Government of the United States.

Letter of November 28, 1914; *Foreign Relations of the United States,* 1914, Supp., 665, I Hackworth, *Digest of International Law* (1940) 637–638.

On January 23, 1924, the United States entered into a treaty with Great Britain, permitting the United States to seize British vessels engaged in liquor smuggling within one hour's sailing dis-

tance of the shore. Article I of that treaty provided:

> The High Contracting Parties declare that it is their firm intention to uphold the principle that 3 marine miles extending from the coast-line outwards and measured from low-water mark constitute the proper limits of territorial waters.

43 Stat. 1761. The same provision is contained in similar treaties entered into with Germany on May 19, 1924 (43 Stat. 1815), with Panama on June 6, 1924 (43 Stat. 1875), with the Netherlands on August 21, 1924 (44 Stat. 2013), with Cuba on March 4, 1926 (44 Stat. 2395), and with Japan on May 31, 1928 (46 Stat. 2446).

A Mexican decree of August 30, 1935, undertook to extend Mexican territorial waters from three to nine miles. On January 11, 1936, Robert W. Moore, the Assistant Secretary of State, instructed R. Henry Norweb, the American chargé d'affaires in Mexico,

> It is desired that you advise the Mexican Foreign Office in writing that your Government reserves all rights of whatever nature so far as concerns any effects upon American commerce from enforcement of this legislation purporting to amend existing law so as to extend the territorial waters of Mexico from three miles in breadth to nine miles.

I Hackworth, *Digest of International Law* (1940) 639–640. Such statement was made by letter of

March 7, 1936, from Mr. Daniels, American ambassador to Mexico, to General Eduardo Hay, Mexican Secretary for Foreign Relations. See letter of December 30, 1949, from James E. Webb, Under Secretary of State, to Senator Tom Connally, Senate Interior Committee Hearings on S. J. Res. 13, etc., 83d Congress, 1st Session, 321, 322.

On November 12, 1952, the United States protested in the following terms the claims of the Russian government to jurisdiction over more than three miles of territorial waters:

> I have the honor to inform your Excellency that the Government of the United States of America has noted with increasing concern the policy of the Union of Soviet Socialist Republics of asserting territorial jurisdiction over a belt of waters 12 nautical miles in breadth along its coasts and coasts under its control. My Government has also noted that in pursuing this policy the Soviet Union is permitting its authorities to violate the rights of nationals of other states in what are generally recognized as international waters by ordering the seizure and detention of foreign-flag vessels between 3 and 12 nautical miles off the coasts and otherwise denying them access to that area.
>
> It is the view of my Government that the Soviet Union, in thus attempting to appropriate to its exclusive use and control a portion of the high seas, has manifested a

willingness to deprive other states, without their consent, of rights under international law. Such conclusion is inescapable in the face of a territorial-waters policy whereunder the Soviet Union would supplant free and untrammeled navigation by all vessels and aircraft over water areas comprising a part of the high seas with such controls as that Government might apply. The Government of the United States of America is not aware of any principle of international law which would support and justify such a policy. In the circumstances, my Government finds it necessary to reiterate that it cannot recognize the action of any government which is calculated to assimilate adjacent high seas to its territory.

The Government of the United States of America therefore protests the Soviet Union's closure of a 12-mile belt of waters contiguous to its coasts and to the coasts under its control, and reserves all its rights and interests of whatever nature in the high seas outside 3 nautical miles from those coasts. [99 Cong. Rec. 4084–4085.]

This Court has also recognized the adherence of the United States to the three-mile rule:

It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a mar-

> ginal belt of the sea extending from the coast line outward a marine league, or three geographic miles.

Cunard S. S. Co. v. *Mellon,* 262 U. S. 100, 122.

In summary, beginning as early as 1793, and continuing throughout its history, the United States has adhered to a policy of claiming for itself and recognizing for other nations jurisdiction over a maritime belt only three geographic miles in width, insisting that no greater marginal belt is sanctioned by international law.

