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No. 11, Original

In the Supreme Court of the United States

OCTOBER TERM, 1956 - 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR JUDGMENT

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JURISDICTION

This is a suit between the United States and a State. As such, it is within the original jurisdiction of the Court under Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States and 28 U. S. C. 1251 (b) (2).

STATUTES INVOLVED

Relevant portions of the following statutes are set out in Appendix A, *infra,* pp. 162–175:

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. 162;

Act for the admission of the State of Louisiana into the Union, etc., approved April 8, 1812, 2 Stat. 701; *infra,* p. 163;

Submerged Lands Act, Public Law 31, 83d Congress, approved May 22, 1953, 67 Stat. 29; *infra,* p. 164;

Outer Continental Shelf Lands Act, Public Law 212, 83d Congress, approved August 7, 1953, 67 Stat. 462; *infra,* p. 167;

Louisiana Act 55 of 1938, approved June 30, 1938, Louisiana Acts of 1938, p. 169; *infra,* p. 170;

Louisiana Act 33 of 1954, approved June 21, 1954, Louisiana Acts of 1954, p. 63; *infra,* p. 173.

QUESTIONS PRESENTED

1. Whether the United States is entitled, as against the State of Louisiana, to the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the continental shelf.

2. Whether the United States is entitled to an accounting by the State of Louisiana for all sums of money derived by the State after June 5, 1950, from such lands and minerals.

STATEMENT

The allegations of the complaint may be summarized as follows: On June 5, 1950, the United States was entitled, as against the State of Louisiana, to the submerged lands and resources of the Gulf of Mexico lying seaward of the low-water mark and outer limit of inland waters on the coast of Louisiana, and it remains so entitled except to the extent that its rights

have been modified by the Submerged Lands Act of May 22, 1953, 67 Stat. 29. Complaint, paragraph II, pages 3–4. On December 11, 1950, this Court entered its decree declaring the United States to be entitled, as against the State, to those submerged lands and resources extending gulfward twenty-seven geographic miles from the low-water mark and from the outer limit of inland waters,[1] enjoining the State from interfering therewith, and requiring it to account for sums derived from that area after June 5, 1950, properly owing to the United States. *United States* v. *Louisiana,* 340 U. S. 899. Complaint, paragraph III, page 4. Thereafter, the Submerged Lands Act of May 22, 1953, granted to the State the lands and resources under navigable water within the State boundary, extending into the Gulf of Mexico not more than three geographic miles unless the State boundary, as previously approved by Congress or as it existed when the State entered the Union, extended more than three miles, and not more than nine geographic miles in any event. The Act also released all money claims based on operations in the area granted. 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. Complaint, paragraph IV, pages 4–5. Louisiana's boundary did not extend more than three miles into the Gulf when the State entered the Union, and Congress has not approved a boundary for the State extending a greater distance. Complaint, paragraph

[1] Lands more than twenty-seven miles in the Gulf were not then in suit because such lands were not claimed by the State at that time. See *United States* v. *Louisiana,* 339 U. S. 699, 705.

V, page 5. The United States thus remains entitled to the submerged lands and resources beyond the three-mile limit, and to an accounting for the State's receipts therefrom since June 5, 1950. Complaint, paragraph VI, pages 5–6. However, the State asserts an adverse claim, and has not accounted for its receipts. By the Outer Continental Shelf Lands Act of August 7, 1953, Congress declared the existence of an urgent need for development of these resources, and provided for issuance of mineral leases by the Secretary of the Interior. The State, by conduct in assertion of its claim, is interfering with development of the area under that statute, thereby inflicting irreparable injury for which the United States has no adequate remedy but this suit. Complaint, paragraph VII, pages 6–7. The original jurisdiction of this Court is invoked because of the need for a prompt and final determination of the dispute, and because that determination will involve ascertaining and applying the foreign policy of the United States with respect to the width of the marginal sea which it claims—an international question of great delicacy and importance. Complaint, paragraph IX, page 7. The relief sought is a declaration of the Government's rights in the disputed area and an accounting for the State's receipts therefrom, between the three-mile line and the twenty-seven mile line, since June 5, 1950. Complaint, page 8.

On May 11, 1956, Louisiana filed suit in a State court against two officials of the United States Department of the Interior and twenty-five oil companies, seeking

to quiet title in the State to the submerged lands and resources extending seaward to the 27th parallel (which is from 120 to 180 geographic miles from the shore of Louisiana) and to enjoin the defendants from interfering therewith without consent of the State. On June 11, 1956, this Court enjoined prosecution of that or any other case involving the controversy before the Court here. 351 U. S. 978.[2]

On November 5, 1956, Louisiana filed its answer, asserting eight defenses. The first defense consists of denials, supplemented by some explanatory allegations. The State asserts full title to the submerged lands and resources, and denies that the United States has ever had any rights therein except power to regulate commerce, navigation and defense and as trustee for Louisiana before creation of the State. Answer, pages 2–3, Paragraph II. The State asserts that the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, and the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, nullified the theory of this Court's decree of December 11, 1950, disclaimed any federal right or title in the submerged lands and resources, and asserted a territorial boundary including

[2] The injunction included a prohibition of new leasing or drilling in the disputed area by either the United States or Louisiana, except by agreement filed with the Court. On October 12, 1956, the United States and the State executed and filed with the Court such an agreement, permitting continued development of the area and providing for the recognition of new leases and the disposition of revenues received pending determination of this litigation.

the continental shelf;[3] that, consequently, the State must be held always to have had title to the submerged lands and resources; and that neither Act requires the State to make any payment to the United States. Answer, pages 3–4, Paragraph III. The State denies that the effect of the Submerged Lands Act is as alleged by the United States, and asserts that the Act recognized that the United States had no rights in the submerged lands and resources underlying the Gulf of Mexico. It alleges that if the Submerged Lands Act or Outer Continental Shelf Lands Act restrict the State's right to extend its boundaries or title to the submerged lands and resources as far as the edge of the continental shelf, or if those Acts assert rights in such lands and resources for the United States, they are to that extent unconstitutional for various stated reasons. Answer, pages 4–7, Paragraph IV. The State denies the allegations that its boundary when it entered the Union extended no more than three miles into the Gulf and that Congress has never approved a greater extent for it. It alleges that its southern boundary has always been coextensive with that acquired by the United States under the Treaty of Paris, April 30, 1803. Answer, page 7, Paragraph V. The State denies that the United States is entitled to any of the submerged lands and resources or any

[3] The continental shelf is "a submarine plane of variable width, forming a border to nearly every continent. The water above it is comparatively shallow (usually less than 100 fathoms). The rapid descent from it to the ocean depths is known as the continental slope." Webster's New International Dictionary (2 ed., 1956) 576.

accounting. Answer, pages 7–8, Paragraph VI. The State alleges that the actions of the Secretary of Interior in leasing tracts in the area have been unlawful and unauthorized and were done over the protest of the State and that the State is entitled to an accounting from such operations. Answer, page 8, Paragraph VII. The State alleges that it cannot be deprived of the right to have a boundary coextensive with that of the United States; that Presidential Proclamation No. 2667 of September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884, the Submerged Lands Act and the Outer Continental Shelf Lands Act asserted federal jurisdiction over the entire continental shelf and are unconstitutional to the extent that they assert federal ownership of the submerged lands and resources thereof or prevent the State from extending its boundaries correspondingly. Louisiana Act 55 of 1938 declared the State boundary to be 27 miles from shore; Louisiana Act 33 of 1954 declared the State boundary to be three leagues from the line established under 33 U. S. C. 151.[4] The State alleges that the boundaries so declared conform to international law and the policies of the United States. Answer, pages 9–11, Paragraph VIII. The State denies the grounds advanced by the United States for invoking the original jurisdiction of this Court, and alleges that the State has exercised unquestioned jurisdiction and acts of ownership over the disputed area under claim of

[4] This line, established by the Commandant of the Coast Guard, delimits the waters where the Inland Rules of Navigation are to be observed.

right from its admission into the Union until 1949. Answer, pages 12–13, Paragraph IX.

Alternatively, Louisiana pleads seven affirmative defenses. The second defense is that by proclamation of April 9, 1682, La Salle claimed for France the territory of Louisiana extending southward to the 27th parallel, that the 27th parallel was always claimed and recognized as the southern boundary of Louisiana by European powers, and that the 27th parallel was the southern boundary of Louisiana when the United States acquired it from France and when it was admitted into the Union as a State and is its southern boundary today. Answer, pages 14–17.

Louisiana's third defense is that under the Act of April 8, 1812, admitting the State into the Union, 2 Stat. 701, this Court's decision in *Louisiana* v. *Mississippi,* 202 U. S. 1, and Louisiana Act 33 of 1954 redefining the State boundary, the southern boundary of the State is three leagues seaward from the coast line and from the line established by the Commandant of the Coast Guard under 33 U. S. C. 151. Answer, pages 17–21.

Louisiana's fourth defense is that the possession by every coastal state of a marginal belt at least three leagues in width was recognized by the United States and all other nations of the Western Hemisphere when Louisiana entered the Union, has always been recognized by the United States, and since Louisiana's admission to the Union has been recognized by the great maritime nations of the world. In any event, Louisiana alleges, Texas and Florida are recognized as having 3-league marginal belts, and Louisiana is

entitled to be on an equal footing with them in that respect. Answer, pages 21–24.

Louisiana's fifth defense is that the State ever since its creation has exercised exclusive and unchallenged possession of the submerged lands and minerals of the Gulf of Mexico, from which have resulted a prescriptive title and a general belief and conclusive presumption that the State has fee simple title to such lands and minerals. Answer, pages 24–26.

Louisiana's sixth defense is that the United States from time immemorial has recognized Louisiana's title to the submerged lands of the Gulf of Mexico, and that such conduct shows the meaning of the Act admitting Louisiana to the Union and estops the United States from making a contrary claim. Answer, pages 26–27.

Louisiana's seventh defense is that the United States and the State from time immemorial have interpreted the Act of Admission as including the lands and resources of the Gulf of Mexico as being within the State's boundaries; that the State in reliance thereon has administered those resources and has incurred debts for the purpose of paying its debts and building highways, bridges and hospitals; and that by acquiescence therein the United States is now estopped to deny the State's title to such land and resources. Answer, pages 27–28.

Louisiana's eighth defense is that a determination of the location of the base line from which the width of the marginal belt is measured should be made at the same time that the width of the marginal belt is determined, and that such determination will require the introduction of documentary evidence and the

taking of testimony. The State asks to have the case transferred to a district court, on the ground that the issues can be more conveniently determined there. Answer, pages 28–30.

SUMMARY OF ARGUMENT

Point I of the Argument sets forth the Government's affirmative case, showing that, on the basis of facts which are subject to judicial notice, the United States is entitled to judgment as a matter of law. Point II discusses separately the allegations of the eight defenses asserted by Louisiana's answer, showing why we consider all of them to be immaterial or unsound.

I

It appears from the complaint that all the facts material to the Government's claim are subject to judicial notice, and that the United States is entitled to judgment as a matter of law. In *United States* v. *Louisiana*, 339 U. S. 699, 340 U. S. 899, this Court held that rights in the offshore submerged lands and resources belonged to the United States rather than the State, and directed the State to account for sums received therefrom after June 5, 1950, which were properly owing to the United States. That decision is *res judicata* and determines the rights of the United States except to the extent that those rights have been subsequently relinquished. The only such relinquishment has been that made by the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301-1315. That Act relinquished to Louisiana the rights of the United States to submerged lands, resources,

and the proceeds thereof within the boundary of the State, limiting the grant, however, to the boundary as previously approved by Congress or as it existed when the State entered the Union or as extended to a distance of three marine miles, and not exceeding three leagues in any event, from the low-water mark and outer limit of inland waters on the coast of the State.

Under the Submerged Lands Act, the location of the State boundary is left to be judicially ascertained. We consider it fundamental that the State boundary cannot be farther seaward than the national boundary. The location of the national boundary is a political matter, to be determined by the political branches of the government; their determination regarding it is binding upon the courts and is subject to judicial notice. A formal declaration by the Department of State is the most appropriate source of information on this subject, and should be accepted as conclusive. Here, the Secretary of State has specifically declared that the national maritime boundary is and has always been at a distance of three miles, and no more, from the low-water mark and from the outer limit of inland waters along the coasts. That declaration is in accordance with a long line of diplomatic history, including both treaties and international correspondence, extending through the whole time of the Nation's existence, and all of which is subject to judicial notice.

Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884, and Section 3 of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C.

(1952 ed.) Supp. III, 1332, *infra,* pp. 181–182, declared the submerged lands and resources of the continental shelf to be subject to the jurisdiction of the United States, but did not bring them within the territorial boundary of the United States or of the coastal States. Thus the United States remains entitled, under this Court's decree, to the submerged lands and resources lying seaward of the three-mile limit, and moneys derived therefrom by the State since June 5, 1950.

II

A. REPLY TO FIRST DEFENSE

(1) All the material facts are subject to judicial notice, and Louisiana's answer does not raise a genuine issue as to any material fact. The eight defenses pleaded alternatively by Louisiana are all insufficient in law to defeat the claim of the United States. We consider them separately.*

(2) The Submerged Lands Act did not nullify the theory of this Court's decree of December 11, 1950, 340 U. S. 899, or repudiate the rights there adjudged to belong to the United States. It merely transferred to Louisiana and other coastal States a limited part of those rights. Thus, the decree remains in effect according to its terms as to all rights not so transferred.

(3) The rights asserted by the United States in the submerged lands and resources of the continental shelf seaward of the three-mile limit are extraterri-

* The numbers preceding these paragraphs in the summary correspond with the numbered subdivisions in the body of this brief, *infra*, pp. 81–150.

torial in their nature. The assertion of those rights by the Submerged Lands Act did not constitute an enlargement of the national boundary beyond the three mile limit. Even if it had done so, that would have been irrelevant here, since it did not enlarge State boundaries in any event. Moreover, the grant made to the States by the Submerged Lands Act does not extend beyond the three-mile limit unless State boundaries extending further existed when the State entered the Union or were approved by Congress before May 22, 1953. The Outer Continental Shelf Lands Act took effect August 7, 1953.

(4) The right of the United States to an accounting rests on this Court's decree of December 11, 1950, 340 U. S. 899. It is therefore immaterial that, as Louisiana alleges, neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act in terms requires such an accounting. The United States retains all rights under the decree which were not relinquished by the Submerged Lands Act.

(5) The Submerged Lands Act was not a recognition by Congress that the United States had no rights in the submerged lands despite the decree of this Court; it was a transfer to the States of part of the rights decreed to be in the United States.

(6) The Submerged Lands Act and Outer Continental Shelf Lands Act do not unconstitutionally infringe any right of Louisiana, under the treaty for the Louisiana Purchase, to extend its boundaries to the edge of the continental shelf. A statute supersedes a prior inconsistent treaty, and is not rendered unconstitutional thereby. Also, the treaty provision on

which Louisiana relies has been fully executed and is no longer of any effect, as this Court has held. Moreover, the territory ceded to the United States by France was bounded by the shore, so that the treaty had no application to any offshore area. And in any event, the treaty required only that the inhabitants of Louisiana be given the privileges of national citizenship according to constitutional principles; no constitutional principle permits States to extend their boundaries beyond the boundary of the United States. This Court has already held that, under the Constitution, the submerged lands and resources of the adjacent sea belonged to the United States, not to the States; in granting part of them to the States, the Submerged Lands Act enlarged, rather than restricted, the rights of the States. Neither it nor the Outer Continental Shelf Lands Act purports to affect State boundaries in any way. The Submerged Lands Act does limit the State boundaries which it uses to measure submerged lands granted to the State, but Congress has complete discretion to limit federal grants as it will.

(7) There is no legal reason why the boundary of Louisiana must be coextensive with that which the United States acquired from France; in fact it is more extended, for the area acquired from France stopped at the shore.

(8) Louisiana alleges that federal leasing in the disputed area has been without authority of law, and in violation of acts of Congress. However, the Outer Continental Shelf Lands Act clearly authorizes fed-

eral leasing in the submerged lands seaward of those granted to the States. We have shown why we believe that the area granted to Louisiana did not extend more than three miles from the coast; it follows that federal leasing in the disputed area, which lies seaward of the three-mile limit, has been authorized by Congress.

(9) Louisiana's statutes of 1938 and 1954 purporting to extend its boundaries more than three miles into the Gulf of Mexico do not entitle it to any rights in the submerged lands or resources beyond the three-mile limit. Neither act was in effect when the State entered the Union in 1812, or was approved by Congress before May 22, 1953 (or ever). Beyond the three-mile limit, the Submerged Lands Act is limited to State boundaries which meet one of those qualifications. Except as granted by the Submerged Lands Act, the submerged lands and resources of the Gulf of Mexico belong to the United States under this Court's decree of December 11, 1950, 340 U. S. 899.

(10) Louisiana alleges that the decision of this case will not involve inquiry into, or application of, the foreign policy of the United States with respect to the location of the national boundary. However, a limiting factor in the decision of this case is the location of the seaward boundary of the United States. That boundary has been established by the political branches of the Government, as a matter of foreign policy, at the three-mile limit, and should be so recognized by this Court. The boundary of the State, as used by the Submerged Lands Act to define the extent

of the grant of submerged lands to the State, cannot exceed the national boundary.

(11) Louisiana has acquired no rights against the United States by acts of jurisdiction or ownership in the disputed area. The issue of ownership was decided against Louisiana by the decree of December 11, 1950, 340 U. S. 899, and nothing has happened since to modify that decision except the Submerged Lands Act. That Act grants no rights beyond the three-mile limit except where more extended boundaries existed when the State entered the Union, or were approved by Congress before May 22, 1953. Even if the State had extended its boundaries by exercise of sovereignty, that would have been after its admission to the Union, and has not been approved by Congress; moreover, a State cannot by any means extend its boundaries beyond those of the United States.

B. REPLY TO SECOND DEFENSE

(1) Neither France nor Spain claimed a boundary for Louisiana extending beyond the shore. La Salle claimed for France to the mouth of the Mississippi; his expression of a mistaken opinion that it was at about the 27th parallel did not show an intention to claim to that line, which is actually about 120 nautical miles into the Gulf. Subsequent acts and expressions by France and Spain show that their claim to Louisiana ended at the shore.

(2) The Escurial Treaty of October 28, 1790, between Britain and Spain, was not a recognition by Britain of a ten-league boundary for Louisiana. It applied only in the Pacific Ocean and the South Seas,

neither of which includes the Gulf of Mexico; moreover, it was not a recognition of territorial boundaries, but only an undertaking to keep British vessels from approaching within ten leagues of Spanish settlements, to prevent smuggling.

(3) Regardless of what France or Spain claimed, for purposes of American jurisprudence, their actual boundary was where our State Department recognized it as being; and the United States has never recognized any territorial boundary more than three miles in the sea.

(4) The act admitting Louisiana to the Union described the State as being bounded by the Gulf, including all islands within three leagues of the coast. 2 Stat. 701. This did not include by implication the waters and bed of the Gulf to the 27th parallel, as having been part of the Louisiana Purchase; the Louisiana Purchase stopped at the shore. If the State received any maritime belt by implication it was the three-mile belt recognized by the United States as the maximum permitted by international law, but in any event the submerged lands and resources of the Gulf were not attributes of State sovereignty and did not pass to the State.

C. REPLY TO THIRD DEFENSE

(1) *Louisiana* v. *Mississippi,* 202 U. S. 1, only located the boundary between Louisiana and Mississippi in the inland waters of Lake Borgne and Mississippi Sound; it did not decide the width of the maritime belt of either State in the Gulf.

(2) Questions as to the proper location of the boundary of inland waters, from which Louisiana's marginal belt should be measured, are premature at this time. However, the line drawn by the Commandant of the Coast Guard to delimit waters where the inland rules of navigation must be followed is clearly not the proper base line. The Commandant expressly stated, in drawing the line, that it had no relationship to State boundaries. The line runs far seaward of the outermost points and islands, so clearly does not enclose inland waters in the ordinary jurisdictional sense. The Commandant's authority related only to navigation, and lines drawn under it do not change State boundaries. Louisiana Act 33 of 1954, claiming a boundary three leagues beyond the Coast Guard line, is untenable as a construction of the provision in the act admitting the State to the Union, that it included all islands within three leagues of the coast; as an affirmative boundary extension it is unavailing to give the State rights in submerged lands beyond the three-mile limit because, if for no other reason, it was not approved by Congress before May 22, 1953, as required by the Submerged Lands Act.

(3) Neither *Louisiana* v. *Mississippi,* 202 U. S. 1, nor *The Josephine,* 3 Wall. 83, recognized any part of what is now the Coast Guard line as constituting part of the coast of Louisiana.

D. REPLY TO FOURTH DEFENSE

(1) When Louisiana entered the Union in 1812, the United States did not claim or recognize bound-

aries extending more than three miles into the sea. Other nations did not then generally recognize three league boundaries, nor would it be material here if they had done so. Domestic policy determines domestic law on the subject.

(2) The United States has never recognized that States or nations bordering on the Gulf of Mexico have boundaries extending three leagues therein. Our diplomatic recognition of the Republic of Texas was not a recognition of the territorial boundaries which it claimed, including a boundary three leagues in the Gulf. Our annexation of Texas reserved all questions of boundary. The Treaty of Guadalupe Hidalgo, 9 Stat. 922, and the Gadsden Treaty, 10 Stat. 1031, extending the boundary between the United States and Mexico three leagues into the Gulf, were only to prevent smuggling at that point, and did not recognize any right to a three-league maritime belt. That is the construction which the United States has repeatedly put on those treaties from the moment of their adoption, and it should be adhered to by the Court. The Act of June 25, 1868, 15 Stat. 73, admitting Florida and other States to representation in Congress after the Civil War, was not an approval of the provision of Florida's constitution claiming a boundary three leagues in the Gulf. It only determined that Florida had established a republican form of government.

