No. 54, Original

In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF FLORIDA AND TEXAS

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT, AND BRIEF IN SUPPORT OF MOTION

JOHN N. MITCHELL,
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Department of Justice,
Washington, D.C. 20530.

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STATES OF FLORIDA AND TEXAS

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America respectfully asks leave of the Court to file the attached complaint against the States of Florida and Texas.

JOHN N. MITCHELL,
Attorney General.
ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF FLORIDA AND TEXAS

COMPLAINT

The United States of America, plaintiff, alleges for its cause of action as follows:

I

The jurisdiction of this Court is invoked under Article III, Section 2, clause 2, of the Constitution of the United States; see also 28 U.S.C. 1251(b)(2).

II

Neither of the defendant States has or has ever had any right to control fishing by foreign vessels or their crews in the sea more than three geographical miles from the coastline of the United States.

III

Each of the defendant States has asserted that it has the right to control fishing by foreign vessels and their crews in some part of the sea more than three geographical miles from the coastline of the United States, and in the exercise of that asserted right each of the defendant States has arrested foreign vessels and their crews for fishing in the sea at points more than three geographical miles from the coastline of the United States.

IV

The exercise of control over fishing by foreign vessels and their crews in the sea more than three geographical miles from the coastline of the United States by the defendant States threatens to interfere with and cause irreparable harm to the foreign policy and conduct of the foreign relations of the United States.

WHEREFORE, the United States requests that a decree be entered declaring that neither of the defendant States has any right to control fishing by foreign vessels or their crews in the sea more than three geographical miles from the coastline of the United States.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

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No. ———, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

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STATES OF FLORIDA AND TEXAS

BRIEF IN SUPPORT OF MOTION

JURISDICTION

This controversy between the United States and the States of Florida and Texas is within the original jurisdiction of this Court under Article III, Section 2, clause 2, of the Constitution of the United States; see also 28 U.S.C. 1251(b)(2).

STATEMENT

The purpose of this litigation is to establish that the defendant States have no right to exercise jurisdiction and control over fishing by foreign vessels and their crews more than three geographical miles from the coastline of the United States.

1. As was recognized by this Court in *United States* v. *Louisiana,* 363 U.S. 1, 33–34, nations have different "boundaries" for different purposes. The United States has traditionally claimed full territorial jurisdiction on its own behalf over a belt of waters ex-

tending no more than three geographical miles from the coastline. See 4 Whiteman, *Digest of International Law* (1965) 14–137, collecting numerous authorities on this point; *United States* v. *California,* 332 U.S. 19, 33–34; Address, John R. Stevenson, Legal Adviser of the Department of State, February 18, 1970, Department of State Press Release No. 49. In addition to this plenary jurisdiction, the United States has, since 1945, claimed the natural resources of the subsoil and seabed of the continental shelf beneath the high seas beyond the three-mile limit but contiguous to the coasts of the United States. Presidential Proclamation No. 2667, 59 Stat. 884. See also Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. 1331–1343; Convention on the Continental Shelf, 15 U.S.T. (Pt. 1) 471. Not until 1966, however, did the United States assert any right to prohibit foreign fishing beyond the three-mile limit. 80 Stat. 908, 16 U.S.C. 1091–1094.

By the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. 1301–1315, the United States gave to the coastal States the natural resources of the sea and seabed within their boundaries, not exceeding three geographical miles from the coastline. That three-mile limitation was subject to an exception in the Gulf of Mexico, however, for any state boundaries previously approved by Congress or existing at statehood, not exceeding three leagues (nine geographical miles) from the coastline. Pursuant to the exception, all five Gulf States claimed historic boundaries beyond three miles, while the United States contended that no State could have a boundary farther seaward than the three-

mile limit of the United States. In *United States* v. *Louisiana, supra,* 363 U.S. at 33–36, the Court held that there was no inconsistency between the three-mile limit asserted by the United States for international purposes and more extended state boundaries for the purely domestic purposes of the Submerged Lands Act. Only Texas and Florida, however, were held to have historic boundaries beyond the three-mile limit. *United States* v. *Louisiana, supra; United States* v. *Florida,* 363 U.S. 121.

In 1953, when the Submerged Lands Act was passed, and in 1960, when the *Louisiana* and *Florida* cases were decided, the United States had not yet claimed for itself or recognized in any other nation a right to exclude foreign fishing vessels from a zone outside its territorial sea. When in 1966 Congress enacted a statute first asserting such jurisdiction on behalf of the United States in a nine-mile zone contiguous to the territoria sea—that is, extending to a distance of 12 miles from the coastline—the statute specifically provided that the authority there asserted was in the federal government exclusively and not in the States. 80 Stat. 908, 16 U.S.C. 1091–1094.

