

DEC 9 1977

MICHAEL RODAK, JR., CLERK

No. 54, ORIGINAL

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*In the Supreme Court of the United States*

OCTOBER TERM, 1977

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UNITED STATES OF AMERICA, PLAINTIFF

*v.*

STATES OF FLORIDA AND TEXAS

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JOINT MOTION TO DISMISS

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WADE H. McCREE, JR.,

*Solicitor General,  
Department of Justice,  
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The United States of America and the States of Florida and Texas move to dismiss this action.

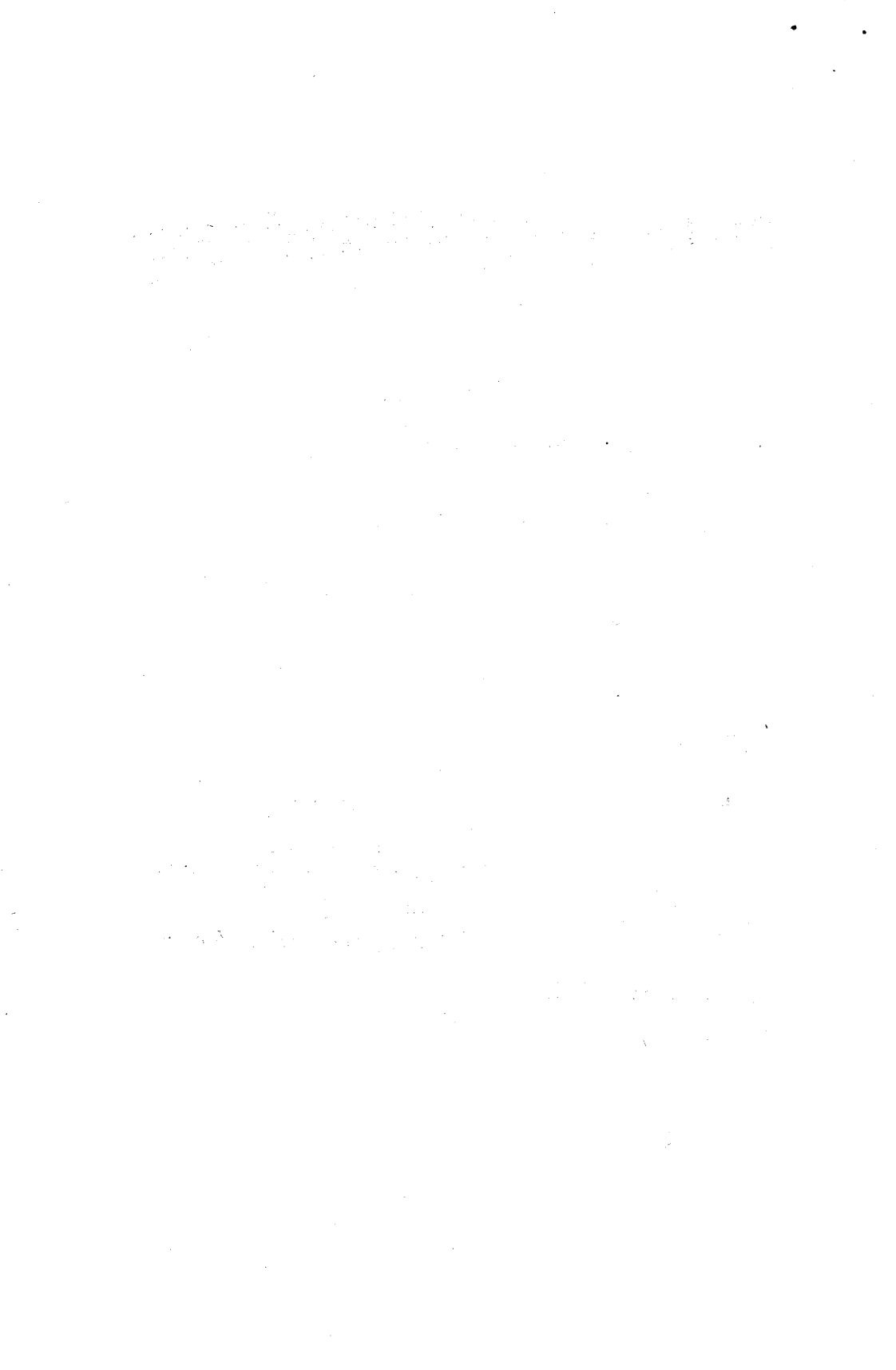
Respectfully submitted.

