Offshore Jurisdiction and Federal-State Relations: The 12 Nautical Mile Territorial Sea and the Tidelands Controversy

Jeremy D. Wiese
University of Rhode Island

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OFFSHORE JURISDICTION AND FEDERAL-STATE RELATIONS:
THE 12 NAUTICAL MILE TERRITORIAL SEA AND THE TIDELANDS CONTROVERSY

BY

JEFFREY D. WIESE

A Thesis submitted in partial fulfillment of the requirements for the degree of:

MASTER OF ARTS
IN
MARINE AFFAIRS

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1983
EXTENSION OF THE UNITED STATES
TERITORIAL SEA
MASTER OF ARTS THESIS

OF

JEFFREY D. WIESE

Approved:

Thesis Committee:

Major Professor

[Signatures]

Dean of the Graduate School

UNIVERSITY OF RHODE ISLAND

1983
ABSTRACT

Recently, after several decades of negotiations, the United States, acting through the President, opted not to sign the United Nations Law of the Sea Treaty. In the aftermath of this decision those individuals involved with marine affairs are beginning to examine the Treaty's separate provisions to ascertain those which the U.S. may embrace under the auspices of customary international law. To date, this examination has led to a Presidential Proclamation generating an Exclusive Economic Zone for the U.S. Jurisdictionally, the next logical step would be U.S. adoption of the 12 nautical mile limit for its territorial sea. Indeed, movement in this direction has already begun.

In proclaiming an EEZ for the United States the President, for the first time in U.S. history, indicated that this Nation would recognize international claims to a territorial sea in excess of 3 nautical miles to a maximum of 12. In light of these developments, this thesis examines the history of the U.S. territorial sea and Federal-State jurisdictional conflicts therein. This examination is made to determine whether, in this regard, the past will be prologue to the future.

The central focus of this study then is the domestic impacts likely to emanate from U.S. adoption of a 12 nautical mile territorial sea. Further, this study presents several potential jurisdictional divisions of an expanded territorial sea as between the coastal States and Federal government, including one option incorporating the current impetus to create an Outer Continental Shelf revenue sharing trust fund for these States. The resolution of this potential U.S. dilemma will be generated through political negotiation and the intent of this thesis is to clarify the issue and alternative solutions prior to this debate.
ACKNOWLEDGMENTS

The author wishes to express his gratitude to the members of his Thesis Committee, all of whom selflessly donated their knowledge, time, and energies to bettering this product. The members of this committee were Dr. Lawrence Juda and Dr. Lewis Alexander, both of the Graduate School of Geography and Marine Affairs, and Dr. Richard Scholl of the College of Business, School of Management.

Last, but not least, the author wishes to also express his appreciation to several individuals who provided the motivational and logistical support which saw him through this effort. These people are his mother, Susan Harvey, Chip Cameron, and Fritts Golden. All of these individuals will undoubtedly be elated to see this study completed, but not nearly as much as the author.
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INTRODUCTION

As the U.S. proceeds through the decade of the 1980's there exists a pervasive sentiment for reducing Federal expenditures. An adjunct to this budget paring fever is a less obvious re-examination of contemporary notions of federalism. This scrutiny of the relative role of Federal, State, and local governments in the coastal zone together with reduced Federal program funding levels may serve as a catalyst for re-opening the wounds of the somewhat inappropriately labelled "tidelands controversy."

The crux of the tidelands controversy was a political and juridical examination of federalism in the coastal zone. Though the political pre-eminence of this controversy peaked during and shortly after the 1952 Presidential elections juridical interpretations of federalism in the coastal zone have spanned half a century and continue to date.

At issue in the original tidelands controversy were ownership rights to the mineral resources of portions of the continental shelf of the U.S. Though there were some early vacillations, the U.S. Federal government came to claim these resources from the shoreline to the edge of the continental shelf and, quite recently, to within 200 nautical miles of the U.S. coast. In contradistinction, the coastal States claimed, at a minimum, rights to the mineral resources of the continental shelf within the territorial sea.

In an historic decision the U.S. Supreme Court ruled, in 1947, in favor of the Federal government as against the State of California regarding the requisite legal authority to lease offshore hydrocarbon development. The political fall-out from this decision can be shown to have influenced the 1952 Presidential elections and in turn led to enactment of the Submerged Lands Act which
granted ownership rights to the mineral resources of the continental shelf from the shore to 3 nautical miles to coastal States.

Though modifications in subsequent statutes have further enhanced State's rights in the Outer Continental Shelf area, this grant of 3 nautical miles to coastal States, with the exceptions of Florida and Texas in the Gulf of Mexico, has remained intact. The 3 nautical mile grant is inextricably tied to what in the past has been deemed the breadth of the territorial sea. This limit to the territorial sea has for some time now been under challenge from the international community of coastal nations. One can argue, in fact, that the contemporary limit for the breadth of the territorial sea has, through customary international law, become 12 nautical miles.

It is, therefore, a combination of changes in the contemporary international conception of the legal territorial sea breadth together with critical domestic reappraisal of federalism in the coastal zone which may lend credence to future coastal State claims to expanded jurisdiction over continental shelf resources. Thus, the re-opening of the tidelands controversy.

In anticipation of serious debate concerning expansion of the U.S. territorial sea and its political division within our federal system of government this thesis will broadly examine the relevant issues. The following discussion will focus on the history and current status of limits to the territorial sea, the evolution of Federal/State jurisdiction over the territorial sea, and on alternative jurisdictional divisions of a hypothetical 12 nautical mile United States territorial sea.
CHAPTER ONE
THE HISTORY AND CURRENT STATUS OF
LIMITS TO THE TERRITORIAL SEA

From the time of the Seventeenth and Eighteenth Century Dutch jurists Grotius and Bynkershoeck it has been generally accepted that a coastal nation's sovereignty extends beyond its shores to a belt of marginal waters known as the territorial sea. The exact legal limit to territorial sea claims of coastal nations has not enjoyed such widespread recognition. Despite numerous international conferences intended to settle the discrepancies in the breadth of claims to a territorial sea, among other related marine matters, there is still no international declaratory rule governing such extensions of national sovereignty into the sea. Provisions for such a rule, however, are contained in the Treaty of the recently concluded Third U.N. Conference on the Law of the Sea. Among other provisions, this Treaty provides for a maximum extension of the territorial sea to 12 nautical miles (n.m.).

Origin and historical breadth of the territorial sea.

While the extent of the territorial sea has never enjoyed absolute international consensus, the prevailing claim prior to World War II was 3n.m., traditionally called the "cannon-shot" rule. Bynkershoeck's early Eighteenth Century writings gave validity to the belief that a coastal nation was entitled to a belt of waters adjacent to its shores that could be defended from land. A contemporary of Bynkershoek's, Italian jurist Galiani, is credited with equating
the cannon-shot rule with three nautical miles. This limit was the equivalent of a marine league, a common measure of nautical distance during that period. It should be noted, however, that the range of a coastal cannon during the days of Bynkershoek and Galiani was considerably less than a marine league.¹

Though the 3n.m. territorial sea achieved stature among some maritime nations, it was not the universal limit prior to World War II. Another standard of measurement was the line of sight rule, or the distance one could see from land, which understandably produced a wide variety of claims.²

In the United States, early adoption of the 3n.m. rule is often traced to correspondence between then Secretary of State Thomas Jefferson and the French and British ministers concerning the establishment of a "neutrality zone" adjacent to U.S. shores. Jefferson tentatively established this zone as extending one marine league from U.S. coasts. Shortly after his note was sent to the British and French ministers, the U.S. Congress officially recognized the breadth of the "neutrality zone" as one marine league.³ It should be noted, however, that this zone did not establish a territorial sea with all its concomitant rights and duties, but instead established a "neutrality zone" solely for the purposes of national defense and maritime commerce.

The territorial sea of the U.S. was first registered in international affairs in the form of a treaty between the United States and Great Britain following the War of 1812. In order to maximize access to the fisheries off Nova Scotia and Newfoundland, the U.S. sought to limit the breadth of the territorial sea to 3n.m.⁴

Prior to and following this treaty, the United States proposed or made jurisdictional claims of disparate breadth for a variety of purposes. Among these varied claims were: (1) a neutrality zone extending to the Gulf Stream,
advocated by then President Jefferson; (2) customs jurisdiction to four marine leagues, adopted by Congressional action in 1799, and extended to 62 miles in 1935; (3) enforcement of Prohibition legislation to four marine leagues in 1922; (4) a distance of one hour's travel from the U.S. coast, as established by the "Liquor Treaty" of 1924 between the U.S. and Great Britain, to constrain smuggling during Prohibition; (5) a security zone reaching several hundred miles from the shores of the American Republics at the beginning of World War II; and (6) air defense identification zones, after World War II, which required notification within two hours cruising distance of U.S. shores. During the Roosevelt Administration several initiatives were undertaken to expand the U.S. territorial sea. Roosevelt himself favored ridding the U.S. of the shackles of the 3n.m. territorial sea and replacing it with one of "common sense," as did an interdepartmental group appointed by Roosevelt to study this and other marine resource jurisdicitional issues. Because of the war and Roosevelt's untimely death nothing came of these initiatives within his administration.

While U.S. claims to special purpose zones of jurisdiction have had a varied history, offshore territorial sovereignty claims have been held to 3n.m. Because of the varied claims of other coastal nations, however, the U.S. has participated in numerous international conferences with a view to establishing a universal limit for territorial sea claims.

One of the earliest international efforts to establish such a limit was the Conference for the Codification of International Law, sponsored by the League of Nations in 1930. In response to queries by the Preparatory Committee, coastal nations promulgated their views on the territorial sea. The United States held that the only limit achieving anything close to consensus was 3n.m. The responses of other coastal nations varied, and the 1930 Conference resulted in no universal limit by general acceptance.
Shortly after its establishment, in 1945, the United Nations requested that the International Law Commission begin an extensive review of sea law, in particular the limits of the territorial sea and jurisdictional regimes for marine resources. The Commission's final report, released in 1956, while not resolving the issue of limits to the breadth of the territorial sea gave rise to a United Nations conference that attempted to standardize international sea law.

This First United Nations Conference on the Law of the Sea (UNCLOS I) was convened in 1958 at Geneva, Switzerland. It met with some success, producing four Conventions dealing with the continental shelf, the territorial sea and the contiguous zone, the high seas, and fisheries and other living resources of the high seas. It was, however, unable to settle the issue of limits to the territorial sea. While these Conventions have gained juridical standing, particularly before the International Court of Justice, they have been widely derided for their lack of clarity on limits to the territorial sea and continental shelf.8

In 1960 the United Nations convened the Second U.N. Conference on the Law of the Sea (UNCLOS II), to again address the issues of limits to the territorial sea and continental shelf. This Conference met with less success than its predecessor, and subsequently the various Conventions created by UNCLOS I went into effect during the years 1962-1968. They remain the primary international treaties governing the law of the sea, pending ratification and entry into force of the UNCLOS III Treaty which was opened for signature on December 10, 1982.

The 1958 Geneva Conventions did not put a stop to the process of creeping jurisdiction, and claims to ocean space have since proliferated. Loopholes in these Conventions in essence opened the door for the continued seaward creep of
jurisdiction, and new and broader claims established the threat of restriction of commercial and military ocean vessel movement through vital straits around the world. Additionally, technological advances have made it clear that resource exploitation would become increasingly feasible even at distances far from coastal areas.

Following UNCLOS II, in 1967-1968, the United Nations established a Seabeds Committee to examine disputed issues regarding ocean mining and other related marine affairs. In recognition of numerous proposals to extend the limit to the territorial sea, President Nixon issued a "Statement About United States Ocean Policy" on May 23, 1970, in which he, among other initiatives, proposed adoption of a coupled agreement on the 12n.m. territorial sea limit and provisions for free transit through and over international straits. President Nixon referred these proposals to the U.N. Seabeds Committee and urged resolution of these and other marine issues via a new law of the sea treaty.9

President Nixon's 1970 Ocean Policy Statements received the endorsement of the U.S. House of Representatives in Resolution 330, on April 2, 1973.10 This resolution exhibited Congressional support for the 12n.m. territorial sea limit. The U.S. Senate passed Resolution 82 on July 9, 1973, for similar purposes.11

Although the U.S. had, through its President and Congress, endorsed the concept of a 12n.m. territorial sea, its adoption was contingent on a transit passage regime. In March 1983, President Reagan in issuing his Exclusive Economic Zone Proclamation and ocean policy guidelines, for the first time in U.S. history, indicated that the U.S. will recognize claims to a territorial sea in excess of 3n.m. to a maximum of 12n.m. by those nations according the U.S. its full rights under international law in their territorial sea.12 The materials accompanying the U.S. EEZ Proclamation made clear that these full rights included those of the transit passage regime.
The Third United Nations Conference on the Law of the Sea (UNCLOS III), was convened in December of 1973 in New York. In the ten years since, the delegates to the world's largest international treaty-making effort have failed to reach a consensus on the entire UNCLOS III Treaty. While a consensus has been achieved on a majority of the provisions of the Treaty, those dealing with exploitation of the mineral resources of the seabed beyond the bounds of national jurisdiction have proven difficult to resolve. The UNCLOS III Treaty was opened for signature of participating nations in Montego Bay, Jamaica during December 1982. Within a matter of weeks of this momentous event well over 100 nations had signed the final act of UNCLOS III, indicating a broad base of support for this often touted "package deal."

