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Recent Developments in the Law of the Sea: Synopsis

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Recent Developments

RECENT DEVELOPMENTS IN THE LAW OF THE SEA: A SYNOPSIS

INTRODUCTION

As a part of its annual symposium on the law of the sea, the *San Diego Law Review* compiles a summary of significant recent developments in the field. This seventh annual synopsis reports major events which occurred between January 1, 1975, and December 31, 1975. Scope, format, and approach are substantially as employed in the past; a minor change is the extended use of footnotes, including citations to newspapers. The synopsis begins with a report on the Third United Nations Conference on the Law of the Sea, which held its third session at Geneva in the spring of 1975. Following this discussion, the developments are presented under these subject headings: Conservation, Fishing, Pollution and Pollution Control, Seabed Resources, Shipping, and Sovereignty. Information was primarily derived from the *Congressional Record*, the *Department of State Bulletin*, the *Environment Reporter*, *International Legal Materials*, local newspapers, the *New York Times*, the *United Nations Monthly Chronicle*, *U.S. Code Congressional and Administrative News*, the *Wall Street Journal*, and the *Weekly Law Digest*.

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UNITED NATIONS LAW OF THE SEA CONFERENCE

The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. The delegations from 148 nations faced issues left unresolved at the close of the first substantive session in Caracas in 1974.[1] The subjects were allocated among three Committees which operated at formal and informal levels. John Norton Moore, of the United States delegation, cited as the session's greatest product the "Informal Single Negotiating Text" (hereinafter referred to as the Text) of draft treaty articles prepared by the Committee chairmen which would serve as a basis for future negotiations.[2]

The First Committee was concerned with a system for managing the exploration and exploitation of resources of the deep seabed beyond national jurisdiction, consistent with the principle that those resources are the common heritage of mankind. The primary exploitation contemplated is the mining of "manganese nodules," for which several international consortia may become operational within the next decade. The area richest in these nodules is the Central East-Pacific.[3] To manage this exploration and exploitation, most States agreed that an "International Sea-Bed Authority" should be established, but widely different views were held as to the nature of its operation. The U.S.S.R., for example, proposed that the individual States would act under contract with this Authority. Each State would have available to it a limited and equal number of contracts.[4] Whereas many developing countries felt that their interests would best be protected if the Authority alone were allowed to exploit the resources directly, the United States held to the view that because of the urgent need for raw materials and the large investment required to mine them, it could not "agree to give ultimate powers of exclusive exploitation to a

1. San Diego Union, March 16, 1975, § A, at 2, col. 6. *See Recent Developments in the Law of the Sea: A Synopsis*, 12 SAN DIEGO L. REV. 665, 666 (1975).
2. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 212 (1975). The Informal Single Negotiating Text, U.N. Doc. A/CONF.62/WP.8/Pts. I-III, is reproduced at 14 INT'L LEGAL MATERIALS 682 (1975).
3. San Diego Union, March 17, 1975, § A, at 2, col. 6.
4. Evening Tribune (San Diego), March 26, 1975, § A, at 14, col. 1.

single new international entity."[5] On August 11, 1975 Secretary of State Kissinger explained that the United States would agree to a policy under which the Authority could directly exploit significant areas of the deep seabed, primarily for the benefit of developing nations. Under this plan, all States also could independently exploit such resources, giving part of the income to the Authority for the developing countries' benefit.[6]

The Text produced by the chairman of the First Committee recognized that any exploitation done in the area should benefit all States, whether coastal or land-locked. It provided that the Authority would control all aspects of deep-sea mining and that States could mine under contract or in joint venture with it. The Text proposed that the Authority have its seat in Jamaica, and suggested its structure and composition.[7]

The Second Committee dealt generally with the nature and extent of the territorial sea and the exclusive economic zone. There had been wide agreement after Caracas upon a 12-mile limit for the territorial sea.[8] An extension from the traditional three miles to 12 would encompass over 100 more straits,[9] some of the more significant being Magellan, Malacca, and Gibraltar. For this reason, the United States,[10] the U.S.S.R.,[11] and others have conditioned acceptance of a 12-mile limit upon a guarantee of unimpeded transit and overflight through the straits. Although none of the Second Committee's groups had finished its work at the close of the session, the chairman produced a draft of articles which set 12 miles as a maximum for the territorial sea.[12] Although the

5. 72 DEP'T STATE BULL. 783, 785 (1975).

6. 73 DEP'T STATE BULL. 353, 357 (1975). For a United States proposal which would effectuate this policy by reserving 50 percent of the international area to be exploited at the discretion of the Authority, whereas the remaining 50 percent could be exploited almost automatically upon fulfillment of treaty provisions, see the statement of Leigh S. Ratiner, Administrator, Oceans Mining Admin., Dept. of the Interior, in *Hearings on Law of the Sea Before the Senate Subcomm. on Oceans and International Environment of the Senate Foreign Relations Comm.*, 94th Cong., 1st Sess., at 17 (1975).

7. 12 U.N. MONTHLY CHRON., June, 1975, at 18-19.

8. The current claims of the 119 coastal States vary: 25 claim three miles, 54 claim 12, and eight claim 200, with the rest in between. Prina, *Law of Sea Talks Try to Quel Ocean Disputes*, San Diego Union, March 2, 1975, § C, at 1, col. 4. Equador stood firm on its 200-mile territorial claim throughout the session. Farina, *Threat to Tuna Fishing Arises at Sea Law Talks*, Evening Tribune (San Diego), May 14, 1975, § A, at 23, col. 2.

9. San Diego Union, March 23, 1975, § A, at 6, col. 3.

10. Prina, *supra* note 8.

11. Newsom, *It Could Be Now or Never for "Law of the Sea,"* Evening Tribune (San Diego), March 20, 1975, § B, at 2, col. 6.

12. U.N. MONTHLY CHRON., *supra* note 7, at 20.

Text did not significantly modify the doctrine of innocent passage, its inclusion of the right of free transit is viewed as a significant concession to the maritime States' insistence upon such a right.

The Text also recognized the concept of the exclusive economic zone, setting its maximum limits at 200 miles. Within this zone, the coastal State would have sovereign rights with regard to exploration, conservation, and exploitation of living and nonliving resources. Coastal States were encouraged to allow foreign States to take fish within the allowable catch beyond the coastal State's fishing capacity, subject to coastal State regulation consistent with the convention. The Text encouraged coastal States to share exploitation of living resources in this zone with land-locked States, with the limitation that developed land-lock States could only look to the resources in waters off developed neighboring States. No agreement was reached at the session on the problem of fishing for migratory species, such as tuna. The United States feels that such fishing should be regulated not by the coastal States, but by a regional or international authority. Mexico's view is typical of developing countries; when such fish enter its 200-mile offshore zone, they become a Mexican coastal resource.[13] The Text subjected fishing for migratory species to coastal State control. The Text further proposed that the economic zone extend to the edge of the continental shelf in those areas where the shelf extended beyond 200 miles, for purposes of shelf resource exploitation. This extension was a prime concern of the United States, Canada, and Australia.[14] However, the Text required the coastal States to share the proceeds from exploitation of resources in the area beyond 200 miles, making payments to the Authority.

