No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1967

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

MOTION BY THE UNITED STATES FOR ENTRY OF A SUPPLEMENTAL DECREE AS TO THE STATE OF LOUISIANA (NO. 2), PROPOSED SUPPLEMENTAL DECREE

AND

MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES AND IN OPPOSITION TO THE MOTION OF THE STATE OF LOUISIANA

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

MOTION BY THE UNITED STATES FOR ENTRY OF A SUPPLEMENTAL DECREE AS TO THE STATE OF LOUISIANA (NO. 2) [1]

The United States of America, by the Solicitor General, moves the Court for entry of a supplemental decree, in the form submitted herewith, defining with greater particularity the rights of the United States and the State of Louisiana as declared by the Final Decree of December 12, 1960, 364 U.S. 502.

This motion is made on the following grounds:

1. The Final Decree of December 12, 1960, declares that the State of Louisiana is entitled, as against the United States, to all the lands, minerals and other natural resources underlying the Gulf of Mexico, extending seaward from its coast line for a distance of three geographical miles (with the exceptions pro-

[1] The "Motion by the United States for Entry of a Supplemental Decree (No. 1)," relating to certain limited areas no longer contested by the parties, was filed November 23, 1965, and led to the Supplemental Decree of December 13, 1965, 382 U.S. 288.

vided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313), and that the United States is entitled, as against the State of Louisiana, to all the lands, minerals and other natural resources underlying the Gulf of Mexico beyond that distance. The decree defines "coast line" to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

2. The parties disagree as to where the coast is in direct contact with the open sea, and what is the seaward limit of inland waters on the coast of Louisiana, within the meaning of the Final Decree.

3. By paragraph 8 of the Final Decree the Court retained jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to the decree.

4. Extensive development and exploitation of valuable mineral resources of the submerged lands off the coast of Louisiana make it necessary and advisable to establish with particularity as soon as may be the boundary between the submerged lands and resources of the United States and those of the State of Louisiana.

Respectfully,

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1968.

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

PROPOSED SUPPLEMENTAL DECREE

For the purpose of giving effect to the conclusions of this Court as stated in its opinion, announced May 31, 1960, and the decree entered by this Court on December 12, 1960, it is ordered, adjudged and decreed as follows:

1. As against the defendant State of Louisiana and all persons claiming under it, the United States is entitled to all the lands, minerals and other resources underlying the Gulf of Mexico more than three geographical miles seaward from the coast line as hereinafter defined. The State of Louisiana is not entitled to any interest in such lands, minerals or resources, and said State, its privies, assigns, lessees and other persons claiming under it are hereby enjoined from interfering with the rights of the United States in such lands, minerals and resources.

2. With the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313 (1964 ed.), the

State of Louisiana is entitled, as against the United States, to all the lands, minerals and other resources underlying the Gulf of Mexico, extending seaward from the coast line as hereinafter defined for a distance of three geographical miles and bounded on the east and west by the eastern and western boundaries of the State of Louisiana. The United States is not entitled, as against the State of Louisiana, to any interest in such lands, minerals or resources, with the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313 (1964 ed.).

3. All sums now held impounded by the United States under the Interim Agreement of October 12, 1956, as amended, derived from or attributable to the lands, minerals or resources described in paragraph 1 hereof are hereby released to the United States absolutely, and the United States is hereby relieved of any obligation under said agreement to impound any sums hereafter received by it, derived from or attributable to said lands, minerals, or resources.

4. All sums now held impounded by the State of Louisiana under the Interim Agreement of October 12, 1956, as amended, derived from or attributable to the lands, minerals or resources described in paragraph 2 hereof are hereby released to the State of Louisiana absolutely, and the State of Louisiana is hereby relieved of any obligation under said agreement to impound any sums hereafter received by it, derived from or attributable to said lands, minerals or resources.

5. Within 75 days after the entry of this decree—

(a) The State of Louisiana shall pay to the United States or other persons entitled thereto under the Interim Agreement of October 12, 1956, as amended, all sums, if any, now held impounded by the State of Louisiana under said agreement, derived from or attributable to the lands, minerals or resources described in paragraph 1 hereof;

(b) The State of Louisiana shall render to the United States and file with the Court a true, full, accurate and appropriate account of all sums of money required to be paid under subparagraph (a) of this paragraph, and of all other sums of money derived by the State of Louisiana since June 5, 1950, either by sale, leasing, licensing, exploitation or otherwise from or on account of any of the lands, minerals or resources described in paragraph 1 hereof for which the State of Louisiana has not heretofore accounted under paragraph 7(b) of the Supplemental Decree of December 13, 1965;

(c) The United States shall pay to the State of Louisiana or other persons entitled thereto under the Interim Agreement, as amended, all sums, if any, now held impounded by the United States under said agreement, derived from or attributable to the lands, minerals or resources described in paragraph 2 hereof;

(d) The United States shall render to the State of Louisiana and file with the Court a true, full, accurate and appropriate account of all sums of money required to be paid under subparagraph (c) of this paragraph, and of all other sums of money derived by the United

States either by sale, leasing, licensing, exploitation or otherwise from or on account of the lands, minerals or resources described in paragraph 2 hereof for which the United States has not heretofore accounted under paragraph 7(d) of the Supplemental Decree of December 13, 1965.

6. In making the accountings required by paragraph 5 hereof, each party shall furnish or make available to the other official descriptions or maps of the lease areas involved, sufficient to identify their boundaries with precision in relation to the Louisiana Plane Coordinate System, South Zone, and such other information as may be necessary to support the accounting.

7. Within 60 days after receiving the account provided for by paragraph 5(b) or 5(d) hereof, either party may serve on the other and file with the Court its objections thereto. At any time thereafter, either party may move the Court to settle the account so objected to. If neither party files such an objection within 60 days, then each party shall forthwith pay to any third person any amount shown by such accounts to be payable by it to such person, and the party whose obligation to the other party is shown by such accounts to be the greater shall forthwith pay to the other party the net balance so shown to be due. If objections are filed but any undisputed net balance is shown which will be due from one party to the other party or to any third person regardless of what may be the ultimate ruling on the objections, the party so shown to be under any such obligation shall forthwith

pay each such undisputed balance to the other party or other person so shown to be entitled thereto.

8. Paragraph 9 of the Supplemental Decree of December 13, 1965, is hereby vacated.

9. As used herein, "coast line" means—

(a) The line of mean low water on the mainland, on islands, and on low-tide elevations lying wholly or partly within three geographical miles from the line of mean low water on the mainland or on an island; and

(b) The line marking the seaward limit of inland waters.

10. The coast line is to be taken as heretofore or hereafter modified by natural or artificial means (excluding artificial spoil banks that serve no useful purpose), and includes the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, 1609.

11. As used herein—

(a) "Island" means a naturally-formed area of land, surrounded by water, which is above the level of mean high water;

(b) "Low-tide elevation" means a naturally-formed area of land surrounded by water at mean low water, which is above the level of mean low water but not above the level of mean high water;

(c) "Mean low water" means the average elevation of all the daily low tides (or lower low tides on days when there are two low tides) occurring over a period of 18.6 years;

(d) "Mean high water" means the average elevation of all the daily high tides (or higher

high tides on days when there are two high tides) occurring over a period of 18.6 years.

(e) "Geographical mile" means a distance of 1,853.248 meters (6080.19781 U.S. Survey Feet or approximately 6080.20997 International Feet).

(f) All distances referred to herein are expressed at grid scale, Louisiana Plane Coordinate System, South Zone.

12. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606. They include—

(a) Any river or stream flowing directly into the sea, landward of a straight line across its mouth;

(b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;

(c) Any bay (defined as a well-marked coastal indentation having such penetration, in proportion to the width of its entrance, as to contain landlocked waters, and having an area, including islands within the bay, at least as great as the area of a semicircle whose diameter equals the length of the closing line across the entrance of the bay, or the sum of such closing lines if the bay has more than one entrance), landward of a straight line across its entrance or, if the entrance is more than 24 geographical miles wide, landward of a straight line not over 24 geographical miles long, drawn within the bay so as to enclose the greatest possible amount of

water. An estuary of a river is treated in the same way as a bay.

13. In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the mean low-water line on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean low water along the open coast meets a line projecting the general trend of the line of mean low water along the tributary waterway.

14. Applying the foregoing principles to the physical conditions depicted by the series of 54 maps accompanying the "Report of the Determination of the Contact Line of Mean Low Water on the Gulf of Mexico with the Mainland and Adjacent Islands of the State of Louisiana by a Committee Representing the U. S. Dept. of Interior and a Committee Representing the State of Louisiana," dated December 20, 1961, the present coast line of Louisiana is held to comprise so much of the following as is within the lateral boundaries of the State:

(a) A straight line across the entrance of East Cote Blanche Bay and Atchafalaya Bay, from South Point, Marsh Island, to Point au Fer;

(b) A straight line across the entrance of Terrbonne Bay, from the southeasternmost extremity of the Isles Dernieres to the westernmost extremity of Timbalier Island;

(c) A straight line across the entrance of Timbalier Bay, from the southeasternmost extremity of Timbalier Island to the westernmost extremity of East Timbalier Island;

(d) A straight line across the entrance of West Bay, from the southernmost extremity of land west of the southern entrance of Pass du Bois, at latitude 29°05′04.69″ N., longitude 89°24′-14.60″ W., to the northwesternmost extremity of land west of Lighthouse Bayou, at latitude 28°58′31.13″ N., longitude 89°24′05.59″ W.;

(e) A straight line across the entrance of Garden Island Bay and Redfish Bay, from the South Pass East Jetty Light to the southernmost extremity of the eastern headland of Redfish Bay, at latitude 29°04′07.69″ N., longitude 89°03′44.08″ W.;

(f) Straight line across entrances to Breton Sound, from the northernmost extremity of the eastern headland of Main Pass to the southernmost extremity of the southern island of the Breton Island couplet; from the easternmost extremity of the southern island of the Breton Island couplet to the southernmost extremity of the northern island of the Breton Island couplet; from the easternmost extremity of the Breton Island couplet to the southwesternmost extremity of Grand Gosier Island; and from the easternmost extremity of Grand Gosier Island to the southernmost extremity of the Curlew Islands;

(g) A straight line across the entrance to Chandeleur Sound, from the northernmost extremity of the Chandeleur Islands to the nearest point on the mean low-water line on Ship Island, Mississippi;

(h) The mean low-water line along the outer sides of the jetties, and straight lines between the jetties: at Sabine Pass; at Calcasieu Pass; at Belle Pass; at the entrance sometimes called the Empire Canal, at latitude 29° 14′ 59.51″ N., longitude 89° 36′ 29.00″ W.; and at Southwest Pass and

(i) Elsewhere, the mean low-water line on the mainland, on islands, and on low-tide elevations situated wholly or partly within three geographical miles from the mean low-water line on the mainland or on an island; and straight lines across narrow entrances to inland waters.

15. For the purpose of delimiting with precision the area within three geographical miles from the coast line as above described, the coast line (omitting certain portions that do not affect the position of the three-mile limit) is defined by points on the mean low-water line, and by straight lines between points on the mean low-water line, as hereinafter set forth. In case of any inconsistency, the following description controls over that contained in paragraph 14. Where straight lines are indicated, they are either across entrances to inland waters, or between points on the low-water line, selected so that lines between them generally will not depart more than 50 feet from the actual line of mean low water. Points are identified by coordinates in the Louisiana Plane Coordinate System, South Zone.