On July 9, 1982, President Reagan announced that the U.S. would not sign the treaty because of objections to provisions for deep seabed mining and future amendments to the treaty which could be adopted without U.S. approval. The interagency review which led to this decision did not make public any reservations concerning provisions of the UNCLOS III Treaty for a 12n.m. territorial sea. For the remainder of the Reagan Administration, and likely for some time following unless substantial progress is made in the Preparatory Commission set up by the Treaty, or outside of the Commission by the Treaty delegates themselves, the U.S. will not be a party to this effort to codify international sea law. This is not to say, however, that the U.S. may not embrace relevant portions of the UNCLOS III Treaty which it finds beneficial and which it feels are assertable under customary international law, as witnessed by the recent U.S. EEZ Proclamation. In lieu of U.S. ratification of this Treaty, several options for domestic implementation of select provisions remain. These options, as well as the basis for their legality, will be reviewed in a subsequent portion of this paper.
Rights and duties of a sovereign power in the territorial sea.

Within the territorial sea a sovereign power retains all rights that it can lawfully assert on its land, subject only to the right of ships of all nations to innocent passage as defined by the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The irrevocable right of innocent passage is a concession granted by the coastal nation through whose territorial sea a ship transverses providing such passage complies with the applicable principles of international law. In other words, a coastal nation exerts sovereignty over the territorial sea. The sovereignty of each nation extends to the air space above, and submerged lands underlying, the territorial sea.

As alluded to earlier, the establishment of the right of a coastal nation to a territorial sea arose largely from recognition that in order to control its sovereign property a nation must be able to control ingress to and egress from that property. This recognition was based upon the customary right of a nation to militarily police its property. Economic considerations, however, grew in relative importance as nations matured and their commercial interdependencies were fashioned. With the rise in international commerce control of the territorial sea became more important for the purposes of protecting coastwise trade and preventing smuggling and piracy.

A further adjunct to a coastal nation's interests in maritime commerce was the generally recognized right of that nation to exclusively enjoy the fruits of resource exploitation within the territorial sea. Until the advent of the petroleum-powered engine this virtually meant the right to exclusively harvest the fishery resources of this zone. This right stems from the view of the territorial sea as an extension of a coastal nation's sovereign holdings.
With the rise in the commercial feasibility of exploiting the hydrocarbon resources underlying the seabed, however, the extent of a coastal nation's claim to a territorial sea gained in importance. This was further aggravated by the developed countries' increasing ability to send commercial fishing fleets further and further from their home bases in search of selected fisheries such as whales, salmon, and tunas. These developments gained in importance in the period immediately preceeding and post-dating World War II.

Within this period the Truman Proclamations on the Continental Shelf and on Coastal Fisheries were issued - in 1945, to be precise. These proclamations were actually the promulgation of a U.S. foreign policy conceived and drafted under the preceeding Roosevelt Administration. In the eyes of many, the Truman Proclamations set the stage for an era of creeping jurisdiction. Numerous coastal nations, most immediately the South and Latin American nations of Mexico, Argentina, Chile, Ecuador, and Peru, used the Truman Proclamations as a basis for the seaward march of their claims. Several of these claims used the Proclamations as a basis for justifying territorial claims of up to 200 nautical miles.

The heightened interest in expanding marine territorial claims brought about by the Truman Proclamations generated, particularly on behalf of the U.S. and other developed countries, a desire to codify internationally acceptable limits to seaward territorial claims. As briefly touched on above, efforts were made in 1947, with the establishment of the International Law Commission (ILC) in the U.N., to define a codifiable limit for territorial sea claims. The ILC served as a preparatory commission for the 1958 U.N. Conference on the Law of the Sea (UNCLOS), held in Geneva, Switzerland. In its 1956 report, the members of the ILC were unable to come to agreement on a limit to territorial sea claims.
between 3 and 12 nautical miles. Although agreement could not be reached between these bounds the ILC did state that, "...international law does not permit an extension of the territorial sea beyond twelve miles." 17

World-wide review of territorial sea claims.

Table 1 presents a chronological view of national claims to a territorial sea from the 1958 UNCLOS to the present. Figure 1 plots the changing claims by coastal nations to territorial sea widths of varying extent as a function of time.

Even a casual perusal of Table 1 and Figure 1 will indicate that in the 25 years since the 1958 Geneva Conventions were signed international claims to a 12n.m. territorial sea have grown in greater proportion than has the number of independent coastal nations, even assuming that all new coastal nations adopted this limit. As Robert Smith has noted, of all European nations only Albania, which claims a 15n.m. territorial sea, claims more than 12n.m. 18 Further, world-wide claims greater than 12n.m. for a territorial sea are located in the developing countries of Africa and Central and South America. Smith attributes these claims to the desire of these nations to protect their economic interests in these areas of ocean space against the developed nations and neighboring countries. Following ratification of the UNCLOS III Treaty many nations with claims greater than 12n.m. for their territorial sea are expected to conform to this new internationally accepted limit.

As of 1982, over half of the independent coastal nations of the world had laid claim to a 12n.m. territorial sea. Moreover, in the 25 years since the 1958 Geneva Conventions were signed the ratio of nations claiming a 3n.m. versus a 12n.m. territorial sea has shifted from 5/1 to less than 1/3. Some credence then may be given to the observation that an international consensus, if not custom, has arisen concerning the legality of claims to a 12n.m. territorial sea.
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FIGURE 1. INTERNATIONAL TERRITORIAL SEA CLAIMS 1958-1982

Key:
- • = # of 3n.m. claims
- o = # of 12n.m. claims
- x = # of 200n.m. claims

International law and the standing of the 12n.m. territorial sea.

With the recent opening of the UNCLOS Treaty for signature, and the growing international consensus on the 12n.m. territorial sea, it may be instructive to examine the standing of this territorial limit in international law. As the world becomes more and more complexly intertwined nations have tended to, in cases short of war, rely on the legal foundation of their territorial claims more than on their ability to unilaterally force these claims upon other nations.

International law is defined as the "...body of principles, customs, and rules that are recognized as effectively binding obligations by sovereign states and other international persons in their mutual relations." International law has evolved as have the extent and scope of international relations. In international relations most nations place a premium on stability and predictability in the pursuit of national objectives and on having a means of peaceful dispute resolution. Despite its numerous shortcomings international law provides these benefits on a daily basis.

An authoritative reference for the sources of international law has been established in Article 38 of the Statute of the International Court of Justice. This article directs the court, in cases it examines, to apply, "(1) international conventions (treaties), whether general or particular, establishing rules expressly recognized by the contestant states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59 (ICJ Statute), judicial decisions and the teachings of the most highly qualified publicists of various nations as subsidiary means for the determination of rules of law."
The claims of coastal nations to marine sovereignty would most soundly be based upon conventional or customary law. As has been brought out above, numerous attempts have been made to codify international sea law through such fora as the League of Nations, beginning as early as 1930, and later the United Nations. It has only been within the past year, over a half century later, that such a codification has seemed imminent. Should it enter into force the UNCLOS III Treaty will affect all nations coastal and land-locked. Though over 100 eligible participants have signed the final act of UNCLOS III, the Treaty will not enter into force until one year after 60 nations have ratified it. That it will enter into force is by no means a certainty, but it does seem highly probable given this initial base of support.

Not all nations will ratify or be bound by the UNCLOS Treaty in its entirety. A treaty is binding only on participating nations, as long as those nations objecting to it publicly maintain their refusal to be bound by it. A treaty is also binding upon new members of the community of nations, entering therein after the treaty's effective date.

It seems probable that at least in the near-term the U.S. will not be participating in these most recent efforts to codify international sea law, primarily because of objections to deep seabed mining provisions. There has been widespread discontent, both domestically and among representatives of many foreign nations, with the U.S. decision to withdraw from future participation in this treaty-making effort. The basis of this discontent rests primarily upon the view that as a major power the U.S. bears a significant responsibility to ensure that multilateral negotiations continue to be a prime source of international law. Without U.S. support for this mode of peaceful conduct less responsible nations may be disposed toward similar unilateralism with its inherent potential for discord and conflict.
This discontent aside, a question remains as to what portions of the UNCLOS III Treaty have already achieved the status of customary international law. For those nations, such as the U.S., who do not accede to the UNCLOS Treaty as a whole, certain provisions will still remain attractive, and assertable as customary international law. Two primary indicators of the achievement of customary international law by a proposed rule of law are the extent of its practice and the longevity of its use. The 12n.m. territorial sea, as evidenced by the practice of coastal nations, may have evolved during the past 30 years to this stature. With or without the UNCLOS III Treaty it would seem well within the bounds of accepted international behavior to assert a claim to a 12n.m. territorial sea. Without the UNCLOS III Treaty, however, the acceptability of the transit passage regime so desired by commercial and military interests may have to rely on the success of bilateral negotiations.

Domestic impacts of a U.S. 12n.m. territorial sea.

It seems clear then that should the U.S. assert its right to establish a 12n.m. territorial sea there would be little legal opposition by other nations of the world. In fact, such a move would probably be welcomed by most nations as it would help to crystalize international sea law pertaining to the territorial sea. United States adoption of this limit, together with bilateral straits access negotiations which would surely ensue without U.S. accession to the UNCLOS III Treaty, will also help to bring the transit passage provisions of the Treaty into more general acceptance. Assertion of a 12n.m. territorial sea would also add to the international pressure on those coastal nations with claims beyond this limit to roll back such claims and bring uniformity and predictability to the seaward
limits to national sovereignty. Continued U.S. refusal to recognize the 12n.m. territorial sea claims of other nations, on the other hand, would have been extremely costly. In view of the pervasiveness of this claim, valuable political capital would have been lost to the U.S. by such intransigence.

Should the U.S. adopt the 12n.m. territorial sea limit, either eventually under the auspices of the UNCLOS III Treaty or unilaterally, there would undoubtedly be some impacts. The predominant number of these impacts would be domestic in nature. Internationally, such a move would generate mostly positive impacts as indicated above.

United States embrace of the 12n.m. limit would shore up international applicability of domestic marine pollution laws and would expand the buffer surrounding the U.S. through which any foreign military activities would be constrained. The single most important domestic impact, however, would be that on Federal/State relations. Such a move should be expected to generate the immediate interest of State governments.

As detailed in the next chapter of this study, a long history of disputes exists between coastal States and the Federal government over ownership of the submerged lands adjacent to U.S. shores. Following Congressional enactment of the Submerged Lands Act of 1953 coastal State jurisdiction in the U.S. was judicially established as extending 3n.m. from the low tide shoreline - except in Texas and Florida, which in the Gulf of Mexico were granted 3 marine leagues. Subsequent judicial decisions were consonant with the official U.S. position regarding seaward limits to national sovereignty. Congressional enactment of the Submerged Lands Act reflected recognition that coastal States did have legitimate interests beyond their shorelines. The 3n.m. limit to these grants corresponded to the extant limit of national sovereignty in the sea. Had the U.S.
territorial sea at that time been broader so might have been the State grants. Regardless, the controversy surrounding Federal versus State seabed has been extremely heated and has spanned more than 35 years.

With U.S. adoption of a 12n.m. territorial sea, the ownership rights to the seabed and management authority within that limit, may again become the subject of controversy between the Federal and State governments. Concomitantly, the ultimate direction of revenue flows from resource development in the 3-12n.m. zone would be subject to dispute. This later domestic impact of the 12n.m. limit is the most immediately chilling as the uncertainty generated by such a dispute could affect both the rate and magnitude of resource development by private industry due to lack of legal clarity to title in leases or permits. Further, the revenue flow dispute will become increasingly more important in the face of mounting deficits at both the Federal and State levels.

A last attendant impact of a Federal-State dispute over rights in an expanded territorial sea will be legal-managerial in nature. That level of government which gains jurisdiction over the additional 9n.m. of ocean space and seabed will incur regulatory and compliance/enforcement costs. Unless the victor is prepared to assume these responsibilities, ultimately it will be the resource management programs which will suffer, and indirectly so will the public in whose benefit these programs are conducted.