The work of the Third Committee involved protection of the marine environment and scientific research. The draft articles prepared by the chairman urged States to protect other States from damage caused by pollution where it originated within the first State's jurisdiction or where the State became aware of a danger and it was likely another would be affected. States were also required to regulate activities on a national level so as to minimize

13. Murphy, *200-Mile Offshore Claim Being Pushed by Mexico*, San Diego Union, March 30, 1975, § B, at 1, col. 3.
14. Lewis, *Hope for Accord Seen at Sea Law Talks*, N.Y. Times, March 31, 1975, at 2, col. 6.

onshore-source pollution and pollution from ocean dumping.[15] The United States seeks to restrict coastal State authority over vessel-source pollution within the zone, fearing that differing national standards may endanger freedom of navigation.[16] The Text appeared to accommodate this view. On the issue of scientific research, the Text gave exclusive rights to engage in such activities within the territorial sea to the coastal State. Within the economic zone, other States or international organizations may perform scientific research, but must supply the coastal State with detailed descriptions and must allow participation. Sharing of technology was, of course, encouraged. While the United States desires that there be little restriction placed upon scientific research,[17] the developing world fears too much freedom will increase the technology gap between it and developed States.

While the Text presented by the Committee chairmen does not represent consensus among delegations, it is to guide negotiations when the next session convenes in New York on March 29, 1976. Conference President H.S. Amerasinghe said the Geneva session could not be called a success because of its failure to reach agreement.[18] (The 1973 General Assembly, discussing a Law of the Sea Conference, had contemplated adoption of a convention by the end of 1975,[19] and hopes were high after Caracas that it could be obtained at Geneva.) Yet neither could he call it a failure, since negotiations were to continue. John R. Stevenson, Chief of the United States delegation, felt that there had been "progress, and in some cases, substantial progress, on filling in with specific articles the outlines of a treaty."[20] He also expected the Informal Single Negotiating Text to speed agreement.

CONSERVATION

IATTC Fails to Reach Agreement on the 1976 Eastern Pacific Yellowfin Tuna Quota: On October 28, 1975, delegates to an eight-nation meeting of the Inter-American Tropical Tuna Commission (IATTC) in Paris failed to reach agreement on the 1976 tuna fishing quota for the Eastern Pacific Ocean.[21] The IATTC annually sets the tonnage quota for the five million square mile yellowfin

15. 12 U.N. MONTHLY CHRON., *supra* note 7, at 21.
16. Prina, *supra* note 8, at 5, col. 4.
17. 72 DEP'T STATE BULL. 783, 785 (1975).
18. N.Y. Times, May 10, 1975, at 4, col. 5.
19. Prina, *supra* note 8, at 5, col. 5.
20. 72 DEP'T STATE BULL. 783 (1975).
21. San Diego Union, Oct. 28, 1975, § B, at 3, col. 1.

conservation zone that stretches from mid-California to northern Chile.

Dr. James Joseph, director of the IATTC, recommended that the quota initially be set at 140,000 tons which could be raised a maximum of five times in increments of 10,000 tons. The quota would be raised if it was apparent that the zone would not reach its maximum sustainable yield.[22] Last year's quota was set at 175,000 tons with two 10,000-ton increases at the insistence of several governments which were in the process of increasing the size of their tuna fleets.[23]

The Commission also drafted a resolution recommending that member nations take steps to equalize surveillance and enforcement measures. Currently, the United States is the only country that regularly enforces the IATTC's recommendations.

International Commission for the Northwest Atlantic Fisheries Sets New Catch Levels: The International Commission for the Northwest Atlantic Fisheries (ICNAF) unanimously approved new fishing quotas for the Northwest Atlantic on September 28, 1975. The new agreement reduces the total 1976 catch from 797,000 tons, excluding squid, to 719,000 tons, including squid.[24] Earlier, in June of 1975, the United States had proposed a quota of 550,000 tons, including squid.[25]

The ICNAF agreement operates on a two-tier system of individual species quotas for each nation and a total catch quota for the entire area. The overall quota is less than the sum of the individual species quotas. This allows member nations to focus their fishing efforts as precisely as possible on target species. The 1976 individual species quotas were adopted by the ICNAF in June of 1975.[26]

At the September session of the ICNAF's 1975 meeting, the Commission also agreed to limit the number of days each year that foreign fleets could catch haddock, cod, redfish and plaice. The principal nations affected by the new limitations are the Soviet

22. Farina, *Tunaboats Wrapping Up Difficult Year*, Evening Tribune (San Diego), Oct. 30, 1975, § B, at 8, col. 1.
23. San Diego Union, Oct. 28, 1975, § B, at 3, col. 1.
24. N.Y. Times, Sept. 29, 1975, at 13, col. 8.
25. 73 DEP'T STATE BULL. 220 (1975).
26. *Id.* at 221.

Union, Portugal, East and West Germany. Besides this limitation, the ICNAF agreed to exclude fishing vessels equipped to catch haddock and yellowtail flounder from most of Georges Bank off the coast of Maine.[27]

NMFS Proposed Regulations Allow United States-Based Fishermen to Violate International Yellowfin Conservation Agreement: On October 24, 1975, Robert W. Schoning, Director of the National Marine Fisheries Service (NMFS), issued proposed regulations giving him authority to suspend a requirement that United States-based tunaboats make daily radio reports to the Coast Guard. Current NMFS regulations require United States tunaboats to radio their exact location to the Coast Guard daily. The tuna fishermen are also required to enter their location in the ship's log, which is open to federal inspection.

Under the proposed regulation, United States tuna fishermen would be able to violate international yellowfin tuna conservation agreements by fishing undetected inside the five million square mile Eastern Pacific yellowfin conservation zone established by the eight-nation Inter-American Tropical Tuna Commission.[28]

National Marine Fisheries Service Proposes Porpoise Mortality Quota: The National Marine Fisheries Service (NMFS) proposed new regulations in September of 1975 limiting the amount of porpoises that can be taken by United States-based tuna fishermen while fishing in the tropical waters of the Eastern Pacific Ocean. Specifically, the NMFS proposed that the porpoise mortality rate be set somewhere between 50,000 and 110,000 per year. Additionally, NMFS observers are to be placed aboard every vessel in the United States tuna fleet to enforce regulation.

Tuna fishermen, who use the porpoise as an indicator of yellowfin tuna, fear the new regulations, which contain strict penalties for noncompliance, could trigger a massive shutdown of the fleet. They point to a report prepared by Morton M. Miller, chief of the economic and marketing research division of the NMFS, which concedes that, even without the regulations, much of the fleet could be in economic trouble by 1976. Miller's report says that if the regulations are approved, the United States may be forced to import more tuna from foreign countries to make up for the deficit in production.

Robert W. Schoning, the Director of NMFS, is expected to review

27. N.Y. Times, *supra* note 24.
28. Hudson, *Tuna Fishing Rule Shift Questioned,* San Diego Union, Oct. 24, 1975, § A, at 1, col. 1.

the comments on the proposed regulation by the end of the year and decide whether the quota and observer provisions of the regulations should be approved.[29]

Federal Courts Lack Jurisdiction Over Challenge to IPHC Regulations: The United States Court of Appeals for the Ninth Circuit on March 11, 1975, affirmed a dismissal for lack of jurisdiction of an action challenging a regulation of the International Pacific Halibut Commission.[30] Fishermen brought the action seeking declaratory judgment and injunction against enforcement of the regulation which required them to return to the sea any halibut accidentally caught when trawling for other fish. They asserted jurisdiction under the Administrative Procedure Act (APA), claiming that the Secretary of State's approval of the regulation constituted agency action within the provisions of the APA and therefore was reviewable in federal courts. To support the injunction, the fishermen maintained that Congress' action in providing criminal penalties for violation of the Commission regulation constituted an unconstitutional delegation of legislative power to the President because it provided no guidelines for the approval of the regulation.