WADE H. MCCREE,  
*Solicitor General.*

ROBERT L. SHEVIN,  
*Attorney General of Florida.*

JOHN L. HILL,  
*Attorney General of Texas.*

DECEMBER 1977.



# In the Supreme Court of the United States

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No. 54, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

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MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS

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## STATEMENT

This is a suit by the United States against the States of Florida and Texas for a declaration that they lack jurisdiction to enforce their fisheries laws against foreign vessels and crews in the zone of waters from 3 to 9 nautical miles off the coasts of those States in the Gulf of Mexico. The motion of the United States for leave to file the complaint in this case was granted on March 20, 1972, and the defendant States filed their answers claiming such jurisdiction on May 22, 1972. On June 26, 1972, this Court appointed a Special Master to conduct hearings and make recom-

mended findings of fact and conclusions of law.<sup>1</sup> On February 23, 1977, the Court, adopting the recommendation of the Special Master, denied a motion by the defendant States for leave to file a counterclaim against the United States concerning the respective powers of the governments in the waters within 3 nautical miles of the coastline. 430 U.S. 140.

On March 1, 1977, the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, 90 Stat. 331, to be codified at 16 U.S.C. 1801, *et seq.*, took effect. That Act establishes a United States fishery conservation zone between the seaward boundary of the coastal states and a line 200 nautical miles from the baseline from which the territorial sea is measured. 16 U.S.C. 1811. The Act flatly prohibits foreign fishing within state boundaries (16 U.S.C. 1857(2)(A)) and allows foreign fishing in the United States fishery conservation zone only under carefully circumscribed conditions: (a) the foreign nation must have entered into a governing international fishery agreement with the United States or be a party to an existing international fishery agreement (16 U.S.C. 1821); (b) the foreign nation must apply for and receive permits for its vessels to fish (16 U.S.C. 1824); and (c) foreign fishing is limited to that portion (if any) of the optimum yield of the fishery in question that will not be harvested by vessels of the United States (16 U.S.C. 1821(d)). Given the amount of United States fishing

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<sup>1</sup> 408 U.S. 918. The Honorable Olin Hatfield Chilson was appointed Special Master on December 8, 1975, following the death of the Honorable Charles L. Powell, the Special Master originally appointed by the Court in this case. 423 U.S. 1011.

relative to the fishery stocks in the fishery conservation zone in the Gulf of Mexico adjacent to the States of Florida and Texas, the number of foreign fishing permits to be issued for that area is expected to be negligible.

The Fishery Conservation and Management Act authorizes the Secretaries of Commerce and the Department in which the Coast Guard is operating (now the Department of Transportation) to enter into agreements with the coastal states to enforce the provisions of the Act. 16 U.S.C. 1861(a). On April 28, 1977, at a pretrial conference in these proceedings, the parties advised the Special Master that they had agreed to enter into such agreements and were in the process of negotiating the terms and conditions thereof. Those negotiations have been completed and the United States and the States of Florida and Texas have now entered into agreements under the Act. (Apps. A and B, *infra*.) They provide that only federal fishery laws will be enforced against foreign fishing in the waters between 3 and 9 miles off of the coastlines of the States in the Gulf of Mexico, and that state officers may enforce the Fishery Conservation and Management Act in cooperation with and under the general supervision of the federal government.

#### ARGUMENT

Except for foreign vessels that have obtained permits under the Fishery Conservation and Management Act—and the number of permits authorizing foreign fishing in the Gulf of Mexico is expected to

be small—the new Act establishes a legal barrier to foreign fishing within 200 miles of the coastline of the United States. It is unlikely that a foreign fishing vessel not possessing a permit will disregard the Act to the extent of fishing not simply within 200 miles but within 3 to 9 miles of the coastlines of the defendant States. To the extent that any unauthorized foreign fishing occurs within that 3 to 9 mile area, the States are now able, within the terms of the cooperative federal-state agreements, to enforce the prohibitions of the Act against any such foreign vessels. Thus, although neither the Act nor the cooperative agreements entered into under the Act resolve the underlying legal controversy between the parties in this suit, in practical effect they eliminate the likelihood that any further disputes will arise over enforcement against foreign fishing vessels within 3 to 9 miles from the States' coastlines. The agreements satisfy the United States that foreign fishing beyond the territorial sea will be addressed in a uniform, national manner, and they satisfy the States that the fishery resources of the waters from 3 to 9 miles off their coasts in the Gulf of Mexico will be protected from unauthorized foreign fishing. Accordingly, the parties believe that the interests of both sides will be accommodated under the agreements, and that further litigation of their respective claims to jurisdiction is unnecessary.