In view of that long history, uniformly and vigorously maintained, it should not be supposed that the United States intended by the Louisiana Enabling Act to establish a different rule. To do so would seem to abandon the contention that international law does not sanction a wider belt—the foundation on which the United States has rested its insistence on full freedom of the seas in all areas more than three miles from shore throughout the world. So radical a departure from the settled policy followed by the nation both before and after the date of the Enabling Act should not be inferred unless absolutely required by the clear language of that Act. However, the Act not only does not require such a construction, it does not even remotely support it, except by giving to its words a meaning very different from their plain and literal meaning. Where, as here, every consideration of history

and policy supports the construction of the act in accordance with its plain, apparent meaning, it is submitted that the Court should not attribute to it a different meaning, at variance alike with the clear words of the Act and the settled policy of the nation.

III. THE LOCATION OF THE NATION'S MARITIME BOUNDARY ALONG THE COAST OF LOUISIANA IS A POLITICAL QUESTION, AS TO WHICH THE UNVARYING HISTORIC DETERMINATION BY THE POLITICAL BRANCHES OF THE GOVERNMENT MUST BE DEEMED CONCLUSIVE

A. IT IS A BASIC PRINCIPLE THAT THE COURTS WILL ACCEPT EXECUTIVE DETERMINATIONS IN THE FIELD OF FOREIGN AFFAIRS

For reasons well grounded in the distribution of functions in our Government (*United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 319–321; *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111), this Court has always insisted that American courts "should not so act as to embarrass the executive arm in its conduct of foreign affairs." *Republic of Mexico* v. *Hoffman*, 324 U. S. 30, 35; *Ex parte Peru*, 318 U. S. 578, 588; see *United States* v. *Lee*, 106 U. S. 196, 209. Decisions in the field of foreign policy are "of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Chicago & S. Air Lines* v. *Waterman*

Corp., 333 U. S. 103, 111. The courts, therefore, are bound to accept as correct and conclusive all declarations and determinations with respect to foreign affairs and foreign policy, made by the Executive Branch of the Government by formal rulings or official action taken in conducting the foreign affairs or formulating the foreign policy of the nation.

This general principle of judicial abstention from the domain of foreign affairs has been consistently applied in various fields touching on this country's international relations. For instance, the government recognized by the President as the government of a foreign sovereign state will be accepted without question (*Kennett* v. *Chambers,* 14 How. 38, 50–51; *Oetjen* v. *Central Leather Co.,* 246 U. S. 297; *United States* v. *Belmont,* 301 U. S. 324, 330; *Guaranty Trust Co.* v. *United States,* 304 U. S. 126, 132–138), as will the "underlying policy" governing the executive recognition of the foreign government (*United States* v. *Pink,* 315 U. S. 203, 229) and executive recognition or non-recognition of another country's laws and ordinances (*Latvian State Cargo and Passenger Steamship Line* v. *McGrath,* 188 F. 2d 1000 (C. A. D. C.), certiorari denied, 342 U. S. 816; *The Maret,* 145 F. 2d 431 (C. A. 3); *Bernstein* v. *Van Heyghen Freres Societe Anonyme,* 163 F. 2d 246, 249 (C. A. 2), certiorari denied, 332 U. S. 772). Similarly, a political determination of a state of war between foreign

states is binding on the courts. *United States* v. *Palmer,* 3 Wheat. 610, 634–635; *The Divina Pastora,* 4 Wheat. 52, 63–64. A certification by the State Department that a foreign vessel, sued in our courts, is state-owned and immune from seizure automatically leads to a dismissal of the action, whatever view of the vessel's immunity the court would have itself taken. *Ex parte Peru,* 318 U. S. 578, 588–590; *Republic of Mexico* v. *Hoffman,* 324 U. S. 30, 34–36. See *National City Bank* v. *Republic of China,* 348 U. S. 356, 360–361. Certificates by the State Department as to the diplomatic character of foreign representatives sued in our courts are likewise followed without question. *In re Baiz,* 135 U. S. 403, 421–422, 432; *United States* v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.) at 1086. Even treaties from which private rights flow will normally not be interpreted contrary to a definite position taken by the executive *vis-a-vis* a foreign country, especially where judicial intervention might well cause difficulties in the larger sphere of foreign relations. *Foster* v. *Neilson,* 2 Pet. 253, 307–309; *Williams* v. *Suffolk Insurance Co.,* 13 Pet. 415; *United States* v. *Reynes,* 9 How. 127, 153–155; *Charlton* v. *Kelly,* 229 U. S. 447, 468, 474–476; *Sullivan* v. *Kidd,* 254 U. S. 433, 442; *Factor* v. *Laubenheimer,* 290 U. S. 276, 295; cf. Jaffe, *Judicial Aspect of Foreign Relations* (1933), 71–78. This principle of judicial deference to formal executive determinations applies not only where