The court of appeals rejected the claim of jurisdiction based on the APA, noting that by its terms the APA does not apply where agency action is committed to agency discretion by law. The court held that the Act would not apply to the Secretary's approval because for purposes of the appeal, the Secretary's actions were actions of the President, and law commits presidential action in the field of foreign affairs to presidential discretion.

The court further found that plaintiffs lacked standing because they could not show actual injury. The mere existence of the statute was insufficient to establish a "case or controversy." By dicta, however, the court stated that even if plaintiffs' claim had been justiciable, the delegation of power was proper because of the wider presidential discretion required when legislation is to be effectuated in the international field.

United States Enforces Continental Shelf Fishery Resources

29. Hudson, *Restrictions Called Threat to Tuna Fleet*, San Diego Union, Oct. 26, 1975, § B, at 1, col. 6.
30. Jensen v. National Marine Fisheries Serv. (NOAA), 512 F.2d 1189 (9th Cir. 1975).

Law: During 1975, the United States Coast Guard seized ships of several countries for taking certain protected species of continental shelf creatures. A law prohibiting foreign vessels from taking "continental shelf fishery resources" was amended January 2, 1974, by the addition of a "definitions" section containing a list of species.[31] The protected species include types of abalones, crabs, lobsters, sponges and others.[32] The Coast Guard delayed enforcement until December 5, 1974, in order to give notice to foreign governments of new enforcement procedures.[33] As was expected,[34] enforcement of the law increased seizures by the Coast Guard.

The first encounter under the new procedures occurred when an Italian vessel was seized on February 2, for taking lobster while trawling 81 miles off Nantucket Island, Massachusetts.[35] Later, the Polish trawler *Wicko* was seized while docked at Port Newark, New Jersey. A consent decree was entered, which imposed a fine of $125,000 against the vessel and $25,000 against the captain. On June 12, a Bulgarian vessel was seized, and agreed to pay the largest fine yet imposed for such a violation: $420,000 against the ship and $5,000 against the captain.[36] The Coast Guard also seized the Japanese lobster boat *Tokachi Maru* on July 15, when it was found trawling 65 miles off Maryland.[37] The first Soviet vessel to be seized for a violation of this law (the sixth such seizure of 1975) was taken to New York harbor after being apprehended on August 17. Again, the resource being exploited was lobster, 84 miles off New Jersey.[38] The vessel was released after a $100,000 settlement of civil and criminal charges was obtained.[39]

FISHING

200-Mile Fishing Zone Bill Passed Overwhelmingly by the House: On October 9, 1975, the House of Representatives passed the Marine Fisheries Conservation Act of 1975 by a vote of 208 to 101.[40] The 1975 Act extends the United States exclusive fishery

31. 16 U.S.C. § 1085 (Supp. IV, 1974).
32. *Id. See also* 50 C.F.R. §§ 295.1, 295.2 (1974).
33. 121 CONG. REC. S 2151 (daily ed. Feb. 19, 1975); *State Dept. Communication to Foreign Countries, Hearings on S.1988 Before the Senate Foreign Relations Comm.*, 93d Cong., 2d Sess., at 23 (1974).
34. *See Recent Developments, supra* note 1, at 671.
35. San Diego Union, Feb. 3, 1975, § A, at 4, col. 2. *See also* CONG. REC., *supra* note 33, at S 2150.
36. Evening Tribune (San Diego), July 11, 1975, § C, at 16, col. 1.
37. *Id.*, July 16, 1975, § A, at 5, col. 8.
38. N.Y. Times, Aug. 18, 1975, at 29, col. 4.
39. San Diego Union, Aug. 30, 1975, § A, at 2, col. 1.
40. H.R. 200, 94th Cong., 1st Sess. (1975).

zone from 12 to 200 miles offshore, and establishes a comprehensive management program for United States and foreign fishermen. The House bill authorizes the collection of federal license fees from all those fishing within the zone, including United States fishermen. However, United States fishermen have priority to licenses, and a portion of the fees collected will be used to reimburse United States fishermen for the costs of foreign fishing fees.

The three most controversial aspects of the bill include its effect on distant water fishermen, such as the California based tuna industry and the gulfcoast shrimpers, and the possibility of conflicts between federal and state policies in areas presently managed by the states. The third problem is the bill's effect on the United Nations Law of the Sea Conference.

Representative Robert L. Leggett, Chairman of the House Sub-Committee on Fisheries, explained to concerned congressmen that the bill contains built-in protections for the tuna and shrimp industry because it exempts highly migratory species, such as tuna, from the United States exclusive jurisdiction. This exception is an attempt to discourage foreign retaliation which could cripple the United States tuna fleet. The bill also amends the Fisherman's Protective Act to include reimbursement for any fines imposed by foreign governments in lieu of confiscation of the catch.[41] Moreover, the bill provides for some limited reimbursement to United States-based fishermen for the acquisition of foreign fishing licenses.

Federal-state conflicts will be resolved through the establishment of Regional Marine Fisheries Councils made up of members appointed from coastal states. Furthermore, the bill requires the federal government to find that a state's action substantially and adversely affects the federal management plan before federal jurisdiction in the three-mile state waters can be invoked.

The Administration and many members of Congress are most concerned that the bill's passage would destroy the United States bargaining position at the United Nations Law of the Sea Conference. They contend that with the important topics of pollution control, unimpeded navigation through straits and jurisdiction over

41. Present law allows compensation for the loss of confiscated fish, but not for the monetary value paid in lieu of confiscation.

seabed resources to be decided, the passage of the 200-mile bill would seriously impede the United States ability to make concessions in order to achieve desirable results in these other areas. However, proponents cite a need for immediate conservation measures to save dwindling fishery resources.

The House version of the Marine Conservation Act of 1975 is pending in the Senate Committee on Commerce awaiting decision by the full Senate on its own bill.[42] Last year the Senate passed a similar measure by a vote of 68 to 27.[43]

Atlantic Tunas Convention Act of 1975: The Atlantic Tunas Convention Act of 1975 was enacted on August 5, 1975, to implement the International Convention for the Conservation of Atlantic Tunas (ICCAT) which was signed by 19 countries on May 14, 1966.[44] The ICCAT was created to conduct research on tuna and make recommendations on maximum catch levels in the Atlantic. As of 1975, the Commission had adopted three recommendations which have been accepted by all signing nations. Two of the recommendations set minimum weight requirements for bluefin and yellowfin tuna. The third limits each nation's catch to "recent levels."

The 1975 Act was needed because the Secretary of Commerce was powerless to require compliance with the ICCAT regulations without domestic legislation. Under the 1975 Act, the Secretary may promulgate regulations to implement the ICCAT's recommendations. The Secretary is given enforcement powers through the Coast Guard, United States Customs Service, and involved coastal states.

Brazil and the United States Initial New Shrimp Fishing Agreement: On March 14, 1975, Brazil and the United States signed a new agreement regulating shrimp harvesting by United States fishermen off the coast of Brazil. The new agreement is an extension of a 1972 shrimp treaty.

The 1972 agreement was negotiated in response to Brazil's asserted 200-mile economic zone. This jurisdictional claim, which the United States refused to recognize, sought to control an area long used by United States shrimp fishermen. In an effort to avoid confrontation, each side began negotiations in October of 1971. The resulting agreement and its 1975-76 extension broke new ground

42. S. 961, 94th Cong., 1st Sess. (1975).
43. S. 1988, 93d Cong., 2d Sess. (1974).
44. Atlantic Tunas Convention Act of 1975, 16 U.S.C.A. § 971 *et seq.* (1975).

in several areas. First, the United States agreed to limit the entry of its own citizens into a high seas fishery. Second, as a result of the agreement, a foreign government is granted unprecedented unilateral enforcement powers against United States citizens. Third, the United States agreed to collect fees from United States fishermen and transfer the fees to Brazil for the enforcement of the conservation agreement. Although revolutionary in many aspects, the agreement contains a savings clause that allows amendment by international agreement.