(a) Beginning at a point on the mean low-water line at the tip of the western Sabine Pass jetty, at x=1,207,613, y=363,715, latitude 29°38′35.30″ N., longitude 93°49′40.43″ W.; thence eastwardly by a straight line to a point

on the mean low-water line at the tip of the eastern Sabine Pass jetty, at x=1,209,227, y=364,245; thence northerly to a point on the mean low-water line on the eastern side of the eastern Sabine Pass jetty, at x=1,206,795, y=378,672, latitude 29°41′03.17″ N., longitude 93°49′-53.39″ W.;

(b) From a point on the mean low-water line on the mainland at x=1,215,615, y=388,263, latitude 29°42′39.99″ N., longitude 93°48′-15.76″ W.; thence generally northeastwardly and eastwardly by successive straight lines through the points

x=1,216,582,	y=389,216
1,217,089	389,513
1,217,536	389,445
1,219,065	390,227
1,219,698	390,746
1,225,421	393,370
1,225,768	393,281
1,226,444	393,922
1,228,772	394,775
1,228,846	394,497
1,233,256	395,989
1,235,668	396,741
1,240,260	397,840
1,243,670	398,400
1,248,971	399,421
1,254,211	400,226
1,259,600	400,971
1,264,910	401,500
1,275,467	402,375
1,280,760	402,836
1,286,154	403,467
1,291,413	404,205
1,296,747	405,049

x=1,307,312,	y=406,260
1,312,617	406,742
1,317,944	407,045
1,323,205	407,138
1,328,473	407,126
1,333,745	406,888
1,341,917	405,967
1,351,162	404,620

to the point x=1,354,310, y=403,875, latitude 29°45′41.51″ N., longitude 93°22′06.32″ W.;

(c) From a point on the mean low-water line at the tip of the western Calcasieu Pass jetty, at x=1,362,416, y=397,822, latitude 29°44′-43.01″ N., longitude 93°20′33.16″ W.; thence eastwardly by a straight line to a point on the mean low-water line at the tip of the eastern Calcasieu Pass jetty, at x=1,363,392, y=397,-870, latitude 29°44′43.66″ N., longitude 93°20′-22.10″ W.;

(d) From a point on the mean low-water line on the mainland, at x=1,372,945, y=406,862, latitude 29°46′14.31″ N., longitude 93°18′35.51″ W.; thence eastwardly by successive straight lines through the points

x=1,376,515,	y=407,966
1,380,235	408,500
1,383,990	409,136
1,386,636	409,216
1,391,954	409,243
1,392,000	409,180
1,397,220	408,870
1,402,525	408,365
1,410,175	407,090
1,416,365	405,700
1,424,630	403,175
1,425,600	402,610

to the point x=1,429,035, y=401,760, latitude 29°45′32.95″ N., longitude 93°07′58.23″ W.;

(e) From a point on the mean low-water line on a low-tide elevation at x=1,429,020, y=401,485, latitude 29°45′30.23″ N., longitude 93°07′58.35″ W.; thence eastwardly by successive straight lines through the point x=1,431,-465, y=400,740 to the point x=1,431,526, y=400,742, latitude 29°45′23.26″ N., longitude 93°07′29.79″ W.;

(f) From a point on the mean low-water line on the mainland at x=1,436,899, y=399,820, latitude 29°45′14.96″ N., longitude 93°06′28.68″ W.; thence southeastwardly, eastwardly, and northeastwardly by successive straight lines through the points

x=1,441,485,	y=398,150
1,444,715	396,930
1,449,935	394,700
1,454,105	393,050
1,460,435	391,260
1,467,685	388,820
1,471,240	387,390
1,479,730	384,090
1,489,725	379,370
1,492,040	378,110
1,496,700	375,770
1,502,470	372,625
1,513,280	366,930
1,524,550	361,675
1,531,240	358,190
1,531,970	358,030
1,532,515	357,575
1,535,690	356,465
1,536,245	356,080
1,536,505	355,610

x=1,539,270,	y=354,040
1,546,195	350,910
1,546,740	350,600
1,550,645	349,050
1,551,670	348,170
1,553,840	347,150
1,555,105	346,865
1,558,720	345,375
1,562,680	344,195
1,564,160	343,480
1,566,375	342,810
1,566,890	342,490
1,567,695	341,990
1,570,480	340,905
1,571,630	340,335
1,576,170	338,670
1,581,450	336,800
1,586,780	335,220
1,589,460	334,525
1,591,685	333,785
1,593,010	333,520
1,593,910	333,645
1,594,075	333,290
1,594,770	333,270
1,595,210	333,090
1,599,740	332,390
1,600,765	332,140
1,603,140	331,540
1,605,565	331,280
1,605,965	331,030
1,608,080	330,835
1,609,300	330,480
1,613,190	329,780
1,616,760	329,510
1,617,090	329,300
1,622,420	328,555

x=1,629,147,	y=327,939
1,639,027	326,645
1,648,656	324,985
1,649,308	324,684
1,650,220	324,644
1,651,294	324,333
1,653,430	323,751
1,655,896	323,305
1,657,050	323,540
1,658,887	323,134
1,659,960	323,169
1,663,290	322,457
1,665,833	321,916
1,667,091	321,595
1,669,012	321,069
1,671,018	320,396
1,675,346	319,196
1,678,545	318,408
1,687,270	316,510
1,689,980	316,170
1,692,568	315,990
1,696,359	315,965
1,700,680	316,390
1,703,080	316,885
1,706,790	317,870
1,708,756	318,661
1,709,968	319,818
1,711,532	320,881
1,717,114	324,303
1,720,140	326,402
1,721,682	327,214
1,722,884	327,774
1,724,713	328,326
1,726,542	329,268
1,730,831	330,886
1,735,850	333,066

x=1,738,236,	y=333,686
1,743,691	334,373
1,748,380	334,810

to the point x=1,755,535, y=335,045, latitude 29°35′08.74″ N., longitude 92°06′08.83″ W.;

(g) A point on the mean low-water line on a low-tide elevation at x=1,758,630, y=333,490, latitude 29°34′53.55″ N., longitude 92°05′33.66″ W.;

(h) From a point on the mean low-water line on the mainland at x=1,762,420, y=333,590, latitude 29°34′54.78″ N., longitude 92°04′50.75″ W.; thence eastwardly by a straight line to the point x=1,763,190, y=333,540, latitude 29°34′54.34″ N., longitude 92°04′42.02″ W.;

(i) Points on the mean low-water line on low-tide elevations at x = 1,778,769, y = 324,757, latitude 29°33′28.36″ N., longitude 92°01′44.98″ W.; x = 1,782,391, y = 321,876, latitude 29°33′00.05″ N., longitude 92°01′03.77″ W.; x = 1,783,067, y = 321,331, latitude 29°32′54.70″ N., longitude 92°00′56.08″ W.; x= 1,791,584, y = 307,545, latitude 29°30′38.71″ N., longitude 91°59′18.77″ W.; x = 1,809,845, y = 296,285, latitude 29°28′48.22″ N., longitude 91°55′51.43″ W.; and x = 1,820,994, y = 291,804, latitude 29°28′04.42″ N., longitude 91°53′45.05″ W.; a point on the mean low-water line on the southernmost of the Shell Keys, at x = 1,833,527, y = 271,423, latitude 29°24′43.24″ N., longitude 91°51′22.21″ W.; and points on the mean low-water line on low-tide elevations at x = 1,834,619, y = 270,301, latitude 29°24′32.15″ N., longitude 91°51′16.59″

W.; x = 1,835,344, y = 270,839, latitude 29°24′-37.54″ N., longitude 91°51′01.64″ W.; x = 1,843,467, y = 275,912, latitude 29°25′28.12″ N., longitude 91°49′30.05″ W.; x = 1,844,021, y = 276,962, latitude 29°25′38.53″ N., longitude 91°-49′23.83″ W.; x=1,875,200, y=285,729, latitude 29°27′06.51″ N., longitude 91°43′31.60″ W.; x = 1,877, 355, y = 283,438, latitude 29°-26′43.91″ N., longitude 91°43′07.14″ W.; and x = 1,877,582, y = 283,274, latitude 29°26′42.-29″ N., longitude 91°43′04.56″ W.;

(j) From the southeasternmost extremity of the mean low-water line on South Point, Marsh Island, at x=1,863,474, y=298,772, latitude 29°29′15.22″ N., longitude 91°45′44.78″ W.; thence southeastwardly by a straight line to the nearest point on the mean low-water line on Point au Fer, at x=1,993,420, y=241,930, latitude 29°19′55.01″ N., longitude 91°21′14.34″ W.;

(k) Points on the mean low-water line on low-tide elevations at x=1,987,371, y=241,272, latitude 29°19′48.48″ N., longitude 91°22′22.67″ W.; and x=1,987,818, y=240,892, latitude 29° 19′44.72″ N., longitude 91°22′17.62″ W.;

(l) From a point on the mean low-water line on the mainland at x=1,995,220, y=235,805, latitude 29°18′54.38″ N., longitude 91°20′53.99″ W.; thence southeastwardly and eastwardly by successive straight lines through the points

x=1,996,506,	y=233,983
1,998,568	230,370
2,000,030	228,573
2,004,384	224,474
2,006,256	222,432

x=2,006,991,	y=221,401
2,008,058	219,434
2,008,873	218,388
2,010,960	216,566
2,014,384	213,268
2,016,243	211,245
2,017,453	210,475
2,021,155	208,850
2,023,042	208,270
2,026,640	206,660
2,029,630	205,680
2,033,385	204,235
2,035,775	203,405
2,037,075	203,200
2,042,475	201,660
2,045,960	201,470
2,049,230	201,255
2,051,090	201,230
2,053,190	201,320
2,054,750	201,215
2,055,610	201,415
2,057,430	200,980
2,058,700	200,495

to the point x=2,062,055, y=199,555, latitude 29°12′54.98″ N., longitude 91°08′19.76″ W.;

(m) A point on the mean low-water line on the mainland at x=2,071,131, y=195,080, latitude 29°12′10.52″ N., longitude 91°06′37.44″ W.;

(n) From a point on the mean low-water line on the mainland at x=2,075,295, y=190,530, latitude 29°11′25.39″ N., longitude 91°05′50.56″ W.; thence southeastwardly by successive straight lines through the point x=2,076,201, y=189,799, to the point x=2,077,417, y=189,-

409, latitude 29°11′14.25″ N., longitude 91°05′ 26.65″ W.;

(o) From a point on the mean low-water line on the mainland at x=2,085,370, y=187,372, latitude 29°10′53.91″ N., longitude 91°03′56.98″ W.; thence eastwardly by successive straight lines through the southernmost extremity of the western headland of East Bay Junop, at x=2,086,261, y=187,177, latitude 29°10′51.96″ N., longitude 91°03′46.94″ W.; to the southernmost extremity of the eastern headland of Jack Stout Bayou, at x=2,103,313, y=183,605, latitude 29°10′16.16″ N., longitude 91°00′34.70″ W.;

(p) A point on the mean low-water line on the mainland at x=2,106,412, y=183,216, latitude 29°10′12.22″ N., longitude 90°59′59.76″ W.;

(q) From a point on the mean low-water line on the western headland of Grand Bayou du Large at x=2,111,697, y=183,677, latitude 29°10′16.63″ N., longitude 90°59′00.13″ W.; thence eastwardly by a straight line to a point on the mean low-water line on the eastern headland of Bayou Grand Caillou at x=2,124,878, y=180,545, latitude 29°09′45.20″ N., longitude 90°56′31.58″ W.;

(r) A point on the mean low-water line on the mainland at x=2,131,078, y=175,500, latitude 29°08′55.04″ N., longitude 90°55′21.86″ W.;

(s) From a point on the mean low-water line on the northern side of the westernmost of the Isles Dernieres, at x=2,117,632, y=143,583,

latitude 29°03′39.52″ N., longitude 90°57′54.64″ W.; thence southwestwardly, southeastwardly, and eastwardly by successive straight lines through the points

x=2,117,317,	y=143,491
2,118,065	142,532
2,118,829	141,971
2,122,523	140,238
2,126,697	139,353
2,128,819	138,694
2,133,089	136,940

to the southernmost extremity of the mean low-water line on the western headland of Coupe Colin, at x=2,134,210, y=136,726, latitude 29°-02′31.07″ N., longitude 90°54′48.14″ W.; thence eastwardly by a straight line to a point on the mean low-water line on the eastern headland of Coupe Colin, at x=2,138,231, y=136,387, latitude 29°02′27.57″ N., longitude 90°54′02.86″ W.; thence eastwardly by successive straight lines along the southerly side of the Isles Dernieres through the points

x=2,139,529,	y=136,276
2,143,589	136,276
2,147,751	136,599

to a point on the mean low-water line, at x=2,148,929, y=136,962, latitude 29°02′32.85″ N., longitude 90°52′02.33″ W.; thence eastwardly by a straight line to a point on the mean low-water line, at x=2,157,920, y=135,521, latitude 29°02′18.21″ N., longitude 90°50′21.11″ W.; thence eastwardly by successive straight lines along the southerly side of the Isles Dernieres through the points

x=2,162,430,	y=135,112
2,163,266	135,182
2,164,477	134,753
2,167,836	134,922
2,169,680	135,315

to a point on the mean low-water line on the western headland of Whiskey Pass, at x=2,171,989, y=136,334, latitude 29°02′25.63″ N., longitude 90°47′42.59″ W.; thence eastwardly by a straight line to a point on the mean low-water line on the eastern headland of Whiskey Pass, at x=2,179,937, y=135,695, latitude 29°-02′18.92″ N., longitude 90°46′13.10″ W.; thence eastwardly by successive straight lines along the southerly side of the Isles Dernieres through the points

x=2,180,645,	y=135,457
2,182,166	135,368
2,183,331	135,655
2,184,788	135,611
2,186,596	135,997
2,192,330	136,944
2,198,296	138,515
2,207,126	141,266
2,215,009	143,380
2,218,146	144,160
2,219,935	144,971
2,221,937	146,004

to the southeasternmost extremity of the mean low-water line on the Isles Dernieres, at x=2,222,957, y=146,695, latitude 29°04′05.48″ N., longitude 90°38′07.76″ W.; thence eastwardly by a straight line to the westernmost extremity of the mean low-water line on Timbalier Island, at x=2,253,306, y=154,102, latitude 29°05′-