Responsible public policy would dictate that such impacts as are described above be anticipated and addressed prior to their onset. A host of natural resources lay within the 12n.m. zone, most of which are identified below, and for the Nation to receive maximum benefit from these public lands management must be reasoned.
Marine resources of the 12n.m. U.S. territorial sea.

The offshore regions of the U.S. and the resources contained therein are managed by governmental entities for the public's benefit as a common property resource. Under the current division, State authority ends and Federal authority begins for resource management at the 3n.m. limit - excluding the Gulf of Mexico wherein this authority relative to Florida and Texas changes hands at 3 marine leagues. It is undoubtedly obvious to all that political divisions such as boundaries are made with no regard for resource distributions. The establishment of a political boundary in the middle of a resource range creates the currently realized potential for lack of coordination, and often direction, in the resource management initiatives of the participating political entities. Under a federal system of government this seems inescapable but should be minimized to ensure that the public benefit is realized from the development of these offshore resources.

Because of its reduced accessibility resource and reserve estimates for the ocean space subject to U.S. and State jurisdiction are more limited than are their onshore counterparts. Within the 3-12n.m. zone, which is subject to dispute should the U.S. adopt the 12n.m. territorial sea, are several known resources of immense value. This study will identify these resources. If this dispute materializes, however, it will become critical to quantify them so that an estimation may be made as to the effect of changes on revenue flows to either State or Federal treasuries and on their respective management capabilities.

The two most readily identifiable resources within the 3-12n.m. zone are fisheries and the hydrocarbons underlying the submerged lands. From a revenue perspective fisheries present little problem as the prime Federal objectives in
fisheries management are conservation of the resource, industrial development, and foreign access control. Further, over 50 and 60 per cent of the monetary value and weight, respectively, of U.S. commercial fisheries are landed within 3n.m. of the coast.\textsuperscript{22} Data collected by the National Marine Fisheries Service is not readily amenable to division at the 12n.m. limit. The magnitude of these numbers, as well as the realization that costs and perishability of product serve as restraining factors to fishing far from shore, serve to illustrate the point that the bulk of commercial fishing will occur within 12n.m. of the coast and therefore be subject to the government gaining jurisdiction in an expanded territorial sea. Extension of State authority in this zone would bring the range of many commercial species completely under their control.

Offshore hydrocarbon development is substantially different from commercial fishing in one important aspect - that is, the revenue it generates to governments through rents, royalties, bonuses, and taxes. Currently, and historically, the only OCS regions under production are those adjacent to Louisiana, Texas, and California. Only the OCS is examined here because that is the area from which the expansion in the territorial sea would be derived. In 1981 alone, these OCS regions generated more than 76 per cent of the total, approximately $3.3 billion, of royalties paid to the Federal government.\textsuperscript{23} Over the period 1953-1981, during which OCS leases have been let, royalties paid to the Federal government have amounted to approximately $13.5 billion.\textsuperscript{24} Though a portion of these revenues are diverted to the Land and Water Conservation Fund ($866 million in FY 1981), and the Historic Preservation Fund ($150 million in FY 1981), which directly benefit the States, the remainder of mineral leasing rents, bonuses, and royalty revenues are deposited into the general treasury and by 1990 will represent the second largest annual deposit next to Federal income taxes.\textsuperscript{25}
Again, the data on offshore hydrocarbon development is not readily amenable to division at the 12n.m. limit. As opposed to fisheries, though, hydrocarbon exploration and development/production is occurring increasingly further from shore. Based on historical record, modification of the territorial sea limit from 3-12n.m. can be predicted to have a regionally diverse impact. Looking at production on the OCS (3n.m. seaward), from which the additional 9n.m. will be subtracted, the Gulf of Mexico oil and condensate production has varied during the past 28 years from 100 - 94 per cent of national OCS production. Similarly, production of gas from the OCS in the Gulf of Mexico over the past 28 years has varied from 100 - 99.4 per cent. It should be noted here that all current OCS production in the Gulf of Mexico comes from the Texas and Louisiana offshore, and primarily the latter. As the Alaskan offshore matures, and with recent "giant" field discoveries offshore California, these figures will likely decline but, it remains clear that certain regions of the U.S. would benefit more than others from an expansion of the territorial sea.

While fisheries and offshore hydrocarbons are presently the primary marine resources under development technological advances coupled with increased demand, and exhaustion of onshore, domestic reserves will create greater incentives to develop the offshore hard mineral resources adjacent to the U.S. Many of these resources have been identified within the 12n.m. zone. In the past both sulfur and salt have been produced near-shore in the Gulf of Mexico. Sand, gravel, and carbonate, used for construction aggregate and beach replenishment, are found in many areas around the U.S. coastal belt. Dredging for these materials has occurred in the New York Bight and San Francisco Bay. Near-term development of these resources is likely to accompany offshore hydrocarbon activities in the Beaufort Sea and in coastal waters adjacent to major
metropolitan areas where the costs of transportation, or alternatives, becomes prohibitive for such basic building materials.

Industrial interest has been expressed on other offshore hard minerals such as phosphorites in the Southeast Atlantic margin and offshore California. Though not as near-term other coastally-located hard minerals potentially extractable under more favorable economic conditions, and following more reserve definition cruises, include placer gold, platinum, tin, titanium, iron, and chromite.27

Because commercial interest, to date, has been rather low for the offshore hard minerals there is as yet no governmental leasing system in place. However, the development of these resources seems highly likely in the not too distant future. Together with the hydrocarbon and fisheries resources it can be seen that there exists, and is in place, a great potential for significant revenues derivable by the governmental unit with jurisdiction from marine resource development. While the change and increase in this flow is extremely difficult to predict, their magnitude seems certain to provide incentive to both the coastal States and Federal governments to exert jurisdiction over the additional 9n.m. should the U.S. assert its right to a 12n.m. territorial sea.
CHAPTER TWO
THE EVOLUTION OF FEDERAL/STATE
JURISDICTION OVER THE TERRITORIAL SEA

Within this chapter an attempt is made to give the reader a sense of how jurisdiction over the territorial sea within the United States evolved, and is still evolving, and of the political magnitude of the "tidelands controversy" during that period in history. An intentionally large portion of the text addresses political aspects of this controversy because of the bearing this will have should the U.S. decide to assert its right to a 12n.m. territorial sea. The likelihood is quite strong that should the U.S. make such a move the "tidelands controversy" would rekindle itself, particularly in light of the valuable resources currently and potentially extractable within this zone.

Events leading to U.S. v California I and other pre-SLA cases.

For approximately the first 150 years of the American Republic the issue of offshore jurisdiction as between the coastal States and Federal government was a non-issue. The Federal government had continually exercised its rights in the fields of international relations, commerce, defense, and navigation. The coastal States had, based upon testimony in several subsequent legal proceedings, continuously believed that they had ownership rights in the resources of the navigable waters, and submerged lands, adjacent to and within their lands.

Resolve of jurisdictional issues is frequently precipitated by industrial or private interest in territory, or resources contained therein, thereby requiring clarification of legal title. Such was the situation leading to a series of
lawsuits between the Federal government and coastal States to resolve
ownership and management rights within the territorial sea. This series of
lawsuits became known as the "Submerged Lands Cases." The litigation of these
cases commenced in 1945 with initiation by the Federal government of an action
against the State of California within the Supreme Court. This case was entitled
U.S. v California.

Events prior to U.S. v California.

Prospects for developing the hydrocarbon resources underlying the seabed
began to evolve around the turn of the century in California. Through
directional drilling from land-based operations, oil was developed from offshore
fields and fields beneath the land-water interface. Gradually developers erected
offshore platforms connected to shore by boardwalks and piers. At this point in
time these activities were conducted largely unfettered of governmental
regulation. In 1921, however, the State of California enacted a general leasing
statute under which leases extending into the territorial sea were issued and
royalties were collected. Heavy offshore development in California commenced
around 1928 and by 1940 wells were being drilled in 60 feet of water. From
1929 to 1938 there was no new general leasing by California for submerged lands.

Due to the obvious hydrocarbon potential and insecurity as to the legal
title to leases being issued by California, several applications were made to the
U.S. Department of the Interior under the framework of the 1920 Mineral
Leasing Act during this period. Then Secretary of the Interior Harold Ickes, until
mid-1937, denied the Federal government's right to issue leases within the
territorial sea directly stating that the title to these proposed California leases
resided with the State.
By mid-1937, however, with the magnitude of the resources offshore California becoming clearer, and similar resources being identified in the Gulf of Mexico and the Bahamas, Secretary Ickes began to shift his stance. Ickes supported a bill sponsored by Senator Nye (S. 2164), in the 75th Congress to assert Federal jurisdiction over petroleum resources under submerged lands around the Nation. This bill, which subsequently became a Senate Resolution (Senate Joint Resolution 208), passed the Senate in August 1937, but did not pass the House. This resolution would have directed the Attorney General to take action to establish U.S. possession of these resources had it been enacted. With the introduction of this and similar legislation in the 76th Congress, Interior began to suspend decisions on lease applications and to cease denying Federal jurisdiction over submerged lands.

In response to these actions to usurp authority which the coastal States had long believed legally resided with them a series of events was precipitated; in 1938 Louisiana extended its seaward State boundary 24 n.m. from the extant 3 n.m. boundary; California resumed leasing offshore rights in 1939; and Texas extended its seaward boundary. These responses created great concern in the Executive branch and particularly Secretary Ickes. Roosevelt established an interdepartmental study group to examine the issue, and the seaward extent of Federal jurisdiction, and present recommendations. The Interdepartmental Committee to Study Title to Submerged Oil Lands reported to President Roosevelt in 1940, recommending judicial action to resolve the dispute between the Federal government and coastal States. However, the impending elections and the emotionalism of State's rights issues caused Roosevelt to put this issue on the back burner. His opponent in the 1940 election, Wendell Wilkie, had adopted a position favoring the coastal States.
Following Roosevelt's re-election the issue of territorial sea rights subsided as the war grew in importance. Executive branch study was made of this issue during Roosevelt's last full term but, the general conclusions were that it would be better to proceed legislatively to resolve the issue. When Roosevelt died in April 1945 his Vice-President, Truman, took office. Shortly thereafter, the famous Truman Proclamations were promulgated. As previously mentioned, these Proclamations were actually conceived and drafted during the Roosevelt Administration. Proclamation No. 2668 asserted jurisdiction and control over the mineral resources of the continental shelf of the U.S. Executive Order No. 9633, issued the same day, gave administrative custody of these resources to the Secretary of the Interior, Harold Ickes, with the disclaimer that the Proclamation did in no way affect the continuing tidelands controversy.

In May of 1945, barely a month after assuming the Presidency, Truman instructed the Attorney General to initiate a suit in the District Court of California to test California's ability to issue offshore leases. Five months later, in October 1945, Truman further instructed Attorney General Clark to file an original suit against the State of California in the Supreme Court.

While the Supreme Court considered this case the 79th Congress had passed House Joint Resolution 225, to transfer title to the submerged lands of the territorial sea to the adjacent States. Truman, however, vetoed this bill and was able to sustain his veto in the House of Representatives during an August 1946 vote. Partially in response to this veto the State of Texas extended her seaward boundary to the edge of the continental shelf.

A major turning point in the tidelands controversy occurred in June 1947 when the Supreme Court returned its verdict in U.S. v California - No. 12. This ruling asserted that the U.S., and not the coastal States, had
"paramount rights" in the territorial sea and submerged lands by virtue of sovereignty in external affairs of the Nation.38

U.S. v California and other pre-SLA cases.

As detailed above President Truman initiated U.S. v California in the Supreme Court in October 1945. Original jurisdiction of the Supreme Court under Article 3, Section 2 of the Constitution was invoked by the U.S. Federal government in this suit against California (No. 12 Original). The basis of the suit was the unresolved U.S. claim to all submerged lands within 3n.m. of the coastline of the U.S. The suit was initiated as a test case and to enjoin further trespass on these lands by the State of California or its lessees.

In answer to this complaint the State of California admitted that it had authorized leases for petroleum extraction from a 3n.m. belt of ocean adjacent to its shores:

"The basis of California's asserted ownership (was) that a belt extending three English miles from the low water mark lies within the original boundaries of the State, Cal. Const., 1849, Art. XII; that the original thirteen states acquired from the Crown of England title to all lands within their boundaries under navigable waters, including a three-mile belt in adjacent seas; and that since California was admitted as a state on an 'equal footing' with the original states, California at that time became vested with title to all such lands."39

Prior to U.S. v California the law of submerged lands was composed of two primary cases - Martin v The Lessee of Wadell (1842), and Pollard's Lessee v Hagan (1846). Both the "Martin" and "Pollard" cases determined State's rights in the submerged lands underlying "navigable waters" within each State's territorial limits. While the courts did not specifically address the application of these
cases to the territorial sea many believed them to be equally applicable there. As it became known the Pollard inland water rule was applied and re-affirmed by courts for the next century. The first real challenge to this rule came when application was made to the submerged lands of the territorial sea.