a foreign nation is directly involved (e. g., *Ex parte Peru,* 318 U. S. 578; *Republic of Mexico* v. *Hoffman,* 324 U. S. 30), but also where the direct controversy is wholly domestic. E. g., *United States* v. *Belmont,* 301 U. S. 324 (suit to recover money deposited by a Russian corporation with a New York banker); *United States* v. *Pink,* 315 U. S. 203 (suit to recover assets of a Russian insurance company in New York); *Chicago & S. Air Lines* v. *Waterman Corp.,* 333 U. S. 103 (controversy between two domestic airlines).[7]

B. TERRITORIAL SOVEREIGNTY IS A POLITICAL MATTER AS TO WHICH THE COURTS WILL FOLLOW AN EXECUTIVE DETERMINATION

1. *Foreign territories.*—Who is the sovereign of an area is a political question, the determination of which by one of the political branches of the Government is conclusive on the courts. Thus, in *Oetjen* v. *Central Leather Co.,* 246 U. S. 297, 302, this Court, holding itself bound by an executive determination of which was the lawful government of Mexico, said:

> The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—

[7] See also *The Federalist,* Nos. 3, 80; *Holmes* v. *Jennison,* 14 Pet. 540, 570; *Henderson* v. *Mayor of New York,* 92 U. S. 259, 273; *Chy Lung* v. *Freeman,* 92 U. S. 275, 279–280; *Chinese Exclusion Case,* 130 U. S. 581, 606; *United States* v. *Rauscher,* 119 U. S. 407, 412–414; *Valentine* v. *U. S. ex rel. Neidecker,* 299 U. S. 5, 8; *Hines* v. *Davidowitz,* 312 U. S. 52, 63; *United States* v. *California,* 332 U. S. 19, 34–36.

> "the political"—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.

In *Kennett* v. *Chambers,* 14 How. 38, 50–51, this Court refused to determine for itself whether Texas had in fact become independent of Mexico before 1837, when the Republic of Texas was formally recognized by our Government:

> It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent state, was a question for that department of our government exclusively which is charged with our foreign relations. And until the period when that department recognized it as an independent state, the judicial tribunals of the country were bound to consider the old order of things as having continued, and to regard Texas as a part of the Mexican territory.

In *Jones* v. *United States,* 137 U. S. 202, 221, this Court held itself bound by the Executive's determination that the island of Navassa was not subject to the jurisdiction of Haiti. The Court said:

> * * * the duty of the judiciary is to decide in accordance with what the President, in the exercise of a discretionary power confided to him by the Constitution and laws, has actually done. As was adjudged, under like circumstances, in *Williams* v. *Suffolk*

> *Ins. Co.*, 13 Pet. 415, 420, before quoted, if the executive, in his correspondence with the government of Hayti, has denied the jurisdiction which it claimed over the Island of Navassa, the fact must be taken and acted on by this court as thus asserted and maintained; it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong; it is enough to know that in the exercise of his constitutional functions he has decided the question.

Similarly, in *Williams* v. *Suffolk Insurance Co.*, 13 Pet. 415, 420, in holding itself bound by the executive determination that the Falkland Islands were not subject to the jurisdiction of Buenos Aires, this Court said:

> And can there be any doubt, that when the executive branch of the government, which is charged with our foreign relations, shall, in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view, it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constitutional functions, he had decided the question. Having done this, under the responsibilities which belong to him, it is obligatory on the people and government of the Union.

See also *Pearcy* v. *Stranahan,* 205 U. S. 257, 265.