(3) Other nations have not since 1812 recognized American boundaries as three leagues in the Gulf, nor would it matter here if they had done so. Under

the Submerged Lands Act, approval by Congress is the only thing that can give Louisiana property rights in the seabed on the basis of boundary extensions beyond the three-mile limit made after entry of the State into the Union.

(4) Louisiana's claim to three leagues in order to achieve equal footing with Florida and Texas is without legal foundation. Whatever rights those two States have, both entered the Union after Louisiana. Therefore, even if equal footing with those States were required by some extension of the traditional theory, it could have no application to Louisiana's boundaries as referred to in the Submerged Lands Act. It did not fix a boundary at the time Louisiana joined the Union and has not since been approved by Congress.

E. REPLY TO FIFTH DEFENSE

Louisiana's claimed exercise of jurisdiction and ownership over the submerged lands and minerals of the Gulf give it no proprietary rights therein. Under this Court's decree of December 11, 1950, 340 U. S. 899, Louisiana has no rights in the submerged lands and minerals except as since granted by the Submerged Lands Act. Assertions of jurisdiction by the State since its admission, even if effective to give it an extended boundary for jurisdictional purposes, have not been approved by Congress and so give it no proprietary rights under the Submerged Lands Act.

F. REPLY TO SIXTH DEFENSE

Louisiana has gained no proprietary rights beyond the three-mile limit through federal acquiescence in her claims. Such supposed acts of acquiescence cannot establish a boundary beyond that which, throughout the period in question, was repeatedly and officially declared by the United States to be at three miles.

G. REPLY TO SEVENTH DEFENSE

The State's actions in paying its debts and providing for itself public facilities such as roads, hospitals and education, cannot estop the United States from asserting its rights beyond the three-mile limit.

H. REPLY TO EIGHTH DEFENSE

It is appropriate at this time to enter a decree describing in general terms the limit of the State's ownership, leaving to supplementary proceedings the precise identification of the limits so described. To attempt to make a complete determination of all questions simultaneously would introduce complicated factual questions and would unnecessarily delay settlement of the basic legal issue.

ARGUMENT

In Point I, *infra,* pp. 22–81, we set forth the Federal Government's affirmative case in support of its claim to the submerged lands and resources more than three miles from the coast of Louisiana. In Point II, *infra,* pp. 81–161, we answer the mass of separate allegations—most of them immaterial and all of the rele-

vant ones lacking merit—contained in the eight independent defenses in the State's Answer. Wherever possible, we have attempted not to repeat in Point II the details of arguments put forth elsewhere in this brief; but the Court will understand that the overlapping and interrelated nature of many of Louisiana's contentions makes some repetition unavoidable.

I

THE COMPLAINT SHOWS FACTS SUBJECT TO JUDICIAL NOTICE WHICH ENTITLE THE UNITED STATES TO JUDGMENT AS A MATTER OF LAW

A. THE RIGHTS OF THE UNITED STATES HAVE ALREADY BEEN ADJUDICATED, EXCEPT TO THE EXTENT THAT THEY HAVE BEEN SUBSEQUENTLY RELINQUISHED BY THE SUBMERGED LANDS ACT

In the case of *United States* v. *Louisiana,* 339 U. S. 699, this Court on June 5, 1950, held that, as between the United States and the State, the United States was entitled to the submerged lands and minerals of the Gulf of Mexico, extending seaward 27 marine miles from the low-water mark and from the outer limit of inland waters on the coast of Louisiana. The decree entered by the Court in that case on December 11, 1950, included the following (340 U. S. 899–900):

> 1. The United States is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, 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 State of Louisiana has no title thereto or property interest therein.

* * * * *

3. The United States is entitled to a true, full, and accurate accounting from the State of Louisiana of all or any part of the sums of money derived by the State from the area described in paragraph 1 hereof subsequent to June 5, 1950, which are properly owing to the United States under the opinion entered in this case on June 5, 1950, this decree, and the applicable principles of law.

That decree is *res judicata* as to the rights of the United States at that time, with respect to lands and resources within 27 miles of the coast. The decision must also be considered controlling, if not strictly *res judicata,* as to lands and resources lying farther seaward. Only a distance of 27 miles was involved in that suit because that was then the extent of Louisiana's claim, under Louisiana Act 55 of 1938 (La. Acts 1938, p. 169; 49 La. Rev. Stats. (1950) 1–3; Appendix A, *infra,* p. 170), 339 U. S. at 705. However, in explaining its decision, the Court said (*ibid.*):

> If, as we held in California's case [*United States* v. *California,* 332 U. S. 19], the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows *a fortiori* that the ocean beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs,

> and world commerce than is the marginal sea. Certainly it is not less so.

Similarly, in *United States* v. *Texas,* 339 U. S. 707, establishing the rights of the United States in submerged lands and resources as against the State of Texas, the Court said of Texan statutes that had purported to extend the State boundary, first to the 27-mile line and then to the outer edge of the continental shelf (339 U. S. at 720): "The irrelevancy of these acts to the issue before us has been adequately demonstrated in *United States* v. *Louisiana.*" Clearly those decisions apply equally to the lands and resources within the limits of Louisiana's most extreme present claim of a boundary at the twenty-seventh parallel.[5]

The rights thus established in the United States by the 1950 decree cannot have been lost except pursuant to an act of Congress, which alone has power to dispose of property rights of the United States. *Royal Indemnity Co.* v. *United States,* 313 U. S. 289, 294. The only act of Congress providing for transfer of those rights from the United States to the States is the Submerged Lands Act, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315. The present question, then, is simply one of determining the extent of the rights transferred to the State by the Submerged Lands Act.

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[5] Opposite the coast of Louisiana, the twenty-seventh parallel is at some points more than 60 marine miles south of the 100-fathom depth generally taken as marking the outer edge of the continental shelf. See U. S. Coast & Geodetic Survey Chart No. 1116.

B. THE SUBMERGED LANDS ACT GRANTED TO LOUISIANA THE SUBMERGED LANDS AND RESOURCES WITHIN ITS BOUNDARY ONLY, BUT DID NOT DETERMINE THE LOCATION OF THAT BOUNDARY

1. The Submerged Lands Act extends only to submerged lands within the State boundary

It is clear from the terms of the Submerged Lands Act that it relates only to submerged lands and resources within State boundaries as there qualified and defined. The granting section of that Act is Section 3, which provides (67 Stat. 30, 43 U. S. C. (1952 ed.) Supp. III, 1311; Appendix A, *infra,* pp. 165–166):

> (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 * * * be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States * * * ;
>
> (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 * * * . [Emphasis added.]

Section 2 of the Act, defining its terms, includes the following (67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301; Appendix A, infra p. 165):

> (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.

Section 4 of the 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, without prejudice to any State's boundary at a greater distance than three miles if previously so approved by Congress or provided for by the constitution or laws of the State before or when it entered the Union. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312; Appendix A, *infra* p. 167.

There can be no doubt of the power of Congress to limit the scope of its grant in this way. The Submerged Lands Act was an exercise of the power of Congress to dispose of property of the United States, *Rhode Island* v. *Louisiana,* 347 U. S. 272, and "it lies in the discretion of Congress, acting in the public interest, to determine of how much of the property it shall dispose." *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 336.

2. The Submerged Lands Act neither changes nor declares the location of the Louisiana boundary

From the sections of the Submerged Lands Act just referred to, it is 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.

This evident meaning of the Submerged Lands Act is fully supported by its legislative history. Throughout the debates in the Senate, where the Act in its present form originated,[6] 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 sub-

[6] 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.

ject 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 those States 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:

> 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.] [7]

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

Senator Holland of Florida, who was the author of S. J. Res. 13,[8] 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 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

[8] See footnote 6, *supra*, p. 27.

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 boundary 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, to determine the extent of the grant made to the State, it is necessary to ascertain whether its actual political boundary was more than three miles from the coast when it entered the Union.[9] Louisiana does not allege that Congress has approved attempts by the State, after its admission, to extend its boundary to more than three miles from the coast. It can therefore claim no benefit, under the Submerged Lands Act, from such attempts. Its attempted reliance on those purported extensions, independently of the Submerged Lands Act, are discussed *infra,* pp. 105–111, 130–136.

C. LOUISIANA HAS NEVER HAD A BOUNDARY EXTENDING MORE THAN THREE GEOGRAPHIC MILES INTO THE GULF OF MEXICO

1. The Act admitting Louisiana to the Union did not describe any marginal belt for the State, and certainly did not establish one more than three miles wide

The Louisiana Enabling Act provided for the formation of a State to comprise "that part of the

[9] If the State's boundary was less than three miles from the coast, subsequent enlargements to the extent of three miles were approved by the Submerged Lands Act and are not questioned here.

territory or country ceded under the name of Louisiana" from France to the United States "contained within the following limits, that is to say: beginning at the mouth of the river Sabine," thence up that river, north, east, southward, and "along the middle of the said [Iberville] 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 * * *." Act of February 20, 1811, 2 Stat. 641; Appendix A, *infra,* p. 162. With minor variations in punctuation, the Act of Admission contained the same description. Act of April 8, 1812, 2 Stat. 701; Appendix A, *infra,* p. 163.

In the past, Louisiana has sometimes contended that the foregoing description gave the State a marginal belt of three leagues. Thus, Act 55 of 1938, approved June 30, 1938, by which the State purported to extend its maritime boundary to a line twenty-seven miles from shore, contains among its preliminary recitals the following (La. Acts 1938, p. 169; Appendix A, *infra,* p. 171):[10]

> 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;"

[10] The affirmative provisions of that Act, purporting to extend the boundary of the State into the Gulf 27 miles from shore, are considered, *infra,* pp. 105–111, 130–136.

> Whereas, therefore, the gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore * * *.

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 fixed its gulfward boundary at 3 leagues from coast." Appendix A, *infra,* p. 173. 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. (See *infra,* pp. 128–130.) The Answer suggests, although not very explicitly, that the contention is among those which Louisiana intends to assert now. *Cf.* Second Defense, paragraph 3, Answer, 16; Third Defense, paragraph 2, Answer, 18, and paragraph 6, Answer 20; Sixth Defense, paragraph 3, Answer, 27.

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 (8 Stat. 80, 82):

> 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.

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.[11]

[11] This point is developed in detail, *infra*, pp. 39–62.

Similarly, the Treaty of March 18/30, 1867, by which Russia ceded Alaska to the United States, described the ceded area as (15 Stat. 539):

> 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 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.

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. 12 *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 (*Foreign Relations of the United States,* 1902, Appendix I, 440):

> 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.

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. The normal meaning of the

boundary description, "to the gulf of Mexico; thence bounded by the said gulf to the place of beginning" (*i. e.,* "the mouth of the river Sabine") seems to be, bounded by the shore of the Gulf. If the State, as so described, was entitled to a marginal belt in the Gulf, that must have resulted not from the terms of the description but from a general national policy to regard such a belt as a normal attribute of a littoral sovereign. Certainly such a belt in any event could not exceed the width of that which the nation claimed for itself; and, as we will show (*infra,* pp. 39–62), the United States has always limited itself to a claim of a marginal belt of not more than three geographic miles. In this view, it is unnecessary to decide whether Louisiana in fact had a marginal belt when it entered the Union. Since its entry it has made statutory claim to a marginal belt of more than three miles. Louisiana Act 55 of 1938, Louisiana Acts 1938, p. 169, Appendix A, *infra,* p. 170; Louisiana Act 33 of 1954, Louisiana Acts 1954, p. 63, Appendix A, *infra,* p. 173. Section 4 of the Submerged Lands Act, approving past or future extensions of State boundaries to a distance of three miles from the coast, presumably approves to that extent these broader claims. Consequently, we concede that the State is now entitled under the Submerged Lands Act to the benefit of a three-mile marginal belt, whatever its past situation may have been. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312.

2. The United States has always disclaimed territorial jurisdiction over a marginal belt more than three miles wide

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 (H. Exec. Doc. 324, 42d Cong., 2d Sess., 553), and to Edmond Genet, the French minister (*American State Papers,* 1 Foreign Relations 183):

> 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.

Two days later, Jefferson sent to the United States Attorneys a circular to the same effect. It said, in part:

> The war at present prevailing among the European powers producing sometimes cap-

tures of vessels in the neighbourhood of our seacoast, and the law of nations admitting as a common convenience that every nation inhabiting the sea coast may extend its jurisdiction and protection some distance into the sea, the President has been frequently appealed to by the subjects of the belligerent powers for the benefit of that protection. To what distance from the seacoast this may be extended is not precisely ascertained either by the practice or consent of nations or the opinions of the Jurists who have written on the subject. The greatest distance to which any respectable assent seems to have been given is the extent of the human sight, estimated at something more than 20 miles. The least claimed by any nation is the utmost range of Cannon shot, usually stated at one sea-league, or 3 sea miles, which is a very small fraction less than 3½ Statute or american miles. Several intermediate distances have been insisted on under different circumstances, and that particularly of 3 sea-leagues has the support of some authorities which are recent. However as the Nations which practice navigation on our coasts, are interested in this question, it is thought prudent not to assume the whole distance which we may reasonably claim, until some opportunity shall occur of entering into friendly explanations and arrangements with them on the subject; but as in the mean time it is necessary to exercise the right to some distance, the President has thought it best, *so far as shall concern the exercise of the Executive powers,* to take the distance of a sea-league, which being settled by treaty between some of the belligerent powers, and as little as any of

> them claim on their own coasts, can admit of no reasonable opposition on their part. *The executive officers* are therefore instructed to consider a margin of one sea-league on our coast as that within which all hostilities are interdicted for the present, until it shall be otherwise signified to them.[12]

The policy thus tentatively announced was never modified, and soon became the settled view of this Nation on the subject. As stated in Jefferson's circular to the United States Attorneys, *supra,* the range of a cannon shot was then considered the equivalent of three miles,[13] and on November 19, 1794, the United States entered into a treaty with Great Britain recognizing the range of cannon shot as marking the territorial limits of the two countries in the sea (Art. XXV, 8 Stat. 116, 128):

> 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*

[12] Ms. in National Archives, Record Group 59; emphasis in original.

[13] See also 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." 1 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. 44.

> *rights* shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels. [Emphasis added.]

On September 2, 1796, Timothy Pickering, then Secretary of State under President Washington, wrote to the Lieutenant Governor of Virginia (1 Moore, *Digest of International Law* (1906) 704):

> 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 * * *.

Not long after Jefferson became president, the United States protested against a claim by Spain to more than three miles of territorial water around Cuba. As described by Secretary of State Bayard, writing on May 28, 1886, to Secretary of the Treasury Manning (1 Moore, *Digest of International Law* (1906) 718, 720):

> When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more * * *.[14]

These actions, all taken before 1812, show that the policy of the United States to claim and recognize

[14] See *infra*, pp. 48, 49.

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 (8 Stat. 224, 225):

> 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 (8 Stat. 248, 249):

> 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 * * *.

By a long succession of subsequent actions, from 1848 to the present time, this policy has been continuously maintained. When Britain protested because she feared that by the Treaty of Guadalupe Hidalgo, 9 Stat. 922, the United States and Mexico intended to claim three-league limits in the Gulf of Mexico, Secretary of State Buchanan disclaimed such intention, as follows, August 19, 1848 (1 Moore, *Digest of International Law* (1906) 730):

> I have had the honor to receive your note of the 30th April last objecting, on behalf of the

British Government, to that clause in the 5th article of the late treaty between Mexico and the United States by which it is declared that "the boundary line between the two republics shall commence in the Gulf of Mexico 3 leagues from land," instead of one league from land, which you observe "is acknowledged by international law and practice as the extent of territorial jurisdiction over the sea that washes the coasts of states."

In answer I have to state, that the stipulation in the treaty can only affect the rights of Mexico and the United States. If for their mutual convenience it has been deemed proper to enter into such an arrangement, third parties can have no just cause of complaint. The Government of the United States never intended by this stipulation to question the rights which Great Britain or any other power may possess under the law of nations.

On January 23, 1849, James Buchanan, Secretary of State under President Polk, wrote to a Mr. Jordan (*ibid.*, 705):

> 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.

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, 1 Moore, *Digest of International Law* (1906) 706, 708, *infra.*

William Seward, Secretary of State under President Lincoln, wrote on August 4, 1862, to Gideon Welles, Secretary of the Navy (*ibid.,* 705):

> 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 * * *.

On December 16, 1862, Secretary of State Seward wrote to the Spanish minister (*ibid.,* 706, 707–708):

> * * * the United States are not prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the open sea beyond a line of three miles from the coast, so as to deprive them of the rights common to all nations upon the open sea.
>
> * * * * *
>
> Spain presented substantially the same claim to this Government in the case of the *El Dorado* in 1856, and Mr. William L. Marcy, then Secretary of State, by direction of the President, announced that the United States could not concede the extension of Spanish sovereignty beyond three miles in the seas which surround the island of Cuba.

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On September 3, 1863, Secretary Seward wrote to Secretary of the Navy Welles (*ibid.*, 730):

> The stipulation in the treaty of Guadalupe-Hidalgo by which the boundary between the United States was begun in the Gulf three leagues from land is still in force. It was intended, however, to regulate within those limits the rights and duties of the parties to the instrument only. It could not affect the rights of any other power under the law of nations.

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, January 22, 1875 (*Foreign Relations of the United States,* 1875, Pt. I, 649–650):

> 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.

On May 28, 1886, Secretary of State Bayard wrote to Secretary of the Treasury Manning, reviewing the whole history of the United States' policy regarding territorial waters. He said, in part (1 Moore, *Digest of International Law* (1906) 718):

> In a letter by Mr. Jefferson, when Secretary of State on November 8, 1793, to the minister of Great Britain, and in a circular of November 10, 1793, to the United States district attorneys, the limit of one sea-league from shore was provisionally adopted by him as that of the territorial seas of the United States. The same position was taken by Mr. Pickering, Secretary of State, on September 2, 1796; by Mr. Madison, Secretary of State, Feby. 3, 1807; By Mr. Webster, Secretary of State, August 1, 1842; by Mr. Seward, Secretary of State, December 16, 1862; August 10, 1863, Sept. 16, 1864; and by Mr. Fish, Secretary of State, December 1, 1875.
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> * * * * *
>
> We may therefore regard it as settled that, so far as concerns the eastern coast of North America, the position of this Department has uniformly been that the sovereignty of the shore does not, so far as territorial authority is concerned, extend beyond three miles from low-water mark, and that the seaward boundary of this zone of territorial waters follows the coast of the mainland, extending where there are islands so as to place round such islands the same belt. This necessarily excludes the position that the seaward boundary is to be drawn from headland to headland, and makes it follow closely, at a distance of three miles, the bound-

ary of the shore of the continent or of adjacent islands belonging to the continental sovereign.

The position I here state, you must remember, was not taken by this Department speculatively. It was advanced in periods when the question of peace or war hung on the decision. When, during the three earlier administrations, we were threatened on our coast by Great Britain and France, war being imminent with Great Britain, and for a time actually though not formally engaged in with France, we asserted this line as determining the extent of our territorial waters. When we were involved, in the earlier part of Mr. Jefferson's Administration, in difficulties with Spain, we then told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more; and this limit was afterwards reasserted by Mr. Seward during the late civil war, when there was every inducement on our part not only to oblige Spain, but to extend, for our own use as a belligerent, territorial privilege. When, in 1807, after the outrage on the *Chesapeake* by the *Leopard,* Mr. Jefferson issued a proclamation excluding British men-of-war from our territorial waters, there was the same rigor in limiting these waters to three miles from shore. And during our various fishery negotiations with Great Britain we have insisted that beyond the three-mile line British territorial waters on the northeastern coast do not extend. Such was our position in 1783, in 1794, in 1815, in 1818. Such is our position now in our pending controversy with Great Britain on this important issue. * * *

During the arbitration of the United States' whaling and sealing claim against Russia, at the Hague in 1902, Mr. Peirce, the American delegate, by specific instruction of Secretary of State Hay, declared that the United States neither claimed for itself nor recognized for other nations territorial jurisdiction extending more than one league from its shores (*supra,* p. 37).

On October 6, 1906, Secretary of State Root wrote to the American Ambassador to Mexico regarding a Mexican law asserting the right to search vessels within 20 kilometers (about 10.8 nautical miles) from the coast. The Secretary enclosed an opinion by the Solicitor of the Department of State, dated October 2, 1906, which said, in part (99 Cong. Rec. 3621):

> International law limits the sovereignty of a country to 3 miles from low-water mark * * *.
>
> * * * * *
>
> While it is clearly settled that territorial jurisdiction does not extend beyond the 3-mile limit, still there is a tendency to permit the regulated exercise of the right of inspection beyond this limit. A distinction is taken between the general application of municipal laws beyond the limit and the extension of the revenue or customs laws for the purpose of facilitating importation. For example an unrepealed statute of the United States permits officers of revenue cutters "to board all vessels which arrive within 4 leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifest required to be on board certain

vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessel until they arrive at the port or place of their destination. (R. S. 2760.)

It cannot be claimed that the jurisdiction of the United States rightfully extends beyond the 3-mile limit, except to its citizens. It would seem, however, that where foreign vessels are bound to the United States, the visitation and examination of cargo as provided for in this article may be convenient. Convenience, therefore, to both parties—to the incoming vessel as well as to the customs officers—would seem to dictate the act and justify the policy. * * *

* * * * *

It would appear, therefore, in the light of authority that local jurisdiction without the consent of the party to be affected does not extend beyond the 3-mile limit * * *.