Following dismissal of several attempts by California's representatives to void the suit on technical grounds Justice Black delivered the majority opinion of the Court. The Court found that California's claim to submerged lands underlying the territorial sea was without merit. The Supreme Court noted that, in their opinion, the Pollard rule did not apply to the submerged lands of the territorial sea. Therefore, California had no rights to title for these lands or for leasing hydrocarbon development therein and that the U.S. was, and had been, possessed of paramount rights in the territorial sea beyond inland waters. The Court further noted that though California was admitted to the Union on an "equal footing" none of the original thirteen colonies had acquired ownership of the 3n.m. territorial sea even though they had acquired elements of sovereignty by their successful revolt against the English Crown. The Court argued that at the birth of our Nation the 3n.m. territorial sea was but a "nebulous suggestion" and not a settled international custom. The Supreme Court's decree was entered on October 27, 1947 (332 U.S. 804).

Though the Federal government had won this test case on territorial sea rights its difficulties were not over. When it became clear that California's request for a new hearing would be denied applications from industry under the Mineral Leasing Act of 1920 again began to be received by the Interior Department. It soon became clear, however, that though the U.S. had won its battle against California it still had no statutory authority to lease hydrocarbon development rights.
Because of the political volatility of the issue the Truman Administration was unable to gain the statutory authority it needed to begin offshore leasing. However, to consolidate its position the Federal government instituted legal proceedings against the States of Louisiana and Texas on grounds similar to the California case. In a jointly issued decree the Supreme Court, in 1950, reaffirmed its decision in the earlier California case ruling that these two States had no property rights in the submerged lands of the territorial sea. Both of these cases again limited the application of the Pollard rule to inland waters. It should be noted that neither of the preceding cases or U.S. v California attempted to settle the location of any State's boundaries.

These three cases - U.S. v California (1947), U.S. v Louisiana (1950), and U.S. v Texas (1950), comprise what are referred to as the "Submerged Lands Cases." As perhaps can be imagined, the rulings in these cases were extremely unpopular with coastal States and the "tidelands controversy" grew further in stature into a significant political issue.

Political magnitude of the "tidelands controversy."

A sense of the political magnitude of the "tidelands controversy" can perhaps be gleaned from the preceding discussion on the evolution of the submerged lands cases. As was pointed out this issue entered national election politics as early as 1940 in the Roosevelt-Wilkie Presidential race. Though urged otherwise by his Secretary of the Interior, Harold Ickes, Roosevelt, in 1940, set aside the problem of resolving ownership rights in the territorial sea because of the impending election and because the "tidelands controversy" had become a State's rights issue in coastal States and within the Republican party.
Following the Federal government's victories in the Supreme Court against the States of California, Texas, and Louisiana it became clear that the Executive branch did not have the authority to issue leases on the submerged lands of the territorial sea or further out on the continental shelf. All revenues generated from development on existing leases had to be held in escrow pending final resolution of the issue. The royalties being generated were significant, particularly from the States' perspective.

During the period 1946-1952 the Executive and Legislative branches of the Federal government were unable to reach agreement on ownership or administration of the submerged lands. Twice, once in 1946 and again in 1952, President Truman vetoed quitclaim legislation passed by Congress which would have reasserted ownership of the submerged lands of the territorial sea for coastal States. Though successful in sustaining his veto Truman was unable to garner sufficient support for Federal offshore leasing authorization. By the time of the 1952 Presidential election the "tidelands controversy" had become quite partisan.

The significance of this issue in determining the Eisenhower-Stevenson Presidential election varies according to account. However, several important points should be noted. The Republican party made their platform for the 1952 elections one of State's rights. Eisenhower promised, if elected, to settle the "tidelands controversy" by securing the necessary quitclaim legislation to return authority and ownership over the submerged lands of the territorial sea to coastal States. The Democratic candidate, Adalai Stevenson, on the other hand, was steadfastly against such action.

The telling blow for Stevenson, in this respect, came when he announced his position to then-Governor Shriver of Texas in August 1952. This
announcement prompted Democrat Shriver to publicly issue a declaration of non-support of Stevenson. The Republican party in Texas, traditionally a Democratic stronghold, capitalized on Stevenson's announcement by placing all of the State's Democratic nominees on the Republican ticket with Eisenhower-Nixon as the Presidential pick to present Texan Democrats a straight ticket.

Further, Shriver publicly indicated his desires to place the Eisenhower-Nixon ticket on the Texas Democratic ballot. A New York Times article of this period noted the rising tide of Republicanism in Texas and attributed it to the desire in Texas to make a clean sweep in Washington and to reclaim submerged lands that were felt to appropriately belong to Texas.

Similar expressions of the importance of this issue to Louisiana, which in 1952 was receiving more than $25 million a year from offshore oil, were made by its Congressional representatives.

Eisenhower prevailed in the 1952 elections and went on to fulfill his promise of restoring ownership of the submerged lands of the territorial sea to the coastal States by orchestrating the Submerged Lands Act through Congress, in May of 1953, four months after his election. That the "tidelands controversy" was the deciding factor in this election is probably unascertainable; that the issue was at least regionally influential is undeniable. Further, the issue was quite partisan and may become so again if it rekindles with U.S. adoption of the 12n.m. territorial sea. The issue then, as it would be now, can be expressed largely in dollar signs.
Congressional enactment of the SLA and OCSLA.

Within four months of his election President Eisenhower managed to orchestrate passage through Congress of both quitclaim legislation for the submerged lands of the territorial sea and authorizing legislation for Federal mineral leasing on the outer continental shelf - an amazing feat given the long and turbulent history of the "tidelands controversy." The Submerged Lands Act (67 Stat 29), passed Congress by a 278-116 vote on May 14, 1953. In this vote the Republicans overwhelming supported Eisenhower by a ratio of 184-17, whereas the Democrats were fairly evenly split by a ratio of 94-98 in favor of the bill. The vote on the Outer Continental Shelf Lands Act passed by only a slightly more favorable margin. An interesting note on the passage of the SLA was the charge by a Democrat that the vote was a Republican debt being paid to Texas Governor Shriver who "repudiated" Stevenson, his own party's nominee in the 1952 election.

Both pieces of legislation were needed at that time to promote the development of offshore oil and establish revenue flow lines. In the Submerged Lands Cases the Supreme Court had specifically referred to the Federal government's interest in the territorial sea as that of "paramount rights," thereby leaving question as to ownership of the submerged lands therein. Further, oil activities had moved beyond the territorial sea in the Gulf of Mexico and, prior to the OCSLA, the Federal government possessed no leasing framework for marine hydrocarbons or hard minerals.

The OCSLA also served to codify the earlier Truman Proclamation on the Continental Shelf and incorporate U.S. jurisdiction over this area into domestic law. The Truman Proclamations were of an extra-territorial nature, claiming
not ownership but merely jurisdiction over the seabed and subsoil of the OCS. The OCSLA and Truman Proclamation were intended to establish jurisdiction without setting undue international precedents for more extravagant claims. As history has shown, however, this Proclamation did serve as the basis for numerous claims on ocean space by other coastal nations.

Subsequent "tidelands" cases: legal interpretation of the SLA and Federal/State authority over marine territory and resources.

Within Section 2 of the SLA, Congress defined the term "lands beneath navigable waters," as, "...all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical (nautical) miles distant from the coast line of each State and to the boundary line of each State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles..." 51 Congress did, however, retain its, "...navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs..." 52

This definitional test for "lands beneath navigable waters" was purposefully left twofold in the Gulf of Mexico to accommodate Texas' claim to a 3 marine league boundary. As will be indicated shortly the uncertainty of this definition for seaward boundaries in the Gulf of Mexico led to several more Supreme Court cases.
Shortly after passage of the Submerged Lands Act two cases were instituted in the Supreme Court to challenge the law on the constitutional grounds that Congress did not own the submerged lands and could, therefore, not cede them to coastal States. These two cases were merged because of their similar intent and decided by a joint decree of the Supreme Court in 1954. This case was entitled Alabama v Texas: Rhode Island v Louisiana (347 U.S. 272). These cases were instituted on the grounds that it was unfair for certain Gulf States to be granted greater seaward boundaries than other coastal States.

In the Alabama v Texas case, Alabama had assumed it would be granted only 3n.m., and that Texas would be granted 3 marine leagues. Alabama wished to assert that a larger submerged lands grant to Texas would violate the "equal footing" doctrine. As one of the original thirteen colonies Rhode Island also put the weight of its case on the "equal footing" doctrine. In its 1954 decision the Supreme Court denied Alabama and Rhode Island leave to file their complaints.

As previously stated, the ambiguity of the Submerged Lands Act with regard to seaward extension of boundaries into the Gulf of Mexico precipitated these challenges to the SLA. This matter was eventually settled by the Supreme Court in another consolidated case, in 1960. This action was initiated by the Federal government to meet Louisiana's claim to submerged lands extending to the edge of the continental shelf. After an interim agreement by Louisiana and the U.S., setting the baseline from which Louisiana's claim would be projected (the Chapman Line), and an amicus curiae brief filed by Texas, the Supreme Court ordered the case broadened to include all coastal States bordering the Gulf of Mexico.

This case, U.S. v States of Louisiana, Texas, Mississippi, Alabama & Florida (No. 11 Original, October Term, 1957), was settled in 1960 (363 U.S. 1, 121).
Ruling separately for Florida, the Supreme Court restricted all Gulf Coast States to a 3 n.m. submerged lands grant - except Texas and Florida on the Gulf Coast, which were granted 3 marine leagues. This case was intended to settle the "tidelands controversy." While it did serve to determine the extent of each Gulf Coast State's submerged lands grant, it did not stop the controversy.

In the October 1974 term of the Supreme Court the Federal government again invoked the original jurisdiction of the Supreme Court to determine whether the U.S. or the Atlantic Seaboard States had jurisdiction over the seabed and natural resources of the continental shelf beyond 3 n.m. (No. 35 Original, decided March 17, 1975, 95 S. Ct. 1155). The argument of the Atlantic States in this case was not novel. These States argued that as successors to the original thirteen colonies, and indirectly the Crown of England, they were entitled to this area and resources. Basically, these States wished to reopen the case U.S. v California (No. 12 Original), upon the grounds that evidence in that case had been inadequately presented. The Supreme Court in its decision on this case rested on the doctrine of stare decisis (adherence to previous judicial interpretation), to refuse to reopen the U.S. v California case and re-examine its constitutional underpinnings. The Court further ruled that the Submerged Lands Cases were "embraced" by Congress in the Submerged Lands Act and not repudiated by it.

The final outcome of this series of post-SLA submerged lands cases left the coastal States, with the previously described exceptions on the Gulf Coast of Texas and Florida, with submerged lands grants of 3 n.m. A wide variety of related cases have been tried but these have primarily been concerned with the placement of the coastal baseline along bays, harbors, and with ambulatory coastlines.
Conjecture can be made that with the history of the Submerged Lands Cases, as described in this chapter, the coastal States of the U.S., and their representatives, were left with a "sour taste in their mouths" as regards their abilities to prevail in jurisdiction-related matters with the Federal government. Rightly or wrongly, this feeling could serve as the spark for rekindling the "tidelands controversy" should the U.S. assert its right to a 12n.m. territorial sea. Coastal States would not, however, automatically gain jurisdiction over this expanded territorial sea. The Submerged Lands Act and history of Supreme Court decisions in this matter would necessitate positive Congressional action for a change in jurisdictional limits to occur. For this reason some not unduly large portion of this chapter has been devoted to presenting the political side of the "tidelands controversy," as it could play a significant role in future domestic sea law changes.
Current Federal/State offshore jurisdictional disputes.

Jurisdiction can be split to be examined from both a territorial and managerial perspective. The preceding segments of this chapter have examined the evolution of Federal/State territorial jurisdiction over the submerged lands within the territorial sea. The remaining segment of this chapter will briefly look at unresolved managerial jurisdictional problems within the territorial sea and beyond as between coastal States and the Federal government. The purpose of this review is to present further evidence indicative of the intergovernmental tension over coastal and marine natural resource jurisdiction which may, in addition to the manner in which territorial jurisdiction in this realm evolved, precipitate coastal State interest in enhancing their position within an expanded territorial sea. Beyond territorial control, coastal States have an interest in the disposition of revenues derived by the Federal government from resource development adjacent to their territory as much of the staging and support activity for this development will be based within their boundaries. In order to plan for and influence the ultimate timing and mode of this development coastal States also desire assured input to related Federal decision-making. These two aspects of managerial jurisdiction will be examined below.