Since, as a practical matter, intervening events have now essentially mooted the controversy that gave rise to this litigation, the parties request that the Court



dismiss this action. Such dismissal would, of course, be without prejudice to the ability of the United States to seek leave to invoke this Court's original jurisdiction in the unlikely event that it should become necessary to resolve differences among the parties respecting enforcement responsibilities in the waters 3 to 9 miles from the coastlines of the defendant States. See *Doremus v. Board of Education*, 342 U.S. 429, 433; *United States v. Alaska Steamship Co.*, 253 U.S. 113, 115-116.

Respectfully submitted.

WADE H. MCCREE,  
*Solicitor General.*

ROBERT L. SHEVIN,  
*Attorney General of Florida.*

JOHN L. HILL,  
*Attorney General of Texas.*

DECEMBER 1977.



## APPENDIX A

### AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND THE STATE OF TEXAS FOR FISHERY ENFORCEMENT

WHEREAS, the Fishery Conservation and Management Act of 1976, Public Law 94-265, 16 U.S.C. 1801, *et seq.*, established a fishery conservation zone contiguous to the territorial sea;

WHEREAS, the Fishery Conservation and Management Act of 1976 expresses the national commitment to conservation of fishery resources;

WHEREAS, the Fishery Conservation and Management Act of 1976 prohibits vessels other than vessels of the United States from engaging in fishing within the boundaries of any State [section 307(2)(A), 16 U.S.C. 1857(2)(A)];

WHEREAS, the seaward boundary of the State of Texas extends 3 leagues from the historic coastline of the State for the purposes of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.*, *United States v. Louisiana, et al.*, 363 U.S. 1 (1960);

WHEREAS, the Fishery Conservation and Management Act of 1976 provides that the Secretaries of Commerce and the Department in which the Coast Guard is operating may enter into an agreement with the State to enforce that Act [section 311(a), 16 U.S.C. 1861(a)];

Recognizing that cooperative enforcement of fishery laws pertaining to foreign fishing adjacent to our coasts is in the interest of the State and the Nation;

The parties hereto being desirous of terminating amicably pending litigation between the State and the

United States regarding jurisdiction to regulate foreign fishing within the waters 3 to 9 nautical miles off the coast of Texas;

Now, therefore,

The Governments of the United States and the State of Texas do hereby enter into an Agreement pursuant to section 311(a) of the Fishery Conservation and Management Act of 1976 [16 U.S.C. 1861(a)] concerning enforcement of that Act's provisions governing foreign fishing in the waters from 3 to 9 nautical miles off the coast of Texas.

#### TERMS

1. This Agreement applies only to the enforcement of the Fishery Conservation and Management Act of 1976 as against foreign nationals fishing in the area between 3 and 9 nautical miles off the coast of Texas.

2. The parties agree that only Federal fishery laws will be applied to foreign fishing in the area covered by this Agreement.

3. In accordance with section 311(b) of the Fishery Conservation and Management Act of 1976 [16 U.S.C. 1861(b)], such officers of the Division of Enforcement of the Texas Parks and Wildlife Department as the head of that agency may designate are authorized to perform the duties enumerated in such section with respect to foreign fishing in the area from 3 to 9 nautical miles from the coast of Texas.

4. In carrying out their duties under paragraph 3 above, the designated officers of the Texas Parks and Wildlife Department shall be governed by the provisions of both the Coast Guard and the National Marine Fisheries Service (or its successor agency) directives concerning enforcement of the Fishery Conservation and Management Act of 1976 with respect to foreign fishing. Any disputes which may arise con-

cerning the proper enforcement action to be taken under these directives shall be resolved by the Coast Guard District Commander after consultation with the head of the Texas Parks and Wildlife Department. The parties agree that State enforcement officers acting under this Agreement are subject to the authority of the Coast Guard District Commander and shall exercise discretion comparable to Federal enforcement officers. The United States shall seek to avoid undue interference with the normal operations of State officers and represents that any decision made under this paragraph will be based upon good faith interpretation of the applicable Federal regulations.