16.85″ N., longitude 90°32′25.22″ W.; thence eastwardly by successive straight lines along the southerly side of Timbalier Island through the points

x=2,254,031,	y=153,153
2,256,191	151,946
2,260,236	150,105
2,264,450	147,674
2,270,205	145,091
2,274,749	143,161
2,281,202	141,484
2,286,402	140,499
2,291,503	139,861
2,293,148	139,498
2,294,383	138,846
2,295,144	138,550
2,296,041	138,519
2,298,538	139,073

to the southeasternmost extremity of the mean low-water line on Timbalier Island, at x=2,300,326, y=139,954, latitude 29°02′53.27″ N., longitude 90°23′36.63″ W.; thence northeastwardly by a straight line to the westernmost extremity of the mean low-water line on East Timbalier Island, at x=2,306,697, y=143,789, latitude 29°03′30.71″ N., longitude 90°22′24.50″ W.; thence eastwardly by successive straight lines along the south side of East Timbalier Island through the points

x=2,307,414,	y=143,059
2,308,552	142,401
2,310,546	141,903
2,312,204	141,813
2,313,902	141,865
2,317,663	142,869

x=2,319,608,	y=143,421
2,320,164	143,811
2,322,466	144,396
2,327,933	146,251
2,335,471	149,301
2,337,450	149,987
2,339,651	150,598
2,342,108	151,526

to the point x=2,347,871, y=153,564, latitude 29°05′03.84″ N., longitude 90°14′39.58″ W.;

(t) From a point on the mean low-water line at the tip of the western Belle Pass jetty, at x=2,353,875, y=152,659, latitude 29°04′54.31″ N., longitude 90°13′32.02″ W.; thence eastwardly by a straight line to a point on the mean low-water line at the tip of the eastern Belle Pass jetty, at x=2,354,070, y=152,599, latitude 29°04′53.69″ N., longitude 90°13′29.83″ W.;

(u) From a point on the mean low-water line on the mainland at x=2,356,733, y=154,323, latitude 29°05′10.50″ N., longitude 90°12′59.63″ W.; thence northeastwardly by successive straight lines through the points

x=2,362,830,	y=157,339
2,363,585	157,549
2,364,392	157,349
2,365,337	157,918
2,367,695	158,943
2,369,709	160,120
2,373,613	162,597
2,374,875	163,200
2,376,521	164,696
2,381,527	168,671
2,385,833	171,938

x=2,393,610,	y=178,130
2,398,175	182,359
2,410,330	192,644

to the easternmost extremity of the mean low-water line on the western headland of Caminada Pass, at x=2,410,949, y=194,412, latitude 29°11′41.73″ N., longitude 90°02′43.59″ W.; thence northeastwardly by a straight line to a point on the mean low-water line on the eastern headland of Caminada Pass, at x=2,412,768, y=195,562, latitude 29°11′52.91″ N., longitude 90°02′22.92″ W.; thence northeastwardly by successive straight lines along the southeast side of Grand Isle through the points

x=2,413,785,	y=196,242
2,415,068	197,994
2,415,162	198,637
2,416,442	200,331
2,418,510	202,105
2,423,068	205,322
2,426,997	207,772
2,428,924	208,999
2,430,176	209,966
2,433,051	211,862
2,436,419	214,125
2,437,945	215,568

to a point on the mean low-water line at x=2,438,898, y=217,128, latitude 29°15′23.38″ N., longitude 89°57′25.21″ W.;

(v) A point on the mean low-water line on a low-tide elevation, at x=2,376,485, y=164,409, latitude 29°06′48.39″ N., longitude 90°09′15.87″ W.;

(w) From a point on the mean low-water line on the Grand Terre Islands, at x=2,445,464, y=222,321, latitude 29°16′14.00″ N., longitude

89°56′10.38″ W.; thence northeastwardly by successive straight lines along the southeast side of the Grand Terre Islands through the points

x=2,446,655,	y=223,514
2,450,142	226,119

to the point x=2,455,116, y=229,691, latitude 29°17′25.78″ N., longitude 89°54′20.38″ W.;

(x) From a point on the mean low-water line on the Grand Terre Islands, at x=2,461,862, y=232,837, latitude 29°17′56.09″ N., longitude 89°53′03.75″ W.; thence eastwardly along the south side of the Grand Terre Islands through the points

x=2,464,217,	y=233,484
2,465,482	233,586

to the point x=2,468,682, y=234,582, latitude 29°18′12.50″ N., longitude 89°51′46.48″ W.;

(y) A point on the mean low-water line on a low-tide elevation, at x=2,472,368, y=234,-810, latitude 29°18′14.29″ N., longitude 89°51′-04.82″ W.;

(z) From a point on the mean low-water line on the mainland, at x=2,482,048, y=237,051, latitude 29°18′35.22″ N., longitude 89°49′15.17″ W.; thence eastwardly by successive straight lines through the points

x=2,484,549,	y=236,987
2,488,866	237,153
2,496,591	237,032
2,497,293	236,734
2,502,492	236,272
2,507,116	236,083
2,508,937	235,857
2,509,271	235,436

x=2,509,755,	y=235,510
5,511,764	235,027
2,513,167	235,038
2,520,554	233,046

to the point x=2,523,819, y=231,858, latitude 29°17′38.12″ N., longitude 89°41′24.26″ W.;

(aa) A point on the mean low-water line on a low-tide elevation, at x=2,528,855, y=229,-207, latitude 29°17′11.16″ N., longitude 89°-40′27.83″ W.;

(bb) From a point on the mean low-water line on Shell Island, at x=2,531,298, y=228,-517, latitude 29°17′03.98″ N., longitude 89°40′00.36″ W.; thence southeastwardly by successive straight lines through the point x=2,543,300, y=221,588, to the point x=2,548,465, y=218,568, latitude 29°15′22.98″ N., longitude 89°36′48.22″ W.;

(cc) From a point on the mean low-water line at the tip of the western jetty at the entrance known as the Empire Canal, at x=2,550,003, y=216,287, latitude 29°15′00.17″ N., longitude 89°36′31.24″ W.; thence eastwardly by a straight line to a point on the mean low-water line at the tip of the eastern jetty, at x=2,550,-402, y=216,158, latitude 29°14′58.84″ N., longitude 89°36′26.76″ W.;

(dd) From a point on the mean low-water line on Pelican Island, at x=2,556,172, y=215,-383, latitude 29°14′50.30″ N., longitude 89°35′21.77″ W.; thence eastwardly and southeastwardly by successive straight lines through the points

x=2,561,385,	y=214,258
2,562,149	214,046
2,563,010	214,045

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x=2,565,940,	y=212,988
2,566,991	212,986
2,568,736	212,548
2,571,725	211,744
2,574,712	210,767
2,574,890	210,450
2,575,992	210,090
2,576,174	209,790
2,576,450	210,023
2,583,750	207,060
2,585,000	206,975
2,587,400	205,250
2,589,100	204,125
2,590,100	203,860
2,593,340	201,660
2,593,875	201,260
2,594,900	199,935
2,598,335	196,450
2,600,780	192,900
2,601,940	190,595
2,602,425	189,395
2,602,860	188,615
2,603,355	186,915
2,604,220	184,790
2,604,990	184,180
2,605,025	183,315
2,605,125	182,710
2,606,370	180,190
2,607,710	178,665
2,608,270	178,325
2,609,110	178,140
2,609,880	177,025
2,611,490	176,505
2,614,070	171,910
2,613,960	170,145
2,613,485	167,600

x=2,613,585,	y=166,700
2,613,550	164,745
2,614,865	161,005
2,614,790	160,765
2,615,135	159,890
2,615,450	157,770

to a point on the mean low-water line on the northern headland of West Bay, at x=2,616,-265, y=157,185, latitude 29°05′04.69″ N., longitude 89°24′14.60″ W.; thence southerly by a straight line to the northwesternmost extremity of the mean low-water line on the southern headland of West Bay, at x=2,617,735, y=117,-450, latitude 28°58′31.13″ N., longitude 89°24′ 05.59″ W.:

(ee) Points on the mean low-water line on the western side of the western bank of Southwest Pass at x=2,615,475, y=113,900, latitude 28° 57′ 56.37″ N., longitude 89°24′31.70″ W.; x=2,614,553, y=111,404, latitude 28°57′31.82″ N., longitude 89°24′42.55″ W.; and x=2,614,-270, y=110,615, latitude 28°57′24.05″ N., longitude, 89°24′45′88″ W.;

(ff) From a point on the mean low-water line on the western side of the western Southwest Pass jetty, at x=2,613,680, y=104,160, latitude 28°56′20.26″ N., longitude 89°24′53.74″ W.; thence southwestwardly by successive straight lines through the points

x=2,611,985,	y=101,005
2,611,045	99,180
2,610,650	98,640
2,608,665	95,870
2,607,455	93,710
2,607,400	93,175

to a point on the mean low-water line at the tip of the western Southwest Pass jetty, at x=2,607,290, y=93,040, latitude 28°54′31.24″ N., longitude 89°26′07.71″ W.; thence southeastwardly by a straight line to a point on the mean low-water line at the tip of the eastern Southwest Pass jetty, at x=2,609,180, y=91,445, latitude 28°54′15.15″ N., longitude 89°25′46.75″ W.; thence northeastwardly by successive straight lines through the points

x=2,609,785,	y= 91,750
2,610,160	92,050
2,611,843	94,130
2,615,196	98,279
2,615,885	99,131
2,618,380	102,265
2,620,655	104,065
2,621,925	105,355
2,624,045	107,660
2,624,760	108,445
2,624,995	108,700
2,625,550	109,560
2,628,680	113,190
2,630,660	116,450
2,633,755	121,760
2,635,800	123,995
2,638,945	126,780
2,639,010	126,830
2,639,545	126,825
2,641,835	129,725

to the point x=2,644,940, y=134,910, latitude 29°01′19.31″ N., longitude 89°18′55.92″ W.;

(gg) A point on the mean low-water line on a low-tide elevation, at x=2,672,315, y=141,745, latitude 29°02′22.09″ N., longitude 89°13′46.24″ W.;

(hh) From a point on the mean low-water line on an island on the south side of Whale Bay, at x=2,673,482, y=141,245, latitude 29°02′16.93″ N., longitude 89°13′33.20″ W.; thence southeastwardly by successive straight lines through the point x=2,678,500, y=139,250, to the point x=2,682,605, y=136,895, latitude 29°01′32.20″ N., longitude 89°11′51.37″ W.;

(ii) A point on the mean low-water line at x=2,685,325, y=133,800, latitude 29°01′01.07″ N., longitude 89°11′21.39″ W.;

(jj) From a point on the mean low-water line on an island, at x=2,697,300, y=118,500, latitude 28°58′27.39″ N., longitude 89°09′09.83″ W.; thence southerly by successive straight lines through the point x=2,697,510, y=117,648, to the point x=2,697,850, y=117,200, latitude 28°58′14.42″ N., longitude 89°09′03.92″ W.;

(kk) The southernmost extremity of the mean low-water line on the western headland of South Pass, at x=2,699,435, y=118,600, latitude 28°58′27.98″ N., longitude 89°08′45.78″ W.;

(ll) From a point on the mean low-water line at the South Pass East Jetty Light, at x=2,702,461, y=124,148, latitude 28°59′22.32″ N., longitude 89°08′10.53″ W.; thence northeastwardly by a straight line to the southernmost extremity of the mean low-water line on the eastern headland of Redfish Bay, at x=2,725,550, y=153,430, latitude 29°04′07.69″ N., longitude 89°03′44.08″ W.;

(mm) Points on the mean low-water line on islands and low-tide elevations at x=2,724,850, y=148,150, latitude 29°03′15.57″ N., longitude 89°03′53.15″ W.; x=2,726,105, y=148,530, lati-

tude 29°03′19.08″ N., longitude 89°03′38.93″ W.; x=2,726,951, y=150,846, latitude 29°03′-41.84″ N.; longitude 89°03, 28.88″ W.;

(nn) From a point on the mean low-water line on an island, at x=2,727,215, y=156,890, latitude 29°04′41.61″ N., longitude 89°03′24.55″ W.; thence northerly by a straight line to the point x=2,728,153, y=162,005, latitude 29°05′-32.05″ N., longitude 89°03′12.84″ W.;

(oo) From a point on the mean low-water line on an island, at x=2,733,040, y=172,295, latitude 29°07′12.94″ N., longitude 89°02′15.45″ W.; thence northeastwardly by a straight line to the point x=2,734,720, y=174,030, latitude 29°07′29.78″ N., longitude 89°01′56.12″ W.;

(pp) Points on the mean low-water line on islands and low-tide elevations, at x=2,736,-662, y=175,902, latitude 29°07′47.92″ N., longitude 89°01′33.80″ W.; x=2,750,586, y=181,270, latitude 29°08′38.25″ N., longitude 88°58′55.61″ W.; x=2,751,045, y=181,305, latitude 29°08′-38.50″ N., longitude 88°58′50.42″ W.; x=2,752,470, y=182,170, latitude 29°08′46.77″ N., longitude 88°58′34.16″ W.; x=2,753,885, y=183,460, latitude 29°08′59.25″ N., longitude 88°58′17.90″ W.; x=2,754,263, y=186,316, latitude 29°09′27.44″ N., longitude 88°58′12.98″ W.; x=2,754,100, y=186,915, latitude 29°09′-33.41″ N., longitude 88°58′14.68″ W.; x=2,755,178, y=203,815, latitude 29°12′20.46″ N., longitude 88°57′58.58″ W.; x=2,755,325, y=204,680, latitude 29°12′28.99″ N., longitude 88°57′56.72″ W.; x=2,750,755, y=206,535, latitude 29°12′48.28″ N., longitude 88°58′47′85″ W.; x=2,738,938, y=209,975, latitude 29°13′24.71″ N., longitude 89°01′00.38″ W.; x=2,738,320,

y=210,230, latitude 29°13′27.36″ N., longitude 89°01′07.30″ W.; x=2,737,065, y=210,155, latitude 29°13′26.87″ N., longitude 89°01′21.47″ W.; x=2,727,090, y=209,195, latitude 29°13′-19.35″ N., longitude 89°03′14.24″ W.; x=2,709,100, y=220,995, latitude 29°15′19.64″ N., longitude 89°06′34.63″ W.; x=2,708,835, y=221,440, latitude 29°15′24.10″ N., longitude 89°06′37.53″ W.; x=2,707,635, y=223,640, latitude 29°15′46.10″ N., longitude 89°06′50.59 W.; x=2,701,500, y=232,820, latitude 29°17′18.14″ N., longitude 89°07′57.85″ W.; x=2,700,735, y=234,640, latitude 29°17′36.30″ N., longitude 89°08′06.09″ W.; x=2,689,305, y=250,395, latitude 29°20′14.40″ N., longitude 89°10′11.79″ W.; x=2,688,235, y=252,215, latitude 29°20′-32.61″ N., longitude 89°10′23.49″ W.;