Revenue flow from offshore hydrocarbon development.

SECTION 8(g) LITIGATION. Even after resolution of the seaward extent of coastal State boundaries had been adjudicated, problems remained. Due to the artificial nature of political boundaries a problem arose concerning the development of hydrocarbon resources from fields underlying the Federal/State
offshore boundaries. Because of the relative magnitude of OCS development in
the Gulf of Mexico, as indicated in Chapter One, this examination focuses on
that region. However, it should be noted the States of California and Alaska are
pursuing litigation against the Federal government on grounds similar to those to
be described below.

When the OCS Lands Act was amended in 1978 a provision, Section 8(g) (43
USC 1337) was added establishing a 3n.m. buffer beyond presumed Federal/State
marine boundaries. Within this buffer the OCS Lands Act Amendments directs
the Secretary of the Interior to provide the Governor of the adjacent State an
opportunity to enter into an agreement for the "fair and equitable" division of
revenues from leases let by the Secretary. Further, the Secretary is directed to
determine whether any such areas subject to lease have oil or gas pools or fields
underlying both Federal and State waters. Section 8(g) is premised on the
likelihood that a hydrocarbon field could be split by the Federal/State boundary
and that development on one side of this boundary could deprive the other party
of resources rightfully theirs. Any revenues derived from an 8(g) lease is
deposited into an interest-bearing escrow account pending agreement as to its
disposition or until a judicial award is made. Section 8(g) litigation in the Gulf of
Mexico alone involves the disposition of over $2.5 billion.

Because of differing interpretations of the Section 8(g) term "fair and
equitable" division of revenues, the States of Texas,53 and Louisiana,54 have
filed lawsuits against the Secretary of the Interior in this matter. Both of these
cases were filed on July 27, 1979 and have yet to be resolved. These cases have
been initiated because the affected States felt that their interests (read
revenues), were being adversely affected by actions of the Federal government
adjacent to lands subject to their territorial jurisdiction.
OCS REVENUE SHARING. In 1972, the U.S. Congress passed, and President Nixon signed into law, P.L. 92-583 - the Coastal Zone Management Act (CZMA). Enacted as a voluntary program, participating coastal States were directed by the CZMA to plan and implement coastal management programs to meet and ameliorate increasing developmental pressures. Pressures on the coast have continued to mount in the 11 years since passage of the CZMA. The increase can largely be attributed to demographic shifts to coastal areas, expansion of coastal-dependent industries, and a dramatic increase in exploration and development/production of hydrocarbons from offshore areas.

The CZMA was reauthorized and amended in 1976 to establish the Coastal Energy Impact Program (CEIP) to assist coastal States and localities in planning for and mitigating the impacts of energy development. The CEIP was proposed by the Ford Administration as an alternative to a number of Congressional initiatives designed to implement an OCS revenue-sharing mechanism. The CZMA was also amended, in 1976, to require that States participating under the CZMA plan for energy facility siting in the coastal zone.

During the reauthorization of the CZMA, in 1980, Congress further amended the Act to provide incentives for coastal States to improve their coastal management programs. An additional amendment expanded eligibility for funding under CEIP to include activities related to coal transportation and storage and ocean thermal energy conversion.

As may be obvious by the preceding synopsis, the CZMA, while providing support for State coastal management planning, has gradually increased State responsibilities. As these responsibilities have grown, so has coastal State dependence on Federal funds provided to meet the objectives of the CZMA. Though the funding for CZMA activities has always been intended to shift from
the Federal to State governments, the Reagan Administration's policy of fiscal restraint has accelerated this transition.

While a policy of fiscal restraint would dictate a decreasing State reliance on Federal funding for CZMA activities, the phase-down comes at a time when other Federal funding to States is also being curtailed. Further, in an effort to decrease U.S. dependence on foreign energy supplies and, in part, to increase revenues for the Federal Treasury, the Reagan Administration has concurrently proposed a dramatically accelerated program of OCS hydrocarbon leasing.

To meet their coastal management and OCS review responsibilities, coastal States are searching for alternative funding sources. One such alternative currently being considered by Congress is OCS revenue sharing. In essence, OCS revenue sharing would provide a mechanism through which coastal States would receive a share of Federal revenues from OCS leasing and development.

Four bills were considered by the recently adjourned 97th Congress. These four bills were: (1) H.R. 5543 - introduced into the House of Representatives on February 22, 1982 by Congressmen Jones and D'Amours, with 52 Congressional co-sponsors; (2) S. 2129 - introduced into the Senate on February 23, 1982 by Senator Mitchell as a companion bill to H.R. 5543; (3) S. 2792 - which mustered 15 Senate co-sponsors, was introduced into the Senate on July 29, 1982 by Senator Stevens; and (4) S. 2794 - introduced into the Senate on July 29, 1982 by Senator Weicker. Hearings were held in the 97th Congress only on H.R. 5543 and S. 2792; these two bills have received the most serious Congressional attention.

These four Congressional OCS revenue sharing bills shared several common elements. In general, these bills would have provided that a portion of Federal OCS revenues be utilized to fund selected coastal and ocean programs. Each bill specifically addressed the Coastal Zone Management Program, the Sea Grant
Program, coastal energy impact activities, and living marine resource programs. These bills varied, however, in their strategy for program funding.

Shortly upon reconvening, both sides of the 98th Congress saw the reintroduction of OCS revenue sharing bills. Floor action on these active bills is anticipated by Summer 1983. The activity on OCS revenue sharing has not been limited to the Congress. The President's Council on Natural Resources and the Environment has also addressed this issue. Though hedging on its final acceptance of any OCS revenue sharing measure the Reagan Administration has been more supportive of those bills which would have the effect of limiting coastal State interference in OCS leasing.

Coastal State input to Federal decision-making beyond the territorial sea.

Though the direct revenue interests of coastal States, beyond Section 8(g) monies, ceases at the limit of their submerged lands grants, their interest in Federal or Federally-sponsored hydrocarbon development on the OCS and Federal fisheries management beyond the territorial sea does not.

CONSISTENCY. Section 307 of the Coastal Zone Management Act, P.L. 92-583, was established as an inducement for coastal States to participate in the voluntary Federal coastal zone management program. As enacted in 1972, Section 307 provided that the following activities must be consistent with State CZM programs that have received Federal approval: (1) Federal activities "directly affecting" the coastal zone; (2) Federal development projects in the coastal zone; and (3) private activities affecting coastal zone uses and requiring Federal licenses or permits (Section 307(c)). Section 307(d) contains a similar provision for State and local government activities receiving Federal assistance.
The CZMA was amended in 1976 to provide, among other things, that OCS lessees submit a consistency certification on exploration, development, and production activities described in OCS plans for State review and concurrence. If the State concurs with all the activities in the plan, the lessee would not thereafter have to submit separate consistency certifications for each activity that requires a Federal permit.

The OCS participation grants available under Section 308(c) of the CZMA, established by the 1978 OCS Lands Act Amendments (P.L. 95-372), provided funding to coastal States with Federally approved CZM programs, and allowed them to carry out their responsibilities under the OCSLA.

A major question has emerged in the evolution of the consistency provisions of the CZMA regarding the extent to which OCS leasing "directly affects" the coastal zone. The issue is important because only Federal activities that "directly affect" the coastal zone must be "consistent to the maximum extent practicable" with approved State CZM programs. The 1976 amendments to the CZMA clearly include post-lease activities as a category subject to consistency review by coastal States, but the question of whether the pre-lease activities of the Department of the Interior are subject to consistency determinations was not clarified.

After the Department of Commerce made several attempts to resolve this question through rule-making, it was turned over to the courts for final adjudication. In 1981, a District Court in California ruled that the Department of the Interior must prepare a consistency determination for OCS Lease Sale 53 (State of California et al. v. James Watt, et al., DC# CV 81-2080 MRP; C.D. Cal., August 18, 1981). This initial ruling held that the lease sale "directly affected" California's coastal zone. This decision was appealed by the Department of Justice.
On August 12, 1982 the United States Court of Appeals of the Ninth Circuit filed its ruling on this appeal (No. 81-5799; DC# CV 81-2080-MRP). In upholding the lower court's earlier decision, the Court of Appeals ruled that the Department of the Interior violated Section 307(c)(1) of the CZMA by not providing a consistency determination for Lease Sale 53. While the Court of Appeals agreed that Lease Sale 53 did "directly affect" the California coastal zone, it opened the question of the meaning of the phrase "consistent to the maximum extent practicable." Following a failed attempt by representatives of the State of California to reopen this case to clarify this phrase, the Department of Justice decided to appeal the case to the Supreme Court where it now is pending.

While establishing that the CZMA required a consistency determination for Lease Sale 53, the Court of Appeals ruling did make clear that a coastal State does not possess veto power over Department of the Interior lease sale activities. Perhaps because of the narrowness of the scope of the Court of Appeals review, and of the ruling itself, questions exist regarding the relative authority over OCS leasing beyond the submerged lands grants of coastal States. The consistency issue has yet to be finally adjudicated but it has clearly been a source of intergovernmental tension and dispute over managerial jurisdictional authority.

**FISHERIES MANAGEMENT.** Due largely to foreign pressures on fish stocks adjacent to the extant 12n.m. U.S. fisheries zone established by the Bartlett Act, the Congress, in 1976, enacted the Fishery Conservation and Management Act (FCMA). The FCMA established a Fishery Conservation Zone (FCZ) which extended from the seaward edge of the coastal States' boundaries to
a line drawn 200 n.m. from U.S. shores. Within the FCZ the Federal government exerts exclusive jurisdiction to manage fishery resources by balancing both resource conservation and promotion of the domestic fishing industry. Foreign access to the FCZ is administered jointly by the National Marine Fisheries Service (NMFS) and U.S. Department of State under governing intergovernmental fishing agreements with the home nations of foreign fishing fleets.

Within the FCZ the FCMA established a regionally-oriented management scheme employing eight regional councils to prepare fishery management plans for major fisheries under their jurisdiction. These regional councils are composed of representatives from Federal and State governments, and private industry. They receive technical assistance from NMFS and, subject to review by the Secretary of Commerce, have their fishery management plans implemented by the U.S. Department of Commerce.

Within the U.S. territorial sea the coastal States retain complete management and enforcement authority for commercial and recreational fisheries. The FCMA does provide for Federal regulation of a commercial fishery that is harvested predominantly within State waters, under limited circumstances, but provides for resumption of State authority pending adjustment of State management initiatives.

Before implementation of the FCMA State regulation of adjacent, offshore fisheries was the rule. Enforcement of State fishery regulations was pursued using the reserved police powers of the State, subject to constitutional limitations, and implemented using at-sea patrol, landing laws, and fishing vessel registration. Extension of State regulation to fisheries outside the territorial sea was permitted if the State could prove its "interests" in this area and could demonstrate that its regulatory efforts were enforceable.56
Following Federal adoption of the FCMA, however, coastal States were preempted from pursuing their "interests" in extra-territorial fisheries management except in the absence of Federal efforts to manage these resources, or where the regional council, or Secretary of Commerce, had decided that no positive Federal regulation was necessary. State regulation would, undoubtedly, have to be pursued within constitutional limits and be directed to similar goals as the FCMA.

Numerous instances may occur where Federal action in fisheries management within the FCZ may be felt by adjacent coastal States to be adverse to their interests. Because of the preemptive effect of positive Federal actions under the FCMA, however, coastal States will be prevented from pursuing these interests outside of the regional councils.

As indicated in Chapter One, the majority of commercial fisheries are conducted within 12n.m. of U.S. shores. It is not, therefore, unlikely that in the event that the U.S. extends its territorial sea coastal States would seek to expand their fisheries jurisdiction even above and over efforts to expand their territorial jurisdiction. Should such actions be successful the end result would have most commercial fishing activity subject to State control.
CHAPTER THREE
DOMESTIC ADVENT OF THE 12n.m. TERRITORIAL SEA

Conditional U.S. acceptance of the 12n.m. territorial sea.