On June 16, 1909, Assistant Secretary of State Huntington Wilson wrote to Mr. F. M. Wilmot, Manager of the Carnegie Hero Fund Commission (1 Hackworth, *Digest of International Law* (1940) 634; 99 Cong. Rec. 3622):

I have to acknowledge the receipt of your letter of the 8th instant, wherein, for the information of your Commission in determining what distance from shore acts performed at sea may properly be considered as within the waters of the United States, you inquire as to the extent of the maritime jurisdiction of the United States.

In reply you are advised that this Government has always adhered to the principle that

its maritime jurisdiction extends for a distance of 1 marine league (or nearly 3½ English miles) from its coasts. This, of course, does not include any waters or bays which are so landlocked as to be, without question, only in the jurisdiction of the United States.

When an Italian royal decree of August 6, 1914, undertook to fix the limits of Italian territorial waters at six nautical miles, Robert Lansing, then Acting Secretary of State under President Wilson, wrote to the Italian Ambassador, in part as follows, November 28, 1914 (*Foreign Relations of the United States,* 1914, Supp., 665; 1 Hackworth, *Digest of International Law* (1940) 637–638):

> 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.

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 distance of the shore. Article I of that treaty provided (43 Stat. 1761):

> 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.

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 (1 Hackworth, *Digest of International Law* (1940) 639–640):

> 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.

Such statement was made by letter of March 7, 1936, from Josephus Daniels, American Ambassador to Mexico, to General Eduardo Hay, Mexican Foreign Secretary. 99 Cong. Rec. 3623.

When Mexico, in reply, referred to Article V of the Treaty of Guadalupe Hidalgo, February 2, 1848, 9 Stat. 922, as justifying the claim of nine miles (99 Cong. Rec. 3623), Mr. De L. Boal, American chargé d'affaires ad interim, wrote to the Mexican Foreign Secretary on June 3, 1936, reasserting this country's position that the treaty provision extending the international boundary three leagues into the Gulf of Mexico was meant to do nothing more than permit jurisdiction to that distance at that particular point, for the prevention of smuggling (99 Cong. Rec. 3623):

> I have the honor under instructions from my Government to acknowledge Your Excellency's courteous note No. 4002 of May 6, 1936, regarding the extension of the breadth of Mexican territorial waters, and to make the following comment thereon:
>
> The Foreign Office relies upon provisions of article V of the treaty of February 2, 1848, between the United States and Mexico and correspondence concerning such provisions to sustain its position that the decree in question is "just and proper" and that the reservation of rights made by the Government of the United States was unwarranted.
>
> The treaty provisions in question read as follows:

"The dividing line between the two Republics shall begin in the Gulf of Mexico three leagues from land at the mouth of the Rio Grande."

* * * * *

That portion of article V of the treaty of 1848 which the Mexican Foreign Office quotes relates only to the boundary line at a given point and furnishes no authority for Mexico to claim generally that its territorial waters extend 9 miles from the coast. The British note of June 9, 1848, which is quoted by the Mexican Foreign Office recognizes the merely local applicability of the agreement between the United States and Mexico as to the easternmost part of the boundary line, when it states in giving notice that the British Government could not "acquiesce in the extent of maritime jurisdiction assumed by the United States and Mexico," that the giving of such notice is "the more necessary because the Gulf of Mexico is a great thoroughfare of maritime commerce."

Furthermore, this view of the restricted nature of the agreement is strengthened by the statements in the note of the Department of State to the British Minister of August 19, 1848, which is also quoted by the Mexican Foreign Office, and wherein it was said that if for the "mutual convenience" of the United States and Mexico it had been proper to enter into such an arrangement, third parties had no just cause of complaint and that the Government of the United States never intended by the stipulation to question the rights which Great Britain or any other power may possess under the law of nations.

> Presumably it is true as indicated by a note sent by this Department to the British Minister of January 22, 1875, that the arrangement thus made between the United States and Mexico with respect to the Gulf of Mexico was designed to prevent smuggling in the particular area covered by the arrangement.
>
> Wholly aside from the question of the boundary line between the two countries, there remains to be considered the total great extent of the Mexican coast and the bordering territorial waters. To say that because the United States agreed that in one area, so far as the United States was concerned, Mexican territorial waters extended 3 leagues from land, therefore Mexico was entitled to claim such an extent of territorial waters adjacent to her entire coastline is a deduction which the terms of article V of the treaty of 1848 do not warrant.

On October 12, 1949, Senator Tom Connally, Chairman of the Senate Foreign Relations Committee, asked Secretary of State Acheson whether the United States recognized the claim of Texas to a boundary three leagues in the Gulf of Mexico. Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 319. Under Secretary of State James E. Webb, writing for the Secretary, replied on December 30, 1949, that the United States recognizes no boundaries beyond three miles in the Gulf of Mexico (*ibid.*, 321-323):

> This Government consistently has adhered to the view that 3 geographical miles constitute the extent of the marginal sea. * * *

> Accordingly, this United States Government claims and asserts an extent of territorial waters in the Gulf of Mexico and elsewhere along its coasts of 3 marine miles. It does not recognize any claim other than its own as binding in the relations of the United States with foreign nations. It does not, therefore, recognize the Texas claim of 3 leagues as binding for international purposes and does not recognize the Texas claim as binding upon Mexico or the nationals of Mexico.
>
> Upon the same principles this Government does not recognize that the United States or its nationals are bound by claims of Mexico to a breadth of territorial waters greater than 3 marine miles. * * *

In connection with the attempted codification of the international law relating to the regime of the high seas, the United States Mission to the United Nations, on January 6, 1950, sent the International Law Commission a memorandum in which it said (U. N. General Assembly, A/CN.4/19 (23 March 1950) 104):

> The United States has from the outset taken the position that its territorial waters extend one marine league, or three geographical miles (nearly 3½ English miles) from the shore * * *. The rule of the three-mile limit has been incorporated in several U. S. Treaties * * *.

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 (99 Cong. Rec. 4084–4085):

> 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.

Addressing Committee VI (the Legal Committee) of the United Nations on December 14, 1956, Edward S. Greenbaum, Alternate United States Representative, repeated this country's strong advocacy of adherence to the three-mile rule. He said, in part (Press Release No. 2557, U. S. Mission to the U. N., Dec. 14, 1956):

> There have been several statements that this three-mile rule is an obsolete one. It has been suggested that because it is an old rule it is no longer valid for the modern world. My Government certainly does not accept this point of view. Our attitude on the breadth of the territorial sea is based in large part upon our traditional and strong adherence to the principle of the freedom of the sea, a principle under which the oceans of the world are to be open freely to the ships of all nations, large and small, and under which principle the strong nations are prevented from asserting their power to control the seas at the expense of the weak. We do not think that changes have occurred on the international scene which require the abandonment of the three-mile rule.[15]

For the purpose of providing a definitive statement of the Government's official position regarding the

[15] See also *infra*, pp. 91–93, for official statements of representatives of the State Department during the consideration of the proposed Submerged Lands Act.

three-mile rule with particular reference to the present case, Secretary of State Dulles on June 15, 1956, wrote to Attorney General Brownell, summarizing the history of this country's adherence to the three-mile rule and emphasizing that its importance as a national policy remains undiminished, as much with reference to the Gulf of Mexico as elsewhere. That letter is set out in full as Appendix B, *infra,* p. 176. It concludes:

> It is no exaggeration to say that, in view of the serious attacks which are now being made upon the freedom of the seas in various parts of the world, the maintenance of the traditional three-mile policy is more than ever a matter of vital interest to the United States.

This Court has also recognized the adherence of the United States to the three-mile rule. In *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 122, it said:

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

Similarly, in *United States* v. *California,* 332 U. S. 19, 33–34, the Court said:

> It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality.

> Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world * * *. 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. *Cunard Steamship Co.* v. *Mellon,* 262 U. S. 100, 122–124. And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones* v. *United States,* 137 U. S. 202, 212–214; *In re Cooper,* 143 U. S. 472, 502–503.

The Court enumerated some of the actions of the "political agencies" to which it referred (332 U. S. at 33, fn. 18):

> Congressional assertion of a territorial zone in the sea appears in statutes regulating seals, fishing, pollution of waters, etc. 36 Stat. 326, 328; 43 Stat. 604, 605; 37 Stat. 499, 501. Under the National Prohibition Act, territory including "a marginal belt of the sea extending from low-water mark outward a marine league, or 3 geographical miles" constituting the "territorial waters of the United States" was regulated. See U. S. Treas. Reg. 2, § 2201 (1927), reprinted in *Research in International Law, supra* [23 A. J. I. L. (Spec. Supp. 1929)] 250; 41 Stat. 305. Anti-smuggling treaties in which foreign nations agreed to permit the United States to pursue smugglers beyond the three-mile limit contained express stipulations that generally the three-mile limit constitutes "the

proper limits of territorial waters.' See *e. g.*, 43 Stat. 1761 (Pt. 2).[16]

3. The location of the Nation's maritime boundary 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

[16] By the provisions of the Submerged Lands Act which, for the purposes of that Act, limit the boundaries of the States in the Gulf of Mexico to three marine leagues (Sec. 2 (b), 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b), Appendix A, *infra*, p. 165) and which provide that the general authorization of a three-mile boundary shall not prejudice the claim of any State to a more extended boundary (Sec. 4, 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312, Appendix A, *infra*, p. 167), Congress did not recognize that a boundary of more than three miles may exist. Those provisions were inserted because certain coastal States argued that they had existing, recognized boundaries extending more than three miles into the Gulf of Mexico, and Congress thought it better policy to leave those claims for judicial determination unaffected by the legislation in any way. (*Supra*, pp. 27–32.)

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).[17]

(b) TERRITORIAL SOVEREIGNTY IS A POLITICAL MATTER AS TO WHICH THE COURTS WILL FOLLOW AN EXECUTIVE DETERMINATION

(*i*) *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— "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.

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[17] 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.

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, the 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 constiutional 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.

(*ii*) *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. 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 18/30, 1867 (15 Stat. 539), whether or not within three miles of the shore.[18] Following the same principle, the ruling of Attorney General Randolph that Delaware 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,* 4 Moore, *International Arbitrations,* 4332, 4341. Similarly, Secretary of State Jefferson's letter to Minister Genet (*supra,* p. 39), 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

[18] 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. 12 *Fur Seal Arbitration, Proceedings of the Tribunal of Arbitration at Paris, 1893*, Oral Argument for the United States, pp. 107–110 (*supra*, p. 36). 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." 2, *op. cit.*, Case of the United States, p. 84.

> 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 39–62, 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.[19] 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 A, *infra* p. 167), may be taken as validating, *pro tanto,* Louisiana Act 55 of 1938 (Appendix A, *infra,* p. 170), which purported to extend the state boundary to a distance of twenty-seven miles, or Louisiana Act 33 of 1954 (Appendix A, *infra,* p. 173), purporting to fix the boundary at three leagues. As already noted, it is therefore unnecessary 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.

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

(C) A STATEMENT BY THE APPROPRIATE EXECUTIVE DEPARTMENT IS THE BEST SOURCE OF INFORMATION ON A POLITICAL QUESTION

As we have already stated, the Secretary of State has furnished the Attorney General with a statement, for presentation to the Court in this case, declaring that the policy of the United States is and has always been to recognize for other nations and to claim for itself territorial jurisdiction over adjacent seas only to a distance of three nautical miles from the coast. (*Supra,* pp. 59–60.) That statement is set out in full in Appendix B, *infra,* pp. 176–180. We have already reviewed the position taken by the State Department throughout the history of the Nation, to show that the position which it now takes is the one which it has always taken on this question. We submit, however, that the Secretary's statement alone is enough to conclude the matter here.

In *In re Baiz,* 135 U. S. 403, the question was whether the petitioner was a foreign diplomatic representative, so as to be entitled to a writ restraining a district court from proceeding with a suit against him. In response to an inquiry, the Second Assistant Secretary of State had written that, in the absence of the minister, "the business of the legation was conducted by Consul General Baiz, but without diplomatic character" (p. 408). The Court said (p. 432): "* * * we do not assume to sit in judgment upon the decision of the executive in reference to the public character of a person claiming to be a foreign minister, and therefore have the right to accept the certificate of the State Department that a party is or is

not a privileged person, *and cannot properly be asked to proceed upon argumentative or collateral proof.*" [Emphasis added.] See also 135 U. S. at 421–422.

United States v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa. 1830), was a prosecution for arresting a foreign diplomat, in violation of Section 25 of the Act of April 30, 1790, 1 Stat. 112, 117–118. The United States Attorney introduced a certificate from the Secretary of State, declaring the diplomatic status of the man arrested; and the court thereupon charged the jury (*per* Baldwin, Circuit Justice, p. 1086):

> The evidence of the reception of Mr. Brandis in this [diplomatic] character, is the certificate from the secretary of the state which has been read. * * * the certificate of the secretary under the seal, oath, and responsibility of office, must also be taken as full evidence of the act certified. * * *
>
> * * * Such recognition invests him with the immunities of a minister, in whatever form it may be done, *and no court or jury can require any other evidence of a reception*: we instruct you then as a matter of law, that at the time of the alleged arrest, Mr. Brandis was a minister of Denmark in the character stated in the certificate. [Emphasis added.]

See also *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa., 1825) and *United States* v. *Liddle,* 26 Fed. Cas. No. 15,598 (C. C. D. Pa., 1808).

The British cases are to be the same effect. In *The Fagernes,* L. R. (1927) P. 311 (C. A.), the court secured, through the Attorney General, a statement from the Home Secretary that the point in question,

in the Bristol Channel, was not within the territorial sovereignty of the Crown. Of this, Atkin, L. J., said (p. 324):

> What is the territory of the Crown is a matter of which the Court takes judicial notice. The Court has, therefore, to inform itself from the best material available; and on such a matter it may be its duty to obtain its information from the appropriate department of Government. *Any definite statement from the proper representative of the Crown as to the territory of the Crown must be treated as conclusive.* [Emphasis added.]

Lawrence, L. J., said (pp. 329–330):

> * * * It is the duty of the Court to take judicial cognizance of the extent of the King's territory and, if the Court itself is unacquainted with the fact whether a particular place is or is not within the King's territory, the Court is entitled to inform itself of that fact by making such inquiry as it considers proper * * *.
>
> * * * * *
>
> *In view of this answer, given with the authority of the Home Secretary upon a matter which is peculiarly within the cognizance of the Home Office, this Court could not, in my opinion, properly do otherwise than hold that the alleged tort was not committed within the jurisdiction of the High Court.* [Emphasis added.]

In *Duff Development Co.* v. *Kelantan Government*, L. R. (1924) A. C. 797 (H. L.), where the House of Lords held that the question of defendant's status as an independent sovereign should be settled by in-

quiry of the Colonial Secretary, Lord Sumner said (pp. 823–824):

> The status of foreign communities and the identity of the high personages who are the chiefs of foreign states, are matters of which the Courts of this country take judicial notice. Instead of requiring proof to be furnished on these subjects by the litigants, they act on their own knowledge or, if necessary, obtain the requisite information for themselves. I take it that in so doing the Courts are bound, as they would be on any other issue of fact raised before them, to act on the best evidence and, if the question is whether some new State or some older State, whose sovereignty is not notorious, is a sovereign State or not, *the best evidence is a statement, which the Crown condescends to permit the appropriate Secretary of State to give on its behalf.* [Emphasis added.]

In *Mighell* v. *Sultan of Johore,* L. R. (1894) 1 Q. B. 149 (C. A.), the question was whether the defendant was an independent sovereign, and the court referred the question to the Colonial Office. Kay, L. J. said in his opinion (pp. 161–162):

> * * * the means which the judge took of informing himself as to his [the defendant's] status was by inquiry at the Colonial Office. * * * I confess I cannot conceive a more satisfactory mode of obtaining information on the subject * * * *I think that statement must be taken as conclusive.* [Emphasis added.]

The situation is in no wise changed by the circumstance that the Government is itself a party to the

litigation. Thus, *Jones* v. *United States,* 137 U. S. 202 (*supra,* pp. 66, 68); *United States* v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.) (*supra,* p. 72); *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.); and *United States* v. *Liddle,* 26 Fed. Cas. No. 15,598 (C. C. D. Pa.) were all criminal prosecutions by the United States.[20] In each, the court held that it should accept a statement from the Department of State as a conclusive source of information on a political matter of which it was bound to take judicial notice. Cf. *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797 (H. L.), where it was objected that the Colonial Office was in fact directing the litigation and other conduct of the very defendant which it was certifying was an independent sovereign. Lord Sumner, discussing this objection (pp. 823–825), concluded that, nevertheless, since the matter of sovereignty was one for judicial notice, and since a statement from the Colonial Office was the best source of information on the subject, the court was obliged to accept the statement as conclusive. This holding may be considered all the more significant in view of the dual, albeit somewhat fictional, character of the House of Lords as a legislative as well as a judicial body.

[20] The status of the United States as a party was clearly brought out in *United States* v. *Ortega,* 11 Wheat. 467 (1826), where the Court held, with respect to a motion in arrest of judgment, that the case was not within the original jurisdiction of the Supreme Court as one "affecting" an ambassador or other public minister. The Court pointed out that, although the case arose out of an assault on a minister, the actual party plaintiff was the United States.

(d) A STATEMENT FROM THE APPROPRIATE EXECUTIVE DEPARTMENT AS TO THE POLICY WHICH IT HAS FOLLOWED MAY NOT BE SUBJECTED TO CHALLENGE

As indicated by the quotations emphasized in the preceding section, the State Department's declaration is not only the "best evidence," but it is binding and conclusive on the Court, and cannot be controverted by other "evidence" or "proof".

(*i*) In *Vermilya-Brown Co.* v. *Connell,* 335 U. S. 377, 380–381, the Court said:

> 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. * * * In the light of the statement of the Department of State, we predicate our views on the issue presented upon the postulate that the leased area is under the sovereignty of Great Britain and that it is not territory of the United States in a political sense, that is, a part of its national domain.

In *Ex parte Peru,* 318 U. S. 578, the Republic of Peru intervened in an admiralty proceeding to assert ownership of the libeled vessel, and sovereign immunity from suit. The Attorney General filed a certificate from the Department of State, recognizing the sovereign immunity of the ship. The Court said (p. 589):

> The certification and the request that the vessel be declared immune must be accepted by the courts as a conclusive determination by the political arm of the Government that the con-

> tinued retention of the vessel interferes with the proper conduct of our foreign relations. Upon the submission of this certification to the district court, it became the court's duty, in conformity to established principles, to release the vessel and to proceed no further in the cause.

In *United States* v. *Benner,* 24 Fed. Cas. No. 14,568 (C. C. E. D. Pa.), as the portion of the opinion quoted above shows, the court ruled that the certificate of the Secretary of State as to the diplomatic status of an individual "must * * * be taken as full evidence * * * and no court or jury can require any other evidence * * *." To the same effect are *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.); *United States* v. *Liddle,* 26 Fed. Cas. No. 15,598 (C. C. D. Pa.).

The opinions quoted above (pp. 72–75) show that the British cases take the same view. In *The Fagernes,* L. R. (1927) P. 311 (C. A.), with respect to a statement by the Home Secretary that a certain point in the Bristol Channel was not within the territorial jurisdiction of the Crown, Atkin, L. J. said (p. 324), "Any definite statement from the proper representative of the Crown as to the territory of the Crown must be treated as conclusive." Lawrence, L. J., said on the same subject (p. 330):

> In view of this answer, given with the authority of the Home Secretary upon a matter which is peculiarly within the cognizance of the Home Office, this Court could not, in my opinion, properly do otherwise than hold that

the alleged tort was not committed within the jurisdiction of the High Court.

To the same effect are *Engelke* v. *Musmann,* L. R. (1928) A. C. 433 (H. L.) (diplomatic status of defendant); *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797 (H. L.) (status of defendant as an independent sovereign); *Mighell* v. *Sultan of Johore,* L. R. (1894) 1 Q. B. 149 (C. A.) (same); *Foster* v. *Globe Venture Syndicate,* L. R. (1900) 1 Ch. 811, 813 (sovereignty of Sultan of Morocco over Suss territories).

(*ii*) The conclusive effect of such a statement results from the fact that the statement is not in the nature of "evidence", but rather is an authoritative declaration by the Government regarding a matter within its peculiar competence to determine. "Such information is not in the nature of evidence; it is a statement by the Sovereign of this country through one of his Ministers upon a matter which is peculiarly within his cognizance." *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 813 (H. L.) (opinion of Viscount Finlay); see also *Engelke* v. *Musmann,* L. R. (1928) A. C. 433, 442, 457 (H. L.) accord (opinions of Lord Buckmaster and Lord Warrington of Clyffe).[21]

[21] In the *Engelke* case, Lords Warrington of Clyffe and Buckmaster both indicated that for this reason the official who made the statement was not subject to cross-examination. In the *Duff Development Co.* case, the Lord Chancellor said that when such information is obtained from a Government department "the Court does not permit it to be questioned by the parties" (L. R. (1924) A. C. 797, 805–806). In the *Foster* case, *supra,* the judge thought that information received from the Crown gave the court

The question in such a case is not of discovering an independent fact, but rather of learning what position has been taken by the Government on the subject. Thus, in *Engelke* v. *Musmann,* L. R. (1928) A. C. 433, 455 (H. L.), Lord Phillimore said, "* * * the exact inquiry in this case is not whether the defendant is a member of the Ambassadorial staff but whether he has been accepted and recognized by the Crown as such a member * * *." Similarly, in *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 824–825 (H. L.), Lord Sumner said, "* * * it was not the business of the Court to inquire whether the Colonial Office rightly concluded that the Sultan was entitled to be recognized as a sovereign by international law. All it had to do was to examine the communication in order to see if the meaning of it really was that the Sultan had been and was recognized as a sovereign."