(qq) From the northernmost extremity of the mean low-water line on the eastern headland of Main Pass, at x=2,681,915, y=257,755, latitude 29°21′28.63″ N., longitude 89°11′33.71″ W.; thence northerly by a straight line to the southernmost extremity of the mean low-water line on the Breton Island couplet, at x=2,678,009, y=294,303, latitude 29°27′31.11″ N., longitude 89°12′10.16″ W.; thence northeastwardly by successive straight lines through the points

x=2,680,880,	y=294,918
2,683,264	296,069
2,685,058	297,573
2,687,014	300,054
2,687,610	301,648
2,688,390	304,545
2,689,514	307,841

to the easternmost extremity of the mean low-water line on the northern island of the Breton

Island couplet, at x=2,689,683, y=308,890, latitude 29°29′53.33″ N., longitude 89°09′55.01″ W.; thence northeastwardly by a straight line to the southwesternmost extremity of the mean low-water line on Grand Gosier Island, at x=2,710,380, y=315,995, latitude 29°30′59.72″ N., longitude 89°05′59.28″ W.; thence northeastwardly by successive straight lines through the points

x=2,711,772,	y=316,107
2,713,324	316,801
2,714,633	317,731
2,715,236	318,391
2,717,012	320,677
2,720,696	326,779
2,722,321	329,172
2,723,975	330,868
2,726,852	333,103

to the easternmost extremity of the mean low-water line on Grand Gosier Island, at x=2,727,653, y=334,120, latitude 29°33′55.75″ N., longitude 89°02′39.73″ W.; thence northeastwardly by a straight line to a point on the mean low-water line on the southernmost of the Curlew Islands at x=2,742,583, y=353,754, latitude 29°37′07.10″ N., longitude 88°59′46.16″ W.; thence northeastwardly, northerly, and northwestwardly by successive straight lines through the points

x=2,743,352,	y=353,794
2,744,222	354,125
2,746,309	355,438
2,749,221	357,797
2,755,015	363,480
2,755,709	364,596

x=2,757,465,	y=366,796
2,758,093	367,862
2,761,138	371,491
2,766,408	378,524
2,767,052	379,676
2,768,031	380,244
2,768,775	381,521
2,770,599	383,887
2,772,541	387,391
2,773,972	389,724
2,774,670	390,293
2,774,819	390,716
2,775,343	391,771
2,776,487	392,403
2,777,922	394,224
2,779,673	397,140
2,783,250	403,219
2,786,724	410,834
2,788,165	414,646
2,790,415	420,878
2,793,260	430,155
2,794,722	436,006
2,795,853	442,333
2,797,067	452,190
2,797,455	458,119
2,797,456	463,898
2,797,209	468,763
2,796,202	475,864
2,794,789	481,712
2,791,690	491,970
2,790,051	496,115
2,788,518	498,898
2,784,689	505,455
2,782,059	508,914
2,780,766	510,417
2,779,032	512,013
2,777,512	513,071

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to the northernmost extremity of the mean low-water line on the northernmost of the Chandeleur Islands, at x=2,775,787, y=513,796, latitude 30°03′24.28″ N., longitude 88°52′51.25″ W., thence northerly along a straight line toward the closest point on the mean low-water line on Ship Island, Mississippi, at x=2,752,565, y=568,525, latitude 30°12′30.80″ N., longitude 88°57′02.50″ W., to the point where said line meets the boundary between Louisiana and Mississippi.

16. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to prior orders or decrees herein or to effectuate the rights of the parties in the premises.

In the Supreme Court of the United States

OCTOBER TERM, 1967

NO. 9, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES AND IN OPPOSITION TO THE MOTION OF THE STATE OF LOUISIANA

INTRODUCTION AND STATEMENT OF POSITION

1. The United States and Louisiana have both moved for the entry of supplemental decrees defining with particularity the "coast line" of Louisiana from which is measured the three-mile limit that separates the submerged lands of the State from those of the United States under the Decree of December 12, 1960, 364 U.S. 502. The cross-motions raise questions on the merits, the decision of which should bring this protracted controversy to a conclusion, but it will also be necessary, at an early stage, for the Court to determine the procedure to be followed in the disposition of the motions. The position of the United States may be summarized as follows:

The United States does not dispute the allegations of paragraphs 1 through 7 of Louisiana's Motion insofar as they assert the basis and need for exercising the jurisdiction of the Court reserved "to entertain such further proceedings, enter such orders, and issue such writs as may * * * be deemed necessary or advisable to give proper force and effect to this Decree" (364 U.S. at 504). The decree awarded Louisiana the submerged lands and resources landward, and the United States the lands and resources seaward, of a line three geographical miles from the coast line of the State, which was defined as

> 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. [364 U.S. at 503.]

The United States and Louisiana are in wide disagreement over the actual location of the line thus

described, chiefly because of differences concerning the applicable legal principles. In many places the disputed zone is 10–25 miles wide. The issue is urgent because of the mineral resources in the area. Further development is impeded and regulation is confused by the uncertainty over the property line. In addition, more than $1,000,000,000 collected as bonuses, rents, and royalties from the disputed areas is impounded pending the outcome of this litigation.

2. The United States submits that the exact location of the coast line is to be established primarily by applying the principles set forth in the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, which were adopted by this Court for the purposes of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315, in *United States* v. *California,* 381 U.S. 139. A few minor elaborations and modifications are required, but the coast line defined in our proposed Supplemental Decree rests essentially upon the application of the Convention. The coast line claimed by the United States is shown by the heavy black line on the small scale map at the back of this Memorandum.

Louisiana claims that the coast line is a line described by the Acting Commandant of the Coast Guard in a regulation issued in 1953, pursuant to the authority granted by the Act of February 19, 1895, 28 Stat. 672, as amended, 33 U.S.C. 151, for the purpose of separating the areas in which shipping would be governed by the Inland Rules of Navigation (33 U.S.C. 152–232) from the area in which shipping should observe the International Rules (33 U.S.C. 1051–1094). The coast line claimed by Louisiana is shown

as a heavy broken line on the map at the back of this Memorandum.

Thus, although the United States is not denying the factual statements in paragraphs 8–12 of Louisiana's motion concerning the establishment of the Coast Guard line, it does challenge the contention (paragraphs 13 and 14) that the Coast Guard line represents or has ever been recognized as representing the coast line of the United States for purposes of sovereignty or international relations.

What emerges is a clear-cut question of law unencumbered by factual controversy. The issue lies at the threshold of this phase of the controversy because a decision must be made as to the basic theory upon which the coast line is to be defined before it is profitable to turn to questions concerning the manner of applying the theory. Accordingly, we suggest that the Court should resolve this basic issue after oral arguments and such further briefs as may be necessary, regardless of whether it develops that other aspects of the controversy should be referred to a master.

We state below our reasons for concluding that the coast line is to be laid out in accordance with the Convention rather than the Coast Guard regulation governing the rules of navigation.

3. The Supplemental Decree proposed by the United States would, with one minor exception, give the exact location of the coast line by reference to 54 large-scale maps prepared by the Coast and Geodetic Survey between 1959 and 1961 under the joint supervision of State and federal representatives, which depict the mean low-water line of the Louisiana coast in minute

detail. We believe that there can be no dispute about the geographical facts portrayed by the maps. The proposed description results from applying to those undisputed facts the international legal principles set forth in the Convention and adopted for the purposes of the Submerged Lands Act in *United States* v. *California,* 381 U.S. 139. In our view, these facts alone are relevant to the delimitation of the coast line, unless Louisiana claims that there are "historic bays" within the meaning of the Convention. We believe the character of facts to which Louisiana refers in paragraph 15 of its Motion are irrelevant, except as they are revealed on the charts and maps to which we have referred. The Convention does not permit departure from the principles therein stated on the basis of other data. Such bearing as data of the character described in paragraph 15 of the Motion might have upon the propriety and location of straight baselines is immaterial here because no such baselines have been drawn by the United States. See *United States* v. *California, supra,* 381 U.S. at 167–168. It seems probable, therefore, that any substantial issues that remain with respect to this proposed coast line, after the governing principle is established, will be questions of law.

At this stage, however, we cannot tell what other objections Louisiana has to the coast line proposed by the United States, assuming that Louisiana's claim to the Coast Guard line is rejected and the coast line is to be defined in accordance with *United States* v. *California.* In order to bring any issues of this nature to a head, we state below in full detail the principles

we have followed and the minor modifications we have made in applying the Convention to the Louisiana coast and waters. If Louisiana were now to respond to our motion by stating the specific segments of our proposed coast line to which she objects (assuming that the Coast Guard line is rejected), and also the exact facts and legal principles which form the basis of the objections, it should be easy to determine which issues can be resolved by the Court upon briefs and oral arguments and which, if any, should be referred to a master.

THE COAST LINE SHOULD BE DEFINED IN ACCORDANCE WITH THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE, AND NOT FOLLOW THE COAST GUARD LINE

A. THE DECISION IN UNITED STATES V. CALIFORNIA IS CONTROLLING

In *United States* v. *Louisiana,* 363 U.S. 1, the central issue was whether Louisiana was entitled to the submerged lands and mineral resources out to three leagues from the coast line. The decree entered December 12, 1960, 364 U.S. 502, rejected Louisiana's claim, and it established that the United States is entitled to the submerged lands and mineral resources lying more than three geographical miles from the coast line. The coast line was defined in the decree as

> 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. [364 U.S. at 503.]

This definition was taken verbatim from Section 2(c) of the Submerged Lands Act, 43 U.S.C. 1301. The

meaning of the term as used in the decree, therefore, turns upon its meaning in the Submerged Lands Act.

In *United States* v. *California,* 381 U.S. 139, this Court held the terms "coast line" and "inland waters," as used in the Submerged Lands Act, must be given an international meaning and were, therefore, to be defined by reference to the Convention on the Territorial Sea and the Contiguous Zone, approved by the Senate in 1960 and ratified by the President in 1961. The Court said (381 U.S. at 164–165):

> Congress, in passing the Act, left the responsibility for defining inland waters to this Court. * * * It is our opinion that we best fill our responsibility of giving content to the words which Congress employed by adopting the best and most workable definitions available. The Convention on the Territorial Sea and the Contiguous Zone, approved by the Senate and ratified by the President, provides such definitions. We adopt them for purposes of the Submerged Lands Act. This establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations * * *.

Louisiana's claim that the "coast line" for the purposes of the Submerged Lands Act is the line established by the Acting Commandant of the Coast Guard under the Act of February 19, 1895, 28 Stat. 672, as amended, 33 U.S.C. 151, is utterly inconsistent with *United States* v. *California.* The Coast Guard line was established for the sole purpose of instructing mariners concerning the applicable rules of the road. It follows none of the principles of international law, neither those to which the United States has historically adhered, nor those set forth in the Convention.

It does not close the mouth of any bay under Article 7 or of any river flowing directly into the sea under Article 13. Even if the Louisiana coast line were such as to justify the use of straight baselines under Article 4 (which most of it, at least, is not), the Coast Guard line cannot be a straight base line within Article 4 for several independently sufficient reasons:

(a) No part of the Coast Guard line has ever been promulgated as a straight base line. See *United States* v. *California,* 381 U.S. 139, 167–169.

(b) Standing alone, the segment extending across the entrance to Chandeleur Sound, from Ship Island Lighthouse to Chandeleur Lighthouse, could not qualify as a straight baseline enclosing inland waters under Article 4, because the waters behind it would not be completely enclosed, as inland waters must be; and, as we next show, such enclosure is not validly completed by the part of the line south of the Chandeleur Islands.

(c) The segment described as following "the general trend of the seaward, high-water shore lines of the Chandeleur Islands to the Southwesternmost extremity of Errol Shoal" fails to qualify because Errol Shoal is a shallow but wholly submerged area in the Gulf of Mexico. The Convention does not permit using a wholly submerged point as the terminus of a base line.