The 1975 agreement substantially follows the prior treaty, except that it lowers the permissible vessels limit from 325 per quarter to 200 vessels per quarter during 1975, and 175 vessels per quarter in 1976. Additionally, the annual enforcement funds have been increased from $200,000 to $361,000.[45]

United States and U.S.S.R. Reach Agreement on Pacific and Middle Atlantic Fishery Issues: On February 26, 1975, representatives of the United States and the Soviet Union reached an agreement on the conservation of Middle Atlantic fishery resources and on measures aimed at minimizing fishing gear conflicts between United States and Soviet vessels. The new agreement calls for stricter enforcement of United States continental shelf fishing regulations and strengthens measures designed to prevent fishing-related conflicts between Soviet mobile gear trawlers and United States fixed gear vessels.[46]

A similar treaty concerning Northern Pacific fisheries was signed in Washington, D.C., on July 18, 1975. Under the new agreement, the Soviet Union is required to close off large areas of the Pacific to its fishermen in order to conserve endangered species such as halibut, rockfish, and crab. In addition, limitations on Soviet catches were established for pollock, halibut and rockfish.[47]

Equador Seizes More Tunaboats: From January 25, to February 2, 1975, Equador seized seven United States tunaboats for fishing without licenses within that nation's claimed 200-mile territorial

45. Offshore Shrimp Fisheries Act Amendment of 1975, 16 U.S.C.A. § 1100b-i *et seq.* (1975).
46. 72 DEP'T STATE BULL. 426 (1975).
47. 73 DEP'T STATE BULL. 230 (1975).

sea.[48] Although 154 United States boats have been arrested or fined in the past ten years, these recent seizures were by far the most costly in terms of lost fishing time (the boats being held as long as 46 days[49] instead of three or four), confiscation of catches, increased fines, and other costs.[50] The skippers estimated the total of these losses at a record $4.3 million.[51] The cost of a license has tripled in the last two years; the cost of all seven vessels for a sixty-day period would have been $231,470, although two ships would have been denied licenses because of their large capacity.[52]

There were reports of violence and looting aboard the vessels while held in the port of Salinas. Several of the crewmen were fired upon, beaten, and jailed, according to the reports; at least two were seriously injured.[53] Among retaliatory measures urged[54] was a bill introduced in the House of Representatives which would stop the sale of a Navy ship to Equador.[55] (Many of the ships in Equador's Navy came from the United States, and some of these have been used in seizures of American tunaboats).[56]

The fishermen sought reimbursement under the Fishermen's Protection Act of 1971.[57] The Act provides that the United States Treasury reimburse the applicant for all expenses paid as a condition of release, and that an insurance fund compensate in full for catch confiscation and vessel and equipment damage, and in part for lost fishing time.[58]

Seizures by the United States: In addition to seizing several foreign vessels under the newly-enforced continental shelf fishery resources law,[59] the United States Coast Guard also seized foreign boats for violations of the 12-mile United States contiguous fishing zone during 1975. On May 17, the Polish vessel *Kalmar* was seized in the waters off Monterey, California.[60] The action renewed com-

48. Evening Tribune (San Diego), Feb. 3, 1975, § A, at 3, col. 6. *See also Recent Developments, supra* note 1, at 672.
49. Evening Tribune (San Diego), March 12, 1975, § B, at 5, col. 1.
50. Lagies, *Tunaboat Dilemma—Principle or Price?*, Evening Tribune (San Diego) March 14, 1975, § A, at 1, col. 3.
51. Farina, *Tuna Seizure Losses Pegged at $4.3 Million*, Evening Tribune (San Diego), May 8, 1975, § B, at 1, col. 2.
52. Hudson, *Few Expect Boats to Pay Equadorian Fee*, San Diego Union, Feb. 24, 1975, § B, at 1, col. 5.
53. Holles, *Tuna Fleet Asks U.S. Aid Off Equador*, N.Y. Times, March 9, 1975, at 20, col. 5.
54. San Diego Union, July 23, 1975, § B, at 4, col. 1.
55. H.R.J. Res. 498, 94th Cong., 1st Sess. (1975).
56. San Diego Union, *supra* note 54.
57. 22 U.S.C. § 1971 *et seq.* (Supp. III, 1973).
58. Lagies, *supra* note 50, at col. 6.
59. *See* notes 31-39 *supra* and accompanying text.
60. L.A. Times, May 21, 1975, pt. 1, at 23, col. 1.

plaints that Russian and Polish fleets were depleting West Coast fisheries. The U.S.S.R. fishes under a treaty with the United States which allows it to take Pacific hake up to the 12-mile limit. Russian fishing facilities include huge floating factories, which remain off the California coast for up to six months processing raw fish. Another seizure occurred in the Gulf of Mexico, where an 82-foot Cuban vessel was taking shrimp within the 12-mile zone. The ship was intercepted and taken 11 miles northeast of Port Arkansas, Texas.[61]

The zone off Alaska also saw seizure activity. On August 7, a South Korean trawler was taken and fined $415,000.[62] The seizure of the Japanese *Eiku Maru Number 33* in April was notable because, for the first time, the United States obtained title to a vessel through an out-of-court settlement for a violation of United States fishery laws.[63] The two companies owning the vessel agreed to surrender the ship (whose value has been estimated at between $400,000 and $1.25 million) and the catch (which was sold for $12,000) rather than pay the $350,000 fine. After being sighted within the 12-mile zone off Alaska by Coast Guard aircraft, the *Eiku Maru* headed for open sea, ignoring morse code and smoke flare messages to stop. It was halted six and one-half hours later, and 12-miles of longline, which had been retrieved from the waters where the ship was first sited, was matched with fishing gear on board.

POLLUTION AND POLLUTION CONTROL

INTERNATIONAL

Effects of Oil pollution on Marine Environment Noted: In a statement on January 30, 1975, before the Senate Commerce Committee, Dr. John M. Hunt, of the Woods Hole Oceanographic Institution, discussed various aspects of oil pollution in the marine environment.[64] Of the approximately six million metric tons of oil dumped into the oceans annually, he said half evaporates into the air, 30 percent sinks or is deposited on the beaches as tar, and the remainder is broken down chemically or by marine organisms.

61. San Diego Union, Aug. 3, 1975, § A, at 8, col. 7.
62. *Id.*, Sept. 25, 1975, § A, at 2, col. 1.
63. 121 CONG. REC. S 7155 (daily ed. Apr. 30, 1975).
64. 5 BNA ENVIR. REP. CURRENT DEVELOPMENTS 1557 (1975).

He said sea fowl and tidal creatures are the primary victims of oil pollution.

Dr. Hunt encouraged the development of offshore drilling as opposed to increasing the use of tankers in obtaining oil. He said that the combined aspects of transporting oil now account for one-third of the marine oil pollution, and use of tankers presents a risk of pollution 20 times greater than does offshore drilling.

Optimism at International Conference: The speakers at the March 25 through 27, 1975 meeting of the International Conference on Prevention and Control of Oil Pollution were optimistic about the progress being made in development of new methods of minimizing damage from oil spills.[65] A Coast Guard spokesman noted a proposed plan whereby supertankers coming from the Valdez, Alaska terminal of the new pipeline would be tracked by the Coast Guard to guard against spill damage.