2. Both Texas and Florida have asserted the right to regulate fishing by foreign vessels and nationals in the Gulf of Mexico, outside the three-mile limit, within their historic boundaries as recognized for purposes of the Submerged Lands Act. The United States denies the right of Texas or Florida to regulate foreign fishing in that area, either under the Submerged Lands Act or on any other basis.

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While Texas has not recently seized any foreign fishing vessels outside the three-mile zone—it has done so in the past—Florida in February of this year seized three Cuban fishing vessels and their crews for fishing without a state license at a point within 9 miles of the Florida coastline. The United States was able to secure the release of these vessels and crew from state custody only upon an undertaking to prosecute them for illegal fishing within the exclusive fishery zone of the United States established by 16 U.S.C. 1091.

The United States seeks declaratory relief against further state seizures of foreign fishing vessels beyond the three-mile limit.

ARGUMENT

I. THE COMPLAINT STATES FACTS ENTITLING THE UNITED STATES TO RELIEF

In *United States* v. *California,* 332 U.S. 19, this Court held that the United States rather than the States obtained paramount rights in and power over the three-mile belt of the territorial sea, including full dominion over the underlying resources. By the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. 1301–1315, the United States granted to Florida and Texas the rights it had to the natural resources in the areas of the sea off their shores within three geographic miles of the Atlantic coastline and, in the Gulf of Mexico, within those States' historic boundaries and no more than nine geographic miles (three marine leagues) from the coastline. *United States* v. *Louisiana,* 363 U.S. 1; *United States* v.

Florida, 363 U.S. 121. The Court specifically noted, however, that the latter decisions were domestic ones only (*United States* v. *Louisiana*, *supra*, 363 U.S. at 35):

> * * * We need not decide whether action by Congress fixing a State's territorial boundary more than three miles beyond its coast constitutes an overriding determination that the State, and therefore this country, are to claim that much territory against foreign nations. It is sufficient for present purposes to note that there is no question of Congress' power to fix state land and water boundaries as a domestic matter.

The only rights in issue in the *Louisiana* and *Florida* cases were the rights to the natural resources of the seabed,[1] which the United States had claimed to the limits of the continental shelf since 1945 (see p. 6, *supra*). Whether those rights were to be exercised through the national government or through

[1] By its pleading in *United States* v. *Louisiana*, No. 9, Orig., the federal government sought a decree "declaring the rights of the United States as against said States in the *lands, minerals and other things underlying the Gulf of Mexico* * * * lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters * * * and extending seaward to the edge of the continental shelf * * *" (emphasis added). Amended Complaint and Statement with Respect to Amended Complaint, *United States* v. *Louisiana*, No. 11, Orig., October Term, 1957, p. 19.

By the pleadings in *United States* v. *Florida*, No. 52, Orig., the federal government has sought a similar decree against the State of Florida with respect to rights in the seabed and subsoil off Florida's Atlantic coast as well as further clarification of rights in the seabed and subsoil areas in the Gulf of Mexico where the Court recognized Florida's rights under the Submerged Lands Act to the mineral resources.

state governments was of no concern to foreign nations, and the transfer of such rights under the Submerged Lands Act was, as the Court held, a "purely domestic" matter. See testimony of Jack B. Tate, Deputy Legal Adviser of the Department of State, Hearings, S. Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st Sess., p. 1067.

The situation is significantly different with respect to the other natural resources of the sea, that is, the free-swimming fish. While the Submerged Lands Act did give those resources to the coastal States within the same limits, Section 3(a), 43 U.S.C. 1311(a), the United States at the time of the Act did not claim, or recognize the right of any nation to claim, exclusive fishery rights beyond the limits of its territorial sea.[2] All that the United States had, and all that it could give the States, with respect to such resources in the area outside the three-mile limit, was a right to control fishing by United States vessels and nationals. See H. Rep. No. 2086, 89th Cong., 2d Sess., p. 4; cf. *Skiriotes* v. *Florida,* 313 U.S. 69. Under international law as then recognized by the United States, foreign vessels had a right to fish anywhere outside the territorial sea,[3] and a statute purporting to give the States a right to regulate fishing by foreign vessels would have been by no means a "purely domestic" matter. Thus, we submit, the Submerged Lands Act

[2] Letter of December 30, 1949, from James E. Webb, Under Secretary of State to Tom Connally, Chairman, Committee on Foreign Relations, Hearings, S. Committee on Interior and Insular Affairs, S.J. Res. 13, 83d Cong., 1st Sess., pp. 321–322.

[3] *E.g.*, Note, dated 7th June 1951, from the Government of the United States to the Government of Ecuador, Whiteman, *Digest of International Law* (1965) 800–801.

gave the States no right to control foreign fishing outside the three-mile limit of the territorial sea.