(d) The remainder of the line—approximately 88 percent—does not qualify under the Convention because it touches no points acceptable as termini for straight base lines. From the southwesternmost extremity of Errol Shoal the line runs through three

offshore buoys to the Ship Shoal Lighthouse, which stands in water about 10 feet deep at mean low tide. U.S.C. & G.S. Chart No. 1275. Thence the line runs through one offshore buoy to another, where it ends.[2] Article 4(3) of the Convention forbids the use of low-tide elevations as termini of straight baselines unless there have been built on them lighthouses or similar installations that are permanently above sea level. *A fortiori,* it does not permit the use of wholly submerged positions, whether unmarked, marked by buoys, or built on with artificial structures.[3]

Accordingly, Louisiana's motion should be denied upon the authority of *United States* v. *California, supra.*

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[2] Even if Louisiana's entire line were subject to no other objection, it terminates in the open waters of the Gulf at its western end, and so actually encloses nothing.

[3] This principle, implicit in the language of the Convention, appears explicitly in the *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports 1951, p. 116 at 129–130: "This method [of straight baselines] consists of selecting appropriate points *on the low-water mark* and drawing straight lines between them." (Emphasis added.) See paragraph 8 of the Commentary of the International Law Commission to this Article (numbered Article 5 in its draft): "Straight baselines may be drawn to islands situated in the immediate vicinity of the coast, but not to drying rocks and drying shoals. *Only rocks or shoals permanently above sea level may be used for this purpose.* * * *" Report of the International Law Commission Covering the Work of its Eighth Session, 23 April–4 July 1956, U.N. General Assembly, Official Records: Eleventh Session, Supplement No. 9 (A/3159), p. 15; 2 *Yearbook, International Law Commission* (1956) 268; emphasis added. Paragraph 3, permitting use of low-tide elevations where structures are built, was added to Article 4 subsequently.

B. THE COAST GUARD LINE CLAIMED BY LOUISIANA HAS NO RELEVANCE TO THE SUBMERGED LANDS ACT

Even if our submission that the coast line is to be laid out in accordance with *United States* v. *California* were mistaken, still the Coast Guard line claimed by Louisiana should be rejected as a coast line for the purposes of the Submerged Lands Act. The terms used in the Act relate to international law and sovereign power; for many such purposes they define the national boundaries of the United States. Cf. *United States* v. *California,* 332 U.S. 19; *United States* v. *Louisiana,* 363 U.S. 1; *United States* v. *California,* 381 U.S. 139. A regulation issued by a subordinate official in the Treasury Department cannot be regarded as an effective legal definition of the territorial boundaries of the United States for the purpose of sovereignty and international relations. Nor is the regulation controlling evidence thereof. The sole purpose of both the regulation and the authorizing legislation was to fix a line for the purpose of advising vessels which set of navigational rules to follow.

1. The statutory authority under which the Acting Commandant of the Coast Guard described the line now advocated by Louisiana was section 2 of the Act of February 19, 1895, 28 Stat. 672, as amended, 33 U.S.C. 151, which 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."

For the most part, the statute merely codified the *status quo* established ten years earlier by the Act of March 3, 1885, 23 Stat. 438: that the old 1864 Rules of Navigation (R.S. § 4233), which had been applicable to all U.S. vessels everywhere, would remain applicable to the "harbors, rivers and inland waters of the United States," while the new Revised International Regulations would be followed by American vessels elsewhere.[4] The Act went on, however, to provide (in Section 2) that—

> 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.[5]

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[4] While the 1864 rules originally applied in terms only to American-flag vessels, the Act of June 7, 1897, 30 Stat. 96, 33 U.S.C. 154, expressly provided that those rules (as there revised) should be followed "by *all* vessels upon the harbors, rivers, and other inland waters of the United States * * *" [emphasis added].

[5] The authority which section 2 conferred on the Secretary of the Treasury was sucessively 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.

As an original matter, it might have been possible to argue that the words "inland waters" were intended to refer to the internal waters of the United States, and that the power of the Secretary or Commandant is limited to marking the line fixed by international law.[6] But the Act has never been so interpreted. The Coast Guard has not attempted to follow the coast line exactly where the exigencies of shipping warrant a departure. It has also changed segments of the line from time to time without reference to land changes—a step clearly inconsistent with any notion that the Coast Guard line fixes the international boundary. And the Coast Guard has repeatedly disclaimed that the line has any jurisdictional or international significance. See pp. 49–52, *infra.*

As early as 1896 in *The Delaware,* 161 U.S. 459, 463, this Court recognized that "the real point aimed at by Congress was to allow the original code to remain in force so far as it applied to pilotage waters, or waters within which it is necessary for safe navigation to have a local pilot." For this reason the Court

Reg. 6521). Subsequent to the order of December 1, 1953, which Louisiana invokes, section 6(b)(1) of the Department of Transportation Act, October 15, 1966, 80 Stat. 931, 938, transferred this authority to the Secretary of Transportation, effective April 1, 1967. See Executive Order No. 11340, March 30, 1967, 32 Fed. Reg. 5453. He again delegated it to the Commandant of the Coast Guard, effective April 1, 1967. 49 C.F.R. § 1.4(a)(2), 32 Fed. Reg. 5606.

[6] Even the adoption of this interpretation could not help Louisiana. For in that event, the Commandant would have no power to make or alter the territorial boundaries of the United States, and, as we show below, he has not purported to exercise the power to find them in the jurisdictional sense. *Infra*, pp. 49–50.

sustained the Commandant's authority to define the dredged channel beyond the headlands of New York Harbor as "part of the inland waters of the United States *within the meaning of this act*" even though the area would not qualify as inland waters under the foreign policy of the United States and international law.

That decision was governed by the practical desirability of having the local rules, familiar to local pilots, applicable to all vessels using the much travelled waterway. Similar considerations controlled the Commandant's action in 1953 when he determined that the inland rules of navigation would apply to the shallow waters of the Louisiana coast, plied chiefly by local shipping, without regard to their distance from shore. Whether these creative actions overstepped an original intent to limit the Commandant's authorization to marking the existing national boundary need not concern us here.[7] In either event, the demarcation of the waters in which the inland rules of navigation are to apply—under an act concerned solely with that

[7] No doubt, as local American rules, the "inland rules" have no binding force on foreign flag vessels beyond the territorial waters of the United States. Under the recent Convention on the Territorial Sea and the Contiguous Zone, a coastal nation may unilaterally determine the navigational rules for all vessels using its waters, whether inland waters or the outer territorial sea. Art. 17. Accordingly, there is no jurisdictional obstacle or conflict with international law if—as in the situation involved in *The Delaware*—the American "inland rules" are made applicable to foreign vessels operating beyond the inland waters of the United States but within its three-mile territorial sea belt. However, insofar as those domestic rules are declared to be applicable to foreign vessels beyond the three-mile limit—as in the case of Louisiana waters—that is a matter of voluntary cooperation.

problem—cannot affect the Nation's seaward boundary. Plainly, the Act of 1895 did not empower the Commandant to determine the limits of United States sovereignty or to make international law.

2. The construction we put upon the Act of 1895 is that adopted by the Commandant in promulgating the line off the Louisiana coast.

When the Acting Commandant promulgated the 1953 regulation upon which Louisiana relies, he made it perfectly clear that the line was drawn "solely for purposes connected with navigation and shipping" and "not for the purpose of defining Federal or State boundaries" nor "to define or describe Federal or State jurisdiction over navigable waters." The order recited the notice and hearing preliminary to issuance and the materials submitted. It continued (18 Fed. Reg. 7893):

> The comments, data, and views submitted which were based on reasons not directly connected with promoting safe navigation were rejected.
>
> 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.

Since the Acting Commandant denied that he was creating jurisdictional limits, his action cannot have independent jurisdictional significance. Since he explicitly disregarded jurisdictional factors, his action cannot be construed as an interpretation of existing jurisdictional limits. In short, the regulation has no jurisdictional significance, either operative or evidentiary.

Second, the action of the Acting Commandant in confining the 1953 regulation to specification of the applicable rules of navigation followed the settled administrative understanding of the State and Treasury Departments. In 1929, in response to a request from the Norwegian government for copies of any regulations which might exist regarding the delineation of the political coastline or the drawing up of the limit between internal and territorial waters, the Department of State replied that various agencies made their own determinations for their own administrative purposes, but that, except in limited areas covered by special treaty or agreement, the United States had not made any final determination binding on all agencies, as to the geographic points for drawing up the baselines of territorial waters. Besides referring to various treaties and statutes, the Department enclosed copies of the pilot rules for inland waters, calling attention to the lines therein described under the 1895 Act, and added, "It should be understood that the foregoing lines do not represent territorial boundaries, but are for navigational purposes, to indicate where inland rules begin and international

rules cease to apply." 1 Hackworth, *Digest of International Law* (1940), 644–645.

In the United States Coast Guard publication, *Admiralty Law Enforcement* (1943), 24–26, immediately following a discussion of law-enforcement jurisdiction within the three-mile belt and waters within headlands, appears the following:

> NAVIGATION RULE: Now let us consider another line of demarcation. As shown in Chapter V, there are different rules for navigation on the "inland waters" and the "high seas"; the Inland Rules and the International Rules. But here we do not apply the previous definition, but adopt a new one for convenience. The Secretary of Commerce has fixed a series of lines along our coast, lines not following the natural curvature of our shores, and not following any three-mile natural perimeter, and the Inland Rules apply inside this line, while the International Rules apply outside the line. Maps showing these lines may be found in the "Pilot Rules."
>
> Quite obviously, this artificial line does not truly separate the high seas from the inland waters of the United States. It simply marks the area within which the Inland Rules apply, and outside of which the International Rules control. Thus, for the purpose of applying the rules of navigation, the high seas are the waters outside of the line fixed by the Secretary of Commerce for that purpose.

Similarly, the United States Coast Guard *Law Enforcement Manual* (1954), p. 3–7, states:

> The dividing line between inland and international waters as established by the Com-

> mandant, found in 33 CFR 82, is used only for the purpose of the Rules of the Road, and the enforcement of the inland rules of the road. It has no connection with territorial waters, or high seas, or other terms denoting general jurisdiction.

Again, in the United States Coast Guard *Selected Materials on Coast Guard Law Enforcement* (1964), p. 4–5, it is said:

> The line established by the Commandant of the Coast Guard has no significance with respect to or dependence on the line establishing the limit of the territorial waters of the United States. In some places, the line is inshore of the territorial waters of the United States while in others, the line extends well outside the territorial limits of the United States. The sole purpose of the line is to establish a division line between the application of the Inland Rules and the International Rules of the Road.

Louisiana puts some reliance (Motion, 19–20) on Coast Guard orders of 1925 that seemed to give jurisdictional significance to lines drawn under the 1895 Act. Those orders were tentative and confidential; they were never published, and consequently expired on December 31, 1952 (if they were in effect until that time, which is far from clear), by reason of Amendment 26 to U.S. Coast Guard Regulations, January 28, 1953, providing that directives (except technical and special series) not incorporated in regulations or a manual should expire at the end of the fourth calendar year following issuance, beginning Decem-

ber 31, 1952.[8] They were mentioned in the Treasury Department letter of June 4, 1929, cited by Louisiana, as part of a response to a request for material to be used in answer to the Norwegian inquiry discussed above. So far from acquiescing in the attribution of jurisdictional significance to the Coast Guard lines, as Louisiana asserts, the State Department made no reference to the confidential orders in its letter to the Norwegian government, and specifically pointed out that the Coast Guard lines, to which it did direct attention, had no jurisdictional significance.

It is thus clear that neither the courts, the State Department nor the Coast Guard has considered lines drawn under the 1895 Act to have jurisdictional significance. Louisiana, by describing the same line in its Act 33 of 1954, La. Rev. Stats. 49:1, could not impart

[8] No copy of the confidential orders of 1925 can now be found, either in the Coast Guard files, the Archives, or elsewhere, beyond the quotation in the letter to which Louisiana refers. However, a substantially similar statement appeared in *Law Enforcement at Sea Relative to Smuggling* (1932), a Coast Guard directive "for official use only," at page 2. Neither the 1925 nor 1932 directive is now in force. Indeed, neither is listed in the *Directives Index* (1 April 1951) listing all Coast Guard directives in force on that date.

The legal unsoundness of both directives in this respect is well exemplified by the fact that they say bays up to 20 miles wide at the mouth are inland waters—a rule that the United States has never followed or recognized. Neither directive was a public assertion of a position. The 1932 directive was designated as "for official use only," and the 1925 directive, as quoted in the cited letter, concluded:

> The definitions and directions herein contained are for official use only and must not be published or otherwise made known outside of the Service, except to officers of the Customs and officers of the Department of Justice.

to it any greater effect so far as the United States is concerned. *Cf. United States* v. *California,* 381 U.S. 139, 167–169.

THE DECREE PROPOSED BY THE UNITED STATES CONFORMS TO THE PRINCIPLES SET FORTH IN THE CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE

There appears to be little room for controversy concerning the location of the Louisiana coast line, for the greater part of its length, once the Coast Guard line is rejected in favor of the principles declared in the Convention on the Territorial Sea and the Contiguous Zone. The application of the principles to charts and maps showing the topography invokes a large mass of details. In an effort to keep the matter as clear as possible we set forth below a two-part exposition of the manner in which our proposed supplemental decree applies the principles—with a few very minor modifications—to the Louisiana coast. Part A refers to the principles and explains the minor departures in full detail. Part B shows how the principles apply to each putatively troublesome segment.