An official of the National Oceanic and Atmospheric Administration stressed the importance of coastal zone management. Under the Coastal Zone Management Act, states will have a voice in such matters as compensation for the costs of onshore facilities and spill liability laws. (The Act provides funding for approved state plans, and states have until September 1977 to submit their plans.)

A representative of Exxon Research and Development Company spoke about self-mixing oil slick dispersants which can be applied by aircraft. These dispersants are advantageous because they can be applied rapidly and uniformly.

Intergovernmental Meeting on the Protection of the Mediterranean: On January 28, 1975, the United Nations Environment Program convened an intergovernmental meeting in Barcelona, Spain, to deal with pollution in the Mediterranean. Representatives of 18 Mediterranean nations and various international organizations attended the meeting.

The principal concern of the convention was the implementation of an integrated planning and development program of resource management with coordinated programs for research and monitoring of pollution. In addition, it was recommended that all coastal nations become parties to the 1973 International Convention on the Prevention of Pollution from Ships. Finally, the conference urged establishment of a regional oil combating center to deal with a major oil spill in the Mediterranean.[66]

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65. *Id.* at 1926.
66. 14 INT'L LEGAL MATERIALS 464 (1975).

United Nations Program on Ocean Monitoring Approved: The Governing Council of the United Nations Environment Program approved an ocean monitoring program during its April 17 through May 2, 1975 meeting in Nairobi. The purpose of the program is to assess human impact on the physical, chemical and biological aspects of the ocean. Additionally, the program will consider the relationship of the oceans to the earth's climate. The program will consist of various ocean baseline stations situated at strategic points throughout the earth's oceans.[67]

Liberian Tanker Charged in Florida Oil Spillage: On November 7, 1975, charges were filed by the United States against the owners and master of a Liberian tanker for dumping 50,000 gallons of crude oil near the Florida Keyes in July of 1974. The spill blackened beaches from Marathon to Dry Tortugas, Florida.

The 42,000 ton tanker *Garbis* was identified by Coast Guard Officials following an investigation of 247 ships in the East and Gulf Coast areas. The ship's owners will be notified that they face a maximum $5,000 fine plus costs of the oil spill cleanup—about $367,500.[68]

DOMESTIC—FEDERAL

Effects of Ocean Dumping Unclear: An Army Corps of Engineers spokesman has stated that preliminary Corps studies of disposal areas show that ocean dumping of dredged materials may not be harmful to the environment. Speaking before the Senate Commerce Subcommittee on Oceans and the Atmosphere on May 20, 1975, the spokesman said these studies indicate the dumping may be beneficial. For example, lobsters seemed to prefer dumping sites, he said, and water quality is improved when some pollutants adhere to the dredged materials.

The Subcommittee was told by an Environmental Protection Agency (EPA) spokesman that all dumping in the Pacific Ocean should be stopped, and dumping in the Gulf of Mexico should be reduced to ten percent of the 1973 amount. He said it was the EPA's intention to stop much industrial ocean dumping as alternative disposal methods are created. The EPA spokesman noted that

67. *Id.* at 1083.
68. L.A. Times, Nov. 7, 1975, pt. I, at 2, col. 5.

a major problem was the disposal of sewage sludge from upgraded treatment plants, especially along the coasts where high population density leaves little land which can be used as a disposal site.[69]

Gulf of Mexico Permit Issued to Shell Oil: The EPA on February 21, 1975, issued a special ocean dumping permit which will allow Shell Oil Company to dump 100,000 tons of sludge into the Gulf of Mexico for one year.[70] An attorney for the National Wildlife Federation said that a special permit (which lasts up to three years as opposed to one year for an interim permit) should not have been issued since EPA regulations require that a bioassay be conducted under approved EPA procedures. Although a bioassay had been conducted, the EPA had not yet promulgated approved procedures.

EPA Reports On Ocean Dumping Program: In a report submitted to Congress on March 3, 1975, the EPA discussed its ocean dumping program.[71] The long-range plan involves three stages; the issuance of regulations on procedures, the publication of criteria for issuance or denial of permits, and the designation of specific dumping sites. In carrying out the first stage, the EPA published regulations on October 15, 1973, which will be amended according to future experience. As to the second phase, some criteria have already been published,[72] and others are being developed in cooperation with other government agencies. The EPA hopes to complete the third stage by the summer of 1976. The regulations and criteria issued during the first and second stages conditionally approved existing sites. Designations of other sites will be accompanied by environmental impact statements, and will be noticed in the *Federal Register.*

Several agencies will be cooperating under the plan. For example, the current Coast Guard surveillance and enforcement operations will continue, and baseline surveying in fiscal 1976 will be performed largely by the National Oceanic and Atmospheric Administration. The report acknowledged current claims that some ocean dumping may be beneficial to the environment, although the same substances would be detrimental to freshwater life forms. It said that if these were proven, the EPA would encourage ocean dumping over alternative disposal methods. It cited as most urgent the need to further develop techniques for sampling and laboratory analysis.

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69. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 213 (1975).
70. 5 BNA ENVIR. REP. CURRENT DEVELOPMENTS 1689 (1975).
71. *Id.* at 1926.
72. 40 C.F.R. § 227.1 *et seq.* (1975).

Navy Dumping Fuel at Sea: A 1975 audit of the Naval Petroleum Office revealed that Navy oilers disposed of approximately 6.2 million gallons of contaminated fuel at sea in fiscal year 1974.[73] The fuel discharges cost the Navy $2.3 million, which does not include losses from oil spillage by other naval vessels. Navy auditors first reported the dumping of large quantities of petroleum at sea in 1961. Prior to that, the Navy employed private tank barges to off-load various petroleum products for reprocessing at coastal refineries. Reprocessing would save the Navy an estimated $2.2 million annually.[74]

Agencies Agree On Regulation Of Nuclear Plants On Navigable Waters: Pursuant to an agreement signed by the Nuclear Regulatory Commission (NRC) and the Army Corps of Engineers, NRC will review the environmental impact of nuclear power plants on navigable waters, and the corps will inform NRC of factors involving shoreline changes, siltation and sedimentation, dredging and filling effects, and location of structures in such waters. The agreement aims to avoid duplication of efforts by the agencies in regulating such plants to assure minimum environmental impact.[75]

Federal Agencies to Comply with All State Water Pollution Control Requirements: The United States Court of Appeals for the Ninth Circuit on February 13, 1975, held that 1972 amendments to the Federal Water Pollution Control Act require federal agencies to comply fully with all respects of state discharge permit programs.[76] California and Washington had proposed water pollution permit programs to the Administrator of the EPA, pursuant to section 402 of the Act. These states appealed when the Administrator exempted federal agencies from compliance with the programs. The Ninth Circuit directed the Administrator to reconsider the states' applications.

The court found that the Act contemplates that states will take the lead in the attack on water pollution, with the federal government performing a supportive function. The court held pursuant to the Act's purpose Congress waived exclusive legislative jurisdic-

73. 121 CONG. REC. H 3310 (daily ed. Apr. 24, 1975).
74. *Id.* H 3605 (daily ed. May 1, 1975).
75. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 533 (1975).
76. California *ex rel.* State Water Resources Control Bd. v. EPA, 511 F.2d 963 (9th Cir. 1975).

tion over the activities of federal agencies in providing for state programs under section 402.