5. Any observation of foreign fishing vessels within the area covered by this Agreement, and any law enforcement action contemplated by the Texas officers with respect to such vessels, shall be reported immediately to the Commander of the Eighth Coast Guard District in New Orleans, Louisiana, who, subject to the availability of appropriate personnel and equipment, will dispatch Coast Guard units to assist the Texas officers in their enforcement and surveillance efforts.

6. If the United States Government observes or becomes aware of foreign fishing vessels within the area covered by this Agreement, the United States Government shall immediately report such observation or information to the Texas Parks and Wildlife Department. Upon such report, the parties shall both be guided by the terms of this Agreement in their subsequent actions.

7. The parties acknowledge that the landward boundary of the Federal fishery conservation zone established by the Fishery Conservation and Management Act of 1976 is a line coterminous with the seaward boundary of each of the coastal States

[section 101, 16 U.S.C. 1811], and that the Fishery Conservation and Management Act of 1976 prohibits foreign fishing within the boundaries of any State [section 307(2)(A), 16 U.S.C. 1857(2)(A)]. For the purposes of this Agreement the term "boundaries of any State" shall be interpreted to include the waters within a line 3 leagues (9 nautical miles) from the historic coastline of Texas. The parties further acknowledge that as of the date of this Agreement, no foreign fishing is authorized under the Fishery Conservation and Management Act of 1976 within the zone of waters covered by this Agreement.

8. When performing the duties described in paragraph 3 above, the authorized officers of the Texas Parks and Wildlife Department shall cooperate with the Coast Guard and the National Marine Fisheries Service (or its successor agency), including, if so requested by the Coast Guard or the National Marine Fisheries Service (or its successor agency), allowing personnel from those agencies to accompany voyages or flights in or over the area covered by this Agreement.

9. The Federal Government will reimburse the State for the additional cost, if any, of having a Federal agent accompany Texas enforcement units in instances where such Federal agents in fact accompany Texas enforcement units. All other expenses incurred by the State under this Agreement will be borne by the State, or shall be borne in accordance with such agreements as may be entered into between the parties from time to time.

10. Except as provided in this Agreement, State officers shall not have the authority to carry out functions or responsibilities of the Federal Government nor shall this Agreement be in any manner considered to constitute employment of the State officers by the



Federal Government. State officers shall not be held nor considered to be employees of the United States for the purposes of any laws administered by the United States Civil Service Commission. State officers may be required to appear as witnesses in connection with any action brought under the Fishery Conservation and Management Act of 1976 with which they have an involvement.

11. This Agreement shall be construed to be consistent with the Fishery Conservation and Management Act of 1976, including the definitions of terms in that Act, and regulations promulgated under that Act.

12. This Agreement shall continue in force for a minimum period of 2 years, and thereafter until terminated by either party, provided that 1 year's notice is given to the other party. Termination may also be effected by the terms of paragraphs 13 or 14 of this Agreement.

13. Notwithstanding the provisions of paragraph 12 above, the enforcement authority, provided for in this Agreement, of the Texas Parks and Wildlife Department or any officer or unit of that Department may, at any time, be terminated for good cause upon a finding by the Commandant of the Coast Guard and the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, that such Department has engaged in a course of conduct not in compliance with the provisions of paragraphs 4, 5, 6, or 8 of this Agreement. Provided, however, that the inability of the State of Texas, by reason of lack of enforcement personnel or equipment, to conduct enforcement activities in particular instances, shall not be grounds for termination under this section. In the event the enforcement authority of the Department is terminated under the provision of term 13, this entire Agreement shall be void and of no force and effect.

14. This Agreement may be modified from time to time upon agreement of the parties. Specifically, this Agreement may be modified or terminated upon 90 days' notice, if the Fishery Conservation and Management Act of 1976 is ever repealed, amended, or modified in such a way as substantially to alter the provisions of that Act referred to in paragraph 7 above.

15. The parties agree, upon execution of this Agreement, to seek a dismissal without prejudice of the lawsuit styled *United States of America v. States of Florida and Texas*, in the Supreme Court of the United States of America, Original No. 54. Except as provided herein, nothing in this Agreement shall be construed as a relinquishment of any claim of right, title, or interest by either party, including, but without limitation to, any claim of right, title, or interest recognized by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.*

Done and executed this the 21st day of November, 1977.