A. THE GOVERNING PRINCIPLES

Since our proposed supplemental decree is based upon the principles set forth in *United States* v. *California,* 381 U.S. 139, and the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, the relevant articles of the Convention are reprinted at pp. 85–87, *infra,* and the relevant portions of the decree in *United States* v. *California* at pp. 85–87, *infra*. The application of these principles is plain

enough in most cases but a few minor modifications seem warranted.

1. *Mean low water.*—Article 3 of the Convention on the Territorial Sea and the Contiguous Zone, *infra,* refers to "the low-water line along the coast as marked on large-scale charts officially recognized" by the coastal nation. On the Pacific coast, where there are two daily low tides of unequal height, the official charts, to the extent that they show a low-water line at all, show the line of mean lower low tide; and that was accordingly the line adopted by the Court in the *California* case as representing the line of "ordinary low tide." *United States* v. *California,* 381 U.S. 139, 175–176. Along the Louisiana coast, on the other hand, there is generally only one low tide daily. The higher low tide, on the few days when one does occur, is disregarded in computing tidal datums. See 1 Shalowitz, *Shore and Sea Boundaries* (1962) 164–165; Marmer, *Tidal Datum Planes* (rev. ed. 1951) 104. Accordingly, in place of "mean lower low water" in the *California* decree, we have substituted "mean low water" throughout our proposed decree, with a definition in accord with the principles just stated. Paragraphs 9, 11, 13, 14, and 15, pp. 7–36, *supra.*

2. *Mean high water.*—High tides, like low tides, generally occur only once a day along the Louisiana coast and, as in the case of low tides, the lower high tide, on those days when two tides occur, is ignored in establishing the datum of mean high tide. See Marmer, *Tidal Datum Planes* (rev. ed. 1951) 86–87. In our proposed decree we have defined "mean high water" accordingly. Paragraph 11(d), pp. 7–8, *supra.*

3. *Artificial spoil banks.*—The California decree defined the coast line as including future natural or artificial modifications. *Infra,* p. 86. The Court explained its inclusion of artificial changes by saying that "when a State extends its land domain by pushing back the sea * * * its sovereignty should extend to the new land * * *." *United States* v. *California,* 381 U.S. 139, 177. In view of that explanation, we have included in the present proposed decree a qualification that "artificial spoil banks that serve no useful purpose" are to be disregarded in defining the coast line. Such spoil banks represent no purposeful pushing back of the sea, and are generally very impermanent. If a rule were to be adopted whereby every casual dumping of spoil along the coast would temporarily deprive the United States of its title to valuable submerged lands three miles off shore, the result would be simply to make it necessary for the United States to deny all permits to dump spoil along the shore. We submit that the Court should not adopt a rule productive of such expense and inconvenience to third parties who have no concern with the ownership of the submerged lands and no capacity to waive such rights as might accrue to the States from consideration of such spoil banks. A specific instance of this problem is discussed at pages 74–75, *infra.*

4. *Geographical mile.*—The decree of December 12, 1960, 364 U.S. 502, fixed the boundary between the submerged lands of the United States and those of the State of Louisiana as "three geographic miles" from the coast line, but did not define "geographic

mile." Such a definition will be necessary if the boundary is to be located with absolute precision.

Conceptually, a geographical mile equals the length of one minute of latitude along a meridian on the surface of the earth; but different countries have given it differing values at various times. Moreover, since the earth is oblate, the length of a minute of latitude differs slightly in different latitudes. Formerly, the United States valued a geographical mile at 1,853.248 meters or approximately 6080.2 feet, but on July 1, 1954, the Department of Defense and the Department of Commerce (including the National Bureau of Standards) adopted the International Nautical Mile of 1852 meters. Using the then accepted relationship that one foot equaled 1200/3937 meters, this gave the nautical mile a value of 6076.10333 . . . feet. *Technical News Bulletin of the National Bureau of Standards,* Aug. 1954;[9] see also Department of Defense Directive No. 2045.1, June 17, 1954. On July 1, 1959, the National Bureau of Standards announced a refinement of the metric value of a foot, to make one yard equal 0.9144 meters. This gave the International Nautical Mile a value of approximately 6076.11549 "International Feet." 24 Fed. Reg. 5348 (July 1, 1959). However, that announcement provided that until further notice a foot having the former value of 1200/3937 meters, to be known as a "U.S. Survey Foot," should be used

[9] The periods indicating a continuing decimal fraction were inadvertently omitted in the original publication of the *Technical News Bulletin*, but were restored in subsequent reprints of the announcement.

with respect to geodetic surveys within the United States. See *Units of Weight and Measure* (National Bureau of Standards Miscellaneous Publication 233, 1960), p. 2.

In paragraph 3(e) of the *California* decree, p. 86, *infra,* the Court, following the recommendation of the parties, adopted the current definition of a geographical mile, that is, 1852 meters. In the present case, however, the parties have heretofore adopted the practice of using the former geographical mile of 1853.248 meters, and we believe that it will be more convenient to continue to use that measurement here. For that reason we have provided in our proposed supplemental decree that "geographical mile" means a distance of 1853.248 meters (6080.19781 [10] U.S. Survey Feet, or approximately 6080.20997 International Feet), Paragraph 11(e), p. 8, *supra.*

5. *Grid scale.*—In paragraph 11(f) of our proposed decree we specify that "All distances referred to herein are expressed at grid scale, Louisiana Plane Coordinate System, South Zone." *Supra,* p. 8. No corresponding provision was included or requested in the *California* decree.

The proposal is made as a matter of convenience rather than of strict technical accuracy. The problem of representing the spherical surface of the earth on flat maps has been resolved in various ways, one of which is the system of State plane coordinate

[10] This is the value derived from the ratio, one U.S. Survey Foot = 1200/3937 meters. It is commonly rounded off to 6080.20 feet. E.g., *Technical News Bulletin of the National Bureau of Standards,* Aug. 1954, *supra.*

grids established by the United States Coast and Geodetic Survey. See Mitchell and Simmons, *The State Coordinate Systems* (1957) VI. This system has been given statutory recognition by many States, including Louisiana. La. Act 226 of 1944, La. Rev. Stats. 50:1–9. Each grid covers a State or part of a State, represented as a plane surface on which locations may be identified in relation to a rectangular grid by x (east–west) and y (north–south) coordinates measured in U.S. Survey Feet from established points of origin. Use of the grids permits areas, distances, and positions to be computed by plane geometry and trigonometry rather than the vastly more complex spherical methods. Because of the discrepancy between the plane surface represented by the grid and the spherical surface of the earth, distances measured on the grid may differ from true geodetic distances by small amounts, generally not more than 1/10000. See Mitchell and Simmons, *The State Coordinate Systems* (1957) pp. 2–3. Both the United States and Louisiana have used the grid of the Louisiana Plane Coordinate System, South Zone, for offshore leasing and measurements, feeling that its convenience far outweighs its slight inaccuracy; and we suggest that this practice be embodied in the proposed decree for the same reason.

6. *Historic bays.*—The *California* decree specifically adjudicated only part of the California coast line, while declaring the principles by which the remainder of the coast line should be ascertained. Since California might assert historic claims in some of the areas left unadjudicated, it was necessary for the decree to

include a statement as to the character and effect of such claims. Paragraph 4(c), p. 87, *infra*. In the present case a decree is sought that will cover the entire Louisiana coast line, so far as material to determination of the three-mile boundary.[11] Therefore, if there were any historic bays on the Louisiana coast (which we think is not the case), they should be specifically identified by the Court in the decree, making unnecessary any general provision as to the effect of historic claims. Since we think that there are no historic bays on the Louisiana coast, we have not included such a provision in our proposed decree.

7. *Ambulatory boundary.*—As this Court held in *United States* v. *Louisiana,* 363 U.S. 1, 66–79, the offshore submerged lands given to Louisiana by the Submerged Lands Act extend to a distance of three geographical miles from the coast line. The coast itself is a movable line, subject to constant modification by natural accretion, erosion, reliction, or subsidence, as well as artificial changes. Cf. *Hughes* v. *Washington,* No. 15, this Term, December 11, 1967. The boundary line three miles seaward from it must move correspondingly. Cf. *De Lancey* v. *Wellbrock,* 113 Fed. 103, 105 (C.C. S.D. N.Y.). The ambulatory nature of the boundary was recognized in the *California* opinion,

[11] Our proposed decree omits certain portions of the Louisiana coast that are so recessed that they could not affect the three-mile line. See fn. 13, p. 63, *infra*. Claims of "historic bays" within such areas would be purely academic, as they would add nothing to the State's nonhistoric rights, *Cf. United States* v. *California*, 381 U.S. 139, 173, where the Court found it unnecessary to consider the historic status of Monterey Bay, in view of its qualification as inland waters under the standard 24-mile and semicircle tests.

where the Court sustained California's contention that account is to be taken of future artificial, as well as natural, changes, 381 U.S. 139, 176–177, and in paragraph 2(b) of the *California* supplemental decree, which provided that "The coast line is to be taken as heretofore or hereafter modified by natural or artificial means * * *." *Infra,* p. 86.[12]

While the coast line is ambulatory, any detailed description of it must necessarily be made with reference to its condition at a particular time or as shown on a particular survey. With a few modifications, the proposed decree describes the coast as depicted on a series of 54 large scale (1:20,000) maps prepared between 1959 and 1961 (partly on the basis of a 1954

[12] Since the boundary is an ambulatory one, the line that is described today may not be the boundary tomorrow. Nevertheless, we believe that establishing the present boundary in precise detail will serve several important purposes. It will establish the specific rights of the parties in the revenues heretofore derived from the disputed area, and in the area itself now and so long as the present conditions prevail. As a practical matter, the advantage of a known and definite line will probably lead the parties to continue to recognize the line now established, at least until very substantial coastal changes occur. Indeed, the impracticality of having properties of this sort subject to shifting ownership may lead to some sort of agreement either to immobilize the boundary for purposes of the Submerged Lands Act, or to minimize the disadvantages of its mobility. The Government expects to seek concurrent legislation to this end, and while its precise form is still in doubt, it seems reasonable to suppose that the boundary established now by the Court will provide the foundation for any such arrangement. If later coastal changes do require some readjustment of the boundary in the future, the present decree, giving the established principles precise application to a specific coastal configuration, will provide a practical example for the parties to follow in applying them to the changed conditions.

survey) by the United States Coast and Geodetic Survey, under the joint supervision of the United States and the State of Louisiana, which generally represents the most detailed depiction now available of the mean low-water line on the coast of Louisiana Designation of points on the coast line by plane coordinates or latitude and longitude in the proposed decree is only for the purpose of identifying them with precision in relation to that survey (with one indicated revision); it does not mean that they are fixed points whose validity will survive coastal changes.

8. *Derivation of boundary from coast line.*—Under the Submerged Lands Act and the Decree of December 12, 1960, the boundary between State and federal submerged lands is defined with reference to the coast line, and the detailed description set out in the proposed decree is not of the boundary but rather is of the coast line from which the boundary is derived. The boundary itself is to be found by measuring seaward a distance of three geographical miles from the controlling coastal features. This conforms to the provision of Article 6 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, 1609: "The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea." This is what is known as the "arcs of circles" method of measurement. This means simply that the territorial sea (or, in the context of the present case, the submerged land of the State) includes everything lying

within a distance of three miles from any part of the coast line, that is to say, which lies within the arc of any circle having its center anywhere on the coast and its radius three miles.

Theoretically, an infinite number of arcs could be drawn, one centered on each submicroscopic point on the coast line; but in practice this interminable geometric process is simplified in two ways. Where the coast is irregular, arcs centered on salient points swallow up those centered along intervening coastal recesses; thus, only the salient points need be considered.[13]

Where the coast is more regular and lacks controlling points of this sort, the theoretically exact three-mile limit is an irregular curve parallel to the coast. In geometric terms, this means a curve such

[13] The coastal points that will affect the three-mile limit can be identified by laying a circle with a radius of three miles (at map scale) on a map of the coast and moving it along the seaward side of the coast line, always touching but never crossing the coast line. As the circle is moved along the coast in this way, its center will always be three miles from the nearest point on the coast. Thus, the path taken by the center of the circle will be the three-mile limit. Parts of the coast line so recessed that the circumference of the circle cannot touch them will have no effect on the three-mile line, because three-mile arcs based on them are entirely swallowed up in the more extended three-mile belt based on more salient points. Generally speaking, we have described only those parts of the coast line that affect the position of a line three geographical miles seaward. It seems unnecessary and indeed irrelevant at this time to identify portions of the coast that do not affect the three-mile line. We have departed from this practice only in very limited areas where it has been simpler to describe a continuous line than to interrupt it by the omission of short stretches not strictly necessary for the present purpose.

that every line normal to the coast (*i.e.*, perpendicular to a tangent at the point of tangency) is also normal to the three-mile line, the distance between the two along every normal being three miles. See 6 *Encyclopedia Britannica* (1948 ed.) 896. But while such a line is easily defined abstractly, its irregular character defies specific description in terms of surveying courses and distances, making its identification on the ground a practical impossibility. It is easy enough to determine the location of any single point, such as the position of a ship, in relation to the coast, which is all that is normally required for navigational purposes; but where submerged land ownership is involved, a complete boundary line must be established. To avoid the impossible task of locating the infinite number of points needed to fix an irregular curve of this sort, the practical expedient is adopted of drawing a series of straight lines along the coast, short enough to approximate the actual coast line with reasonable accuracy, long enough so that they will not be too numerous for practicality. Such a rectilinear approximation of the low-water line is like the meander lines regularly used by surveyors to represent the water line boundaries of upland tracts of land. Cf. *Railroad Company* v. *Schurmeir,* 7 Wall. 272, 286–287. The three-mile line can then be drawn as a series of arcs centered on salient coastal points, and straight lines parallel to the segments of the meander line. Such a line can be defined and located by specific courses and distances, which the theoretically ideal three-mile line could not.