The United States Supreme Court granted the EPA's petition for a writ of certiorari on June 23, 1975.[77]

EPA to Regulate All Radioactive Discharges into Navigable Waters: On December 9, 1975, the United States Court of Appeals for the Tenth Circuit held that the EPA is required by the Federal Water Pollution Control Act Amendments of 1972 to regulate the discharge of all radioactive materials into navigable waters.[78] The EPA had argued that since the Atomic Energy Act of 1954 gave regulatory powers over certain types of discharges (source, by-product, and special nuclear material) to the Atomic Energy Commission, only discharges not in those areas were committed to the EPA's regulation. The court found that the 1972 Amendments' definition of pollution to include "radioactive materials" clearly and unambiguously meant "all radioactive materials."

Definition of FWPCA "Navigable Waters" Expanded: On March 27, 1975, the United States District Court for the District of Columbia granted the motion for summary judgment of environmental groups in a suit brought by them to force the Army Corps of Engineers to expand its definition of "navigable waters."[79] The Corps' definition had been keyed to susceptibility of navigation and the ebb and flow of tides.[80] The court held that the intent of Congress in defining "navigable waters" as the "waters of the United States, including the territorial seas" in the Federal Water Pollution Control Act Amendments of 1972 was to assert jurisdiction to the maximum allowed by the commerce clause. The Corps was directed to revoke its current definition and to publish new regulations consistent with this holding.

Domestic—State

New York Beaches Not Immediately Threatened By Ocean Dumping: A National Oceanic and Atmospheric Administration (NOAA) report and local municipal investigations indicate that no immediate threat is posed either to public health or to the beaches of Long Island by ocean dumping off the New York coast. It had

77. EPA v. California *ex rel.* State Water Resources Control Bd., 422 U.S. 1041 (1975).
78. Colorado Public Interest Research Group v. Train, 507 F.2d 743 (10th Cir. 1974), *cert. granted*, 421 U.S. 998 (1975).
79. Natural Resources Defense Council v. Callaway, 392 F. Supp. 685 (D.C. Cir. 1975).
80. *See* 39 Fed. Reg. 12119 (1974).

been feared that the dumping of municipal sewage sludge about 12 miles offshore had created a threatening mass of black sludge which was constantly moving towards shore.[81] Although almost half a billion cubic feet per year of the wastes have been dumped, the NOAA report indicated "[t]here has been essentially no buildup" of sludge at the dumping site.[82] However, the report did state that dumping may be associated with damage such as fin rot in fish and deformations in crustacaea, in addition to increased levels of coliform bacteria. In concluding that there is no immediate threat, the report supported the position held by the EPA.

The Commissioner of the Town of Hempsted's Department of Conservation and Waterways also said that no such mass was moving towards the shore.[83] His studies of floor samples demonstrated that sewage sludge dumped at the site is no longer identifiable seven and one-half miles south of Rockaway Inlet. The Commissioner disapproved of suggestions that the dump site be moved further seaward.

Texas Enacts Oil Spill Legislation: On June 9, 1975, the Governor of Texas signed into law additions to the state's Water Code aimed at prevention and control of damage from spills of oil and other hazardous substances.[84] Among the provisions are comprehensive reporting requirements and the creation of an agreement whereby state highway department personnel, equipment and materials can be used for cleanup operations. The Act also establishes a coastal protection fund, to be reimbursed by the federal government or the party responsible for the spill.

Philadelphia Gets Ocean Dumping Permit: On February 14, 1975, the EPA issued to Philadelphia a one-year interim ocean dumping permit.[85] Issued pursuant to the Marine Protection, Research, and Sanctuaries Act of 1974, the permit authorizes the city to dump 150 million gallons of sewage sludge into the Atlantic Ocean at a point approximately 50 miles southeast of Delaware Bay. However, Philadelphia is required to monitor environmental effects, to

81. *See Recent Developments, supra* note 1, at 680.
82. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 405 (1975).
83. Forgernon, *Ocean Dumping Is No Threat To L.I. Beaches, Udell Says*, N.Y. Times, April 27, 1975, § 5, at 16, col. 1.
84. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 455 (1975).
85. 5 BNA ENVIR. REP. CURRENT DEVELOPMENTS 1689 (1975).

develop alternative disposal methods, and to reduce ocean dumping to 50 percent by January 1, 1979, and cease by 1981. The EPA granted the city funds to help develop the alternatives. The issuance of the permit will be challenged by the state of Maryland and Ocean City, Maryland.

Further Santa Barbara Channel Litigation: The United States Court of Appeals for the Ninth Circuit on February 24, 1975, vacated a federal district court's dismissal of an action brought by oil and gas lessees who challenged the Secretary of the Interior's order denying permission to construct an additional drilling platform.[86] Permission to construct the new platform had been granted prior to the 1969 Santa Barbara oil spill. Immediately after that disaster, the Secretary suspended all activities on the lease. In 1971, he withdrew permission to construct new platforms because of environmental dangers. The federal district court dismissed the oil companies' complaint, finding the withdrawal of permission to be within the Secretary's statutory authority, and not an abuse of discretion as alleged.

Noting that under the Outer Contenental Shelf Lands Act the Secretary is empowered to regulate activities for conservation of the Shelf's natural resources, including marine life, recreational potential, and aesthetic values, the court determined that without congressional authorization, the Secretary has no condemnation powers. Therefore, the court remanded to decide whether the order constituted a taking of property within the meaning of the fifth amendment. If so, such an order would be beyond the Secretary's power. The court stated that a suspension so interferes with the beneficial use of the property as to constitute a taking when its duration is indefinite. The complaint should be dismissed, the court said, if the Secretary's reasons for suspension sufficiently restrict the duration of suspension as not to constitute a taking.

California Halts Offshore Oil and Gas Developments: The Governor of California signed into law a prohibition on construction of and additions to offshore oil and gas pipelines. The law, which became effective January 1, 1976, is intended to halt new development of oil and gas resources until the state legislature can act upon a program soon to be completed by the California Coastal Zone Conservation Commission. Penalties under the law include a $100,000 civil charge and a fine of $5,000 for every day of violation.[87]

86. Union Oil Co. of Cal. v. Morton, 512 F.2d 743 (9th Cir. 1975).
87. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 912 (1975).

Study Shows Louisiana Coast not Damaged by Offshore Oil Production: The State of Louisiana's Department of Conservation released a report in July of 1975, stating that oil drilling and production off the coast of Louisiana has not significantly damaged the area's ecological balance.[88] The study was conducted in Timbalier Bay which has produced oil for 38 years.

Dr. R.R. Minzies of Florida State University headed a group of 23 scientists in the two-year project. The scientists reported natural phenomena, such as changes of seasons and floods, had a much greater impact on the ecology of the bay than oil production and drilling.

SEABED RESOURCES

Senate Passes Amendments to Other Continental Shelf Act of 1953: On July 30, 1975, the Senate passed and sent to the House legislation[89] updating the Outer Continental Shelf Act of 1953. Under the 1953 Act, oil companies, either singly or jointly, bid on 5,760-acre tracts preselected by the Interior Department. The highest bidder could win the right to conduct exploratory drilling and extract discovered oil and gas.[90]

The new legislation authorizes a wide variety of new bidding systems designed to reduce preliminary cash bonus bidding, thus making it easier for small independent companies to enter into Outer Continental Shelf exploration and development. The bill also increases the Government's royalty allowance from 12½ to 16⅔ percent. Under the amendments, governors of coastal states are able to establish regional Outer Continental Shelf Advisory Boards to advise the Secretary of the Interior regarding the size, timing and location of proposed Outer Continental Shelf leases. If the regional advisory board or a governor of any potentially affected state makes a specific recommendation regarding the proposed lease sale or development plan, the Secretary of the Interior must accept the recommendation unless it is inconsistent with the national interest.