FOR THE UNITED STATES:

/s/ DAVID H. WALLACE,  
*Acting Assistant Administrator*  
*for Fisheries, National Oceanic*  
*and Atmospheric Administration.*

/s/ E. L. PERRY,  
*Acting Commandant,*  
*United States Coast Guard.*

FOR THE STATE OF TEXAS:

TEXAS PARKS AND WILDLIFE  
 DEPARTMENT,

By: /s/ PEARCE JOHNSON,  
*Chairman, Texas Parks*  
*and Wildlife Commission.*

## APPENDIX B

### AGREEMENT BETWEEN THE GOVERNMENTS OF THE UNITED STATES AND THE STATE OF FLORIDA FOR FISHERY ENFORCEMENT

WHEREAS, the Fishery Conservation and Management Act of 1976, Public Law 94-265, 16 U.S.C. 1801, *et seq.*, established a fishery conservation zone contiguous to the territorial sea;

WHEREAS, the Fishery Conservation and Management Act of 1976 expresses the national commitment to conservation of fishery resources;

WHEREAS, the Fishery Conservation and Management Act of 1976 prohibits vessels other than vessels of the United States from engaging in fishing within the boundaries of any State [section 307(2)(A), 16 U.S.C. 1857(2)(A)];

WHEREAS, the seaward boundary of the State of Florida in the Gulf of Mexico extends 3 leagues from the historic coastline of the State for the purposes of the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.*, *United States v. Florida*, 363 U.S. 121 (1960);

WHEREAS, the Fishery Conservation and Management Act of 1976 provides that the Secretaries of Commerce and the Department in which the Coast Guard is operating may enter into an agreement with the State to enforce that Act [section 311(a), 16 U.S.C. 1861(a)];

Recognizing that cooperative enforcement of fishery laws pertaining to foreign fishing adjacent to our coasts is in the interest of the State and the Nation;

The parties hereto being desirous of terminating amicably pending litigation between the State and the United States regarding jurisdiction to regulate foreign fishing within the waters 3 to 9 nautical miles off the coast of Florida in the Gulf of Mexico;

Now, therefore,

The Governments of the United States and the State of Florida do hereby enter into an Agreement pursuant to section 311(a) of the Fishery Conservation and Management Act of 1976 [16 U.S.C. 1861 (a)] concerning enforcement of that Act's provisions governing foreign fishing in the waters from 3 to 9 nautical miles off the coast of Florida.

#### TERMS

1. This Agreement applies only to the enforcement of the Fishery Conservation and Management Act of 1976 as against foreign nationals fishing in the area between 3 and 9 nautical miles off the coast of Florida in the Gulf of Mexico.

2. The parties agree that only Federal fishery laws will be applied to foreign fishing in the area covered by this Agreement.

3. In accordance with section 311(b) of the Fishery Conservation and Management Act of 1976 [16 U.S.C. 1861(b)], such officers of the Division of Law Enforcement of the Florida Department of Natural Resources as the Executive Director of the said Department may designate are authorized to perform the duties enumerated in such section with respect to foreign fishing in the area from 3 to 9 nautical miles from the coast of Florida in the Gulf of Mexico.

4. In carrying out their duties under paragraph 3 above, the designated officers of the Division of Law Enforcement shall be governed by the provisions of

both the Coast Guard and the National Marine Fisheries Service (or its successor agency) directives concerning enforcement of the Fishery Conservation and Management Act of 1976 with respect to foreign fishing. Any disputes which may arise concerning the proper enforcement action to be taken under these directives shall be resolved by the Coast Guard District Commander after consultation with the Executive Director of the Florida Department of Natural Resources. The parties agree that State enforcement officers acting under this Agreement are subject to the authority of the Coast Guard District Commander and shall exercise discretion comparable to Federal enforcement officers. The United States shall seek to avoid undue interference with the normal operations of State officers and represents that any decision made under this paragraph will be based upon good faith interpretation of the applicable Federal regulations.

5. Any observation of foreign fishing vessels within the area covered by this Agreement, and any law enforcement action contemplated by the Division of Law Enforcement with respect to such vessels, shall be reported immediately to the Commander of the Seventh Coast Guard District in Miami, Florida, who, subject to the availability of appropriate personnel and equipment, will dispatch Coast Guard units to assist the Division of Law Enforcement in their enforcement and surveillance efforts.