In our proposed decree we have described a meander line such that its segments, with only a few minor

exceptions, do not depart more than fifty feet from the actual water line. This reduces to manageable proportions the geometric problem of deriving the three-mile line from it, and produces a three-mile line not significantly different from the true theoretical line. While this procedure is comparable to the usual use of a meander line, one distinction must be noted. A meander line is used to represent a water line boundary for purposes of describing its location and computing the area of the riparian land, but it does not become the actual boundary. The actual water line, which has an observable, physical existence, remains the true boundary of the upland. "A meander line is not a line of boundary, but one designed to point out the sinuosity of the bank or shore, and a means of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser." *Whitaker* v. *McBride,* 197 U.S. 510, 512. In the present case, the boundary is not the water line, but a line three miles seaward therefrom, which cannot be seen on the ground, but can only be identified by geometric derivation. And, as we have seen, the only practical geometric derivation must be based on a meander line, not the actual water line. Thus, while the meander line is only a convenient approximation of the coast line, the three-mile line derived from it will be in effect the "real" boundary line. The fact that the line three miles from the meander line is a real boundary does not mean, however, that it is a fixed boundary. If the water line moves, a new meander line should be adopted, from which a new boundary may be measured.

As an aid to visualizing the problems involved and comparing the positions of the parties, we attach hereto a rather small-scale map showing the coast lines as proposed by both parties, together with the three-mile line corresponding to each. Appendix, *infra,* at page 88. Larger and more detailed maps presumably will be needed at a later stage of the case to show in detail the shore line and the coast line proposed by the United States, at least.

9. *Lateral boundaries of Louisiana.*—There may be some uncertainty as to the precise location of the offshore lateral boundaries between Louisiana and the neighboring States of Texas and Mississippi. To avoid prejudicing that entirely separate question, involving parties not otherwise directly concerned in the present motions, the proposed decree specifies that only so much of the described line as lies within the lateral boundaries of Louisiana is to be considered as established by the decree. Paragraph 14, p. 9, *supra.* The problem of identifying those lateral limits is thus preserved for future determination by agreement or litigation between the parties concerned.

B. SPECIFIC COASTAL SEGMENTS

In general, our proposed detailed description of the coast line follows the mean low-water line or lines across the mouths of small inland water entrances, and requires no special comment. Segments that seem to call for further explanation are discussed below.

1. *Jetties at Sabine Pass, Calcasieu Pass, Belle Pass, the Empire Canal, and Southwest Pass.*—As in

the *California* case, our proposed decree calls for inclusion in the "coast line" of the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone. *Supra,* pp. 7, 8. On its face, Article 8 is limited to "the outermost permanent harbour works which form an integral part of the harbour system;" but that language, which was adopted intact from the draft convention submitted by the International Law Commission in its report covering the work of its eighth session, must be read in the light of the Commission's commentary accompanying that draft:

Commentary

> (1) The waters of a port up to a line drawn between the outermost installations form part of the internal waters of the coastal State. No rules for ports have been included in this draft, which is exclusively concerned with the territorial sea and the high seas.
>
> (2) Permanent structures erected on the coast and jutting out to sea (such as jetties and coast protective works) are assimilated to harbour works.
>
> (3) Where such structures are of excessive length (for instance, a jetty extending several kilometres into the sea), it may be asked whether this article could still be applied or whether it would not be necessary, in such cases, to adopt the system of safety zones provided for in article 71 for installations on the continental shelf. As such cases are very rare, the Commission, while wishing to draw atten-

tion to the matter, did not deem it necessary to state an opinion.[14]

The jetties at Calcasieu Pass, Belle Pass, the Empire Canal, and Southwest Pass protect navigational channels. They do not appear to be true "harbor works," since none is in or at a harbor; but the distinction is immaterial, in view of the International Law Commission's commentary, since none is of such "excessive length" as to invoke the caveat of paragraph 3 of the commentary regarding assimilated structures of excessive length. The Sabine Pass jetties were constructed as harbor works, at a time when the Sabine Pass was an important harbor. See, *e.g., Report of the Chief of Engineers,* 1885, H. Exec. Doc. No. 1, 49th Cong., 1st sess., Pt. 2, vol. 2, pt. 2, App. S 13, pp. 1415–1424 (Cong. Doc. Ser. No. 2371). While the pass is now primarily a navigational channel, it appears still to have some harbor facilities. Accordingly, we recognize the character of the jetties as true harbor works within the meaning of Article 8.

In view of the foregoing considerations, all of the enumerated jetties are included in our proposed description of the coast line, paragraphs 15(a), 15(c), 15(t), 15(cc), and 15(ff), pages 11–12, 13, 24, 27, and 29, *supra.*

2. *Atchafalaya Bay.*—Atchafalaya Bay is a well-marked coastal indentation having such penetration,

[14] U.N. General Assembly Official Records: Eleventh Sess., Supp. No. 9 (A/3159), p. 16; reprinted in 2 *Yearbook of the International Law Commission* (1956) 253, 270. Article 71 there referred to corresponded to the present Article 5 of the Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 471, 473–474, but was substantially revised before its adoption.

in proportion to the width of its mouth, as to contain landlocked waters. The width of its mouth, from South Point to Point au Fer, is 23.3272 geographical miles, and its area substantially exceeds that of a semicircle having a diameter of that length. Thus, it meets the criteria for inland waters under paragraph 12(c) of our proposed decree, and accordingly the line across its mouth is included as part of the coast line. Paragraphs 14(a), 15(j), pp. 9 and 18, *supra.*

3. *Low-tide elevations at Atchafalaya Bay.*—Following the rule stated in paragraph 9(a) of our proposed decree (*supra,* p. 7), our proposed description of the coast line includes salient points on the low-tide elevations that extend within three geographical miles of the mean low-water line on South Point (paragraph 15(i), pages 17–18, *supra*) or Point au Fer (paragraph 15(k), page 18, *supra*).

According to the 1959 survey to which our description is directed, there is among the low-tide elevations more than three miles from South Point, one point, at x=1,899,110, y=282,309, which bares 1.3 feet at mean high water, and so might be thought to be technically an island. However, that formation consists simply of an unstable pile of oyster shells. Its location changes rather rapidly, under the influence of wind and water, and its dimensions above mean high water are generally on the order of five feet by ten feet. In view of its unstable character—a pile of loose shells rather than a "naturally-formed area of land" as required by article 10 of the Convention on the Territorial Sea and the Contiguous Zone and this Court's prior decree in the *California* case (*infra,*

pp. 85, 86), its small dimensions, and its maximum elevation of less than 16 inches above mean high water, we do not consider it realistic to recognize this as an island entitled to its own three-mile belt of territorial sea. Accordingly, we treat it as a low-tide elevation that has no effect on the coast line because more than three miles from the mean low-water line on the mainland or an island.[15]

4. *Caillou Bay.*—In the angle formed where the coast approaches the western end of the Isles Dernieres is an area of the Gulf of Mexico commonly designated "Caillou Bay." A closing line less than 24 miles long can be drawn across the western side of that area in such a way as to enclose an area greater than that of a semicircle having a diameter of the same length. Nevertheless, the area does not constitute internal waters, within the meaning of the Convention on the Territorial Sea and the Contiguous Zone, because it is not "a well-marked indentation." Indeed, it is not an indentation at all, but is merely part of the open Gulf, partially screened by the Isles Der-

[15] If this little pile of shells stood alone, treating it as an island would have little effect on the three-mile line, as it seems usually to be only about 830 feet seaward of the closing line of Atchafalaya Bay from which the three-mile line is otherwise measured. However, it is surrounded by low-tide elevations; and if it were to be recognized as an island, all low-tide elevations within three miles of it would form part of the base line (*supra*, p. 7), which would result in adding about four square miles to the State's submerged lands. Theoretically, it would be possible for such a point, with adjacent low-tide elevations, to be so situated as to support a territorial sea of as much as 100 or more square miles. We consider it wholly unrealistic to accord to so small a pile of loose shells a status that could lead to such disproportionate consequences.

nieres. It is, in that respect, essentially like the Santa Barbara Channel, for which California unsuccessfully asserted the status of a "fictitious bay." *United States* v. *California,* 381 U.S. 139, 170–172.[16] The concept of a "fictitious bay" is not recognized in international law. Under the Convention, islands in the mouth of a bay are considered as reducing the length of the closing line; but islands cannot be relied on as creating a bay that would not exist without them. Accordingly, we have not described a closing line at Caillou Bay, but instead have described the coast lines of the mainland and of the islands, to the points where their respective three-mile lines meet. Paragraphs 15(p)–15(s), *supra,* pp. 20–21.

5. *Timbalier Bay, Terrebonne Bay, and Lake Pelto.*—These names designate what more properly might be considered, in a geographical sense, parts of a single body of inland waters, slightly broken up by small, scattered islands. Considered as a whole, this presents the situation distinguished above, of a well-marked indentation in the mainland, the mouth of which is largely screened by the Isles Dernieres and Timbalier and East Timbalier Islands. From the Gulf of Mexico there are six openings into this body of water, having a combined length of 50,574.9 feet, or 8.318 geographical miles. A semicircle drawn on a diameter of that length has an area of 27.17 square miles, whereas the area of the Lake Pelto-Terrebonne-Timbalier complex is more than 200 square miles. Plainly,

[16] Unlike the Santa Barbara Channel, however, Caillou Bay apparently does not serve as a useful channel of navigation between areas of high seas.

this is not a mere curvature of the coast, but is a well-marked indentation containing landlocked waters. Since it meets the semicircle test and its entrances total much less than 24 miles, it constitutes an inland water bay under Article 7 of the Convention. Accordingly, we have described the coast line as following the low-water line on the gulfward side of the Isles Dernieres and Timbalier and East Timbalier Islands,[17] with closing lines across the intervening entrances in conformity with the provisions of Article 7(3) of the Convention on the Territorial Sea and the Contiguous Zone regarding indentations that have more than one entrance because of the presence of islands. Paragraph 15(s), *supra,* pp. 20–24.

6. *From Caminada Pass to Sandy Point Bay.*— From the southwestern headland of Caminada Pass to the southeastern headland of Sandy Point Bay, the coast presents an even clearer situation of several well-marked indentations, accessible only by narrow, well-defined entrances through a smooth and otherwise unbroken shoreline. While that shoreline itself is somewhat curved, its curvature cannot be considered more than slight, and the adjacent waters of the Gulf of Mexico are in no sense landlocked. Louisiana has some-

[17] We understand that the shore of East Timbalier Island, described by us as part of the coastline in accordance with the 1961 maps, has recently eroded about 400 feet. However, we do not yet have precise information as to its present location, and it seems likely that at least part of the loss may be restored by protective measures now under consideration. In these circumstances, we have based our present motion on the 1961 maps; if the shore line stabilizes in a substantially different position, a further supplemental decree to take note of that fact may be appropriate at some time in the future.

times referred to this coastal curvature as "Ascension Bay," but we know of no historical, geographical, or cartographic authority for that designation, and the area does not meet the criteria of Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. No line 24 miles long (or of any other length) can be drawn across the curvature or any part of it in such a way that the waters between that line and the shoreline curve will meet the semicircle test. The test could be met only by combining the area of those waters with the waters of the inner bays—Caminada, Barataria, Bastian, and others—whose entrances breach this section of the shore. Such combination is not permissible where, as here, the inner bays are distinct entities, almost completely shut off from the open waters of the Gulf and sharing no unity of configuration with those waters. In applying categorical legal concepts to the infinite variations of actual geography, there are often situations where there is room for differences of opinion;[8] but it is hard to imagine any situation that would present a clearer example of well-defined inner bays, almost completely isolated and utterly distinct from the open waters outside their entrances.

To qualify as inland waters under Article 7 of the Convention, a bay must be "a well-marked indentation." This means that it must have unity of configuration. Mere ability to stay within the 24-mile

[8] For example, it may be debated whether Caminada Bay, Bay des Islettes, Barataria Bay, and some smaller contiguous bays, should be considered one body of inland waters or several. That question need not be answered here, however, as they all fully qualify as inland waters, whether considered severally or in the aggregate.

limit and to enclose more water than a semicircle drawn on the closing line cannot justify treating essentially distinct bodies of water as parts of a single bay; each geographical entity must be judged on its own merits. So judged, the waters seaward of the entrances to Caminada, Barataria and Bastian Bays have none of the characteristics of inland waters.