88. 121 CONG. REC. E 4191 (daily ed. July 28, 1975).
89. S. 521, 94th Cong., 1st Sess. (1975).
90. Kenworthy, *Major Changes Proposed in System of Leasing Oil and Gas Tracts beyond the 3-mile Limit*, N.Y. Times, Apr. 15, 1975, at 13, col. 1.

One of the most significant features of the bill is the new absolute liability provision for oil spill damage. The bill makes the Outer Continental Shelf lessee liable, without regard to fault, for the total cost of control and removal of the spilled oil within 200 nautical miles of the baseline of the United States, Canada, or Mexico. It also imposes absolute liability upon the lessee for damages to land resources or businesses.[91] The lessee is liable for the first $22 million of damage; any additional damages or restoration costs are paid by an Offshore Oil Pollution Settlement Fund created by the bill. The fund consists of a $200 million corpus to be created by a two and one-half cent tax on each barrel of oil produced from the Outer Continental Shelf.

Senate Adopts Amendments to the Coastal Zone Management Act of 1972: The Senate on July 16, 1975, passed a series of amendments to the Coastal Zone Management Act of 1972 designed to help states deal with the present and future effects of Outer Continental Shelf oil exploration and development.[92] The proposed amendments authorize a $250 million Costal Energy Impact Fund to provide federal grants and loans to state programs directed toward ameliorating the adverse effects of Outer Continental Shelf energy development. The purpose of the fund is to establish a primary source of money to states and municipalities for the construction of schools, roads, sewers and other related facilities needed to cope with the large influx of oil-related personnel.

States which have experienced net adverse effects within the last three years may also receive compensating grants or loans for up to five years after final passage of the bill.[93]

Recent Developments in the Southern California Leasing Controversy: On October 31, 1975, Secretary of Interior Thomas S. Kleppe announced the United States would sell 1.25 million acres of oil leases located off the coast of Southern California on December 9, 1975.[94] The leases will be issued despite a Bureau of Land Management study which concluded a major oil spill the size of the 1969 Santa Barbara disaster could be expected every seven to ten years if the offshore oil development is allowed to follow industry plans. The Interior department originally planned to sell 1.6 million acres of leases but trimmed the figure to exempt areas where drilling rigs could be seen from the shore. Secretary Kleppe

91. 121 CONG. REC. S 14287 (daily ed. July 30, 1975).
92. S. 586, 94th Cong., 1st Sess. (1975).
93. 121 CONG. REC. S 12842 (daily ed. July 16, 1975).
94. Richmond, *Go Ahead Given on Offshore Oil*, Evening Tribune (San Diego), Oct. 31, 1975, § A, at 1, col. 1.

also said an additional three-quarter-mile buffer zone between state and federal waters would be provided in those areas where the state has not already leased tracts for development.

Government studies put the resource potential of the area at between 1.6 billion and 2.7 billion barrels of oil and 2.4 trillion to 4.8 trillion cubic feet of gas. The largest area to be leased is the 639,360 acre Cortez Bank located 94 miles west of San Diego. Scientists Robert Owen and Paul Smith, of the National Marine Fisheries Service laboratory in La Jolla, California, feel that the Cortez Bank is a poor choice for the proposed Outer Continental Shelf Development. They contend ocean currents would force any oil spill near the Cortez Bank directly to San Diego's shores.[95]

State and local officials, fearing they may become oil spill victims, formed a coalition to delay the proposed lease sale. They cited as their reasons for seeking the delay a need for evaluation of near-shore and on-shore impacts, as well as establishment of a national fund to assist state and local governments in dealing with the large influx of oil-related personnel. The Southern California city officials also asked for a guarantee of absolute indemnity for damage from oil-related activities.[96]

Attempting to allay fears of local officials, the federal government sent energy chief Frank Zarb to California on November 12, 1975. Representatives of ten Southern California cities told Mr. Zarb the federal lease conditions were too lax and the environmental safeguards inadequate. He promised to relay the message to Secretary Kleppe.[97] Seven days later, the coalition of 41 cities voted unanimously to sue the federal government to block the proposed lease. At the same time, the State of California instituted a similar suit. It appears both suits will argue that the Interior Department's Environmental Impact Statement was inadequate and that the federal government is not receiving reasonable compensation for the leases.[98]

Despite the pending litigation, leases totaling $438.2 million were sold on December 11, 1975. Department of Interior officials had

95. Smith, *Offshore Oil Hunt Here Disclosed After 2 Months*, San Diego Union, Oct. 24, 1975, § A, at 1, col. 5.
96. Smith, *Riley Urges County Suit to Delay Oil Leasing Program*, L.A. Times, Nov. 12, 1975, pt. II, at 1, col. 2.
97. San Diego Union, Nov. 15, 1975, § A, at 2, col. 4.
98. *Id.*

predicted that the bids would total between $1.5 billion and $2 billion.[99]

GAO Recommends Steps to Insure Efficient Lease Siting Procedures: In July of 1975, the General Accounting Office (GAO) recommended to Secretary of Interior Stanley K. Hathaway a series of steps designed to improve federal programs for establishing the place and price of offshore oil leases.[100] The GAO recommended that the Interior Department conduct federally-financed exploration programs directed at appraisal of Outer Continental Shelf leases, claiming that currently, the decision as to where to lease is largely left to private industry.[101] The GAO also recommended that the Secretary establish a test program to evaluate, offer, and lease entire geological structures as opposed to the present practice of leasing in tracts.

In addition, the GAO report states that federal government shelf evaluation programs are being jeopardized by a data base inadequate to reasonably ensure a fair market return on leasing investments. The Interior Department commented that if the federal government were to finance the explorations, development of the resources would be delayed up to two years.[102]

Environmental Impact Statement for Gulf of Mexico Tracts Upheld: On March 27, 1975, the United States Court of Appeals for the Fifth Circuit held that an environmental impact statement (EIS) prepared by the Department of Interior in connection with the sale of oil and gas leases in the Eastern Gulf of Mexico met the requirements of the National Environmental Policy Act (NEPA).[103] Environmental organizations and individuals brought suit to block the sale of the leases, and 17 oil companies, who were among those making bonus bids of over $1.5 billion for exploration rights, intervened. Plaintiffs challenged the sale on four grounds. First, they claimed that the EIS insufficiently analyzed the *present environment*, the *impact* of the sale, the *cumulative effect* of oil development in the area, and reasonable *alternatives* to the sale. Second, they argued that defendant's evaluation of effects upon the total environment, aquatic life, aesthetics, recreation, and other resources was inadequate. The third ground urged was that the decision to proceed with the sale constituted an abuse of discretion.

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99. Fisher, *Oil Lease Bids Fall Far Short of U.S. Estimate*, L.A. Times, Dec. 12, 1975, pt. I, at 1, col. 5.
100. 121 CONG. REC. S 12241 (daily ed. July 10, 1975).
101. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 490, 491 (1975).
102. *Id.* at 491.
103. Sierra Club v. Morton, 510 F.2d 813 (5th Cir. 1975). *See also Recent Developments, supra* note 1, at 688.

Finally, they claimed that the sale frustrated NEPA by imposing the duty to protect the environment from harm caused by construction of pipelines or onshore facilities upon the states rather than the federal government.