(*iii*) Accordingly, whether the determination made by the Government has been right or wrong is immaterial. "* * * 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. * * * *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

"a knowledge of facts that cannot be disputed," and in *Mighell, supra,* Kay, L. J., indicated that the purpose of securing such information was to avoid a "contentious inquiry."

question." (Emphasis added.) *Jones* v. *United States,* 137 U. S. 202, 221 (American sovereignty over Navassa Island). Accord: *Williams* v. *Suffolk Insurance Co.,* 13 Pet. 415, 420 (Buenos Ayrean non-jurisdiction over the Falkland Islands); *Kennett* v. *Chambers,* 14 How. 38, 50 (jurisdiction of Mexico over Texas before recognition of the Republic of Texas); *Duff Development Co.* v. *Kelantan Government,* L. R. (1924) A. C. 797, 824–825 (H. L.), *supra.*

Thus, in *Rose* v. *Himely,* 4 Cranch 241, 272, where counsel had relied largely on the writings of Vattel in support of the contention that Santo Domingo, then in revolt against France, should be regarded as independent, the Court said, "But the language of that writer is obviously addressed to sovereigns, not to courts. It is for governments to decide, whether they will consider St. Domingo as an independent nation * * *." And in *United States* v. *Ortega,* 27 Fed. Cas. No. 15,971 (C. C. E. D. Pa.), the court (per Washington, Circuit Justice), after pointing out the intolerability of having a judicial decision at variance with the executive practice in a matter of state, continued (pp. 361–362):

> Besides, if it belongs to courts of justice to meddle with these matters, and looking beyond the acts and conduct of the president, to decide a person recognized by him as a foreign minister, to be no minister, surely that branch of the government ought to possess all the lights to guide their judgment which are possessed by the president, and should consequently

be empowered to call for and to expose to public view, the archives of state, and the correspondence of the executive of this nation with foreign nations, in relation to the subject on which the decision is to be made. Yet, who would be wild enough to maintain a proposition so extravagant and absurd?

(For similar reasoning, see *Chicago & S. Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 111).

II

THE ANSWER OF THE STATE OF LOUISIANA RAISES NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND IS INSUFFICIENT IN LAW

A. REPLY TO FIRST DEFENSE

1. The material allegations of the complaint are subject to judicial notice, and denials of them raise no genuine issue of fact

Louisiana's First Defense (Answer, 1–13) consists primarily of denials or contradictions of allegations of the complaint. As we have shown (*supra,* pp. 22–70) all the material facts alleged in the complaint are subject to judicial notice. Denials of such allegations raise no genuine issue of fact, so as to prevent entry of summary judgment. *Fletcher* v. *Evening Star Newspaper Co.,* 133 F. 2d 395 (C. A. D. C.); see 6 Moore, *Federal Practice* (2d ed. 1953) 2035. Cf. the opinion of Mr. Justice Frankfurter in *United States* v. *John J. Felin & Co.,* 334 U. S. 624, 639: "It is as old as the common law that an allegation purporting to be one of fact but contradicted by common knowledge is not confessed by a demurrer."

Besides denials, Louisiana's First Defense contains

various affirmative allegations of new matter. We believe all such allegations to be immaterial, unsound, or both.

2. The Submerged Lands Act gave Louisiana certain of the rights awarded to the United States by this Court's decree of December 11, 1950, but did not "nullify" the legal theory of that decree

Louisiana alleges (Paragraph III; Answer, 3) that the theory and effect of this Court's decree of December 11, 1950, in *United States* v. *Louisiana,* 340 U. S. 899, have been "nullified and superseded" by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301–1315, and the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331–1343, and that consequently "the States must be held to have always had title to submerged lands and resources." Certainly the effect of the decree has been superseded, to some extent, by the Submerged Lands Act; the purpose of the present suit is to ascertain the extent of that supersedure. Equally clearly, the theory of the decree has not been "nullified" to any extent whatever. We need not even inquire into the power of Congress to "nullify" the legal theory of a judicial decision, for manifestly it had no such intention here. The Submerged Lands Act did not dispose of the entire area covered by the decree, a belt of submerged land extending 27 marine miles from the coast of Louisiana. It disposed of only so much thereof (designated "lands beneath navigable waters") as lay within State boundaries as defined in the Act, but in no event more than 3 leagues from

the Gulf coast. Secs. 2 (a) (2), 2 (b), 3 (a), 3 (b), 4, 67 Stat. 29–31, 43 U. S. C. (1952 ed.) Supp. III, 1301 (a) (2), 1301 (b), 1311 (a), 1311 (b), 1312. Section 9 of the Act clearly reasserted federal rights in the remainder of the continental shelf (67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302):

> Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

Even as to the area granted to the States, the Submerged Lands Act did not merely undo the decree and surrender title to the States. The first proviso of Section 3 (c) allowed to holders of State leases, in some circumstances, a longer tenure than their leases provided, amounting to a term from the effective date of the Act equal to the lease term remaining unexpired on December 11, 1950. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1311 (c). In imposing such a condition, Congress was necessarily relying on, rather than abnegating, the adjudicated rights of the United States in the submerged lands. As this Court has held, the Submerged Lands Act was an exercise of the power of Congress to dispose of property of the United States. *Alabama* v. *Texas* and *Rhode Island* v. *Louisiana*, 347 U. S. 272.

The same view was expressed in the debates on the Act by Senator Daniel of Texas, one of the co-authors and most ardent supporters of the Act. He said (99 Cong. Rec. 4080–4081):

> We do not ask Congress to overrule the Supreme Court of the United States, although, I think, the Court was incorrect. We can and do accept the decisions of the Court as the interpretation of the law as it exists today, but, by the same token, the Congress of the United States, in placing its interpretation on the Constitution and in deciding the equities can write the law for the future differently from that which the Court has found it to be at this time.
>
> That is what we propose in Senate Joint Resolution 13. * * *

In the case of *Superior Oil Co.* v. *Fontenot,* 213 F. 2d 565 (C. A. 5), certiorari denied, 348 U. S. 837, cited by Louisiana (Paragraph III, Answer 3), the question was whether a lessee from the State could recover State severance taxes paid under protest on oil and gas produced from the 3-mile marginal belt between June 5, 1950, and May 22, 1953. Judgment for the defendant was affirmed on four independent grounds, one of which was that the Submerged Lands Act either conferred on the State and its lessee a title which related back, or nullified this Court's decree so that the State must be held to have had title from the beginning.[22] The court did not purport to decide

[22] Other grounds of decision were that a lessee cannot dispute the title of his lessor, that the plaintiff would be unjustily en-

which was the correct analysis of the statute. In any event, the decision involved only the effect of the Act as to land within its geographic scope. The plaintiff's lease lay in the 3-mile belt, admittedly within the scope of the Act, and the court had no occasion to consider how far seaward the Act applied. The decision is wholly irrelevant to the present case.

3. The Outer Continental Shelf Lands Act asserts federal rights of an extraterritorial character and does not extend State or National boundaries beyond three miles from the coast

Louisiana alleges (Paragraph III; Answer, 3) that the Outer Continental Shelf Lands Act "asserts the extent of the territorial boundaries of the United States as including the Outer Continental Shelf." Even if true, that would be irrelevant. Louisiana's rights under the Submerged Lands Act are limited to lands within State boundaries; and there is no allegation that the Outer Continental Shelf Lands Act extended the boundaries of the State (as it clearly did not; see Sec. 4 (a) (3), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1333 (a) (3), Appendix A, *infra*, p. 169. Moreover, the Outer Continental Shelf Lands Act did not take effect until August 7, 1953, whereas the grant made by the Submerged Lands Act was limited to State boundaries existing when the State entered the Union or approved by Congress before May 22, 1953, the effective date of the Submerged Lands Act. As reported, the bill made similar pro-

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riched if allowed to escape the tax while keeping the oil, and that payment of the tax was expressly required by the provision of Section 3 (c) of the Act requiring that a lessee, to maintain his lease, must pay "all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State * * *."

vision with respect to State boundaries subsequently approved by Congress, but that was deleted on Senator Holland's motion. 99 Cong. Rec. 4114–4116.[23]

Louisiana's allegation, in addition to being irrelevant, is unsound. The Outer Continental Shelf Lands Act does not extend the territorial boundaries of the United States to include the outer continental shelf. What it does assert is that

> It is hereby declared to be 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 as provided in this Act.

Section 3 (a), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332 (a). It has always been recognized that this asserts a special jurisdiction, extraterritorial in its nature, and does not constitute an extension of the territorial boundary of the Nation. That is shown by the qualified character of the language just quoted.

Legislative history shows complete recognition of the extraterritorial nature of our claim to the outer continental shelf. When the Outer Continental Shelf Lands Act was under consideration, Senator Ellender of Louisiana said (99 Cong. Rec. 7223),[24] "Techni-

[23] Section 4 of the Act does make it applicable to subsequent extensions of State boundaries out to the 3-mile limit, where States have not claimed so far heretofore. 67 Stat. 31, 43 U. S. C. (1952 ed.) Supp. III, 1312. That is not involved here, as the Government concedes Louisiana's right to three miles under the Act.

[24] This was the debate on S. 1901. The Outer Continental Shelf Lands Act as enacted is designated H. R. 5134, but its provisions are those of S. 1901, substituted by a Senate amendment. 99 Cong. Rec. 7264.

cally, this bill would not extend the boundaries of the United States but would only extend the jurisdiction and control of the United States over the resources and subsoil of the seabed."

Senator Long of Louisiana offered an amendment which would have extended State and national boundaries to the edge of the continental shelf. For the present language of Section 3 (a), quoted above (*supra,* p. 86), it would have substituted the following (99 Cong. Rec. 7232):

> SEC. 3. Jurisdiction over outer Continental Shelf: (a) It is hereby declared that the seabed and subsoil of the outer Continental Shelf, the natural resources therein contained, and any structures which are erected on such subsoil or seabed for the purpose of exploring for, developing, removing, and transporting the natural resources of such subsoil or seabed, are within the territory of the United States.

Speaking in support of his amendment, Senator Long said (*ibid*):

> The amendment would extend the boundaries of the United States and the boundaries of the coastal States to include the seabed and subsoil of the outer Continental Shelf. * * *
>
> This amendment is in keeping with the better recognized practice of international law of extending the boundaries of a littoral nation to include the seabed and subsoil of the outer Continental Shelf. Thus far Great Britain and the other nations of the British Empire are among the 18 nations of this world that pursue the concept that a nation should extend its bound-

> ary to include the seabed and subsoil on the Continental Shelf without affecting the rights of navigation or fishing in the waters above the seabed.
>
> * * * * *
>
> Authorities in international law could see no serious objection to extension of national boundaries to include the seabed and subsoil. Insofar as any foreign nation is concerned, it amounted to a distinction without a difference whether we claimed the seabed and subsoil to be within our boundary or whether we declared the seabed and subsoil to be subject to the jurisdiction and control of the United States.

Senator Long's amendment was rejected. 99 Cong. Rec. 7236. That was perhaps primarily due to its provision for extension of State boundaries; nevertheless, the fact had been brought out clearly that the bill as introduced did not extend federal boundaries, and no change was made in that respect. Section 3 (a) was enacted exactly as it was reported by the Senate Committee. See S. Rept. No. 411, 83d Cong., 1st Sess., page 15.

In the course of the House debate on the Outer Continental Shelf Lands Act, Congressman Yorty of California said (99 Cong. Rec. 4888):

> Mr. Chairman, I cannot understand how anyone can seriously find fault with the action the committee has taken in considering the areas inside of historic State boundaries and [outside?] such boundaries in two separate bills because actually I think we all recognize that two different sets of principles are involved

> in these areas. Inside the historic boundary we are dealing with an area that always belonged to the States until the decision of the Supreme Court cast doubt upon the title, but when you go beyond the historic seaward boundaries of the States you are dealing with an area that is altogether different. It is not only outside of the States, it is outside of the United States. We are dealing with it only on the legal basis of a proclamation of the President of the United States claiming, not title to the lands outside of the historic State and national boundaries, but rather claiming only the right to extract the resources of the seabed and the subsoil and to the edge of the Continental Shelf. Historically, legally, and in every way you are dealing with an entirely different proposition when you deal with the area known as the Continental Shelf.

That statement was made with reference to H. R. 5134 as originally introduced in the House.[25] That bill was in the form of an amendment to the Submerged Lands Act, and would have amended Section 9 of that Act to read, in part, as follows (99 Cong. Rec. 4891):

> SEC. 9. Jurisdiction over outer Continental Shelf: (a) It is hereby declared to be the policy of the United States that the natural resources of 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 as provided in this act. Federal laws now in effect or here-

[25] See fn. 24, *supra*, p. 86.

> after adopted shall apply to the entire area of the outer Continental Shelf. * * *
>
> * * * * *
>
> This act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to their free and unimpeded navigation and navigational servitude shall not be affected.

In thus limiting the continental shelf claim to the natural resources, rather than extending it to the seabed itself, H. R. 5134 conformed to Section 9 of the Submerged Lands Act, 67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302, and Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884 (Appendix C, *infra,* p. 181), by which this Nation first asserted rights in the outer continental shelf. That proclamation was entitled, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf." It read, in part:

> Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just * * *
>
> Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.
>
> * * * the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States,

> subject to its jurisdiction and control. * * * The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

Designation of this as a "policy" rather than an extension of boundary, and reference to the resources as "appertaining to the United States, subject to its jurisdiction and control," rather than being incorporated into the United States, strongly imply that no boundary extension was involved. This is corroborated by the specific statement that the overlying water retains its character as high seas. Indeed, since the jurisdiction asserted was only over the natural resources, and not over the seabed itself, it would have been altogether impossible to describe it in terms of a boundary extension.

At the Senate Interior Committee hearings on the Submerged Lands Act, Jack B. Tate, Deputy Legal Adviser of the Department of State, testifying for that Department, said (Senate Committee on Interior and Insular Affairs, Hearings on S. J. Res. 13, 83d Congress, 1st Session, 1053, 1056):

> The claim made by the United States in the Presidential proclamation of September 28, 1945, to jurisdiction and control of the national [natural?] resources of the subsoil and seabed of the Continental Shelf off its coast is one more example of the compatibility between the United States position on the 3-mile limit and the protection of its interests. This Government did not claim sovereignty in this proc-

> lamation or an extension of its boundaries beyond the limit of three miles of territorial waters. Indeed it specified in the proclamation that the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation are in no way affected.
>
> * * * * *
>
> The Federal Government's claim as to territorial waters has always been 3 miles. The Federal Government's claim to the Continental Shelf has always been jurisdiction and control.

The same distinction was drawn by Thruston B. Morton, Assistant Secretary of State, in a letter written on March 6, 1953, to Senator Henry M. Jackson, which Senator Jackson put in the record of the Senate Interior Committee hearings on the Submerged Lands Act. Assistant Secretary Morton wrote, in part (Senate Committee on Interior and Insular Affairs, Hearings on S. J. Res. 13, 83d Cong., 1st Session, 1087, 1088):

> This Nation has always supported the concept that the sovereignty of coastal States in seas adjacent to their coasts (as well as the lands beneath such waters and the airspace above them) is limited to a belt of 3 miles width, and has vigorously objected to claims of other States to broader limits. In international relations, the territorial claims of the States and of the Nation are indivisible. This Nation now supports the 3-mile limit and the claims of the States cannot exceed those of the Nation. * * *

> This Nation has traditionally taken the position that it was not prevented by international law from reasonably exercising its jurisdiction beyond the 3-mile limit for certain purposes. Legislation is now in effect whereby this Government exercises jurisdiction over foreign as well as domestic vessels for purposes of customs control (Antismuggling Act of August 5, 1935, 49 Stat. 517, 19 U. S. C. 1701–1711). This exercise of jurisdiction is recognized in international practice. Exercises of jurdisdiction in the high seas for fiscal, sanitation, or navigation purposes are not infrequent. The claim made by the United States in the Presidential proclamation of September 20, 1945, to jurisdiction and control of the national resources of the subsoil and seabed of the Continental Shelf off its coast was without precedent. In keeping with its traditional position, however, this Government carefully refrained from suggesting that it was claiming sovereignty, or an extension of its territorial waters or boundaries, and, indeed, specified in the proclamation that the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation were in no way affected.

In the Report of the Senate Interior Committee on the Submerged Lands Act (S. Rept. No. 133, 83d Cong., 1st Sess.), it was said (page 9):

> The complexity of the problem presented by the assumption by the United States of jurisdiction and control over the subsoil and seabed of the outer Continental Shelf is immediately

apparent from even a cursory examination of the Presidential proclamation. The declaration is limited to jurisdiction and control of the resources of the land mass; as stated in the proclamation—

> the character as high seas of the waters above the Continental Shelf and the right to their free and unimpeded navigation are in no way thus affected.

Clearly, we have here neither absolute sovereignty nor absolute ownership.

It must follow that the interest of the United States is, from a national and an international standpoint, politically and legally, *sui generis*.

In the congressional debates on the Submerged Lands Act it was clearly recognized that the proclamation of September 28, 1945, did not assert an extension of our boundary. Thus, Congressman Hays of Ohio said (99 Cong. Rec. 2503):

> Any attempt to extend the boundaries of the United States or any of its constituent States to the edge of the Continental Shelf would result in the most serious problems involving the freedom of the seas. The careful wording of the 1945 Presidential proclamation has protected the interests of the United States to date, deviations from this would not be acceptable.

Congressman Feighan of Ohio emphasized the same point (99 Cong. Rec. 2518):

> In the President's Continental Shelf proclamation of 1945 which related to the sea bed and subsoil under the high seas beyond the marginal belt, the President was careful not to assert

> title, but merely jurisdiction and control. This area is clearly outside of territorial waters and thus in a domain where international considerations prevail.

The same point was brought out in the Senate. Senator Sparkman of Alabama said (99 Cong. Rec. 4086):

> Every President from George Washington to President Eisenhower, every Secretary of State from Thomas Jefferson to John Foster Dulles—each of them, without exception—has insisted on the 3-mile limit; and our country has opposed efforts on the part of any other nation to extend its limits beyond 3 miles. * * * Mr. Tate, who was representing the Secretary of State and the Department of State in the presentation before the committee, * * * called attention to the fact that the Government of the United States had made a claim for the resources out to the edge of the Continental Shelf. * * * But Mr. Tate differentiates between our right to take those resources and the right of ownership.

Senator Douglas of Illinois said (99 Cong. Rec. 4113):

> If * * * we do not push ownership beyond the 3-mile limit, but if we assert Federal control, which is a different matter, out from the 3-mile limit, we can then with good grace protect our fishermen as they fish close to the coast, but beyond the 3-mile limit, off Mexico, Canada, and possibly Siberia.

The Outer Continental Shelf Lands Act did broaden the subject matter of the claim, to include the seabed

and subsoil instead of merely the natural resources therein. Sec. 3 (a), 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332 (a). However, it made no change in the character of the rights claimed, but retained exactly the former language, saying,

> It is hereby declared to be 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 as provided in this Act.

The report of the Senate Interior Committee said, with reference to this change (S. Rept. 411, 83d Cong., 1st Sess., p. 7):

> It will be noted that the proclamation asserted only that the Government of the United States "regards the natural resources of the subsoil and seabed" of the Continental Shelf as "appertaining to" the United States. The provisions of S. 1901 as reported carry this limited control a necessary step forward and extend the jurisdiction and control of the United States to the seabed and subsoil themselves.

Plainly, the change was only in the subject matter of the claim and not in its nature. This is fully borne out by the Senate debates on the Outer Continental Shelf Lands Act quoted above (*supra*, pp. 86–89).

It is thus apparent that both Congress and the Executive have consistently and purposefully maintained a distinction between our claim of rights in the outer continental shelf and an extension of the na-

tional boundary. The distinction should not be disregarded here, where Congress has used "boundary" as a term of art in defining the extent of the rights granted to the States.

4. This Court's decree of December 11, 1950, entitles the United States to an accounting for moneys received by Louisiana after June 5, 1950, from submerged lands seaward of the State boundary

Louisiana alleges (Paragraph III; Answer, 4) that neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act requires the State to make any payment to the United States. That allegation is correct but immaterial. The right of the United States to an accounting rests on this Court's decree of December 11, 1950, 340 U. S. 899, which as we have pointed out remains in full force and effect, except to the limited extent that rights under it were relinquished by the Submerged Lands Act. That relinquishment was limited to claims arising out of operations in the submerged lands that were granted to the State by the Act. Sec. 3 (b), 67 Stat. 30, 43 U. S. C. (1952 ed.) Supp. III, 1311 (b), Appendix A, *infra,* p. 166. And as already shown (*supra,* pp. 25–26), that grant was limited to lands lying within the State boundary as it existed when the State entered the Union or as approved by Congress before May 22, 1953, but not more than three leagues from the coast.

5. The Submerged Lands Act was a transfer of part of the rights awarded by this Court's decree of December 11, 1950, not a disclaimer of all such rights

Louisiana alleges (Paragraph IV; Answer, 4) that by the Submerged Lands Act, Congress recognized

that the United States had no right, title or interest in the lands, minerals and other things underlying the Gulf of Mexico, and relinquished all its rights therein, if any. As we have shown (*supra,* pp. 82–85), the Submerged Lands Act was not a disclaimer of the rights adjudicated by this Court, but rather was a grant of a limited portion thereof.

6. The Submerged Lands Act and Outer Continental Shelf Lands Act do not affect Louisiana's right, if any, to claim jurisdiction over the continental shelf and are not unconstitutional in limiting its assertions of title thereto

Louisiana alleges (Paragraph IV; Answer, 5–7) that insofar as the Submerged Lands Act and the Outer Continental Shelf Lands Act restrict the right of the State to extend its boundaries or title to the submerged lands and minerals to the edge of the continental shelf, and insofar as they assert any right therein in the United States, they are unconstitutional for four reasons. All of these contentions are unsound.