2. *Territory of the United States.*—This rule is equally applicable to the determination of whether particular areas are within the jurisdiction of the United States. In *Vermilya-Brown Co.* v. *Connell,* 335 U. S. 377, 380–381, regarding the question of whether Bermudan military bases leased from Great Britain by the United States were subject to the sovereignty of the latter, this Court said:

> * * * is this a political question beyond the competence of courts to decide? * * * Recognizing that the determination of sovereignty over an area is for the legislative and executive departments * * * does not debar courts from examining the status resulting from prior action.

The Court accepted the statement of the Legal Adviser of the State Department that "The arrangements under which the leased bases were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States."

In *Jones* v. *United States,* 137 U. S. 202, *supra,* this Court held itself concluded by an executive determination that the island of Navassa had been brought under the jurisdiction of the United States under the Guano Islands Act of August 18, 1856, 11 Stat. 119, 48 U. S. C. secs. 1411–1419. Similarly, an executive determination that the

Isle of Pines was not territory of the United States was held conclusive in *Pearcy* v. *Stranahan,* 205 U. S. 257. Accord, *Foster* v. *Neilson,* 2 Pet. 253, 307–309.

Specifically, executive determinations have been accorded judicial recognition as being decisive of the question of American sovereignty over the waters bordering our coasts. Thus, in *In re Cooper,* 143 U. S. 472, this Court indicated that it would be bound by what it understood to be an executive determination that the jurisdiction of the United States extended to all the waters of the Bering sea east of the demarcation line described in the Russian cession treaty of March 30, 1867 (15 Stat. 539), whether or not within three miles of the shore.[8] Following the same principle, the ruling of Attorney General Randolph that Dela-

[8] After *In re Cooper* was decided in 1892, the United States disavowed all claim to own the waters of Bering sea more than three miles from land. XII *Fur Seal Arbitration, Proceedings of the Tribunal of Arbitration at Paris, 1893,* Oral Argument for the United States, pp. 107–110. This does not, of course, detract from the force of the Court's prior indication that it would consider itself bound by the executive action in the matter. Indeed, the United States was careful to point out to the arbitration tribunal that the courts, in deciding *In re Cooper* and similar cases, had felt themselves bound by the actions of the political branches of the Government, observing that "Lastly, the United States courts, whenever the question has come up before them, have refused to interfere with the executive branch of the Government in its interpretation of the treaty of 1867 and of the laws of Congress enacted on the basis of what the United States acquired by this treaty." II, *op. cit.,* Case of the United States, p. 84.

ware Bay was inland water within the jurisdiction of the United States (1 Op. A. G. 32 (1793)) was relied on by the Second Court of Commissioners of *Alabama* Claims, in holding the Chesapeake Bay similarly territorial. *The Alleganean: Stetson* v. *United States,* IV Moore, *International Arbitrations,* 4332, 4341. Similarly, Secretary of State Jefferson's letter to Minister Genet (*supra,* p. 24), asserting jurisdiction over a marginal belt of three miles, was one of the authorities relied on by this Court in *United States* v. *California,* 332 U. S. 19, 33–34, in saying:

> That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. * * * And this assertion of national dominion over the three-mile belt is binding upon this Court.

As is shown, *supra,* pages 23–35, the political branches of the Government have consistently adhered to the rule that this country has a marginal belt of three miles and no more.[9] Under the circumstances of this case that determination should be considered conclusive here. Section 4 of the Submerged Lands Act, validating state statutes extending maritime boundaries out to three miles from the coast (Appendix, *infra,* pp. 48–49), may be taken as validating, *pro tanto,* Louisiana Act

[9] In *United States* v. *California,* 332 U. S. 19, 33–34, fn. 18, the Court recognized Congressional assertions of a three-mile territorial zone.

55 of 1938 (Appendix, *infra,* p. 49), which purported to extend the state boundary to a distance of twenty-seven miles, or Louisiana Act 33 of 1954 (Appendix, *infra,* p. 52), purporting to fix the boundary at three leagues. It is therefore unnecesary to consider whether Louisiana had a three-mile boundary before those enactments, either by virtue of the general federal claim of three miles or otherwise. It is sufficient to know that, for the purposes of the Submerged Lands Act, the maritime boundary of the State is three miles in the Gulf of Mexico.