6. If the United States Government observes or becomes aware of foreign fishing vessels within the area covered by this Agreement, the United States Government shall immediately report such observation or information to the Division of Law Enforcement. Upon such report, the parties shall both be guided by the terms of this Agreement in their subsequent actions.

7. The parties acknowledge that the landward boundary of the Federal fishery conservation zone

established by the Fishery Conservation and Management Act of 1976 is a line coterminous with the seaward boundary of each of the coastal States [section 101, 16 U.S.C. 1811], and that the Fishery Conservation and Management Act of 1976 prohibits foreign fishing within the boundaries of any State [section 307(2)(A), 16 U.S.C. 1857(2)(A)]. For the purposes of this Agreement the term "boundaries of any State" shall be interpreted to include the waters within a line 3 leagues (9 nautical miles) from the historic coastline of Florida in the Gulf of Mexico. The parties further acknowledge that as of the date of this Agreement, no foreign fishing is authorized under the Fishery Conservation and Management Act of 1976 within the zone of waters covered by this Agreement.

8. When performing the duties described in paragraph 3 above, the authorized officers of the Division of Law Enforcement shall cooperate with the Coast Guard and the National Marine Fisheries Service (or its successor agency), including, if so requested by the Coast Guard or the National Marine Fisheries Service (or its successor agency), allowing personnel from those agencies to accompany voyages or flights in or over the area covered by this Agreement.

9. The Federal Government will reimburse the State for the additional cost, if any, of having a Federal agent accompany Florida enforcement units in instances where such Federal agents in fact accompany Florida enforcement units. All other expenses incurred by the State under this Agreement will be borne by the State, or shall be borne in accordance with such agreements as may be entered into between the parties from time to time.

10. Except as provided in this Agreement, State officers shall not have the authority to carry out functions or responsibilities of the Federal Government



nor shall this Agreement be in any manner considered to constitute employment of the State officers by the Federal Government. State officers shall not be held nor considered to be employees of the United States for the purposes of any laws administered by the United States Civil Service Commission. State officers may be required to appear as witnesses in connection with any action brought under the Fishery Conservation and Management Act of 1976 with which they have an involvement.

11. This Agreement shall be construed to be consistent with the Fishery Conservation and Management Act of 1976, including the definitions of terms in that Act, and regulations promulgated under that Act.

12. This Agreement shall continue in force for a minimum period of 2 years, and thereafter until terminated by either party, provided that 1 year's notice is given to the other party. Termination may also be effected by the terms of paragraphs 13 or 14 of this Agreement.

13. Notwithstanding the provisions of paragraph 12 above, the enforcement authority, provided for in this Agreement, of the Division of Law Enforcement or any officer or unit of the Division of Law Enforcement may, at any time, be terminated for good cause upon a finding by the Commandant of the Coast Guard and the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, that the Division of Law Enforcement has engaged in a course of conduct not in compliance with the provisions of paragraphs 4, 5, 6, or 8 of this Agreement.

Provided, however, that the inability of the State of Florida, by reason of lack of enforcement personnel or equipment, to conduct enforcement activities in particular instances, shall not be grounds for termination under this section. In the event the enforce-

ment authority of the Division of Law Enforcement is terminated under the provision of term 13, this entire Agreement shall be void and of no force and effect.

14. This Agreement may be modified from time to time upon agreement of the parties. Specifically, this Agreement may be modified or terminated upon 90 days' notice, if the Fishery Conservation and Management Act of 1976 is ever repealed, amended, or modified in such a way as substantially to alter the provisions of that Act referred to in paragraph 7 above.

15. The parties agree, upon execution of this Agreement, to seek a dismissal without prejudice of the lawsuit styled *United States of America v. States of Florida and Texas*, in the Supreme Court of the United States of America, Original No. 54. Except as provided herein, nothing in this Agreement shall be construed as a relinquishment of any claim of right, title, or interest by either party, including, but without limitation to, any claim of right, title, or interest recognized by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301, *et seq.*

Done and executed this the 5th day of December 1977.

FOR THE UNITED STATES:

/s/ DAVID H. WALLACE,  
*Acting Assistant Administrator  
 for Fisheries, National Oceanic  
 and Atmospheric Administration.*

/s/ E. L. PERRY,  
*Acting Commandant,  
 United States Coast Guard.*

FOR THE STATE OF FLORIDA:

/s/ HARMON W. SHIELDS,  
*Executive Director,  
 Florida Department of Natural Resources.*