(a) THE TERMS OF THE LOUISIANA PURCHASE DID NOT GIVE THE STATE A CONSTITUTIONAL RIGHT TO ASSERT SUCH JURISDICTION AND TITLE

First, Louisiana asserts (Answer, 5–6) that under the treaty for the purchase of Louisiana, 8 Stat. 200, the United States was bound to "incorporate the purchased territory of Louisiana into the Union according to the principles of the federal constitution, and to maintain the inhabitants of Louisiana in their property in the territory with all its rights and appurtenances in the same manner as they had been acquired

by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it;" that Congress was bound by the treaty to hold the territory in trust for the States to be formed; that when it created the State it could not and did not attempt to retain any federal domain seaward therefrom; and that by subsequent boundary extensions Congress and the Executive could not deprive Louisiana of its sovereign rights and claims to the continental shelf. This argument must be rejected for several independent reasons.

(*i*) The fact that a statute is inconsistent with a prior treaty does not render the statute unconstitutional. Congress has power by statute to supersede a treaty. *Stephens* v. *Cherokee Nation,* 174 U. S. 445, 483.

(*ii*) Louisiana apparently seeks to invoke Article III of the treaty, 8 Stat. 202, which provided:

> The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

As this Court said, in *New Orleans* v. *De Armas,* 9 Pet. 224, 235:

> This article obviously contemplates two objects: one, that Louisiana shall be admitted

> into the Union, as soon as possible, upon an equal footing with the other states; and the other, that, until such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property and religion. * * * But this stipulation ceased to operate, when Louisiana became a member of the Union, and its inhabitants were "admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States."

Since the treaty provision has "ceased to operate," the State is no longer in a position to invoke it.

(*iii*) As we will show (*infra,* pp. 111–124), the outer continental shelf was not part of the territory which the United States acquired from France; therefore the treaty rights relied on by Louisiana never applied to it.

(*iv*) In any event, the treaty provision for admitting the inhabitants of Louisiana to the privileges of national citizenship "according to the principles of the Federal constitution" did not require that any one of the States to be formed out of the purchased territory should have greater jurisdictional or proprietary rights in the adjoining ocean than were enjoyed by other States. On the contrary, it required the State of Louisiana to be admitted on an equal footing with other States. *New Orleans* v. *De Armas,* 9 Pet. 224, 235. The maritime jurisdiction of all States is necessarily limited to that claimed by the United States, which is three miles from the coast (*supra,* pp. 39–62). The treaty did not give the State any

right to have more when it entered the Union, or to extend its boundaries thereafter beyond those claimed by the United States. As to proprietary rights in the marginal sea bed, the applicable constitutional principle is that all States entered the Union on an equal footing, with no such rights. *United States* v. *Texas,* 339 U. S. 707, 718; *United States* v. *Louisiana,* 339 U. S. 699. The Submerged Lands Act is an enlargement, not a restriction, of the State's rights in that respect. In granting proprietary rights to the State, Congress had complete discretion as to the extent of the rights to be granted. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 336.

(b) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY ARTICLE IV, SECTIONS 3 AND 4, OF THE CONSTITUTION

Second, Louisiana alleges (Answer, 6) that recognition of federal ownership of the submerged lands and resources of the outer continental shelf violates Sections 3 and 4 of Article IV of the Constitution. This Court has already held that the United States had complete rights in the marginal seabed and that the State had no proprietary rights therein. *United States* v. *Louisiana,* 339 U. S. 699. That decision necessarily determined that the Constitution does not require a different result.

(c) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY THE NINTH AMENDMENT TO THE CONSTITUTION

Third, Louisiana alleges (Answer, 6–7) that the Submerged Lands Act and Outer Continental Shelf

Lands Act violate the Ninth Amendment to the Constitution, to the extent that they assert federal proprietary rights in the outer continental shelf or restrict the boundaries or title of Louisiana therein. The proprietary rights asserted by those Acts have already been adjudicated by this Court. *United States* v. *Louisiana,* 339 U. S. 699. Neither Act purports to restrict State boundaries. They do restrict the submerged area granted to the State and assert federal control over the submerged area retained by the United States. As already noted, Congress has power to restrict such a grant to whatever limits it chooses. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 330–331.

(d) THE SUBMERGED LANDS ACT AND OUTER CONTINENTAL SHELF LANDS ACT DO NOT VIOLATE ANY RIGHTS GUARANTEED TO LOUISIANA BY THE TENTH AMENDMENT TO THE CONSTITUTION

Fourth, Louisiana alleges (Answer, 7) that the Submerged Lands Act and Outer Continental Shelf Lands Act violate the Tenth Amendment to the Constitution, insofar as they assert federal ownership in the submerged lands of the outer continental shelf, because Louisiana has never relinquished such rights to the United States. Since Louisiana has never had such rights, *United States* v. *Louisiana,* 339 U. S. 699, the question of relinquishment does not arise.

7. Louisiana's boundary is not necessarily coextensive with that of the United States

Louisiana alleges (Paragraph V; Answer, 7) that its southern boundary has always necessarily been coextensive with the southern boundary of the United

States acquired by the Louisiana Purchase. This allegation is both unsound and immaterial. It is immaterial because, as we shall show (*infra,* pp. 111–124), the boundary acquired by the United States from France was at the shore. The allegation is unsound because there is no reason why a State cannot have a more restricted seaward boundary than does the United States. For example, in *United States* v. *California,* 332 U. S. 19, 23, the Court took note of the fact that the federal boundary claim of three *nautical* miles extended seaward .45 of an English mile beyond the boundary of the State of California, established by its constitution at three *English* miles from the shore. And the original Atlantic Coast states did not all include a three-mile belt within their boundaries (see Brief for the United States In Support of Motion for Judgment, *United States* v. *California,* Oct. Term 1946, No. 12 Orig., pp. 93 *et seq.*). The Submerged Lands Act recognized that, by 1953, some states might not yet have extended their boundaries to the three-mile limit, by providing that all states might do so and approving such an extension.

8. Federal leasing in the disputed area has been authorized by Congress

Louisiana alleges (Paragraph VII; Answer, 8) that in issuing mineral leases on the submerged land now in suit, federal officials acted "without statutory authority and in violation of positive enactments of the United States Congress." The issuance of such leases is authorized by the Outer Continental Shelf Lands Act, Section 8 (a) of which provides, in part

(67 Stat. 468, 43 U. S. C. (1952 ed.) Supp. III, 1337 (a)):

> In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary [of the Interior] is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. * *

The term "outer Continental Shelf" is defined by Section 2 (a) of the Act (67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1331 (a)), as follows:

> The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

The only question, then, as to the authority of federal officials to issue leases is whether the area being leased was included in the grant made to the State by the Submerged Lands Act. As we have shown (*supra*, pp. 25–81), the grant there made to the State was in terms limited to a maximum extent of three leagues from the coast, and was in fact, we submit, limited to three marine miles therefrom.

9. Louisiana is not entitled to any proprietary rights in the seabed more than three miles from the coast by reason of its boundary extension statutes of 1938 and 1954

Louisiana alleges (Paragraph VIII; Answer 9–11) that the extent of its territorial jurisdiction in the Gulf of Mexico is that of an independent nation, and is coextensive with that of the United States; that the United States cannot deprive Louisiana of the benefit of an extension of national sovereignty into contiguous territory; that Presidential Proclamation No. 2667, the Submerged Lands Act and the Outer Continental Shelf Lands Act have extended national jurisdiction over the subsoil, seabed and natural resources of the continental shelf and are unconstitutional to the extent that they seek to divest Louisiana of its title to and right to possession of the seabed, subsoil, and natural resources of the continental shelf and restrict the right of Louisiana to extend its boundaries to the edge of the continental shelf; and that Louisiana Act 55 of 1938 and Act 33 of 1954, declaring the State boundary to be extended to include large parts of the continental shelf, are in accord with international law and the policies of the United States, at least insofar as they relate to the subsoil, seabed and natural resources of the Gulf of Mexico.

Like most of the Answer's other allegations, these allegations too are wholly immaterial to the present issues. This case involves rights of a proprietary nature. In 1950, this Court held that all such rights in the submerged lands and resources of the marginal seabed belonged to the United States and not to Louisiana, regardless of where the State boundary

might be located. *United States* v. *Louisiana,* 339 U. S. 699, 705. Thereafter, by the Submerged Lands Act, Congress granted those rights, within certain limits, to Louisiana. Territorial boundaries are material here only to the extent that Congress used them as the measure of that grant of proprietary rights. As such measure, Congress in its discretion chose to use the State boundary as it existed when the State entered the Union, or as extended at any time to a distance of three miles from the coast, or as approved by Congress before May 22, 1953 (the effective date of the Act), but in no event extending more than three leagues from the coast. Thus, Louisiana's claims that it has extended its boundary are immaterial unless the asserted extensions comply with the conditions laid down by Congress. Obviously, extensions based on statutes of 1938 and 1954 were not in existence when Louisiana entered the Union in 1812. Neither is it alleged that they were approved by Congress before May 22, 1953; and the fact is that they were not so approved. It follows that, whatever might be their effectiveness as extensions of territorial boundaries, they could afford the State no ground for claiming the proprietary rights now in issue, more than three miles from the coast.

Also, these allegations by Louisiana are largely incorrect. We agree that the seaward boundaries of the State and the United States are both three miles from the coast. Since the national boundary has not been extended further (*supra,* pp. 85–97), it seems academic to consider whether, if such an extension

were made, Louisiana would have a constitutional right to conform to it. However, we find nothing in the Constitution conferring such a right, and history does not seem to support it. In the past, acquisitions of "territory contiguous to * * * any border or coastal state" (Paragraph VIII (a); Answer, 9) has not led to corresponding enlargement of such States. The acquisition of Florida from Spain in 1819 (8 Stat. 252) did not inure to the benefit of Georgia, nor did the acquisition of New Mexico, Arizona, and California from Mexico in 1848 (9 Stat. 922) inure to the benefit of Texas. Even as to submerged lands, Louisiana's own history indicates that they need not be included in adjacent States. Louisiana's western boundary, as described in her Act of Admission (2 Stat. 701) is the middle of the Sabine river, but the western boundary of the United States at that point, as fixed by the Treaty of February 22, 1819, with Spain (8 Stat. 252, 254–256), the Treaty of January 12, 1828, with Mexico (8 Stat. 372, 374) and the Convention of April 25, 1838, with the Republic of Texas (8 Stat. 511), was the western bank of the Sabine. The western half of the river bed was never included in Louisiana, however, and a few years after Texas was admitted into the Union, Congress permitted Texas to annex the western half of the river bed. Act of July 5, 1848, 9 Stat. 245.

Neither the Submerged Lands Act nor the Outer Continental Shelf Lands Act purports in any way to restrict boundary extensions by coastal States; it is therefore unnecessary to consider further the allegation (Paragraph VIII (c); Answer, 10) that they are

unconstitutional to the extent that they seek to do so. The Submerged Lands Act does, of course, restrict the extent to which it uses State boundaries as the measure of the submerged area granted; but we repeat that there can be no question of the power of Congress to fix limits on the amount of property it gives away. And the allegation that the Submerged Lands Act and Outer Continental Shelf Lands Act are unconstitutional in asserting federal ownership of the subsoil, seabed and natural resources of the continental shelf is plainly unsound, in view of this Court's holding that the United States held all rights therein, to the complete exclusion of the State. *United States* v. *Louisiana,* 339 U. S. 699.

Louisiana alleges (Paragraph VIII (d); Answer, 11) that its boundary extension statutes of 1938 and 1954 are in accord with national policy and international law, at least insofar as they relate to the subsoil, seabed and natural resources under the Gulf of Mexico. That is not so. As we have shown (*supra,* pp. 39–81), it is settled national policy to limit boundary claims of this country to three miles from the coast, and to maintain that international law does not permit the assertion of greater claims. While we do recognize and assert rights to control exploitation of the seabed and its resources beyond that limit, this Court has held that such rights belong in the first instance to the Federal Government and not to the States, *United States* v. *Louisiana,* 339 U. S. 699; and the Submerged Lands Act, Section 9, 67 Stat. 32, 43 U. S. C. (1952 ed.) Supp. III, 1302, and the Outer Continental Shelf

Lands Act, Section 3, 67 Stat. 462, 43 U. S. C. (1952 ed.) Supp. III, 1332, manifest a clear national policy to retain such rights in the Federal Government exclusively.

In this connection, Louisiana quotes (Paragraph VIII (d); Answer, 11) a passage from this Court's opinion in *United States* v. *Louisiana,* 339 U. S. 699, which it construes as a recognition of the effectiveness of the State's boundary extension. However, the quotation is incomplete. The entire sentence, italicizing the portion omitted by the State in its answer, reads (339 U. S. at 705–706):

> *So far as the issues presented here are concerned,* Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil.

The issue there presented was, of course, whether the United States or the State was entitled to exploit the resources of the area, and the federal claim there referred to was a claim against the State. The context of the sentence was a discussion of the importance of exclusive federal control in areas of international concern. Thus, the sentence in fact means that Louisiana's ill-considered excursion into this high-seas area emphasized the force of the Government's claim that the area should be considered exclusively a federal one.

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10. Decision of this case involves application of the foreign policy established for the United States by the political branches of the Government

Louisiana also alleges (Paragraph IX; Answer, 12) that no matter of foreign policy is here involved, because the outer boundaries of the United States have already been settled by the political branches of the Government. This allegation misconstrues the position of the United States. We do not ask the Court to formulate foreign policy with respect to boundaries; on the contrary, we respectfully submit that it has no authority to do so, but must accept such policy as adopted by the political branches of the Government. We fully agree with Louisiana that what is involved here is a domestic dispute as to rights to exploit the resources of the continental shelf. However, Congress has chosen to allocate those rights by reference to State boundaries. Those boundaries, in turn, are necessarily limited by national boundaries. Thus it becomes necessary to discover, as a limiting factor, what are the national boundaries established by the political branches of the Government. We believe that this Court is the forum in which that inquiry can most appropriately be conducted.

11. Louisiana has not acquired rights against the United States in the outer continental shelf by exercise of ownership or jurisdiction thereover

Finally, Louisiana alleges in its First Defense (Paragraph IX; Answer, 13) that it has exercised jurisdiction and ownership over the submerged lands continuously, without any interference prior to 1949.

So far as ownership is concerned, *United States* v. *Louisiana,* 339 U. S. 699, 702, 705, established that the State's exercise of acts of ownership was unavailing against assertion of the rights of the Federal Government in the area. So far as jurisdiction is concerned, any boundary claimed to have been established thereby beyond the three-mile limit is irrelevant because not existing when the State entered the Union or approved by Congress before May 22, 1953. Submerged Lands Act, Section 2 (b), 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b). Moreover, we consider it too plain for argument that a State cannot by any means extend its exterior boundary beyond the boundary claimed by the United States.

For the foregoing reasons, we submit that Louisiana's First Defense raises no genuine issue as to any material fact, and is insufficient in law.

B. REPLY TO SECOND DEFENSE

1. Neither France nor Spain claimed territorial jurisdiction seaward of the shore of Louisiana

Louisiana's Second Defense (Answer, 13–17) is that Louisiana, as originally claimed for France by La Salle, extended into the Gulf of Mexico to the 27th parallel (about 120 miles south of the southernmost islands or shore of Louisiana); that the same extent into the Gulf was continuously claimed by France and successively transferred to Spain, back to France, and to the United States; and that the Act admitting the State of Louisiana to the Union likewise embraced the Gulf of Mexico to the 27th

parallel. The claim is historically and legally unsound.

It is apparent from La Salle's proclamation of April 9, 1682, that it was the mouth of the Mississippi which defined the limit of his claim. His expression of the mistaken belief that the river mouth, which he had visited just before issuing the proclamation, was at "about" the 27th parallel did not show any intention to claim to that parallel, however far out in the Gulf it might actually be. His claim was that

> I * * * have taken and do take possession * * * of this country of Louisiana, seas, harbors, ports, bays, adjacent straits and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, rivers, streams, comprehended in the extent of the said Louisiana, from the mouth of the great river Saint Louis on the east side, otherwise called Ohio, Olighinsipou or Chukagoua, and this with the consent of the Chaouesnons, Chicachas and other peoples living there with whom we have made alliance, as also along the river Colbert, or Mississippi, and streams which discharge therein, from its source beyond the country of the Sioux or of the Nadouesioux, and this with their consent and of the Ototantas, Illinois, Matsigamea, Arkansas, Natchez, Koroas, who are the most important nations that live there, with whom we have made alliance in person or through people in our behalf, as far as its mouth in the sea or gulf of Mexico, about 27 degrees of the elevation of the north pole as far as the mouth of the Palms, on the assurance that we have had from all these nations

> that we are the first Europeans who have descended or ascended the said river Colbert.[26]

The *procès-verbal,* or official report, of Jacques de la Métairie, notary of the La Salle expedition, shows that the proclamation was issued after the mouth of the Mississippi had been reached and the party had returned upstream only far enough to find solid ground for the erection of a monument, and that La Salle then thought that they were at about the 27th parallel:

> We continued the navigation until the 6th [of April, 1682], when we arrived at three channels by which the river Colbert discharges in the sea. We camped on the bank of the western channel, at three leagues or thereabouts from the mouth.

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[26] * * * Je * * * ay pris et prends possession * * * de ce pays de la Louisiane, mers, havres, ports, bayes, destroits adjacents et toutes les nations, peuples, provinces, villes, bourgs, villages, mines, minières, pesches, fleuves, rivières, compris dans l'estendue de ladite Louisiane, depuis l'emboucheure du grand fleuve Saint-Louis du costé de l'est, appelé autrement Ohio, Olighinsipou ou Chukagoua, et ce du consentement des Chaouesnons, Chicachas et autres peuples y demeurant avec qui nous avons fait alliance, comme aussy le long du fleuve Colbert, ou Mississipi, et rivières qui s'y deschargent, depuis sa naissance au delà du pays des Sioux ou des Nadouesioux, et ce de leur consentement et des Ototantas, Islinois, Matsigamea, Akansas, Natchez, Koroas, qui sont les plus considérables nations qui y demeurent, avec qui nous avons fait alliance par nous ou gens de nostre part, jasqu'à son embouchure dans la mer ou golfe de Mexique, environs les 27 degrez d'élévation du pôle septentrional jusques à l'emboucheure des Palmes, sur l'asseurance que nous avons eue de toutes ces nations que nous sommes les premiers Européens qui ayent descendu ou remonté ledit fleuve Colbert." 2 Margry, *Découvertes et Établissements des Français dans L'Ouest et dans le Sud de L'Amérique Septentrionale* (1877) 191–192.

> On the 7th, M. de La Salle went to explore it and visit the shores of the neighboring sea, and M. de Tonty the large central channel. These two mouths having been found fine, wide and deep, on the 8th we reascended a little above the confluence to find a dry place that was not overflowed. At about 27 degrees of the elevation of the pole, were prepared a column and a cross * * *.[27]

The proclamation was uttered, with appropriate solemnities, at that point. Clearly, La Salle intended to claim to the mouth of the river, he erected the monument as near thereto as he could find solid ground for the purpose, and he believed that he was then at about the 27th degree of latitude.

Thirty years after La Salle's proclamation, on September 14, 1712, Louis XIV granted to his secretary, Antoine de Crozat, letters patent for exclusive trading rights in Louisiana. That grant described Louisiana as beginning *at the shore of the sea.* It provided, in the last paragraph of its preamble and in its first article:

> * * * We have by these Presents signed by our hand, established & do establish the said Sieur

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[27] "On continua la navigation jusques au 6e, qu'on arriva aux trois canaux par lesquels le fleuve Colbert se descharge dans la mer. On campa sur le bord du canal occidental, à trois lieues ou environ de l'emboucheure. Le 7e, M. de La Salle le fut reconnoistre et visiter les costes de la mer voisine, et M. de Tonty le grand canal du milieu. Ces deux emboucheures s'estant trouvées belles, larges et profondes, le 8e on remonta un peu au-dessus du confluent pour trouver un lieu sec et qui ne fust point inondé. Environ à 27 dégrez d'élévation du pôle, on fit préparer une colonne et une croix * * *." 2 Margry, *op. cit.* 186, 190–191.

Crozat to conduct alone the commerce in all the Lands possessed by Us & bounded by new Mexico, & by those of the English of Carolina all the establishments, Ports, Harbors, Rivers & principally the Port & Harbor of Dauphine Island formerly called Massacre, the River Saint Louis formerly called Mississipy *from the shore of the Sea* as far as the Illinois, together with the Rivers saint Philippe formerly called the Missourys, & saint Hierosme formerly called Ovabache with all the Countries Regions, Lakes in the Lands & the Rivers which fall directly or indirectly into this part of the River Saint Louis.

First Article.

We will that all the said Lands, Regions, Rivers, Streams & Islands be and remain comprised under the name of the government of Louisiana, which shall be dependent on the general government of new France, to which it shall remain subordinate * * * .[28]

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[28] Emphasis added. This is a translation of the French text (from a copy in the Henry E. Huntington Library, San Marino, California) as separately printed at Paris, in 1712, by Muguet, Chief Printer to the King and Parlement ("Lettres Patentes du Roy, Qui permettent au Sieur Crozat Secretaire du Roy, de faire seul le Commerce dans toutes les Terres possedées par le Roy, & bornées par le nouveau Mexique & autres. * * * A Paris, Chez la Veuve François Muguet & Hubert Muguet, Premier Imprimeur du Roy & de son Parlement, ruë de la Harpe, aux trois Rois. 1712.") :

* * * Nous avons par ces Presentes signées de nostre main, établi & établissons ledit Sieur Crozat pour faire seul le commerce dans toutes les Terres par Nous possedées & bornées par le nouveau Mexique, & par celles des Anglois de la Caroline tous les établissemens, Ports, Havres, Rivieres & principalement le Port & Havre de l'Isle Dauphine appellée autrefois de Massacre, le Fleuve Saint Loüis autrefois

Here we see the king giving a comprehensive definition of the area to be included in the province of Louisiana, and describing it as beginning at the seashore. Plainly, he did not consider that the province extended any distance whatever into the Gulf of Mexico.