Nothing in the 1966 statute creating for the first time a zone, adjacent to and extending nine geographical miles seaward of the territorial sea in which the United States asserts exclusive fishery rights and forbids fishing by alien,[4] can be read to give now to Florida and Texas jurisdiction over foreign fishing outside the three-mile limit. To the contrary, the statute expressly provides (80 Stat. 908, Sec. 4, 16 U.S.C. 1094):

> Nothing in this Act shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this Act or as diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.

The manifest purpose of this provision, which was added to the bill by the House Committee on Merchant Marine and Fisheries, was explained in the committee report as follows (H. Rep. No. 2086, 89th Cong., 2d Sess., pp. 9–10):

> In order to avoid any misunderstanding or misinterpretation of the language of the legislation, your committee deemed it desirable to add a new section to make it clear that the jurisdiction of the coastal States to regulate the fisheries and to manage and develop the natural

[4] 16 U.S.C. 1091–1094. The statute reflected the State Department's view that by 1966 international law had come to recognize the validity of claims to exclusive fishery zones to a maximum extent of 12 miles from the coastline. See H. Rep. No. 2086, 89th Cong., 2d Sess., pp. 2–3, 5–7, 14–15.

resources beneath and in the waters of the territorial sea (out to 3 miles from the shore) was neither increased nor decreased, nor was the jurisdiction of the coastal States to regulate the fisheries and to manage and control any resources beneath and in the waters of the newly established fisheries zone extended to such zone. Thus, the amendment would recognize the jurisdiction of the States within the 3-mile coastal area, but would disclaim any extension of coastal State jurisdiction to the fisheries zone contiguous to this area.

Although the United States now asserts exclusive fishing rights to a distance of 12 miles from the coastline, the enforcement of such rights outside the three-mile limit remains a very sensitive international problem. The United Nations has called for an international conference in 1973 to deal with all of the outstanding problems related to the law of the sea. One of the more persistent problems has been the extent to which a coastal nation may exercise jurisdiction over fishing off its shores by alien vessels. The United States is currently engaged in delicate negotiations with other nations over possible positions it will take at the proposed 1973 conference. Any actions by the United States or one of its individual States which could be construed by other coastal nations as an assertion of jurisdiction over the waters adjacent to its coast would necessarily have an immediate and powerful impact on such negotiations. It is important, therefore, that regulation and enforcement relating to fishing off our shores by foreign vessels be exclusively under federal control so that they may be co-

ordinated to the maximum extent with considerations of foreign policy and international relations.[5]

II. THIS IS AN APPROPRIATE CASE FOR DECLARATORY RELIEF

Generally speaking, the purpose of seeking declaratory relief is to remove uncertainty from legal relations and to clarify, quiet and stabilize them before irretrievable acts have been undertaken. *Delaney* v. *Carter Oil Co.*, 174 F. 2d 314 (C.A. 10), certiorari denied, 338 U.S. 824.

The State of Florida has precipitated this suit by seizing foreign fishing vessels and their crews and threatening to continue to make such seizures until its right to do so is adjudicated.[6] Such seizures could cause irreparable harm to the foreign policy and foreign relations of the United States. Declaratory relief avoids the necessity of waiting until such harm has been sustained.

Moreover, declaratory relief permits inclusion of the State of Texas in this action. Although that State has not recently taken or threatened any action against foreign nationals or vessels in the contiguous

[5] See letter of May 7, 1971, from John R. Stevenson, Legal Adviser, Department of State to Shiro Kashiwa, Assistant Attorney General, Appendix, *infra*, pp. 17–19.

[6] Such action is being withheld by Florida at present only in expectation that an early determination of the question will be sought in this Court, and only to the extent that the State is satisfied with federal enforcement pending such determination. This situation, while certainly preferable to state enforcement, still deprives the United States of the freedom that it should have to adjust its enforcement policies to its foreign relations interests.

fishery zone, it has taken such action in the past, and continues to assert the right to take such action in the future. Since our disputes with Florida and Texas involve identical legal issues, it is appropriate that declaratory relief be sought against both States in a single action. See *United States* v. *Louisiana,* 354 U.S. 515, 515–516.

III. THIS IS AN APPROPRIATE CASE FOR THE EXERCISE OF THE ORIGINAL JURISDICTION OF THIS COURT

This case is one which eminently justifies invoking the original jurisdiction of this Court. The dispute, which is not one of merely local or transitory significance, is between the Nation itself and two coastal States. On the one hand, the United States seeks to protect its ability to conduct the foreign relations of the country unfettered by particularly local considerations of the coastal States while, on the other hand, the States seek to secure rights to which they believe they are entitled.