As has been brought out in the first chapter of this study, the U.S., prior to President Reagan's EEZ Proclamation, had only conditionally accepted the 12n.m. limit for coastal nation's territorial sea projections. President Nixon, in his 1970 Ocean Policy Statement, made the first such promulgation. From this point through the remainder of the UNCLOS III deliberations the U.S. maintained that it would acquiesce to the 12n.m. territorial sea limit in exchange for guarantees for unimpeded passage of surface, subsurface, and air ships through straits used for international navigation. The reasoning behind this conditional acceptance by the U.S. of the 12n.m. territorial sea was concisely put by Oxman in his review of preparations for UNCLOS III. "No state can be expected to agree to subject its communications with the rest of the world to the discretion of another state, nor is it clear whether any state would in fact gain by the acquisition of a discretionary right to interfere with transit of straits where the exercise of that right would be a matter of such fundamental concern to so many others."58

The use of the term "communications" can be viewed as an amalgamation of U.S., and other nations', interests in commercial and military transportation. Undue interference with commercial transportation could appreciably add to monetary and temporal shipping costs. Interference with military movements through critical straits, however, has likely been the potential outcome most feared by the global powers from coastal nation extension of territorial seas in
those areas which would completely cover straits used for international navigation. Of course, the two global powers potentially most affected by interference with military access to and through straits used for international navigation are the U.S. and the U.S.S.R. Accordingly, these two countries pushed early on in the UNCLOS negotiations for provisions guaranteeing "free transit" through such straits.59 Opponents of "free transit" preferred to rely on the tenets of "innocent passage" as articulated in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The difference in these two positions was the relative weighting given "strait states" in imposing controls on such passage. The compromise reached was that of non-suspendable "transit passage" for the purpose of, "...expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone..." subject to reasonable coastal nation regulation for the purposes of safety and pollution control, and customs, fiscal, immigration, and sanitary law implementation.60 This compromise was for the most part hammered out in the 1975 Geneva session of UNCLOS III.61

Continued U.S. opposition of coastal nations' extensions of a 12n.m. territorial sea has, until recently, been pursued in lieu of successful completion of UNCLOS III negotiations and the quid pro quo of the transit passage regime. With the recent decision of the Reagan Administration to abandon the UNCLOS Treaty, the ultimate global implementation of the transit passage regime remains in doubt. As earlier pointed out, however, the growing acceptance of the 12n.m. limit to territorial sea projections as an international custom accorded members of the community of nations has increasingly precluded the U.S. from expending its limited political capital in opposing such extentions. This is, perhaps, the reason why U.S. recognition of the right of other coastal
nations to a 12n.m. territorial sea was included in President Reagan's EEZ Proclamation. From a global strategic perspective access to and through straits used for international navigation will continue to decline in importance as the range of weapon delivery systems of the naval fleets are technologically extended. Further, in time of armed conflict it is difficult to imagine a global power abiding by the strictures of lesser non-involved powers on its movements. Without U.S. accession to the UNCLOS III Treaty bilaterally negotiatied access should, in most cases, assure U.S. military and commercial interests of their required routes.

As of this writing, this remains the official U.S. position regarding the 12n.m. territorial sea from an international perspective. International customary acceptance of this limit together with the recent U.S. decision to recognize the 12n.m. territorial sea claims of other coastal nations may force reappraisal of U.S. opposition to domestic adoption of the 12n.m. limit.

Previous efforts to generate a 12n.m. territorial sea in the U.S. - and the bureaucratic response.

As the 12n.m. territorial sea achieves the stature of customary international law, and as coastal nation adoption of this limit grows, the avenues for domestic accession to this limit will increase. The basic premise of this study is that with international acceptance and implementation of this limit to seaward territorial projections the U.S. will eventually succumb to domestic pressures, such as those described in Chapters One and Two, and incorporate the 12n.m. territorial sea into domestic law. Attempts to adopt this limit are not new however. Several bills have, in the past, been introduced into the U.S. Congress to do just this.
Within the past 12 years at least three separate, relevant bills have been introduced into the U.S. Congress for consideration. Each bill if not identical was only marginally modified from its predecessor. These three bills - H.R. 5253, H.R. 1738, and H.R. 4374 were introduced into the 92nd, 93rd, and 94th Congresses, respectively. All three bills were referred to the House Committee on the Judiciary. Additionally, H.R. 4374 was referred to the House Committees on Interior and Insular Affairs, and Foreign Affairs, perhaps reflecting the growing cross-jurisdictional interests of Congressional committees.

Given their striking similarity only the latest version, H.R. 4374 (94th Congress), and the bureaucratic response to this bill will be examined here. The purposes of this examination are twofold; examination of H.R. 4374 will serve both to illustrate a likely model for related future bills and to portray the long standing opposition of the Executive branch to initiatives which as an end result represent a diminution of its authority. A photocopy of H.R. 4374 is included as an appendix to this study for the reader's consideration.

The most recent legislative initiative aimed at granting coastal states within the U.S. mineral rights on the continental shelf to 12 n.m. was introduced into the House of Representatives on March 6, 1975. Sponsored by Congressman Eilberg (D.- Pa.), H.R. 4374 (94th Congress), was referred to the Committees on the Judiciary, Interior and Insular Affairs, and Foreign Affairs. No action was taken on this bill in the Foreign Affairs Committee and no hearings were scheduled in either of the other two committees.

Within the House Interior and Insular Affairs Committee, H.R. 4374 was referred to the Mines and Mining Subcommittee. The Subcommittee in turn requested legislative comments from the Executive branch Departments of the Interior, Commerce, and State. Unfavorable reports were filed with the
Subcommittee by the Departments of the Interior and Commerce, and no report was forthcoming from State.

The House Committee on the Judiciary referred H.R. 4374 to its Subcommittee on Immigration. Legislative comments were requested by the Subcommittee from the Departments of Defense, Interior, Justice, State, and Treasury. Unfavorable reports were received from the Departments of Defense, Interior, Justice, and Treasury. Again, no comments were issued by the State Department. The positions taken by the reporting Departments on H.R. 4374 via the request of both Subcommittees are summarized and itemized below.

Distillation of Executive Branch opposition to H.R. 4374.

As with all other Executive branch testimony or legislative comments the responses of the identified Departments were coordinated by the President's Office of Management and Budget. It should not, therefore, be too much of a suprise to identify some common elements among these responses. Each agency will, of course, stress those elements of its opposition which best serve its purposes in the conduct of its mandate. With this in mind, a distillation of Executive branch opposition to H.R. 4374 is presented below. Any future legislative attempt to alter ownership of the submerged lands of the 3-12n.m. zone will have to contend with most of these same detractions, and should be drafted accordingly:

(1) The issue of ownership of submerged lands as between the coastal States and the Federal government was appropriately settled by enactment of the Submerged Lands Act and the OCS Lands Act;
(2) The resources of the OCS are national resources and should be administered for the benefit of the entire nation;

(3) Pressing U.S. energy needs dictate that OCS resources be used to solve national problems;

(4) A substantial source of revenue to the U.S. Treasury would be transferred to coastal States without an increase in their liabilities;

(5) By its imprecision, H.R. 4374 did not provide adequate protection for portions of the OCS withdrawn by the President (e.g., marine sanctuaries), or by the Executive branch for military purposes;

(6) Coastal State control of the 3-12n.m. zone could delay OCS development and interfere with free market competitive forces;

(7) Extension of coastal State ownership of submerged lands would project them into the field of international relations where they have no constitutional business; and,

(8) Creation of the U.S. international boundary advisory commission would be a constitutional infringement on the President's powers.

**Department of the Interior.** The Department of the Interior strongly recommended against enactment of H.R. 4374. Noting its similarity to several previous bills DOI stated that, "(i)t has been the firm position of the Administration that the resources, and revenues from those resources, of the Outer Continental Shelf are and should continue to be national assets, administered to benefit all of the citizens of the United States. We reaffirm that position....The Department believes that the question of ownership and jurisdiction over the OCS has been appropriately settled by enactment of the Submerged Lands Act and the OCS Act and by various decisions of the courts.
We know of no rationale for changing that settlement at this time." The Department of the Interior's position on H.R. 4374 was conveyed by a letter from then Assistant Secretary of the Interior John Kyl to Congressman Peter W. Rodino, Jr., then chairman of the House Committee on the Judiciary dated April 12, 1976.

Department of Defense. Beyond deferring to the views of the Department of the Interior, in view of its mandate to implement the OCS Lands Act, the Department of Defense had one primary grievance with H.R. 4374. The "Engle Act," (43 USC 155-158), limits provisions of the OCS Lands Act by allowing designation of National Defense Areas. This limitation requires a specific act of Congress to approve withdrawal of parcels of "public lands" exceeding 5,000 acres for use by the DOD. To circumvent this limitation DOD and DOI have authorized agreements for the use of selected areas on the OCS by the military departments. The Department of Defense held that Section 4 of H.R. 4374, did not give adequate protection to such OCS areas utilized by the military under agreement with the Department of the Interior and only protected those areas withdrawn as National Defense Areas by statute. The DOD held that such protections were necessary to prevent selection of mineral exploitation sites by various States which could present problems in: a) possible interference with the use of military operating areas and testing sites such as missile ranges, gun ranges, calibration ranges, acoustic ranges, etc.; b) dangers relating to unexploded offshore ordnance; and, c) the fact that national energy resources, on or offshore, must be defended in time of national emergency. The views of the Department of Defense concerning H.R. 4374 were conveyed by letter from E.J. Liebman, Acting Director of the Legislative Division of the Navy, to Congressman Peter W. Rodino, Jr., on April 15, 1976.
Department of Commerce. As in the case of the Department of Defense the Commerce Department deferred to the opinion of the Department of the Interior for a full discussion of reasons for recommending against enactment of H.R. 4374. Beyond this deferment, however, the Department of Commerce noted that the pressing energy needs of the U.S. demanded that the mineral resources of the OCS be used to solve national problems for the benefit of the entire U.S. public. The status quo established by the Submerged Lands Act and the OCS Lands Act was felt by the Department of Commerce to be satisfactory and should, therefore, not be changed. The views of the Department of Commerce on H.R. 4374 were detailed in a letter from John Thomas Smith II, then General Counsel of the Commerce Department to Congressmen James A. Haley, then Chairman of the House Committee on Interior and Insular Affairs, and Thomas E. Morgan, then Chairman of the House Committee on International Relations, dated May 4, 1976.

Department of the Treasury. The Department of the Treasury also opposed enactment of H.R. 4374. This opposition was premised on the revenue impacts of such an initiative, on its belief that the bill would delay OCS development, and on the fact that H.R. 4374 would nullify previous Supreme Court decisions which established ownership of the submerged lands beyond the grants of the Submerged Lands Act.

Regarding revenue impacts of H.R. 4374 the Department of the Treasury asserted that, "(e)nactment of this legislation would transfer substantial revenue from the Federal Government to coastal State governments without sufficient concomitant responsibilities or detriment on the part of the States. This is particularly true in the case of areas where there is existing production such as off the coast of California and in the Gulf of Mexico."
The position of the Department of the Treasury regarding H.R. 4374 was conveyed by letter from Richard R. Albrecht, then Treasury's General Counsel, to Congressman Charles C. Diggs, Jr., then Chairman of the Subcommittee on International Resources, Food and Energy of the House Committee on International Relations, on April 14, 1976.

**Department of Justice.** The Department of Justice expressed "substantial" objection to H.R. 4374. The DOJ noted that the bill was drafted in a quite imprecise manner and would result in questions regarding delineation of Federal versus State authority in the 3-12n.m. zone. Further, the Justice Department's legislative comments on H.R. 4374 pointed out that extension of State authority beyond the limit of the extant territorial sea would place the States in the realm of international relations where they had no constitutional interests. Remaining objections to H.R. 4374 expressed by the Department of Justice in its legislative comments were: a) that until lateral seaward boundaries between coastal States were settled their extension would be impossible and could interfere with resource development in the zone in question; b) that this bill would have created the possibility of greater State control over regulation of conservation (read oil production), which could affect oil prices by creating artificial shortages or over supply, i.e., it would affect the domestic free market system; c) that the bill, by creating a committee to establish baselines from which to project the territorial sea, would duplicate work previously conducted by an interdepartmental study group; d) that provisions on withdrawal of areas within the 3-12n.m. zone and the inapplicability of State control therein were unclear; e) that transfer of the submerged lands in question would unjustifiably shift revenues from the U.S. Treasury to the coastal
State; and, f) that Section 5 of this bill, by creating an advisory commission to consult with Canada and Mexico on shared, disputed maritime boundaries, would infringe unconstitutionally on the President's external relations powers.

The legislative comments submitted by the Justice Department on H.R. 4374 were easily the most thorough and articulate of all responding Executive branch departments. This response was made in a letter sent by Michael M. Uhlmann, then Assistant Attorney General, to Congressman Peter W. Rodino, Jr., then Chairman of the House committee on the Judiciary, dated April 26, 1976.

Compendium of legislation requiring amendment for U.S. adoption of a 12n.m. territorial sea.

Much of the first two chapters of this study was concerned with political impediments to U.S. adoption of a 12n.m. territorial sea. This section will identify legal impediments to such an initiative. Though important, these legal impediments are easily surmountable if the political will is mustered. Most current U.S. statutes which would hinder or prevent U.S. adoption of a 12n.m. territorial sea have provisions premised on the Submerged Lands Act and, therefore, amendment of this Act is fundamental to progress in this regard. Though Congressional enactment of a bill to grant coastal States the submerged lands in the 3-12n.m. zone would overturn numerous, previous judicial decisions, such an initiative would be similar to Congressional enactment of the Submerged Lands Act itself.