When France transferred Louisiana to Spain by the secret treaty of November 3, 1762, the cession was described only as "all the country known under the name of Louisiana, as well as New Orleans and the island in which that place stands." See 13 Cong.

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appellé Mississipy depuis le bord de la Mer jusq' aux Illinois, ensemble les Rivieres saint Philippe autrefois appellée des Missourys, & saint Hierosme autrefois appellée Ovabache avec tous les Pays Contrées, Lacs dans les Terres & les Rivieres qui tombent directement ou indirectement dans cette partie du Fleuve Saint Loüis.

Article Premier.

Voulons que toutes lesdites Terres, Contrées, Fleuves, Rivieres & Isles soient & demeurent compris sous le nom du gouvernement de la Loüisiane, qui sera dépendent du gouvernement general de la nouvelle France, auquel il demeurera subordonné * * * .

There was another French edition of the letters patent, printed at Paris, "Chez la Veuve Saugrain & Pierre Prault, à l'entrée du Quay de Gêvres, du côté de Pont au Change, au Paradis," undated but apparently of about the same period, which differs from the foregoing in that, in lieu of "depuis le bord de la Mer" (from the shore of the Sea) it reads, "depuis le port de la Mer"—that is to say, "from the seaport." However, "bord de la Mer" seems to have been generally accepted as the correct text. It was followed in the *Recueil d'Arrests* (Amsterdam, 1720) and has been used by translators. See, *e. g.*, Hermann, *The Louisiana Purchase* (G. P. O. 1898), 15 ("from the edge of the sea"); Greenhow, *Memoir, Historical and Political, on the Northwest Coast of North America* (S. Doc. No. 174, 26th Cong., 1st Sess., 1840), 150 ("from the seacoast"). But even the alternative version, "from the seaport", clearly would have referred to a coastal starting point and not one any distance out in the Gulf of Mexico.

Deb. (24th Cong., 2d Sess.) Pt. 2, App., 226. However, by the Seventh Article of the treaty between France, Spain and Great Britain, executed at Paris on February 10, 1763, it was agreed that

> for the future, the confines between the dominions of his Britannic majesty, and those of his most Christian [*i. e.,* French] majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Pontchartrain, *to the sea;* and for this purpose, the most Christian king cedes in full right, and guaranties to his Britannic majesty, the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans, and the island in which it is situated, which shall remain to France * * *. [Emphasis added.]

15 *Parliamentary History of England,* 1291, 1296. This conformed to the sixth article of a preliminary convention executed by the same powers at Fontainebleau on November 3, 1762, the date of the secret cession of Louisiana to Spain. *Ibid.,* 1241, 1244. See 13 Cong. Deb. (24th Cong., 2d Sess.) Pt. 2, App., 227. Whatever one may think of the degree of candor shown by his most Christian Majesty and his Most Catholic Majesty in thus describing as property of the former what had already been secretly transferred to the latter, the fact remains that the three European powers

interested in North America here joined in defining the eastern limit of Louisiana as terminating at the sea.

It is very natural that we thus find no intention, up to this point, to make a territorial claim in the Gulf of Mexico, for, as this Court has observed in the case where the whole subject of the marginal sea was given most exhaustive consideration, the concept of territorial ownership of the marginal sea did not arise in international law until after the time when this country achieved its independence. *United States* v. *California,* 332 U. S. 19, 32–33.

By Article 3 of the Treaty of San Ildefonso, October 1, 1800, Spain retroceded to France

> the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.[29]

The Treaty of April 30, 1803, by which France ceded Louisiana to the United States, recited the foregoing terms of the Treaty of San Ildefonso, and provided (8 Stat. 202):

> The First Consul of the French Republic * * * doth hereby cede to the said United States * * * the said territory with all its rights and

[29] "* * * la Colonie ou Province de la Louisiane, avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avoit lorsque la France la possédoit, et telle qu'elle doit être d'après la traités passés subséquemment entre l'Espagne et d'autres Etats." See 8 Stat. 202, 203.

> appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with his Catholic Majesty.
>
> Art. II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. * * *

The specific reference to islands, in Article II, would have been unnecessary if the cession had extended to the 27th parallel, which is 120 miles south of all islands. It plainly shows that the parties, with their attention particularly directed to the question of the Gulf of Mexico, regarded the cession as including the islands therein and nothing more.

Thereafter, the United States engaged in a long dispute with Spain over the eastern and western limits of Louisiana as so ceded. The Spanish views as to the southern limit, although it was not in issue, also appear incidentally from that correspondence. Thus, Pedro Cevallos, the Spanish Foreign Minister, writing on April 13, 1805, to Charles Pinckney and James Monroe, the American Envoys, said (*American State Papers;* 2 Foreign Relations 662):

> It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, *beginning at the Gulf of Mexico,* between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north * * *. [Emphasis added.]

Louis de Onis, the Spanish Ambassador, writing to John Quincy Adams, Secretary of State, on December 29, 1817, said with respect to the situation existing at the time of the Treaty of San Ildefonso (*American State Papers;* 4 Foreign Relations 453):

> At that time Louisiana was, in the hands of Spain, precisely what it was when ceded by France, in virtue of the treaty of 1764. In the same treaty its eastern boundaries are marked by a line running eastward from Manchac Point, thence following the course of the river Iberville, and dividing the lakes Borgne, Pontchartrain, and Maurepas, and *finally terminating at the Gulf of Mexico,* without leaving the smallest doubt as to the true points of the frontier. [Emphasis added.]

Writing again to Secretary Adams on March 23, 1818, de Onis said (*American State Papers;* 4 Foreign Relations 484):

> That which has been said by Don Pedro Cevallos and by me, and which can admit of no doubt, is, that the western boundaries of Louisiana have always been notorious and acknowledged between Spain and France; *from the ocean* by a line drawn between the rivers Mermento and Calcasia, running by Arroyo Hondo, between the Adaes and Natchitoches, crossing the Rio Roxo, (Red River,) and ascending towards the north. [Emphasis added.]

As the foregoing shows, both France and Spain always regarded Louisiana as being bounded on the south by the Gulf of Mexico, and not as extending any distance therein. Thus, there is no foundation

for any contention that the United States acquired from France an area extending into the Gulf to the 27th parallel, or any other distance.

2. Great Britain did not recognize Spanish jurisdiction in the Gulf of Mexico by the Treaty of 1790

Louisiana further alleges (Answer, 14–15) that a Spanish claim to the Gulf of Mexico as far as the 27th parallel was recognized by Britain in the Escurial Treaty of October 28, 1790, by mutual agreement "to boundaries, both in North and South America, extending ten leagues seaward into the Pacific Ocean and the South Seas, which latter seas included the Gulf of Mexico." The allegation is fallacious in every particular.

Since the 27th parallel is 40 leagues or more from the coast of Louisiana, it does not appear how a claim to that distance would be "recognized" by an agreement for boundaries extending 10 leagues seaward. More importantly, the treaty referred to was not a recognition of maritime boundaries at all; it was merely an agreement that, to prevent smuggling, British ships would not approach within 10 leagues of Spanish settlements. The relevant provisions were:

> III. And in order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the 2 Contracting Parties, it is agreed that their respective Subjects shall not be disturbed or molested either in navigating or carrying on their Fisheries in the Pacific Ocean, or in the South Seas, or in landing on the Coasts of those Seas,

in places not already occupied, for the purpose of carrying on their commerce with the Natives of the Country, or of making Settlements there; the whole subject, nevertheless, to the restrictions and provisions specified in the 3 following Articles.

IV. His Britannic Majesty engages to take the most effectual measures to prevent the Navigation and Fishery of his Subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit trade with the Spanish Settlements; and, with this view, it is moreover expressly stipulated, that British Subjects shall not navigate, or carry on their Fishery in the said Seas, within the space of 10 sea leagues from any part of the Coasts already occupied by Spain.[30]

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[30] Translation appearing in *British and Foreign State Papers. 1812–1814* (London, 1841) Vol. I, Part I, 663, 665–666. The parallel official French text also appears there, as follows:

III. Et, afin de resserer les liens de l'amitié, et de conserver à l'avenir une parfaite harmonie et bonne intelligence entre les 2 Parties Contractantes, il est convenu que les Sujets respectifs ne seront point troublés ni molestés, soit en naviguant ou en exerçant leur Pêche dans l'Océan Pacifique, ou dans les Mers du Sud, soit en débarquant sur les Côtes qui bordent ces Mers, dans des endroits non déjà occupés, afin d'y exercer leur commerce avec les Naturels du Pays, ou pour y former des Etablissemens. Le tout sujet néanmoins aux restrictions et aux provisions qui seront spécifiées dans les 3 Articles suivans.

IV. Se Majesté Britannique s'engage d'employer les mesures les plus efficaces pour que la Navigation et la Pêche de ses Sujets dans l'Océan Pacifique, ou dans les Mers du Sud, ne deviennent point le prétexte d'un commerce illicite avec les Etablissemens Espagnols; et, dans cette vûe, il est en outre expressément stipulé, que les Sujets Britanniques

Moreover, the agreement was confined to the Pacific Ocean and the South Seas. Louisiana's allegation (Answer, 15) that the South Seas included the Gulf of Mexico, is wholly unsupportable. The term South Sea or South Seas referred to the Pacific Ocean, particularly the South Pacific, or sometimes to the waters of the southern hemisphere:

> South Sea. Name given to the Pacific by its discoverer, Vasco Nunez de Balboa (1513). As the Isthmus of Panama, where he crossed it, runs nearly east and west, the Pacific forms its southern shore: hence, to the Spaniards on the Isthmus it was the South Sea. Until the 19th century this was the common name, sometimes employed in a special manner for the South Pacific. It is still occasionally used. (3 *Century Cyclopedia of Names* (1954) 3666.)
>
> South sea, *n.* [Sp., *el Mar del Sur.*] 1. The Pacific Ocean;—so called when discovered in 1513 by Vasco Nunez de Balboa, Spanish governor of Darien, who first beheld it when looking south.
>
> 2. *pl.* The seas of the Southern Hemisphere; esp., the south Pacific Ocean. (*Webster's New International Dictionary* (2d ed., unabridged, 1956) 2406.)
>
> South Sea. A name formerly applied to the Pacific Ocean and the China Sea. (21 *New International Encyclopaedia* (1930) 326.)

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ne navigueront point, et n'exerceront pas leur Pêche dans les dites Mers, à la distance de 10 lieues maritimes d'aucune partie des Côtes déjà occupées par l'Espagne.

South Sea, name formerly given to the Pacific Ocean. (*Macmillan's Modern Dictionary* (1938) 1152.)

South Sea; *Span. El Mar del Sur* * * *. The Pacific Ocean—so named by Balboa on his discovery of it in 1513. In the plural, South Seas, the waters of the Southern Hemisphere, esp. the South Pacific Ocean. (*Webster's Geographical Dictionary* (1949) 1070.)

South Sea, a name formerly applied to the Pacific Ocean. * * * (*Lippincott's Gazetteer of the World* (Heilprin ed., 1922) 1740.)

We find only one reference work, *Murray's New English Dictionary* (1919), recognizing additional applications for the term, and they are plainly irrelevant here (the dagger marks obsolete usages):

South Sea * * *.

† 1.a. The sea to the south of Europe; the Mediterranean. *Obs.*

† b. The English Channel. *Obs.*

2. *pl.* The seas of the southern hemisphere; *esp.* the South Pacific Ocean.

3. The South Pacific Ocean; † the Pacific Ocean as a whole (obs.). (*Op. sit.*, vol. IX, Pt. 1, p. 485.)

The Gulf of Mexico is no part of the Pacific Ocean. It and indeed the entire Caribbean Sea lie well north of the Equator. The area here under discussion lies north of the 27th parallel, and so is removed from the Equator by 27 degrees, or 1620 nautical miles. It could not possibly be considered water of the Southern Hemisphere. It follows that it was not within the scope of the provision of the Escurial Treaty.

3. French and Spanish claims of maritime jurisdiction would not determine the boundary of the State of Louisiana

Even if France and Spain had claimed to the 27th parallel and Britain had recognized that claim, those circumstances would be entirely unavailing to Louisiana here. As we have shown (*supra,* pp. 65–67), the extent of the territory subject to the jurisdiction of a foreign nation is a political question, and a decision reached on that subject by the political branches of a government is binding upon the courts of that government. That rule was announced by this Court long ago, in a case involving the precise question of the extent of the territory of Louisiana as acquired by the United States from France. *Foster* v. *Neilson,* 2 Pet. 253. The issue there was whether the Louisiana Purchase was bounded on the east by the Iberville river,[31] or extended east to the Perdido river (the present western boundary of Florida). That depended, in turn, on whether the area between the two rivers was included in the retrocession of Louisiana to France by Spain, by the Treaty of San Ildefonso. At issue was the validity of land grants made by Spain in the area between 1803, the date of the Louisiana Purchase, and 1819 when the United States acquired Florida from Spain. Both Spain and France asserted that the disputed area had not been transferred to France by the Treaty of San Ildefonso; but the President and Congress took a different view, and this Court held that it was bound to conform to their decision.

[31] Now called Bayou Manchac. See *Louisiana* v. *Mississippi,* 202 U. S. 1, 37; Adams, *Atlas of American History* (1943), plates 49 and 50.

Chief Justice Marshall, speaking for the Court, said (2 Pet. at 307):

> In a controversy between two nations, concerning national boundary, it is scarcely possible, that the courts of either should refuse to abide by the measures adopted by its own government. * * * The judiciary is not that department of the government, to which the assertion of its interests against foreign powers is confided; and its duty commonly is, to decide upon individual rights, according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the legislature, if that will has been clearly expressed.

We have shown (supra, pp. 42–60) that the Government of the United States, acting through the Executive as that branch of the Government charged with foreign affairs, has consistently refused to recognize that any nation can possess a belt of territorial waters wider than three nautical miles. The courts of the United States are bound to accept that view. Here, then, it must be held that neither France nor Spain had a marginal belt wider than three miles along the coast of Louisiana, and that the United States consequently could not have received, and did not receive, from France a boundary more than three miles from the coast, at the most.

4. Louisiana's Act of Admission did not include by implication a boundary more than three miles from the coast

Phrasing its point in another fashion, Louisiana alleges (Answer, 15–16) that, since the Gulf area between the shore and the 27th parallel was not expressly excepted by Congress, it was included by implication, if not in terms, by the description of Louisiana in the Act of Admission, 2 Stat. 701, as "bounded by the said Gulf * * * including all islands within three leagues of the coast", and that ownership of the submerged lands in the sea is an attribute of sovereignty which likewise passed to the State in the absence of specific provision to the contrary.

The answer to this contention is the same we have already given. The implication as to boundary rests on the supposition that that portion of the Gulf had been acquired by the United States from France. As we have proved (*supra,* pp. 111–124) the territory acquired from France was bounded by the shore; consequently, that grant cannot support any implication that the State of Louisiana was given a greater extent. If the State did receive a marginal belt by implication, it was a three-mile belt accorded by the policy of the United States; but we consider it unnecessary to decide whether or not the State had such a belt upon entering the Union, as we concede that it does now. In any event, ownership of the submerged land of the marginal sea would not pass to the State, as such ownership is an attribute of national rather than State sovereignty. *United States* v. *Louisiana,* 339 U. S. 699.

C. REPLY TO THIRD DEFENSE

1. Louisiana *v.* Mississippi *did not hold that the boundary of Louisiana extends three leagues into the Gulf of Mexico*

In this defense, Louisiana first alleges (Paragraph 1; Answer, 17) that its seaward boundary extends at least three leagues into the Gulf of Mexico, and in support thereof asserts "that its southern boundary has been adjudged by this Court to be a water boundary in the open sea, that its limits extend at least three marine leagues seaward from its coast line (*Louisiana* v. *Mississippi,* 202 U. S. 1, 50 L. Ed. 913) and said limits are drawn on the diagrams which are made a part of the Court's decision in that case." It is not clear how much of the foregoing allegation is attributed to the decision in *Louisiana* v. *Mississippi;* but it is perfectly clear that the decision in that case does not in fact give any support to Louisiana's claim of a three-league boundary.

The issue there was the location of the boundary between Louisiana and Mississippi in Lake Borgne and Mississippi Sound. Those are inland waters, as the Court specifically held in applying the thalweg rule to them. 202 U. S. at 48, 50–53. The decree traces the boundary through Mississippi Sound "between Cat Island and Isle à Pitre, *to the Gulf of Mexico,* as delineated on the following map * * *." (202 U. S. at 58; emphasis added.) The map shows only as far east as the 89th meridian, within Chandeleur Sound, which, as Louisiana will presumably concede, is itself inland water. Thus, there is nothing in the decree to indicate how far, if at all, the

boundary extends *into* the Gulf, or what width of territorial waters is within the gulfward boundaries of the two States. The opinion makes it clear that that question was not reached (202 U. S. at 52):

> Questions as to the breadth of the maritime belt or the extent of the sway of the riparian States require no special consideration here. The facts render such discussion unnecessary.

Louisiana's reference (Answer, 17) to its limits in the Gulf as "drawn on the diagrams which are made a part of the Court's decision in that case" is somewhat misleading. Those diagrams were exhibits to Louisiana's bill, and were included as such in the statement of the case which precedes the arguments of counsel and opinion of the Court. 202 U. S. at 4, 5. They are drawn on a small scale,[32] and the red line marking the State boundary was obviously drawn with a very free hand—even on the land portions it obviously is used to emphasize rather than depict a boundary. The gulfward boundary which it shows is not alike on the two diagrams, and varies from about nine to 18 nautical miles from the shore. The Court referred to the two diagrams (202 U. S. at 36–37) as showing, respectively, the limits of the State before and after the addition, made by the Act of April 14, 1812, 2 Stat. 708, of the area between the Iberville and Pearl rivers. In the light of what has been said

[32] According to the legend, the scale on Diagram No. 1 was one inch to 86 miles, and on Diagram No. 2, one inch to 90 miles. As reproduced in the report, both appear to be on a scale of one inch to 74 nautical miles or 85.21 statute miles.

above, that casual reference clearly was not an endorsement, let alone an adjudication, of the erratic, excessive and inconsistent gulfward boundaries sketched on those diagrams, which were not at all in issue in the case.

2. Louisiana is not entitled to the submerged lands and resources within a marginal belt measured from the Coast Guard line

Louisiana next alleges (Paragraphs 2–6; Answer, 18–20) that its boundary is three leagues seaward of the line of demarcation between its inland waters and the open sea, and that the line established by the Commandant of the Coast Guard (33 C. F. R. 82.95, 82.103) constitutes that line of demarcation and has been so recognized by Louisiana Act 33 of 1954 (La. Acts, 1954, p. 63). In our view, this allegation is immaterial, unsound, and relates to an issue that is not before the Court on the Government's present motion for judgment.

(*a*) The judgment sought by the complaint (p. 8) and motion (p. 1) is one declaring the rights of the United States as against Louisiana in the submerged lands and minerals lying more than three miles seaward from the ordinary low-water mark and outer limit of inland waters. Such a decree will determine whether the limit of the State's submerged lands should be predicated on a base line so defined (*i. e.*, as distinguished from the State's absolute claim to the 27th parallel) and, if so, at what distance therefrom. For reasons stated below (*infra*, pp. 158–161), we believe that the first step in the decision of this case should be entry of a decree of that character. There-

after, supplementary proceedings may appropriately be had to resolve any disputes that may arise, in view of the particular terms of the decree entered, regarding its application to the terrain at any particular point. The question of whether the Coast Guard line is the proper base line should be deferred, in this view, for consideration along with all other contentions that may be made as to the proper identification of such base line as the decree may designate. Nevertheless, we shall discuss here briefly our reasons for believing the Coast Guard line should be rejected as the base line. It is not clear whether Louisiana relies on the Coast Guard line as having some operative effect to create new rights in the State, or merely as evidence of what has been the outer limit of the inland waters of the State ever since it entered the Union; but we submit that, viewed in either light, the line can give no support to Louisiana's claims.

(*b*) Clearly, the Coast Guard line is not an interpretation of the extent of Louisiana's existing inland waters. This was emphatically declared by the man best qualified to know, the Commandant of the Coast Guard himself, at the time of promulgating the line. His order establishing the line included the following (18 Fed. Reg. 7893):

> The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. Section 2 of the act of February 19, 1895, as amended (33 U. S. C. 151), authorizes the establishment of these descriptive lines primarily to indicate where different statutory and regulatory rules for

> preventing collisions of vessels shall apply and must be followed by public and private vessels. These lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters. Upon the waters inshore of the lines described, the Inland Rules and Pilot Rules apply. Upon the waters outside of the lines described, the International Rules apply.

Even if the Commandant had misconstrued his authority, it is obvious that a line which he formulated without regard to jurisdictional boundaries can have no weight as an interpretation of those boundaries. However, we submit that he was correct in his belief that the statute under which he acted provided for nothing more than the establishment of navigational rules. That statute, the Act of February 19, 1895, 28 Stat. 672, was entitled,

> An Act To adopt special rules for the navigation of harbors, rivers and inland waters of the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal, supplementary to the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea."

Relevant provisions of the Act were:

> That on and after March first, eighteen hundred and ninety-five, the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regu-

lations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States.