In our description of this part of the coastline, we have departed in one small particular from the 1961 maps on which our description is generally based. There is a discrepancy of about 50 feet between the position of the shoreline immediately west of 89° 30′ W., as shown on the map designated "8 of 41," which was based on a 1954 survey, and the position of the shoreline immediately to the east, as shown on the map designated "8 of 8," which was based on a 1959 survey. This results from erosion that occurred between the dates of the two surveys. To reconcile this inconsistency and avoid giving the coast line either an abrupt jog or an incorrect direction in this vicinity, we have taken note of the erosion and designated the first turning point west of 89° 30′ W. (the 14th point in paragraph 15(dd) of our proposed decree) as x = 2,583,750, y = 207,060, rather than x = 2,583,790, y = 207,010 as Map 8 of 41 would indicate. This is the only instance in which we have departed from the 1961 maps to take note of subsequent accretion or erosion, except for the Pass Tante Phine spoil bank, next discussed.

7. *Spoil bank at Pass Tante Phine.*—Attached to the northern headland of Pass Tante Phine, on the

west side of the Mississippi River delta (at about 29° 09′ 30″ N., between 89° 26′ and 89° 27′ W.), the 1959 survey showed a peninsula of tideland about 115 feet wide and half a mile long, extending westward into the Gulf of Mexico at right angles to the coast. We are informed by the Army Corps of Engineers that this formation, which was exposed at low tide but submerged at high tide, was formed by the dumping of spoil from a channel dredged by the Gulf Refining Company, which had a permit dated May 21, 1956, to dredge a channel, but had no permit to create a spoil bank. We are also informed by the Army Corps of Engineers that the spoil bank is no longer above the level of mean low water. In view of the facts that this formation was only a spoil bank, not a purposeful or useful extension of the land; that it was created without permission of the United States; and that it was of a transitory and insubstantial character and has now disappeared, we do not regard it as any proper part of the "coast line" for purposes of delimiting the territorial sea or the submerged lands of the State.

8. *West Bay.*—West Bay, on the western side of the Mississippi River delta, is a well-marked indentation 39,762.2 feet wide at the mouth, or about 6.540 geographical miles. Its inner portion is somewhat broken by fragments of Grand Pass, Double Bayou, and scattered islands, adumbrating subdivisions designated Scott Bay and Dixon Bay, as well as smaller unnamed bays. If those subdivisions were to be excluded, West Bay would not meet the semicircle test; but in our view the inner bays are such integral parts of the over-

all configuration of West Bay, and are so tenuously separated from its main body, that it is appropriate to consider the whole a single body of water. So considered, it meets the semicircle test. Accordingly, the proposed decree recognizes it as a bay comprising inland waters.

Two much smaller indentations just north of West Bay, one at the northern entrance to Pass du Bois and the other leading to Chawee Bay, are similarly recognized as bays containing inland waters. However, they are so small that the effect on the three-mile line is insignificant.

9. *East Bay.*—A different situation is presented by the indentation between Southwest Pass and South Pass, known as East Bay. We have described as part of the coast line, lines and points along the shore that control the three-mile limit within this indentation. No closing line can be drawn farther seaward within the indentation that will enclose enough water to meet the semicircle test. Accordingly, no waters seaward of the coast line we describe can be considered inland waters of a bay.

Neither can East Bay be considered the mouth of a river, within the meaning of Article 13 of the Convention. That article provides:

> If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

That language obviously relates to a flowing mouth of a river, such as Southwest Pass or South Pass, not

to a coastal indentation between two mouths, such as East Bay.

10. *Garden Island and Redfish Bays.*—Between the South and Southeast Passes of the Mississippi River is the double indentation of Garden Island Bay and Redfish Bay, separated by the remnants of Old Balize Bayou. Without the Old Balize Bayou, the two bays would form a single, well-marked indentation having a width at the mouth of 37,289.9 feet, or about 6.133 geographical miles, and an area of not less than 18 square miles, substantially in excess of the 14.77 square mile area of a semicircle drawn on the closing line. While Garden Island and Redfish Bays might be regarded as separate indentations, the analogy of the Svaerholt, discussed by the International Court of Justice in the *Fisheries Case* (*United Kingdom* v. *Norway*), I.C.J. Reports 1951, p. 116 at 141, suggests that treatment of the two as parts of a single bay is more appropriate. This seems especially true in view of the continuing disintegration of the Old Balize Bayou, which may be expected to disappear altogther within a few years.

11. *Between Southeast Pass and Main Pass.*—Between Southeast Pass and Main Pass, the shore is largely irregular, and with minor exceptions the three-mile line is controlled by a few salient points on the mainland and on offlying islands or low-tide elevations. While there are many inland water entrances in this area, closing lines across them would lie landward of the base points we describe, and so could add nothing to the three-mile limit as measured from the latter.

12. *Chandeleur and Breton Sounds.*—Under the Convention on the Territorial Sea and the Contiguous Zone, waters between the mainland and coastal islands do not have the status of inland waters unless the coastal nation elects to enclose them by straight baselines under Article 4. Prior to that Convention there was no international consensus on the subject; but the United States had taken the position that such waters were inland waters at least in some circumstances. In accordance with that position, we have heretofore treated Chandeleur and Breton Sounds as inland waters in this case and its predecessor, *United States* v. *Louisiana,* No. 13, Original, October Term, 1948; No. 12, Original, October Terms, 1949–1950; No. 7, Original, October Terms, 1951–1960.

In 1950 federal officials described the line, commonly known as the "Chapman Line," representing the federal position as to the proper coast line of Louisiana, which drew closing lines across the entrance to Breton Sound from Breton Island, by way of Bird Island, to the northern headland of Grand Bay, and across the entrance to Chandeleur Sound from the northern tip of the northernmost of the Chandeleur Islands to the western tip of the westernmost of the Ship Islands. On March 16, 1951, the United States asked Louisiana for an accounting on the basis of that line, under the decree of December 11, 1950, 340 U.S. 899. That line was used also as the baseline of the three-mile belt, called "Zone 1," which Louisiana is allowed to administer without impoundment of proceeds under the Interim Agreement of October 12, 1956. See Agreement Between United States of Amer-

ica and State of Louisiana Pursuant to Section 7 of the Outer Continental Shelf Lands Act and Act 38 of the Louisiana Legislature of 1956, paragraphs 2(a) and (6), and Exhibit "A" thereto, filed October 12, 1956, pursuant to the order of June 11, 1956, 351 U.S. 978, and Amended Exhibit "A," January 28, 1957, filed June 11, 1957. On the same basis we conceded in 1958 that the waters between the mainland and islands belonging to Louisiana under its Act of Admission were in fact sufficiently enclosed to constitute inland waters under the principles then being followed by the United States. See *United States* v. *Louisiana,* 363 U.S. 1, 67, fn. 108. Paragraph 3(d) of the supplemental decree of December 13, 1965, 382 U.S. 288, 292, entered on motion of the United States without objection by Louisiana, awarded to Louisiana certain submerged land in the entrance to Breton Sound on the same basis (but assuming a closing line from Breton Island directly to the eastern headland of Main Pass, seaward of the original Chapman Line, in recognition of substantial intervening accretion at Main Pass).

We think that there would be much justification for asking at this time to be relieved of a concession, at variance with the Convention on the Territorial Sea and the Contiguous Zone, made four months before that Convention was signed by the United States, more than six years before it entered into force, and seven years before this Court announced that the grant made by the Submerged Lands Act of May 22, 1953, was to be measured by the rules of the Convention rather than by the principles followed by

the United States at the time the Act was passed. However, we do not ask for such relief because we think it would not be in the public interest, at this late date, to upset a fundamental assumption that has guided the conduct of both parties and their lessees in a large area over a long period of time. We do point out, however, that since Louisiana's right to these sounds as inland waters rests solely on the basis of our adherence to our past concession, and not on any legal principle, there is no basis on which Louisiana can be allowed closing lines farther seaward than the concession warrants.

THE TEMPORARY PROTECTION GIVEN TO LESSEES OF SPLIT LEASES BY PARAGRAPH 9 OF THE SUPPLEMENTAL DECREE OF DECEMBER 13, 1965, SHOULD BE TERMINATED

Where the boundary line described by this decree crosses an existing State or federal lease, the result is to split it into two leases, one State and one federal. It is our understanding that after entry of the decree the lessee in such circumstances must treat each portion of his former lease as a separate lease. However, this is a question between the lessors and the lessees, and as the latter are not parties to the present proceeding, we believe that the subject should not be dealt with here. The Supplemental Decree of December 13, 1965, establishing rights of the parties in certain limited areas, leaving adjacent areas still in dispute, similarly split existing leases, but since there was no assurance that the ultimate decree would split such leases along the same lines, we felt that it would impose an unwarranted burden on the lessees

to require them to commence maintaining the two parts of their leases as separate leases under that decree. Accordingly, we proposed and the Court adopted paragraph 9 of the Supplemental Decree, which provides that, until further order of the Court or agreement of the parties, an existing lease split by the Supplemental Decree between adjudicated and unadjudicated areas shall continue to be recognized by the parties as a single lease for all purposes except administration and receipt of the proceeds. 382 U.S. 288, 294–295. That provision has operated simply as a protection to the lessees and was appropriately entered despite their absence from the case. The decree now proposed, on the other hand, will establish the final boundary between adjudicated areas, so that it no longer presents the danger of requiring lessees to make difficult and expensive adjustments in their operations to meet a situation that may be only temporary. Accordingly, we believe that the special protection against such a hardship afforded to the lessees by paragraph 9 of the 1965 Decree should now be terminated. This, of course, will not amount to an affirmative decision as to the rights or obligations of the lessees, but will leave that question to be decided between them and their lessors according to applicable principles.

CONCLUSION

An order should be entered requiring the State of Louisiana to respond to the motion of the United States, specifying any particular objections to our proposed decree, beyond the State's preference for

the Coast Guard line. The Court should then direct the filing of briefs and oral argument on the issues thus joined under both motions.

Respectfully submitted.

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JANUARY 1968.

APPENDIX

1. The Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1606, includes the following relevant provisions:

Article 3

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

* * * * *

Article 5

1. Waters on the landward side of the baseline of the territorial sea from part of the internal waters of the State.

* * * * *

Article 6

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Article 7

* * * * *

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

a line drawn across the mouth of that indentation.

3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water areas of the indentation.

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters.

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

* * * * *

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.[1]

[1] Here, as in *United States* v. *California*, 381 U.S. 139, we are dealing with a present coastline to which this Article is applicable, unlike the historic 1845 boundary of Texas to which the Court by its opinion of December 4, 1967, herein, held this Article to be inapplicable.

* * * * *

Article 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.

2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high-tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

* * * * *

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

2. Applying the foregoing principles and definitions, the supplemental decree of January 31, 1966, in *United States* v. *California,* 382 U.S. 448, 449–451, provided:

> 2. As used herein, "coast line" means—
>
> (a) The line of mean lower low water on the mainland, on islands, and on low-tide elevations lying wholly or partly within three geographical miles from the line of mean lower low water on the mainland or on an island; and

(b) The line marking the seaward limit of inland waters.

The coast line is to be taken as heretofore or hereafter modified by natural or artificial means, and includes the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, T. I. A. S. No. 5639.

3. As used herein—

(a) "Island" means a naturally-formed area of land surrounded by water, which is above the level of mean high water;

(b) "Low-tide elevation" means a naturally-formed area of land surrounded by water at mean lower low water, which is above the level of mean lower low water but not above the level of mean high water;

(c) "Mean lower low water" means the average elevation of all the daily lower low tides occurring over a period of 18.6 years;

(d) "Mean high water" means the average elevation of all the high tides occurring over a period of 18.6 years;

(e) "Geographical mile" means a distance of 1852 meters (6076.10333 . . . U.S. Survey Feet or approximately 6076.-11549 International Feet).

4. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. The inland waters referred to in paragraph 2(b) hereof include—

(a) Any river or stream flowing directly into the sea, landward of a straight line across its mouth;

(b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;

(c) Any "historic bay," as that term is used in paragraph 6 of Article 7 of the Convention, defined essentially as a bay over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations;

(d) Any other bay (defined as a well-marked coastal indentation having such penetration, in proportion to the width of its entrance, as to contain landlocked waters, and having an area, including islands within the bay, at least as great as the area of a semicircle whose diameter equals the length of the closing line across the entrance of the bay, or the sum of such closing lines if the bay has more than one entrance), landward of a straight line across its entrance or, if the entrance is more than 24 geographical miles wide, landward of a straight line not over 24 geographical miles long, drawn within the bay so as to enclose the greatest possible amount of water. An estuary of a river is treated in the same way as a bay.

5. In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway.

3. Map showing the coast lines as proposed by the United States and Louisiana, together with lines three miles seaward therefrom.

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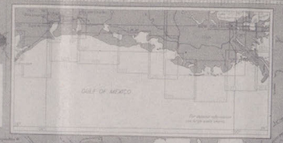
COASTLINE AS PROPOSED BY UNITED STATES AND LOUISIANA



SOUNDINGS IN FATHOMS AT MEAN LOW WATER

CAUTION

Compiled and printed at Washington, D.C. by
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SOUNDINGS IN FATHOMS - SCALE 1:80,000

UNITED STATES' PROPOSED COAST LINE
UNITED STATES' THREE-MILE LINE
LOUISIANA'S PROPOSED COAST LINE
LOUISIANA'S THREE-MILE LINE