CONCLUSION

For the foregoing reasons it is submitted that the decree of December 11, 1950, herein, should be modified to exclude from its scope all submerged lands lying within three miles seaward of the line of ordinary low-water and the outer limit of inland waters, and the proceeds of such lands.

Respectfully,

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MAY 1955.

1. **Act of February 20, 1811, 2 Stat. 641:**

Chap. XXI.—*An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem

proper, under the provisions and upon the conditions herein after mentioned.

* * * * *

2. Submerged Lands Act, Public Law 31, 83d Congress, 1st Sess., approved May 22, 1953, 67 Stat. 29:

AN ACT

To confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act".

TITLE I

DEFINITION

SEC. 2. When used in this Act—

(a) The term "lands beneath navigable waters" means—

* * * * *

(2) 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 such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became

a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles * * *;

* * * * *

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" 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;

* * * * *

TITLE II

LANDS BENEATH NAVIGABLE WATERS WITHIN STATE BOUNDARIES

SEC. 3. Rights of the States.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and

natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters * * *.

* * * * *

SEC. 4. Seaward Boundaries.— * * * Any State admitted subsequently 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 * * *. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three

geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

* * * * *

3. Act 55 of 1938, approved June 30, 1938, Louisiana Acts 1938, p. 169, 6 Dart. Louisiana General Statutes (1939) sections 9311.1–9311.4:

AN ACT

To declare the sovereignty of Louisiana along its seacoast and to fix its present seacoast boundary and ownership

Whereas dominion, with its consequent use, ownership and jurisdiction, over its marginal waters by a State has found support because it is the duty of a State to protect its citizens whose livelihood depends on fishing, or taking from said marginal waters the natural products they are capable of yielding; also, has found support in that sufficient security must exist for the lives and property of the citizens of the State;

Whereas, according to the ancient principles of international law it was generally recognized by the nations of the world that the boundary of each sovereign State along the seacoast was located three marine miles distant in the sea, from low water mark along its coast on the open sea;

Whereas, the seaward boundary of each sovereign State as so fixed is generally known as the three-mile limit of such State;

Whereas, the said three-mile limit was so recognized as the seaward boundary of

each sovereign State, because at the time it became so fixed, three marine miles was the distance of a cannon shot and was considered the distance at which a State could make its authority effective on the sea by the use of artillery located on the shore;

Whereas, since the said three-mile limit was so established as the seaward boundary of each sovereign State, modern cannon have been improved to such an extent that now many cannon shoot twenty-seven marine miles and more and by the use of artillery located on its shore a State can now make its authority effective at least twenty-seven marine miles out to sea from low water mark;

Whereas, by the Act of Congress of February 20th, 1811, by which the State of Louisiana was admitted to the United States as a State, the southern boundary of Louisiana was fixed as follows: "thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast;"

Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore, a width of marginal area made greater, by the above Act and agreement, than the well-accepted and inherent three-mile limit;

Whereas, a State can define its limits on the sea;

Whereas, the State of Louisiana owns the waters of the sea and the waters of the arms of the sea and the bed of the sea, the bed of the arms of the sea, and the seashore and the shores of all arms of the sea as far inland as the high water mark within the territory of the State of Louisiana; and

Whereas, the State of Louisiana, including all parts thereof and all territory that may be added thereto, forms a part of the United States of America, over which the said United States is authorized to exercise and exercises such powers and jurisdiction as the said United States is authorized by the Constitution of the United States to exercise thereover;

Section 1. Be it enacted by the Legislature of Louisiana, That the gulfward boundary of the State of Louisiana, is hereby fixed and declared to be a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit.

Section 2. That, subject to the right of the government of the United States to regulate foreign and interstate commerce under Section 8 of Article 1 of the Constitution of the United States, and to the power of the government of the United States over cases of admiralty and maritime jurisdiction under Section 2 of Article 3 of the Constitution of the United States, the State of Louisiana has full sovereignty over all of the waters of the Gulf of Mexico and of the arms of the Gulf of Mexico within the boundaries of Louisiana, as herein fixed, and over the beds and shores of the Gulf of Mexico and all arms of the said Gulf within the boundaries of Louisiana, as herein fixed.