* * * * *

SEC. 2. The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

Section 2, *supra,* is now codified as 33 U. S. C. 151. The authority which it conferred on the Secretary of the Treasury was successively transferred to the Secretary of Commerce and Labor (Act of February 14, 1903, Sec. 10, 32 Stat. 829), later redesignated "Secretary of Commerce" (Act. of March 4, 1913, Sec. 1, 37 Stat. 736) transferred to the Commandant of the Coast Guard (Reorganization Plan No. 3 of 1946, Secs. 101–104, 60 Stat. 1097–1098), transferred to the Secretary of the Treasury, or to the Secretary of the Navy when the Coast Guard is operating in that Department (Reorganization Plan No. 26 of 1950, 64 Stat. 1280) and delegated by the Secretary of the Treasury to the Commandant of the Coast Guard (Treasury Department Order of July 31, 1950, 15 Fed. Reg. 6521).

The Act of 1895 did nothing more than to provide for rules of navigation, and for delimiting the waters where the inland rules were to be followed, as distinguished from the international rules. It cannot be supposed that Congress intended to invest the Commandant of the Coast Guard with power to decide the

boundaries of the United States or of the coastal States; he was concerned with navigational problems and would presumably be guided by considerations of navigation rather than jurisdiction—as his own statement, *supra,* shows that he has been.

Furthermore, the character of the Coast Guard line as described in 33 C. F. R. 82.95 and 82.103 shows that the Commandant's order describing it constituted the establishment of an artificial line rather than the recognition of a natural one. Except for about 60 nautical miles of its length nearest the Mississippi boundary, the line runs between navigational buoys, and one lighthouse, situated distances of from 1½ to 10 nautical miles seaward from the nearest mainland or island, as shown on charts of the Coast and Geodetic Survey.[33] The line itself runs much more than 20 nautical miles from the nearest land at some places. Inland waters in the jurisdictional sense are those that are so landlocked as to be within the exclusive jurisdiction of the littoral nation. However one is to define "landlocked" waters (and we believe that question should be deferred to supplementary proceedings; see *infra,* pp. 158–161), they cannot include, as does the Coast Guard line, a belt of water extending far seaward of the outermost islands and points of land. Even the *Anglo-Norwegian Fisheries Case,* I. C. J. Reports (1951) 116, apparently marking the most extreme extent of base line for the marginal

[33] The Louisiana portion of the Coast Guard line is shown on U. S. C. & G. S. Charts 1267, 1270, 1272–1279. It also appears in somewhat more convenient form on the smaller scale charts 1115 and 1116.

sea ever to be given international recognition, did not go beyond lines drawn between points of dry land, either on the mainland or islands or rocks in the sea.

The Act of February 10, 1807, 2 Stat. 413, cited by Louisiana (Paragraph 3; Answer, 18), is wholly irrelevant. It merely authorized a survey of coastal waters for the purpose of preparing navigational charts.

(*c*) It is equally clear that the Coast Guard line had no operative effect to enlarge Louisiana's boundary. The establishment of such a line, defining the area in which the inland rules of navigation are to be observed, does not work any change in State boundaries. *United States* v. *Newark Meadows Imp. Co.*, 173 Fed. 426, 428 (C. C. S. D. N. Y.) And, as we have already pointed out (*supra,* pp. 131–132), the Commandant of the Coast Guard, in establishing the line, declared that it was not intended to have any such effect.

(*d*) Louisiana Act 33 of 1954, La. Acts, 1954, p. 63, asserting a boundary three leagues seaward from the Coast Guard line, cannot improve the State's position in this respect. For the reasons just discussed, the Coast Guard line is not a proper base line from which to measure the width of the marginal sea. Moreover, the statute came too late to entitle the State to benefits under the Submerged Lands Act. The grant made by that Act is limited to boundaries three miles from the coast, unless a more extended boundary existed when the State entered the Union, or was approved by Congress before May 22, 1953. Sec. 2 (b), 67 Stat.

29, 43 U. S. C. (1952 ed.) Supp. III, 1301 (b). The Coast Guard line was not adopted until December 1, 1953, to be effective January 1, 1954 (18 Fed Reg. 7893); and Louisiana Act 33 of 1954 was not adopted until June 21, 1954, and has never been approved by Congress.

Moreover, Louisiana Act 33 of 1954 cannot be invoked as a mere interpretation of the State's boundary as it existed when the State entered the Union. The Act of April 8, 1812, 2 Stat. 701, admitting Louisiana to the Union, defined the State as "including all islands within three leagues of the coast." First, Louisiana construes that as meaning "including *everything* within three leagues of the coast." Then, it says that this means the State has a three-league marginal belt. Then, it says that this means the State extends three leagues beyond the outer limit of inland waters. And finally, it says that this means the State extends three leagues beyond the Coast Guard line. The net result of this series of substitutions is that "including all islands within three leagues of the coast" is said to mean, "including three leagues of water beyond a line which itself runs, between the Mississippi and the Sabine, seven nautical miles or more seaward of all islands." We submit that "islands within three leagues of the coast" does *not* mean, "16 miles of water beyond the outermost islands."

3. This Court has not recognized any disputed portions of the coast line claimed by Louisiana Act 33 of 1954

Louisiana alleges (Paragraph 7; Answer, 20–21) that "Certain portions of said coast line and certain bearings and markers delineating the same have been specifically recognized by this Court as parts of the coast line of the State of Louisiana," citing *Louisiana* v. *Mississippi,* 202 U. S. 1, and *The Josephine,* 3 Wall. 83. We understand "said coast line" to refer to the Coast Guard line, discussed immediately before.

We find nothing in either of the cited cases to support Louisiana's allegation. In *Louisiana* v. *Mississippi* the Court did mention the Chandeleur Islands (on which the seaward high-water mark forms part of the Coast Guard line; 33 C. F. R. 82.95), but not as forming part of the coast line of Louisiana. On the contrary, the Court expressed the view "that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana Marshes at the eastern extremity thereof form part of the coast line of the State; and that the islands within nine miles of that coast are hers * * *." 202 U. S. at 47. The Coast Guard line is about nine miles seaward from the Louisiana Marshes; plainly it does not follow the "coast line" referred to by the Court. This passage from the Court's opinion shows that the three leagues, within which the State was to receive islands, is to be measured from the mainland and not, as the State urges, from the islands themselves or from some line still farther seaward.

D. REPLY TO FOURTH DEFENSE

1. In 1812 the United States did not claim or recognize territorial boundaries extending more than three miles into the sea

Louisiana alleges (Paragraph 1; Answer, 21) that when it entered the Union in 1812, territorial boundaries extending at least three leagues seaward were agreed to by all nations possessing territories in the Western Hemisphere and were acquiesced in by the United States and the other maritime nations of the world. We have already shown (*supra,* pp. 39–81) that the United States has never claimed more than three miles nor acquiesced in greater claims by other nations. We believe the remainder of Louisiana's allegation to be equally unfounded, but consider it so patently irrelevant to the present case that we refrain from discussing it at this time. The question here is, where is Louisiana's boundary, as it was when the State entered the Union or as afterward approved by Congress. We have pointed out (*supra,* pp. 111–127) that when the State entered the Union its boundary was at the shore or, at the most, three miles seaward by implication from the policy of the United States to claim that distance. It can make no difference what boundaries were then claimed by other nations, or even what boundaries were maintained by them; for, as we have shown, for purposes of American jurisprudence other nations possessed only such boundaries as the United States recognized them as possessing, namely, boundaries extending not more than three miles seaward (*supra,* pp. 42–81). It is equally obvious that the allegation is irrelevant to any

claim that Congress has approved a broader boundary for the State since its admission to the Union.

2. The United States has never recognized that States and nations bordering on the Gulf of Mexico own the marginal seas more than three miles from their shores

As part of this defense, Louisiana alleges (Paragraphs 2–3; Answer, 21–22) that the United States has always recognized that the States and nations bordering on the Gulf of Mexico own the marginal seas and subsoil to a distance of at least three leagues, as shown by certain enumerated treaties, acts and resolutions of Congress, and diplomatic correspondence. The materials we have discussed in Point I (*supra,* pp. 22–81) demonstrate that the United States has never recognized ownership of the marginal sea beyond a distance of three miles. We do recognize the right of littoral nations to exploit the resources of the subsoil and seabed to the edge of the continental shelf; but the States of the United States have no such right, except as given to them by Congress in the Submerged Lands Act. *United States* v. *Louisiana,* 339 U. S. 699. The materials cited by Louisiana do not conflict with this position.

(a) TREATY WITH SPAIN, FEBRUARY 22, 1819

The Treaty of February 22, 1819, with Spain, 8 Stat. 252 (Answer, 22) ceded Florida to the United States and described the boundary between the United States and Spanish possessions, from the Gulf of Mexico to the Pacific. It contains no reference to ownership of the bordering seas. Indeed, its implica-

tion is against such ownership, for it describes the western boundary as beginning "on the Gulph of Mexico, *at the mouth* of the river Sabine, in the sea, continuing north, along the western bank of that river," and finally "along the said [42d] parallel, *to* the South Sea." Art. 3, 8 Stat. 254, 256 (emphasis added). There is no indication that the territory of either country extended into the Gulf or the South Sea (*i. e.,* the Pacific). See *supra,* pp. 123–124.

(b) TREATY WITH MEXICO, JANUARY 12, 1828

The Treaty of January 12, 1828, with Mexico, 8 Stat. 372 (Answer, 22), was entered into after Mexico became independent of Spain. It affirmed the same boundary described in the 1819 treaty, *supra.* Art. Second, 8 Stat. 374. It contains nothing additional with respect to the marginal sea.

(c) RESOLUTION OF MARCH 1, 1837

Louisiana cites (Answer, 22) the Resolution of March 1, 1837, referring to it as a "Resolution of Congress recognizing independence of Texas."[34] In fact it was a resolution of the Senate, not of Congress, and it did not recognize the independence of Texas. The recognition of foreign nations is a function of the Executive, not of the Senate. Cf. *National City Bank* v. *Republic of China,* 348 U. S. 356, 358; *United States* v. *Belmont,* 301 U. S. 324, 330. The Senate resolution merely expressed the view that recognition of Texas

[34] The citation given by Louisiana (Answer, 22) is incorrect. The resolution was introduced at 4 Cong. Globe, 24th Cong., 2d Sess., 83, and passed, *ibid.,* 214.

would be proper. It was as follows (4 Cong. Globe, 24th Cong., 2d Sess., 83):

> *Resolved,* That the State of Texas having established and maintained an independent Government, capable of performing those duties, foreign and domestic, which appertain to independent Governments, and it appearing that there is no longer any reasonable prospect of the successful prosecution of the war by Mexico against said State, it is expedient and proper, and in perfect conformity with the laws of nations, and the practice of this Government in like cases, that the independent political existence of said State be acknowledged by the Government of the United States.

There is nothing in the foregoing relating to territorial boundaries in the sea.

It is true that on December 19, 1836, the Republic of Texas had enacted a statute defining its boundary, which included a claim of three leagues in the Gulf of Mexico. 1 Laws Rep. Tex. 133. In 1844, in the course of debates on the unratified treaty for the annexation of Texas, Senator Walker, who had introduced the resolution of March 1, 1837, regarding the recognition of Texas, made the statement that he had read the Texan boundary statute to the Senate during the debates on the 1837 resolution. 13 Cong. Globe, 28th Cong., 1st Sess., App., 548, 549. However, such reading does not affirmatively appear from the reports of the debates on the recognition resolution. See 4 Cong. Globe, 24th Cong., 2d Sess., 83, 94, 108–110, 134, 175, 210, 214. In any event, the concern of Congress

at both times was over disputed upland boundaries, and there is nothing to indicate that any consideration was given to the maritime boundary claim. But even if the Texan boundary was described to the Senate, and even if the Senate resolution had effected the recognition of Texas,[35] that would not have constituted a recognition of Texas' claim to a three-league boundary in the Gulf. Recognition of a nation does not involve recognition of its boundary claims. *Garvin* v. *Diamond Coal & Coke Co.*, 278 Pa. 469, 473, 123 Atl. 468 (1924); see 1 Hackworth, *Digest of International Law* (1940) 377–378. In fact, the Texan boundary as described in its statute took in the major part of New Mexico, including Santa Fe, the capital, which was always under the effective control of Mexico, and which was not recognized by the United States as part of the Republic of Texas. *De Baca* v. *United States*, 36 C. Cls. 407.

(d) JOINT RESOLUTION OF MARCH 1, 1845, FOR THE ANNEXATION OF TEXAS

Louisiana also cites (Answer, 22) the Joint Resolution of March 1, 1845, 5 Stat. 797, as "annexing State of Texas." Actually, that resolution merely provided for such annexation, which was afterward effected by the Joint Resolution of December 29, 1845, 9 Stat. 108. Presumably Louisiana cites the resolution of March 1, 1845, to show approval of the Texan three-

[35] Texas was recognized on March 7, 1837, by appointment of a chargé d'affaires to be sent to that republic. 1 Moore, *Digest of International Law* (1906) 101.

league claim already referred to; but it clearly had no such effect. It gave the consent of Congress

> that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State * * * upon the following conditions, and with the following guarantees, to wit: *First,* Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments * * *.

That was not a recognition that any particular area was "properly within, and rightfully belonging to the Republic of Texas"; and certainly the question of maritime boundary was one of those which might arise with other governments and which was therefore specifically made subject to adjustment by the Federal Government.

(e) TREATY OF GUADALUPE HIDALGO, FEBRUARY 2, 1848

As another recognition of a three-league boundary in the Gulf of Mexico, Louisiana cites (Answer, 22) the Treaty of Guadalupe Hidalgo between the United States and Mexico, February 2, 1848, 9 Stat. 922, 923. We find nothing on either of the cited pages having any conceivable relationship to the question of maritime boundaries.[36] However, Article V of that treaty, 9 Stat. 926, is often referred to in that connection. It

[36] The provision of Article III, 9 Stat. 923, that American troops in the interior of Mexico should be withdrawn "to points that shall be selected by common agreement, at a distance from the seaports not exceeding thirty leagues," plainly referred to inland assembly points, where troops were to be held pending embarcation.

establishes the boundary between the United States and Mexico, beginning

> The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river * * *.

The claim has sometimes been made that by thus extending their mutual boundary to a point three leagues from shore, the United States and Mexico both claimed three-league maritime belts along their entire Gulf coasts. However, the United States has consistently rejected that view and insisted that the provision was merely intended to prevent smuggling, and referred only to the precise site of the international boundary itself. We have already referred to much diplomatic correspondence on this subject (*supra,* pp. 43–56). As we have shown, the Court should accept the position thus taken by the political branches of the Government with respect to the territorial extent of the national boundary (*supra,* pp. 62–81).

(f) GADSDEN TREATY, DECEMBER 30, 1853

Louisiana likewise refers (Answer, 22) to the Gadsden Treaty with Mexico, December 30, 1853, 10 Stat. 1031. Article I of that treaty, 10 Stat. 1032, modified the western portion of the boundary described by the Treaty of Guadalupe Hidalgo, retaining the eastern

portion as before, "Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the 5th article of the treaty of Guadalupe Hidalgo" etc. So far as concerns a claim of jurisdiction in the Gulf of Mexico, this adds nothing to the Treaty of Guadalupe Hidalgo, discussed above. Since the United States had already informed Great Britain that the provision of of the Treaty of Guadalupe Hidalgo did not import a three-league maritime claim, that construction must be understood to have been intended when the same provision was repeated in the Gadsden Treaty.

(g) ACT OF JUNE 25, 1868, ADMITTING FLORIDA AND OTHER STATES TO REPRESENTATION IN CONGRESS

Louisiana cites (Answer, 22) the "Act of Congress approving the Constitution of the State of Florida, February 25, 1868, 15 Stat. 73." Apparently this is intended to refer to the Act of June 25, 1868, "to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to Representation in Congress," 15 Stat. 73. Presumably its present relevance is supposed to lie in the fact that Article I of the Florida Constitution of 1868, to which it refers, describes the State boundary as running three leagues from land in the Gulf of Mexico. Fla. Laws, 1868, 193, 195; 25 Fla. Stats. Anno., pp. 411, 413. Without attempting to pass upon Florida's rights under the Submerged Lands Act, Congress did not by its action approve the Florida Constitution except to the limited extent of reciting that it established a republican government. The boundary pro-

vision was not approved or, so far as appears, even noticed, by Congress. The statute, so far as here material, declares:

> Whereas the people of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida have, in pursuance of the provisions of an act entitled "An act for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and the acts supplementary thereto, framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same: Therefore,
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, shall be entitled and admitted to representation in Congress as a State of the Union when the legislature of such State shall have duly ratified the amendment to the Constitution of the United States proposed by the Thirty-ninth Congress, and known as article fourteen, upon the following fundamental conditions: That the constitutions of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State, who are entitled to vote by the constitution thereof herein recognized * * *.

It is clear that Congress' concern was to protect the political rights of citizens, and the only operative

effect of the Act was to provide for representation of the named States in Congress.

(h) MEXICAN BOUNDARY CONVENTIONS

Louisiana also cites (Answer, 22–23) three boundary conventions between the United States and Mexico: Convention of July 29, 1882, 22 Stat. 986; Convention of March 1, 1889, 26 Stat. 1512; and Convention of March 20, 1905, 35 Stat. 1863. None of these has anything to do with the width of the marginal sea. The Convention of July 29, 1882, provided for a boundary commission to reestablish displaced boundary monuments between the Pacific Ocean and the Rio Grande. The Convention of March 1, 1889, provided for a boundary commission to decide boundary questions involving changes in the bed of the Colorado River or Rio Grande, where those rivers form the international boundary. The Convention of March 20, 1905, provided for the elimination of bancos, areas in loops of the old river bed cut off by avulsive changes in the river which did not change the boundary under existing agreements.

(i) LETTER FROM ROBERT W. MOORE, ASSISTANT SECRETARY OF STATE, TO JOSEPHUS DANIELS, AMERICAN AMBASSADOR TO MEXICO, MAY 23, 1936

Finally, Louisiana cites (Answer, 23) a letter of May 23, 1936, from Assistant Secretary of State Robert W. Moore to Josephus Daniels, American Ambassador to Mexico, 1 Hackworth, *Digest of International Law* (1940) 640–641. That letter refutes, rather than supports, the State's position. It was

the letter of instruction, pursuant to which was written the letter of June 3, 1936, from De L. Boal, American chargé d'affaires, to Eduardo Hay, Mexican Foreign Secretary, 99 Cong. Rec. 3623, already discussed (*supra,* pp. 54–56). The letter of instruction, so far as printed in Hackworth's *Digest,* was carried forward verbatim, with two trivial changes in wording, in the text of the letter to the Mexican Foreign Secretary. It was part of the correspondence by which the United States vigorously protested against a Mexican decree of August 30, 1935 (Diario Oficial, Aug. 31, 1935) amending Section I of article 4 of the Law of Immovable Properties of the Nation (December 18, 1902) to claim nine rather than three nautical miles of territorial waters. See 99 Cong. Rec. 3623–3625; 1 Hackworth, *Digest of International Law* (1940) 639–642. In that letter, as throughout that correspondence, the United States took the position that three miles is the limit of maritime jurisdiction sanctioned by international law, and that Article V of the Treaty of Guadalupe Hidalgo, providing that the boundary between the United States and Mexico should start three leagues in the Gulf of Mexico, was merely an anti-smuggling provision relating only to the particular point of the international boundary and did not justify any claim to a three-league belt of territorial waters along the coast. We are at a loss to perceive how Louisiana can cite this letter as a recognition of a three-league boundary claim by the United States.

3. It is not material what boundaries in the Gulf of Mexico have been recognized by other nations since 1812

Louisiana alleges (Answer, 23) that since it was admitted into the Union in 1812 the family of nations and the great maritime nations of the world have recognized American treaties and conventions with Mexico and Spain fixing boundaries of the coastal States in the Gulf of Mexico three leagues seaward. Like its cognate assertions, this allegation is both immaterial and unsound.

It is wholly immaterial to this case what view other nations have taken since 1812 regarding boundaries in the Gulf of Mexico. The subject of this suit is the right to exploit mineral resources in the seabed. The State has no such right except to the extent granted by the United States. *United States* v. *Louisiana,* 339 U. S. 699. The grant made by the United States is limited to State boundaries as they existed when the State entered the Union, or as since approved by Congress before May 22, 1953. Thus, congressional approval would be the only circumstance since 1812 on which the State could predicate any rights.

Indeed, the views of other nations at any time whatever are equally immaterial. As we have explained (*supra,* pp. 39–81), the position taken by the United States is that its boundary is only three miles from the coast; and the question is a political one on which the position taken by this Government must be accepted by the courts of this Nation. It would be anomalous to suggest that the views of other governments are of more weight than the views of this

Government in domestic courts, with regard to such a question.

Since, as we have just shown (*supra,* pp. 139–147), the treaties and conventions referred to by Louisiana did not fix the boundaries of the coastal States three leagues in the Gulf, any supposed acceptance by other nations of the view that they had done so would have been based on a misconception. Certainly other nations, by mistakenly imputing to the United States a three-league claim which it has never made, could not invest it with a jurisdiction which it vigorously disclaims. Nor have they shown any disposition to do so. On the contrary, when Britain, for example, feared that the Treaty of Guadalupe Hidalgo did reflect such a claim, she protested promptly. The United States, of course, immediately replied that, as we have ever since maintained, no such claim was intended. *Supra,* pp. 43–44, 46–47, 54–57.