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Submerged Lands Act (43 U.S.C. 1301-1315):

Title I, Section 2(b) provides the definition, in the SLA, of the submerged lands grants to coastal States. This section, and references to it (e.g., Title II, Section 4), would have to be amended for coastal State gains from U.S. generation of a 12n.m. territorial sea. Section 2(b) limits these grants by asserting that, "...in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico."

Outer Continental Shelf Lands Act (43 U.S.C. 1331-1356):

The OCS Lands Act was enacted pursuant to the Submerged Lands Act to provide the Federal government with jurisdiction and mineral leasing authority over the submerged lands of the OCS beyond State control. Section 2(a) of this Act defines the OCS as, "...all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act..., and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." The term "coastal zone" is defined by the OCS Lands Act, in Section 2(e), as extending seaward to the outer limit of the U.S. territorial sea. It should be noted here that much of the statutory language in the OCS Lands Act applicable to coastal States refers to the "coastal zone" as defined above. Should the U.S. adopt a 12n.m. territorial sea the "coastal zone," if strictly interpreted according to this statute, would automatically extend to the 12n.m. limit - even though the submerged lands granted coastal States would not. To bring the OCS Lands Act into accord with an extended territorial sea, Section 2(a), and references to it, would have to be amended.

Title I, Section 101(a) of the MPRSA subjects ocean dumping by U.S. national to Federal permitting procedures for all ocean waters. Title I, Section 101(b), restricts foreign vessels from dumping any materials into the territorial sea and contiguous zone of the U.S. unless they have first obtained a permit from the Federal government. Title III, Section 302(b), of the MPRSA provides that Governors of affected States may withhold certification of approval for a Federal marine sanctuary designation which encompasses waters within their seaward boundaries, as defined by the Submerged Lands Act.

A change in the territorial sea limit would apply to Sections 101(b) and 302(b). Ocean dumping by foreign national would automatically be controlled in an extended territorial sea and contiguous zone, however, amendment of the Submerged Lands Act would be necessary to extend coastal State Governor’s authority over Federal marine sanctuary designations.


Section 304(a) of the CZMA defines the "coastal zone" as, "...the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in the Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea...Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by
the Federal Government, its officers or agents." This last sentence in the CZMA
definition of the "coastal zone" would appear to preclude automatic extension of
the coastal zone beyond the Submerged Lands Act grants to coastal States should
the U.S. extend its territorial sea. The OCS, defined by Section 2(a) of the OCS
Lands Act, is that area beyond the Submerged Lands Act grants to coastal
States, and which is held in trust by the Federal government for the American
public (Section 3(3)).

The Coastal Zone Management Act presents a potential interpretational
conflict in the event of U.S. extension of its territorial sea. This conflict arises
because of the CZMA's Section 304(a) reliance on aligning the definition of the
coastal zone with the territorial sea instead of the submerged lands grants of the
coastal States. As expressed above, however, unless amended the reservation in
the Section 304(a) definition regarding areas held in trust by the Federal
government would seem to preclude automatic extension of the coastal zone
over areas of the OCS.


Section 3(10) of the DWPA defines deepwater ports as a port or terminal
used for moving petroleum products and which is situated beyond the territorial
sea. Section 9 of this Act provides States within 15 miles of a proposed
deepwater port possess veto power over the project if it is not consistent with
that State's coastal zone management program. This section also applies to
coastal States with satisfactorily developing CZM programs.

Expansion of coastal States submerged lands grants could place proposed
projects, such as the Texas Offshore Port, under direct State control and, subject
others situated further out on the OCS to closer scrutiny by coastal States under
the consistency provisions of the CZMA. Should legislation be drafted to expand State lands within a 12n.m. territorial sea provision would have to be made for existing deepwater ports, such as the Louisiana Offshore Oil Port, to ensure that all previous arrangements with the Federal government would be honored.

Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.):

The Fishery Conservation and Management Act (FCMA), established the authority of the Federal government to regulate the commercial take of fisheries in waters beyond State control. Section 101 and 306 of the FCMA delimits the inner boundary of the fishery conservation zone (FCZ) as a line conterminous with the seaward boundary of coastal States and extending to a line drawn 200n.m. from U.S. shores. The inner boundary of the FCZ, therefore, would only be subject to change if coastal State seaward boundaries were extended and not solely because of U.S. expansion of the territorial sea. As indicated in Chapter One of this study, however, extension of coastal State seaward boundaries would bring a predominant portion of U.S. commercial fisheries under the sole managerial control of those States.

Summary. It seems clear that from examining the above referenced U.S. statutes, which are the major statutes affecting State versus Federal control of offshore waters and submerged lands, U.S. adoption of a 12n.m. territorial sea would not automatically extend coastal State's seaward boundaries. Expansion of these boundaries would require positive Congressional action similar to that undertaken in enacting the Submerged Lands Act. Since most relevant statutes enacted subsequent to the SLA, with several confusing exceptions, are premised
on this Act, its amendment would definitely be required to expand State offshore authority. Further, amendment should be made to several statutes, such as the OCS Lands Act and the Coastal Zone Management Act, to clarify the application of their jurisdictional limits to State offshore authority as being that conferred on them by the Submerged Lands Act.

The statutes discussed above, though the major ones with regard to the division between coastal State and Federal offshore jurisdiction, are not the only ones which would be affected by either an expansion of the U.S. territorial sea and/or coastal State's submerged lands grants. The remaining statutes, however, would have a lesser effect if their jurisdictional limits were changed. Congressional study prior to any change in the status of the territorial sea or submerged lands grants should identify these lesser statutes and quantify the effect of changes in their jurisdictional application.

Relative merits of different jurisdictional divisions of a hypothetical 12n.m. territorial sea.62

For the purposes of this section a hypothesis is made that the U.S. will, in time, acquiesce to domestic and international pressures and adopt a 12n.m. territorial sea. In this event the question will arise as to how jurisdiction over the 3-12n.m. zone will be apportioned, if at all, between the Federal government and coastal States. The preceding discussion has made clear that in the absence of positive Congressional action change in the territorial sea's limit will not automatically assure change in coastal State's seaward boundaries.

It is assumed, herein, that with U.S. adoption of a 12n.m. territorial sea the alternatives for domestic jurisdictional apportionment of the 3-12n.m. zone will
be: (1) Federal control; (2) State control; (3) a division of this zone between the two levels of government; or, (4) compensation, monetary or managerial, to State governments with Federal jurisdiction maintained over this zone. Each of these alternatives will be briefly addressed below.

**Federal control over an expanded territorial sea.**

In light of the substantial revenues which accrue to the Federal government from resource exploitation beyond the territorial sea, significant Executive branch opposition to attempts to diminish Federal control in this area can be expected. To adequately assess the magnitude of this opposition careful quantification of the existing and projected revenues from the 3-12n.m. zone should be made. The lion's share of these revenues will come from offshore oil and gas activity leasing and royalties and, accordingly, quantification of the submerged hydrocarbon fields in this area and their value will present a good first order of magnitude assessment.

The arguments for Federal control in this zone can be expected to be based on the fact that at present these resources are contained in public lands and benefits should accrue to the public as a whole and not solely to coastal States. Further, inertia can be expected to play a role in Executive branch opposition to gains in coastal State authority under an expanded territorial sea. As did the States prior to enactment of the Submerged Lands Act, the Federal government will likely argue that organizationally and financially it would be the most efficient trustee of this zone. Because of the existing arrangements regarding management authority in this zone the Federal government has, in place, the organizational capacity to administer this zone and the financial resources to achieve its objectives without significant change.
It should be noted, however, that Federal assertion of complete control over an expanded territorial sea will accrue significant domestic political costs. These costs, addressed in Chapter Two of this study, and their magnitude will not easily be discounted.

State control over an expanded territorial sea.

As discussed in preceding chapters of this study, it should be expected that coastal States and their representatives will attempt to assert control over the area under an expanded territorial sea. In many ways this will be tantamount to a rekindling of the "tidelands controversy" with all of its attendant turmoil. This will be particularly true for those States which stand to benefit the most from expansion of seaward State control. At present, the States that would be most vocal on asserting State control would be Louisiana, Texas, California, and Alaska - the States with current oil and gas activity off their shores. Though not without its positive effects on coastal State economies, through job formation and taxation of locally sited, related industries, offshore oil and gas does contribute negatively to such States through environmental degradation and stress on their social services infrastructure and, with the imminent demise of the Coastal Energy Impact Program instituted under the CZMA, such an argument is not without its merits.

Complete State control over an expanded territorial sea, however, would also convey significant costs to the affected States. These costs would be composed of the additional management (i.e., regulatory, compliance/enforcement, and organizational) responsibilities that the affected States would have to shoulder in administering gains under an expanded territorial sea. For those coastal States with little to gain from resource
exploitation in this 3-12n.m. zone the costs might outweigh potential revenue benefits. This is not to say, however, that from a purely legal standpoint those States may not wish to exert control over existing and potential activities therein.

In addition to the expected Federal opposition to complete State control over an expanded territorial sea, some degree of opposition may be expected from the offshore industries most immediately affected. As with any change, the severing of established relationships and expectations adds a certain degree of uncertainty to planning efforts. In the absence of assurances to the contrary, offshore industries might encounter operating conditions less to their liking or, at the least, conditions which could vary regionally, if not State by State. Provisions would have to be made for existing offshore leases, renewal rights, and operating conditions in the event of any change from the status quo.

Division of an expanded territorial sea.

Any number of permutations for the functional or spatial division of an expanded territorial sea between the Federal government and coastal States are possible in the event of a compromise between their relative positions. This discussion will deal with such an outcome generically.

In a worst case scenario the Federal government and coastal States would assume mutually exclusive demands for control over an expanded territorial sea. In many negotiations compromise is often the less costly alternative, in terms of time, money, and political damage, to steadfast resolve of one's position. Depending on the political magnitude of a rekindled "tidelands controversy" compromise may appear to be the most viable solution to the disputants.
For reasons addressed above, the coastal States can be expected to adopt varying attitudes regarding the acceptability of a compromise on jurisdictional authority over an expanded territorial sea. As in the evaluation of any compromise each party will assess its particular benefit/cost value and negotiate accordingly. While compromise in this regard would lower management costs to coastal States, so would it lower existing and potential benefits to be gained from exclusive resource jurisdiction.

An additional possibility in any compromise over division of an expanded territorial sea would be to deal with this zone as a zone sui generis - a unique situation, in which the relative costs and benefits would be divided between coastal States and the Federal government. A potential outcome of such a compromise could be a form of regional management akin to that set up for fisheries management under the FCMA. To be a realistic option regional management must be conducted under conditions where the parties involved deal with each other from bases of relatively equal power. As with other options for administering a divided, expanded territorial sea the attractiveness of this option will be determined by the perceived costs and benefits it will accrue to the participants. In light of continuing efforts to readjust the contemporary notions of federalism, shared jurisdiction in this zone is an attractive possibility.63

Federal control over an expanded territorial sea with compensation to coastal States.

The last option for resolution of jurisdiction over an expanded territorial sea to be evaluated in this section is retention of "ownership" of the 3-12n.m. zone by the Federal government with some form of compensation to coastal States. The outcome most easily envisioned under this option would be a
graduated revenue sharing scheme. Without getting into the numerous permutations on percentages of such a graduated revenue sharing scheme, this alternative would be employed to present coastal States with an attractive source of income while retaining the jurisdiction of the Federal government over an expanded territorial sea.

As an alternative to a long drawn-out legal-political battle in the rekindled "tidelands controversy" this option can be seen to create the least disruption of the status quo by maintaining existing management responsibilities as between the Federal government and coastal States and yet providing incentives to these States in the form of allocated revenues. Indeed, as previously mentioned, with the imminent demise of both the Coastal Zone Management Program and its Coastal Energy Impact Program, there exist few incentives for coastal States to allocate already scarce budgetary resources to properly address coastal planning and onshore impacts of offshore resource exploitation activities - responsibilities that Congress has numerous times declared to be in the national interest. In fact, in the case of a perceived negative benefit/cost assessment of these activities it is not unrealistic to envision coastal State legal impedance of these offshore activities.