Section 3. That the State of Louisiana owns in full and complete ownership the waters of the Gulf of Mexico and of the arms of the said Gulf and the beds and

shores of the Gulf of Mexico and the arms of the Gulf of Mexico, including all lands that are covered by the waters of the said Gulf and its arms either at low tide or high tide, within the boundaries of Louisiana, as herein fixed.

Section 4. That this Act shall never be construed as containing a relinquishment by the State of Louisiana of any dominion sovereignty, territory, property, or rights that the State of Louisiana already had before the passage of this Act.

4. Louisiana Act 33 of 1954, approved June 21, 1954.

AN ACT

To amend and re-enact Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 relative to state water boundaries; gulfward boundary

Whereas, under authority of Section 3 of Article IV of the United States Constitution, the United States Congress admitted Louisiana as a State into the Union in April, 1812, and fixed its gulfward boundary at 3 leagues from coast.

Whereas, in compliance with Acts of Congress of February 10, 1807, 2 Stat. 413, and of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151, the coast line of the State of Louisiana was officially designated and defined by bearings, light-houses, buoys and coast objects, as shown in Section 1 herein;

Whereas, the United States Supreme Court has held that the waters inside of the coast line designated and defined under said Act of February 19, 1895, are "as much a part of the inland waters of the

United States within the meaning of this Act as the harbor within the entrance" and another Federal Court held that said Act "was for the purpose of defining the inland waters of the United States."

Whereas, the United States Congress, by its "Tidelands" Act, approved May 22, 1953, 67 Stat. 32, recognized and confirmed State ownership of the lands beneath navigable waters within the State's boundaries, and the natural resources, including oil, gas, and all other minerals, and fish, shrimp, oysters, and other marine animal and plant life within such lands and waters; and said Tidelands Act adopted State boundaries in the Gulf of Mexico as they existed at the time such State became a member of the Union not more than 3 marine leagues into the Gulf of Mexico from the coast line, which "coast line" is defined in said Act as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters; and

Whereas, the State of Louisiana owns these submerged lands and natural resources within such land and waters in trust for its people, and the economic welfare of the State and the public services dependent upon the State revenues to be derived from these valuable natural resources require that the State's historic boundary be redefined to avoid confusion and to clarify the situation with regard thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1 of Title 49 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§ 1. Gulfward boundary. The historic gulfward boundary of the State of Louisiana extends a distance into the Gulf of Mexico 3 marine leagues from coast.

The coast or coast line of the State of Louisiana is accepted and approved as designated and defined in accordance with applicable Acts of Congress, as follows: From Ship Island Lighthouse to Chandeleuer Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleuer Islands to the Southwesternmost extremity of Errol Shoal; thence to Pass-a-Loutre lighted whistle buoy 4 to South Pass lighted whistle buoy 2; thence to Southwest Pass entrance midchannel lighted whistle buoy; thence to Ship Shoal lighthouse; thence to Calcasieu Pass lighted whistle buoy 1; thence to Sabine Pass lighted whistle buoy 1, as designated and defined under authority of the Act of Congress of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151 as amended, and as is shown on the attached chart showing the coast line of the State marked thus - - - and showing the State gulfward boundary by a solid line 3 marine leagues from coast, which chart shall be paraphed by the Speaker of the House of Representatives, the President of the Senate and by the Governor to be identified herewith.

Section 2. That all laws or parts of laws in conflict herewith be and they are hereby repealed with the exception that the designation on the attached plat of the common boundaries of the coastal parishes of the State of Louisiana shall not be taken or interpreted as in any manner changing or affecting the interior or inland bound-

aries of any said coastal parishes as now existing or fixed by applicable State laws, nor shall said plat be taken or construed, as intending to affect the common maritime boundary between this State and the States of Mississippi and Texas.

Section 3. The Governor having certified to the legislature during the session of the legislature the necessity for the immediate passage of this Act, this Act shall become effective upon approval thereof by the Governor.

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