4. Louisiana's equal footing with other States does not entitle it to boundaries more than three miles from the coast

Louisiana alleges in this defense (Paragraph 5, Answer, 23) that the equal footing to which it is entitled under the Constitution requires that its boundary be recognized as being three leagues in the Gulf because the boundaries of Texas and Florida and other Gulf States are recognized as extending that far. We shall not attempt in this case to argue the rights of either Texas or Florida under the Submerged Lands Act with respect to the continental shelf adjacent to their shores. There is nothing in

the "equal footing" theory which makes the extent of their rights in any way pertinent to Louisiana's claims.

Ordinarily, the claim to stand on an "equal footing" is that a newly admitted State is entitled to stand on an equal footing with the original States, or with other States already admitted to the Union. Louisiana, however, was the first of the Gulf States to be admitted to the Union, April 8, 1812 (2 Stat. 701).[37] Thus Louisiana is in the unusual position of asserting a right to stand on an equal footing with States that came after it. We believe it unnecessary to consider what effect this chronology might have on the underlying question of political boundary; but it clearly forecloses reliance on the "equal footing" theory so far as concerns the rights here involved. As we have several times stressed, the question here is the extent of the rights granted by the Submerged Lands Act, and those rights are limited to the State boundary as it existed when the State entered the Union or as afterward approved by Congress. Certainly when Louisiana entered the Union in 1812 it had no boundary derived from a constitutional right to stand on an equal footing with respect to the particular boundaries to

[37] Mississippi was admitted December 10, 1817 (3 Stat. 472); Alabama was admitted December 14, 1819 (3 Stat. 608); Texas was admitted December 29, 1845 (9 Stat. 108); Florida was admitted March 3, 1845 (5 Stat. 742), but its claim to a three-league boundary in the Gulf rests on Article I of its Constitution of 1868 (Fla. Laws, 1868, pp. 193, 195; 25 Fla. Stats. Anno., pp. 411, 413) and the Act of June 25, 1868, readmitting it to representation in Congress (15 Stat. 73; *supra*, pp. 145–146).

be claimed by future States in years to come. And there is no claim that Congress has since approved any boundary for Louisiana resulting from the more extended claims of Texas and Florida. Even if such a boundary had been accorded to Louisiana by force of its constitutional equality, for purposes of political jurisdiction, it had not the Congressional approval which is prerequisite to its applicability to the grant of mineral rights made by the Submerged Lands Act.

And there certainly can be no valid claim that Congress is *constitutionally* required to make precisely the same grant of federal resources to each and every state. The whole history of congressional grants of federal property—lands, facilities, monies—belies such an argument. The rule has never been that what Congress gives to one state it must give to all.

E. REPLY TO FIFTH DEFENSE

1. Louisiana has no prescriptive right to the submerged lands and minerals of the outer continental shelf

Louisiana alleges (Paragraphs 1–3; Answer, 24–26) that ever since 1812 it has exercised open, notorious, exclusive and unquestioned possession over the submerged lands and minerals described in the complaint, from which have resulted a general conviction and conclusive presumption that Louisiana has title thereto, and a prescriptive title.[38] In *United States*

[38] The notoriety of Louisiana's occupancy seems only recently to have reached to the office of the Attorney General of the State. In response to a request for some reference to the southern legal boundary of the State, James O'Connor, Assistant Attorney General of Louisiana, on September 21, 1934, merely quoted from the

v. *Louisiana,* 339 U. S. 699, the same contentions were carefully considered and unqualifiedly rejected by this Court, and a decree was entered declaring that the State had no right, title or interest in those lands and minerals. 340 U. S. 899. No further comment seems necessary now.

2. Louisiana has no right to submerged lands and minerals beyond the three-mile limit as a result of any exercise of territorial jurisdiction over that area

In this connection, Louisiana alleges (Paragraphs 1, 2; Answer, 24–25) that ever since 1812 it has exercised continuous and unchallenged sovereignty over the area described in the complaint, and that by reason thereof it is entitled to the submerged lands and minerals therein. To the extent that this is in-

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Act of Congress admitting the State to the Union, and said, "you will note that the southern boundary of the State of Louisiana is given as the Gulf of Mexico." Letter to Mr. L. J. Neuman; *Reports and Opinions of the Attorney General of Louisiana from April 1, 1934, to April 1, 1936,* p. 685. And on December 8, 1937, in response to an inquiry whether certain oyster reefs near Marsh Island were within the jurisdiction of Louisiana, Assistant Attorney General A. P. Miceli, writing to William G. Rankin, State Commissioner of Conservation, reviewed certain international law authorities and federal decisions declaring a three-mile limit to have been adopted by the United States, and said, "we conclude, in consonance with the treaties of the United States with foreign powers, and the jurisprudence of the United States Supreme Court, that the minimum limit of the territorial water domain of our state in the Gulf of Mexico extends at the present time to a distance of three marine miles (60 to a degree of latitude) from the lowest point of low water mark of the coast." A three-league boundary for the State was not mentioned. *Reports and Opinions of the Attorney General of Louisiana from April 1, 1936, to April 1, 1938,* p. 959.

tended to assert a claim independently of the Submerged Lands Act, it is equally answered by the decision in *United States* v. *Louisiana,* 339 U. S. 699. It was there held that all rights in these lands and minerals belonged to the United States exclusively.

If this allegation is intended to state a claim under the Submerged Lands Act, it is insufficient. A boundary created by conduct subsequent to statehood is not a boundary existing when the State entered the Union. Neither is it a boundary subsequently approved by Congress. The fact, of course, is that it is not a boundary at all. The boundary of the United States is three miles from the coast, and no State has power by any means either to extend or to exceed the boundary of the nation. (*Supra,* pp. 39–81.)

F. REPLY TO SIXTH DEFENSE

1. Louisiana has not acquired ownership of submerged lands and minerals of the outer continental shelf through acquiescence of the United States

Louisiana here alleges (Paragraphs 1, 2; Answer, 26–27) that for a long time the United States has recognized and acquiesced in Louisiana's assertion of title to the submerged lands and minerals of the continental shelf, and that the United States is therefore estopped to assert a contrary claim. That allegation does not relate to any claim under the Submerged Lands Act; it asserts an independent right in the State. This Court has already ruled against it. *United States* v. *Louisiana,* 339 U. S. 699.

2. The United States has not shown by acquiescence any belief that the act admitting Louisiana to the Union should be construed in accordance with the State's claims

Louisiana also asserts (Paragraph 3; Answer, 27) that the Government's acts of acquiescence in the State's assertions of ownership "constitute evidence of the intent of Congress in describing Louisiana's boundaries as 'including all islands within three leagues of its coast,' and are interpretive of the Act of Congress admitting Louisiana to the Union to mean that Louisiana has title to the waters, submerged lands and resources lying seaward from its coast".

So far as title is concerned, this allegation is answered by what has been said above. It is *res judicata* that the State received on its admission to the Union no title to the submerged lands and minerals of the Gulf of Mexico. *United States* v. *Louisiana,* 339 U. S. 699.

Apparently this allegation is intended also to support a claim under the Submerged Lands Act, on the theory that by recognizing Louisiana's ownership of the submerged lands and minerals the United States showed how it construed the boundary described in the act admitting the State to the Union. However, it is not alleged that any of the acts of acquiescence related to areas more than three miles from the coast; without that, they could not be germane to the present issue. On the other hand, if it is intended to imply that those acts related to locations throughout the area in dispute, which extends far more than three leagues beyond the outermost land or islands, such

acts would have no tendency to show a construction of the phrase "including all islands within three leagues of the coast" contained in the act admitting the State to the Union (2 Stat. 701). But quite apart from its technical defects, the allegation must be rejected for more fundamental reasons. If, as this Court held in *United States* v. *California,* 332 U. S. 19, 39–40, acts of acquiescence such as are referred to here were incapable of defeating federal ownership, even though the principle of federal ownership of the bed of the marginal sea had never been enunciated prior to that case, then *a fortiori* they must be incapable of defeating the federal policy of limiting the national boundary to three miles—a policy constantly and vigorously announced and maintained by the United States throughout its history (*supra,* pp. 39–62). Louisiana's purpose in referring to federal acquiescence in State assertions of ownership is apparently to support an implication that the boundary of the State is more than three miles from the coast. But, as we have shown, the State boundary cannot exceed the national boundary, and the location of the national boundary is a matter for judicial notice, to be ascertained from official acts and declarations. It should not be made the subject of argumentative evidence. (*Supra,* pp. 62–81.)

G. REPLY TO SEVENTH DEFENSE

1. The United States is not estopped to deny that Louisiana has title to the submerged lands and resources of the Gulf of Mexico

Louisiana alleges (Answer, 27–28) that it has spent money in reliance on both parties' belief that the State owned the submerged lands and resources, and that consequently the United States is now estopped to deny that the State owns them. This allegation has no relation to the Submerged Lands Act, but states an independent claim. That claim was rejected by the holding in *United States* v. *Louisiana,* 339 U. S. 699, that the State had no right, title or interest in or to those submerged lands or resources. It cannot be relitigated now.

In any event, such expenditures cannot estop the Government from asserting its title. In *United States* v. *Texas,* 162 U. S. 1, 89–90, the Court held that the United States' right to Greer County as part of the Indian Territory could not be defeated by the fact that Texas had spent large sums to establish a school system there; and similar claims of estoppel were rejected in *United States* v. *California,* 332 U. S. 19, 40, and *Lee Wilson & Co.* v. *United States,* 245 U. S. 24, 32. In those cases, moreover, the expenditures had been made on the disputed area, and so were lost to the claimant. Here, most of the expenditures alleged—payment of debts, construction of highways, bridges and hospitals, and education—presumably are equally necessary and equally beneficial to the State, whether or not it owns the sub-

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merged lands and minerals seaward of the three-mile limit.

H. REPLY TO EIGHTH DEFENSE

1. This Court should now enter a decree defining the area granted to Louisiana by the Submerged Lands Act, leaving to further proceedings the precise identification of the area so defined

Lastly, Louisiana alleges (Answer, 28–30) that a decree should not be entered defining its marginal belt without at the same time specifically identifying its limits; that such a complete determination will involve questions of fact requiring the taking of much evidence; and that such issues can more appropriately and conveniently be heard and determined in a district court. The State moves (Paragraph 4; Answer, 30) that the case be transferred to a district court in Louisiana for that purpose. We submit that the very complexity of the additional issues which Louisiana seeks to present now demonstrates the desirability of deferring them to supplementary proceedings.

As we have shown, the claim of the United States to the submerged lands and resources lying more than three miles from the coast of Louisiana rests upon the legal effect of this Court's decree in *United States* v. *Louisiana,* 340 U. S. 899, the Submerged Lands Act, and the location of the national maritime boundary along the coast of the State. These are all matters of law or subject to judicial notice (*supra,* pp. 22–81). By reference to them, a decree can be entered fixing the width and defining the base line of the belt of submerged lands granted to Louisiana.

Thereafter, if the parties are in disagreement as to the location of any or all of that base line, one or more supplemental decrees may be entered, as necessary, specifically identifying parts or all of it. That is the procedure adopted by the Court in *United States* v. *California,* 332 U. S. 19, where the problem was the same as in the present case, except that there the disputed area began at the low-water mark and outer limit of inland waters instead of three miles seaward therefrom, as here. In that case, the Court rejected California's contention that the issue, framed in such terms, was too vague, saying (332 U. S. at 26):

> * * * there is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary. *Oklahoma* v. *Texas,* 258 U. S. 574, 582. Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings. See *e. g. Oklahoma* v. *Texas,* 256 U. S. 602, 608–609; 260 U. S. 606, 625; 261 U. S. 340. California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution.

On a shelving and tortuous coast such as that of Louisiana, specific identification of the low-water mark and the outer limit of inland waters involves both difficult factual questions of physical observation at every disputed location and legal questions as to

definition of terms and application of such definitions to particular physical situations. Resolution of these problems with respect to the entire Louisiana coast will be, at best, a protracted process. There are many reasons why the clear-cut legal question of the width of the marginal belt should be answered separately and in advance. It can be answered quickly. If it is answered first, then every subsidiary determination of a segment of the base line will automatically determine the State and federal titles seaward therefrom; if, however, all questions are thrown into one consolidated trial, title to none of the submerged land will be settled until final judgment. And until the width of the marginal belt is known, there can be no complete identification of the waters whose status (as inland water or marginal sea) is material to the case. For example, if Louisiana owns all the submerged lands to the 27th parallel, as it claims, it will not be necessary to identify any inland waters at all. Even under the State's most modest claim, of a marginal belt of three leagues, the State will own the beds of all coastal indentations less than six leagues wide, while under the three-mile contention of the United States it will be necessary to decide the inland water status of all indentations more than six miles in width. Obviously, there must be a preliminary determination of the width of the marginal belt before it can be known what the further issues will be. The mere fact that trial of the consolidated issues would, as the State asserts, require the taking of much evidence should suffice to show the undesirability of complicating and delaying decision of the single legal question presented by the

Government's present motion, by consolidating it for trial with the subsidiary factual issues that the State seeks to advance.

CONCLUSION

For the foregoing reasons, it is submitted that this Court should now enter a decree declaring that the United States is entitled, as against the State of Louisiana, to the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana and extending seaward to the edge of the continental shelf, and that the State of Louisiana has no title thereto or property interest therein; declaring that the United States is entitled to an accounting by the State of Louisiana for all sums of money derived by the State from such lands and minerals after June 5, 1950; and retaining jurisdiction of the case for such further proceedings as may be necessary to effectuate the decree.

Respectfully,

HERBERT BROWNELL, JR.,
Attorney General.

J. LEE RANKIN,
Solicitor General.

OSCAR H. DAVIS,
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Assistants to the Solicitor General.

GEORGE S. SWARTH,
FRED W. SMITH,
Attorneys.

FEBRUARY 1957.

APPENDIX

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. Act of April 8, 1812, 2 Stat. 701:

CHAP. L.—*An Act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state*

Whereas, the representatives of the people 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 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; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the State of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved; therefore

Be it enacted by the Senate and House of Representatives of the United States of Amer-

ica in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana * * *.

* * * * *

3. 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. [43 U. S. C. (1952 ed.) Supp. III, 1301] 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. [43 U. S. C. (1952 ed.) Supp. III, 1311] 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 * * *.

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such

lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease * * *.

* * * * *

SEC. 4 [43 U. S. C. (1952 ed.) Supp. III, 1312] SEAWARD BOUNDARIES.— * * * 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 * * *. 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.

* * * * *

SEC. 9. [43 U. S. C. (1952 ed.) Supp. III, 1302] Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.

* * * * *

4. Outer Continental Shelf Lands Act, Public Law 212, 83d Congress, 1st Sess., approved August 7, 1953, 67 Stat. 462:

AN ACT

To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes.

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 "Outer Continental Shelf Lands Act".

SEC. 2. [43 U. S. C. (1952 ed.) Supp. III, 1331] DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

* * * * *

SEC. 3. [43 U. S. C. (1952 ed.) Supp. III, 1332] JURISDICTION OVER OUTER CONTINENTAL SHELF.—(a) It is hereby declared to be 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 as provided in this Act.

(b) This Act shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

SEC. 4. [43 U. S. C. (1952 ed.) Supp. III, 1333] LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all

artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary [of the Interior] now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of the effective date of this Act are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

* * * * *

SEC. 8. [43 U. S. C. (1952 ed.) Supp. III, 1337] LEASING OF OUTER CONTINENTAL SHELF.—

(a) In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary [of the Interior] is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. * * *

* * * * *

5. Louisiana Act 55 of 1938, approved June 30, 1938, Louisiana Acts of 1938, p. 169:

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. [La. Rev. Stats. (1950) 49: 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. [La. Rev. Stats. (1950) 49: 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.

6. Louisiana Act 33 of 1954, approved June 21, 1954, Louisiana Acts of 1954, p. 63:

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 boundaries 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.

APPENDIX B

Letter from John Foster Dulles, Secretary of State, to Herbert Brownell, Jr., Attorney General, June 15, 1956:

DEPARTMENT OF STATE
WASHINGTON

JUNE 15, 1956.

DEAR MR. ATTORNEY GENERAL: I refer to your letter of April 26, 1956, concerning proceedings now pending before the Supreme Court of the United States between the Federal Government and the State of Louisiana. You state that the purpose of the suit is to determine the extent of the submerged off shore area which the United States granted to the State by the Submerged Lands Act of May 22, 1953 (67 Stat. 29, 43 U. S. C. (1952) Supp. II, secs. 1301–1315). You point out that this issue involves the location of the maritime boundary of the United States and you request a statement of the position of the United States concerning the extent of its territorial waters, particularly during the early years of its history.

When the Submerged Lands Act was under consideration in Congress, the Department of State testified before the Senate Committee on Interior and Insular Affairs on the foreign relations aspects of the proposed legislation, including the extent of the territorial waters of the United States. The Department testified that the United States had traditionally supported the three-mile limit, that is, a breadth of territorial waters of three nautical miles measured from low water mark on the shore. (See Hearings on S. J. Res. 13 and other bills before the Committee on Interior and Insular

Affairs, United States Senate, 83d Congress, 1st Session, February 16–27, March 2–4, 1953, p. 1051.)

This position is supported by a long line of court decisions, treaties and statements of the Executive going back as far as 1793, when this Government first had to face the question of the breadth of territorial waters. At that time, international practice regarding the breadth of waters over which a coastal State could exercise control was not fully developed. The expression "territorial waters" was not yet in current use. Frequently, the projection of territorial sovereignty into adjacent waters took the form of an assertion of a right to prohibit hostilities between foreign vessels in the waters under the control of the cannons on the shore (neutrality). The United States was perhaps the first nation to translate the concept of the utmost range of a cannon ball into a specific distance fixed at three miles, in a note to the French Government of November 8, 1793, which read in part:

"It is certain that, heretofore, they [governments] have been much divided in opinion as to the distance from their sea coasts, to which they might reasonably claim a right of prohibiting the commitment of hostilities. The greatest distance, to which any respectable assent among nations has been at any time given, has been the extent of the human sight, estimated at upwards of twenty miles, and the smallest distance, I believe, claimed by any nation whatever, is the utmost range of a cannon ball, usually stated at one sea-league. Some intermediate distances have also been insisted on, and that of three sea-leagues has some authority in its favor. 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. Not proposing, however, at this time, and without a respectful and friendly communication with the Powers interested in this navigation, to fix on the distance to which we may ultimately insist on the right of protection, 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 sea shores. This distance can admit of no opposition, as it is recognised by treaties between some of the Powers with whom we are connected in commerce and navigation, and is as little or less than is claimed by any of them on their own coasts." (Mr. Jefferson, Sec. of State, to Mr. Genet, the French Minister, I American State Papers, For. Rel., 183).

The caution which led Jefferson to reserve for further consideration the claims of the United States in this matter continued to mark the position of this Government for a few years after the turn of the century. There are indications that our statesmen kept an open mind on the possibility of extending the limit, although they remained firm in their conviction that three miles was the smallest limit claimed by any nation and hence a limit which could not be questioned by any one. Secretary of State Pickering reaffirmed in 1796 the position of the United States that "our jurisdiction * * * has been fixed * * * to extend three geographical miles * * * from our shores" and Secretary of State Madison stated in 1807 that "there could surely be no pretext for allowing less [to the United States] than a marine league from the shore, that being the narrowest allowance found in any authorities on the law of nations" (I Moore, International Law Digest 702).

But this Government soon resolved any doubts it had in the matter in favor of a firm stand on a three-mile limit and opposition to

claims to broader limits. From the outset, it had adopted freedom of the seas as an axiom of its foreign policy. It rapidly perceived that, in order to give maximum effect to this policy, it must adhere strictly to the three-mile limit. This position was clearly illustrated in a note addressed by Secretary Seward to the Spanish Minister on December 16, 1862. Spain claimed a jurisdictional belt around Cuba of six miles. The Secretary pointed out that the principles bearing on the issue were the principle "that the sea is open to all nations" and the principle that a nation is entitled to exercise its sovereignty in a portion of the sea adjacent to its coasts. He stated that the exercise of this sovereignty abridged the "universal liberty of the seas". And he concluded, after a review of the practice of states regarding the limit to which they were entitled to exercise this sovereignty:

"Impressed by these general views, the United States are not prepared to admit that Spain, without a formal concurrence of other nations, can exercise exclusive sovereignty upon the sea beyond a line of three miles from the coast, so as to deprive them of the rights common to all nations upon the open seas". (I Moore, International Law Digest 706, at 707–708.)

The position of the United States on the three-mile limit has remained unchanged to this day, and at no time has this Government followed a different policy regarding the extent of its territorial waters in the Gulf of Mexico. Freedom of the seas continues to be essential to the national interests of the United States, particularly in matters of commerce, fishing and defense. Free sea lanes and air routes over the seas are essential to the maintenance of the pre-eminence of the United States in commercial shipping and air transport. Free seas are essential to the prosperity of its fishing

industry. And it is its traditional concept of defense that the greater the freedom and the range of its warships and aircraft, the more effectively its security interests are protected. Compromise of the position of the United States on the three-mile limit would necessarily compromise, if not force abandonment, of its opposition to claims of foreign states to greater breadths of territorial waters, and in turn impair the protection of national interests which the policy of freedom of the seas is designed to achieve. It is no exaggeration to say that, in view of the serious attacks which are now being made upon the freedom of the seas in various parts of the world, the maintenance of the traditional three-mile policy is more than ever a matter of vital interest to the United States.

Sincerely yours,

(S) John Foster Dulles,
JOHN FOSTER DULLES.

APPENDIX C

Presidential Proclamation No. 2667, September 28, 1945, 10 Fed. Reg. 12303, 59 Stat. 884:

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

Whereas its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

Whereas recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

Whereas it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these

resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

Now, therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

[SEAL] HARRY S. TRUMAN.

By the President:

DEAN ACHESON,

Acting Secretary of State.

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