A graduated revenue sharing scheme for administration of an expanded U.S. territorial sea would recognize the relative interests of both the Federal government and coastal States in offshore areas and could serve as a mechanism for maintaining reasoned management of coastal and territorial sea resources by preserving the ability of States to fund related programs. The merits of revenue sharing from offshore resource exploitation will be addressed further in the following section of this study.
Having reviewed the relative merits of the potential division of an expanded territorial sea as between coastal States and the Federal government, and in light of the political polarization - as described in Chapter Two, likely to result from consideration of this issue, compromise among opposing factions may appear to be an attractive alternative. It will be, of course, important to examine the "operating environment" in which debate over an expanded territorial sea will occur. Debate on this potential issue could be polarized or muted by several factors. The economic health of the Nation will play a substantial role in determining the outcome of this debate. The Federal government and coastal States would both loathe yielding easily to any loss of potential revenue in the face of budget deficits and severe personnel and program reductions. Additionally, if the call for a revitalized federalism maintains its current appeal or gains real substance it may contribute favorably to a compromise in the resolution of this issue.

Over a period of 10-12 years the Congress has attempted to develop the abilities of coastal States to both manage their coastal regions and to participate in federally sponsored OCS development. The statutory vehicles for these abilities have been provided by enactment of the Coastal Zone Management Act of 1972 and the OCS Lands Act Amendments of 1978. Through monies and authorities these Acts conferred on coastal States the framework for substantive input to coastal planning and OCS leasing. The authorities so conferred have had a more sustained history than have the monies.
The previously mentioned Coastal Energy Impact Program was mandated by Congress in its 1976 amendments to the CZMA to assist coastal States in meeting the onshore negative impacts generated by an accelerated OCS leasing schedule. This accelerated schedule had been initiated to reduce U.S. dependence on imported sources of hydrocarbons whose interruption could adversely affect national security and, as has subsequently been witnessed, the national economy. The CEIP was enacted as an Executive branch substitute to several measures being sponsored in Congress to establish as OCS revenue sharing fund. The CEIP was empowered to meet its objectives through establishment of a Coastal Energy Impact Fund from which monies were apportioned to coastal States in a variety of fashions. This was intended to facilitate coastal State abilities to plan for, mitigate, and remedy coastally-related energy impacts.

In amending the OCS Lands Act, in 1978, Congress conferred upon coastal States the ability to participate in federally sponsored OCS leasing by providing "participation grants" to help establish the requisite State organizational abilities and by providing that Federal decision making which "directly affected" the coastal zone of a State with an approved, or satisfactorily developing, CZM program be consistent to the "maximum extent practicable" with that program. This amendment was to have far reaching, and as of yet, unrealized potential. Further, these amendments established a framework for formalizing State input to OCS-related decision making at the Federal level.

During the tenure of the Reagan Administration, however, the expectations that these two statutes have conveyed to coastal States have been changing. Monies available under the CZMA, scheduled for a phase-out in 1985, have been drastically reduced - particularly the CEIP. While Congress has partially
buffered the immediacy of these program terminations by maintaining lowered appropriations the end result will probably come before 1985.

Additionally, under the Reagan Administration virtually the entire OCS is being offered for lease. This dramatic acceleration of OCS leasing juxtaposed with reduced Federal funding of coastal planning has created a significant controversy among concerned parties. Though the consistency power conferred on coastal States is still being employed by these States to meet selected objectives in coastal planning, its range and magnitude of authority is still being judicially determined.

This OCS development-coastal planning controversy has been fueled by similar program termination initiatives of the Reagan Administration in other marine and coastal program areas including fisheries preservation and development and the National Sea Grant Program. In turn, this controversy has resurrected Congressional efforts to institute an OCS revenue sharing fund. The 97th Congress came very close to enacting such a fund and has under reconsideration identical measures in the 98th Congress. Basically, though allocation formulas vary, an OCS revenue sharing fund would be designed to compensate coastal States for onshore impacts of offshore hydrocarbon development and to assist them in other marine and coastal planning efforts. In skeletal form these OCS revenue sharing initiatives would attempt to provide: (1) equity in revenue sharing from development activities on Federal lands for coastal States similar to that enjoyed by inland States, while accounting for inherent differences; (2) recognition and assistance to coastal States in meeting negative onshore impacts of OCS development; and, (3) recognition, and accordingly funding for, maintenance of the national interest in a variety of marine and coastal programs instituted over the past decade.65
Whatever its final form, support for some mechanism for sharing federally derived OCS revenues with coastal States is widespread outside of the Executive branch. The current House vehicle's (H.R. 5 - 98th Congress) predecessor in the 97th Congress, H.R. 4597, passed late in the second session by a substantial margin of 260 to 134, with 56 Congressional co-sponsors. A similar bill in the Senate received similar widespread support but was not voted on by the end of the 97th Congress. Nearly identical bills are being considered by the 98th Congress and hearings are currently being conducted by both Houses of Congress.

Enactment of an OCS revenue sharing fund will likely predate consideration of an expanded territorial sea. However, in considering alternative divisions of an expanded territorial sea it is not improbable that a re-weighing of the relative interests of the Federal government and coastal States in the 3-12n.m. zone could include adjustment of any established revenue sharing system. One possible outcome of such a re-weighing of interests could be a graduated revenue sharing scheme. It will be necessary for Congress to articulate these relative interests - precisely, before any graduated revenue sharing formula could realistically be devised.

Ultimate resolution of both of these issues would foster, not hinder, efforts to develop the offshore resources of the U.S. and serve to revitalize coastal federalism. A great deal of political teeth-gnashing can be expected before their resolution but the end result could firm up intergovernmental marine affairs and establish the framework for a more rationalized approach to ocean and coastal policy formulation.
CONCLUSION

This study was directed to examining the domestic impact of U.S. adoption of the 12 nautical mile territorial sea limit. In so doing the history and current status of limits to the territorial sea, the evolution of jurisdictional authority between the Federal government and coastal States within this zone, and the impediments to, and alternative division of, an expanded territorial sea were examined.

In light of the recent U.S. Executive branch decision to recognize international territorial sea claims up to 12n.m., the central premise of this paper has been that domestic pressures will force the U.S. to accede to this customary, internationally recognized limit. To meet this alteration of seaward territorial limits it will be critical to assess the impacts of its adoption in the U.S. Such an assessment should be composed of at least three elements. These elements are the political impact on decision makers, the concomitant revenue shifts of revised ownership of the mineral rights in the 3-12 nautical mile zone, and the legal impediments to any alteration of the U.S. territorial sea. This paper has briefly reviewed these three elements.

With this assessment in hand decision makers at both the Federal and State levels of government will be better prepared to evaluate the relative merits of alternative divisions of the expanded territorial sea as between themselves. Four alternative divisions of the 3-12 nautical mile zone emanating from an expanded territorial sea were identified in this study and, a cursory review was made of their relative merits. The alternatives identified were: (1) Federal control; (2) State control; (3) division of jurisdiction; and, (4) Federal control with compensation made to coastal States.
In light of the drastic reductions in many coastal and marine program areas made under the current Administration, the incorporation of a graduated OCS revenue sharing scheme was identified as a possible solution to the division of an expanded territorial sea. The assumption was made that due to the political volatility of a rekindled "tidelands controversy" negotiation and compromise between polarized factions involved in the debate (i.e., the Federal government and coastal State representatives), could appear to be a viable, and expedient solution. A potential compromise identified herein, though certainly not the only solution, was retention of Federal control in the 3-12 nautical mile zone with compensation to coastal States in the form of a graduated offshore revenue sharing system. Such a system would require the least disruption of the status quo while yet recognizing the relative interests of both parties in an expanded territorial sea and, likely be the least costly from a monetary, temporal, and political perspective.

The advent of the 12 nautical mile territorial sea has been brought about by the UNCLOS III negotiations. Now that the U.S. has, at least for the present, indicated its refusal to become party to the UNCLOS III Treaty, U.S. ocean policy formulators should begin to assess those UNCLOS III provisions which are most easily implementable. Together with the 200 nautical mile Exclusive Economic Zone Proclamation recently issued by President Reagan, U.S. adoption of the 12 nautical mile territorial sea will provide the over-all framework for a re-examination of U.S. ocean policy and federalism in the coastal zone.
A BILL

To grant to each coastal State mineral rights in the subsoil and seabed of the Outer Continental Shelf extending to a line which is twelve miles from the coast of such State, and for other purposes.

By Mr. Briones

March 6, 1975

Referred to the Committees on the Judiciary, Interior and Insular Affairs, and Foreign Affairs
Mr. EISENBERG introduced the following bill; which was referred to the Committee on the Judiciary, Interior and Insular Affairs, and Foreign Affairs.

A BILL

To grant to each coastal State mineral rights in the subsoil and seabed of the Outer Continental Shelf extending to a line which is twelve miles from the coast of such State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. The United States grants to each State whose coastline borders on the Atlantic or Pacific Ocean or the Gulf of Mexico all mineral rights held by the United States in the subsoil and seabed in such ocean or gulf out to a line which is twelve miles from the base line established pursuant to section 3.

Sec. 2. (a) No grant to a State shall take effect under...
section 1 unless the State files with the Secretary of the Interior notification of acceptance of such grant and an agreement to take such grant subject to—

(1) any lease (including rights of renewal and other rights) recognized by the United States on the date of enactment of this Act; and

(2) such regulations with respect to the management of the rights granted as are established by the Secretary of the Interior as necessary for the protection of the public health and welfare and safety, including reasonable provisions for the conservation of natural resources.

Upon compliance with this subsection, the State shall take the place of the United States with respect to any lease or rights referred to in paragraph (1).

(b) Upon compliance with subsection (a) of any State, the Secretary of the Interior shall pay to such State all income received by the United States with respect to mineral rights granted to such State pursuant to this Act for the period from the date of enactment of this Act until the date on which such State complies with subsection (a).

SEC. 3. For the purpose of determining the extent of the grant pursuant to this Act, the Secretary of the Interior shall establish a coastal baseline along the coasts of the United States after consultation with the Secretary of State, the
Secretary of Defense, the Attorney General, and appropriate
officials of the coastal States, in accordance with the prin-
ciples established in the Convention on the Territorial Sea
and the Contiguous Zone as adopted at the Law of the Sea

Sec. 4. Section 1 shall not apply with respect to mineral
rights in any area restricted from exploration and operation
under section 12 (d) of the Outer Continental Shelf Lands
Act (43 U.S.C. 1341 (d)), relating to national defense
areas.

Sec. 5. The Congress hereby consents until July 1,
1976, to any agreement between any two coastal States for
the purpose of establishing the location of the mutual bound-
ary between such States extending seaward from the coast
of such States.

Sec. 6. (a) There is established a boundary advisory
commission to be composed of two Members of the United
States Senate, appointed by the President pro tempore of
the Senate, three Members of the United States House of
Representatives appointed by the Speaker of the House, and
one representative each from the Departments of State,
Justice, Defense, and Interior, and three other members,
each appointed by the President. The Commission shall
consult with the Governments of Canada and Mexico and
make recommendations to the President, not later than one
year after the date of enactment of this Act, with respect to the mutual boundary extending seaward from the coast between each such country and the United States.

(b) Members of the advisory commission who are not regular full-time employees of the United States shall, while serving on business of the advisory commission, be entitled to receive compensation at rates fixed by the President, but not in excess of $100 per day, including traveltime. While so serving away from their homes or regular places of business, such members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code, for persons in Government service employed intermittently.

(c) The advisory commission is authorized, without regard to the civil service laws, to engage persons for such technical assistance as may be required to carry out its functions.
NOTES


4. Ibid., pp. 15-16.


11. Ibid.


14. Convention on the Territorial Sea and the Contiguous Zone, Article 2; 15 UST 1606; TIAS 5639; 516 UNTS 205.

15. Ibid, section III.


17. Ibid., p. 123.


20. Ibid., p. 10.


24. Ibid., p. 56.

25. Ibid., pp. 62-64.


29. Ibid.

30. Ibid., p. 29.
31. Ibid.


34. U.S. Congress, Senate, Submerged Lands, pp. 1231-1233.

35. Ibid.

36. Ibid.

37. Ibid.

38. Ibid.


40. Ibid., 332 U.S. 32.


42. Ibid., p. 107.


46. Ibid.

47. Ibid.

48. Ibid.


50. Ibid.


52. Ibid.

54. State of Louisiana v Watt, et al., Civil No. 79-29654-I(2), Eastern District Court of Louisiana.


56. Ibid., p. 650.

57. Ibid., pp. 673-674. Also see, People v Weeren, 449 U.S. 873 (1980).


59. Ibid., p. 10.


62. For alternative political divisions of the hypothetical U.S. 12n.m. territorial sea, see Jordan and Herrick, Management of an Expanded Territorial Sea.

63. See generally, U.S. Department of Transportation, United States Coast Guard, Coordination of Ocean Management: A Perspective on the Gulf of Maine, by Kenneth J. Havran and Jeffrey D. Wiese, Department of Transportation Report No. CG-D-53-82 (November 1982).


65. Ibid.
SELECTED BIBLIOGRAPHY