Until resolved, the disagreement threatens to interfere with and endanger the foreign policy and foreign relations of this country. Two of the most controversial issues which are now the subject of delicate negotiations in preparation for the 1973 United Nations conference relate to the breadth of the territorial sea and the extent to which nations will be permitted to extend their fisheries jurisdiction. The occurrence of international incidents such as those likely to result from Florida's threatened action could irreparably damage those delicate negotiations and should, therefore, be prevented.

Moreover, this is the only forum in which both Texas and Florida can be joined in a single suit. As previously noted, the issues raised with respect to Florida are so closely related to the interests of Texas that justice requires that they be adjudicated in a single proceeding. In view of the urgency of securing a decision as soon possible to forestall international incidents, it would be unnecessarily time consuming to initiate separate law suits in the district courts. Indeed, the question involved is of such importance that ultimate decision by this Court will undoubtedly be sought wherever the action is begun.

Finally, it is unlikely that any factual issues will arise in this case requiring the appointment of a special master, since the precise geographic location of the coastlines of Florida and Texas need not be resolved here. Disputes between the United States and Florida over the location of the Florida coastline are at issue and will be resolved in *United States* v. *Florida*, No. 52, Orig.—a suit, now before a special master, brought by the United States to determine the geographical extent of Florida's rights to exploit the natural resources of the subsoil and seabed of the continental shelf off its coast. With respect to Texas, no dispute over the location of its coastline is anticipated in connection with this litigation. Accordingly, this case involves only a narrow issue of law which can be resolved efficiently and conveniently by means of an original action in this Court.

CONCLUSION

For the reasons stated, the motion for leave to file the complaint should be granted.

Respectfully submitted.

JOHN N. MITCHELL,
Attorney General.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

APPENDIX

DEPARTMENT OF STATE,
Washington, D.C., May 7, 1971.

Hon. SHIRO KASHIWA,
Assistant Attorney General, Lands and Natural Resources Division, Department of Justice, Washington, D.C.

DEAR MR. KASHIWA: On February 25, 1971, the State of Florida seized three Cuban fishing vessels and their crews for fishing without a state license at a point about 8.7 miles south of the Dry Tortugas Islands, in waters claimed by the State as within its boundary but regarded by the United States as high seas. At that time, the State Department asked the Department of Justice to initiate legal proceedings to secure the release of those vessels and crews from state custody as soon as possible. By letter of March 5, 1971, you informed the Department that the Department of Justice was able to secure release of the vessels and crews to federal custody by undertaking to prosecute them for illegal fishing within the exclusive fishery zone of the United States established by 16 U.S.C. 1091.

While that agreement achieved the immediate objective of our request, it did not resolve the underlying dispute as to the claim of the State that it is entitled to exercise enforcement jurisdiction to prevent foreign fishing more than three miles from the coast.

In light of the above, the State Department now requests the Department of Justice to bring an appropriate judicial action against the State of Florida

to resolve this question and to forestall other potential international incidents. Such an approach makes it possible to proceed in a less heated atmosphere than when an actual seizure is involved and will, moreover, avoid the unfortunate international complications of such an episode. I understand that the State of Florida also endorses such a procedure.

It is the view of the United States that no State in the Union may exercise jurisdiction with respect to foreign vessels and nationals beyond the three-mile territorial sea of the United States. The Supreme Court has held that Congress in passing the Submerged Lands Act of 1953 recognized boundaries for Florida and Texas extending more than three miles into the Gulf of Mexico for domestic purposes. These States may not, however, exercise under that Act any rights against foreign nationals or vessels beyond three miles, although such rights are enjoyed by the United States.

The United States must seek to prevent unlawful State actions against foreign nationals or vessels which interfere with and endanger our foreign policy and foreign relations. It is true that the United States now claims an exclusive fishery zone extending twelve miles from the coastline, so that Florida's arrests within nine miles do not exceed rights claimed internationally by the United States. However, the whole subject of ocean fisheries is now the subject of thorough international review in preparation for the 1973 United Nations Conference on the Law of the Sea and, under these circumstances, we consider it essential that all enforcement outside the three-mile limit be by federal authority. This will permit complete coordination of our foreign policy objectives and protect our position on the law of the sea.

Texas is the only State other than Florida which presents the question of rights conferred by the Submerged Lands Act beyond the three-mile limit. Although there have been no recent episodes involving an attempt by that State to exercise control over aliens fishing in the exclusive fishery zone, it appears that a determination of that State's jurisdiction over alien fishing more than three miles from the coastline would also be advisable at this time in conjunction with the determination suggested with respect to Florida.

I will be glad to provide you with any additional information at my disposal.

Sincerely,

JOHN R. STEVENSON,
The Legal Adviser.

U.S. GOVERNMENT PRINTING OFFICE: 1971