The court first discussed the sufficiency of the EIS, stating the requirement that it be sufficiently detailed to enable the court to make a determination as to whether a good-faith attempt to protect NEPA values has been made, to inform the public clearly and specifically of the environmental costs, and to bring to light all serious problems and criticism. The court found the analysis of the *present environment* adequate noting that, although analysis of present air and water quality and of the Eastern Gulf ecosystem as a whole was lacking, the EIS did analyze significant parts of the biological environment and provided adequate geological information. The court also found that the important information concerning oil spill hazards was presented with sufficient clarity as to enable a court to assess the environmental *impact*. Specifically, a matrix system predicting the potential for oil spillage from each of the tracts to reach and damage important resources, although not as detailed as other systems, did not portray a breach of a good-faith requirement in presenting the information. Also, the absence of analysis of possible harm from military activities was not found to be a fatal defect since the EIS stated that such an analysis had been requested, thus informing the decisionmaker of the issue. Further, the court found a failure to discuss effects of pipeline location, construction, and breakage on particular areas cured by discussions of general long-term effects and prior experiences in the Gulf, and by lease stipulations as to pipeline location.

Cumulative effect analysis was found to be of sufficient detail. The court stated that the plaintiffs' contentions concerning analysis of effects of oil spillage from platforms, pipelines and tankers, and of other pollutants, went to the degree of detail rather than the lack of it. The challenge to the consideration of *alternatives* was also held to be without merit. Although the defendant had produced a 352-page volume concerning alternatives, plaintiffs claimed that analysis of enumerated others was required. The court's answer to some of these was: "An alternative which would result in similar or greater harm need not be discussed."[104]

104. Sierra Club v. Morton, 510 F.2d 813, 825 (5th Cir. 1975).

Plaintiffs also asserted defendant's failure to comply with NEPA sections requiring systematic, interdisciplinary study of methods and alternatives aside from the EIS requirements. They specifically pointed to defendant's plans to do post-EIS testing of the floor geologic conditions, claiming these violated the rule that an EIS must meet the requirements alone. The court saw the sale of leases as a special situation, wherein the defendant would have constant control over future lessee activities. Significantly, the court held that

> where shortcomings in a major federal action can be corrected or minimized when and if they surface, the EIS upon which such action is authorized may meet NEPA's objectives with some less detail and analysis than would otherwise be required.[105]

The court disagreed with plaintiffs' contention that the decision to proceed with the sale was an abuse of discretion. The scope of this inquiry, the court noted, did not extend to the merits of the decision, but rather to insuring that the project's effects on the environment were given consideration. Since the EIS was found sufficient, the decision could only be rejected if it was obviously made without regard to that information.

Finally, the court rejected plaintiffs' claim that the federal government had abdicated its responsibility to protect the environment from harm due to pipeline and onshore facility construction. The court noted that the leases required federal government selection of pipeline corridors, thus providing for future federal control. Also, the court was satisfied that the states had been consulted and warned about environmental dangers, as contemplated by NEPA.

OCS Oil and Gas Lease Schedule Updated: The Bureau of Land Management approved on June 12, 1975, a proposed schedule for oil and gas lease sales on the Outer Continental Shelf.[106] The schedule was issued pursuant to the Outer Continental Shelf Lands Act[107] and certain regulations,[108] and updated a schedule of November 1974. Twenty-four sales are scheduled through 1978, in the following areas: the Gulf of Mexico (six sales), the Pacific Coast (three), Alaska (nine), and the Atlantic Coast (six). Tracts to be sold in 1975[109] were in the central Gulf of Mexico (July), off Southern California (October), and in Cook Inlet off Alaska (December). The latter sale was scheduled contingent upon a judicial

105. *Id.* at 828.
106. 40 Fed. Reg. 25833 (1975).
107. 43 U.S.C. §§ 1331-43 (1970).
108. 43 C.F.R. § 3301.2 (1974).
109. 6 BNA ENVIR. REP. CURRENT DEVELOPMENTS 404 (1975).

determination of United States sovereignty in the area, which was so held on June 23, 1975.[110]

North Sea Begins to Yield Oil: On November 3, 1975, Britain began receiving 50,000 barrels a day of crude oil from British Petroleum's Forties Field in the North Sea.[111] The event marked the end of a five-year, $1.6 billion effort to extract oil from the largest of Britain's North Sea fields.[112] Oil is currently being transported through a 36-inch undersea pipeline 110 miles to Cruden Bay, and then overland to await refining at Grangemouth, 126 miles to the southwest; the 50,000 barrel-a-day rate is expected to climb to 400,000 barrels a day, or about 20 percent of Britain's daily needs, within three years. The British sector of the North Sea is expected to yield about two million barrels each day by 1980.[113]

Earlier, in November of 1975, Phillips began pumping approximately 300,000 gallons a day from the Ekofisk field in the Norwiegan sector to its $252 million Teeside Terminal in Northern England. Most of the Ekofisk oil will be shipped back to Norway for processing.[114]

Claim of Exclusive Seabed Mining Rights Filed by Deepsea Ventures, Inc.: Deepsea Ventures, Inc., on November 15, 1974, filed a notice of discovery and claim of exclusive mining rights to a seabed deposit of manganese nodules lying 1,300 kilometers southwest of Mexico in the Pacific Ocean.[115] Deepsea asserted exclusive rights to develop, mine and sell all the manganese nodules and other minerals found in an area approximately 60,000 square kilometers in size. Mining is to begin within 15 years and last for about 40 years. The expected output of the area is between 1.35 and 4 million wet metric tons of nodules per year.

In addition to the notice of claim and discovery, Deepsea filed a request for diplomatic protection with the United States Department of State.[116] The State Department replied:

110. United States v. Alaska, 422 U.S. 184 (1975).
111. Trimborn, *Queen Pushes Button, Oil Flows From the North Sea*, L.A. Times, Nov. 4, 1975, pt. III, at 6, col. 3.
112. *See Recent Developments in the Law of the Sea IV: A Synopsis*, 9 SAN DIEGO L. REV. 559, 570 (1973).
113. Trimborn, *supra* note 111.
114. *Id.*
115. 14 INT'L LEGAL MATERIALS 51 (1975).
116. *Id.* at 54.

> The position of the United States Government on deep ocean mining pending the outcome of the Law of the Sea Conference is that the mining of the seabed beyond the limits of national jurisdiction may proceed as a freedom of the high seas under existing international law.[117]

The Governments of Canada,[118] Great Britain[119] and Australia[120] refused to recognize the claim.

Multinational Joint Venture for the Mining of Manganese Nodules Agreed Upon: An agreement to form a multinational joint venture for seabed mining was announced by four major marine mining and metal processors in May of 1975.[121] The four participants are International Nickel Co. of Canada; International Nickel Co., Inc. (a wholly owned subsidiary of the Canadian corporation); Deepsea Mining Co. (a group of Japanese companies); and AMR (a group of German firms). The purpose of the mining consortium is to research and develop techniques for mining manganese nodules from the ocean floor. The agreement also contemplates the eventual establishment of joint mining facilities.[122]

Record Depth Reached In Seabed Drilling: In explorations being conducted on the Atlantic continental shelf, the Deep Sea Drilling Project bored to a record depth of 1,412 meters. Operating about 225 miles off the coast of northern Florida, the drilling ship Glomar Challenger attained the record depth using a single tungsten-carbide bit, drilling for 85 hours. A Project spokesman said discovery of an ancient coral reef under 9,000 feet of water, where drilling was begun, would aid future explorations for continental shelf resources.[123] The scientists plan to leave November 29, 1975, for a site 1,250 nautical miles northeast of Puerto Rico, where the Glomar Challenger will attempt to drill 2,000 meters into the Mid-Atlantic Ridge.[124] Whereas the 1,412-meter drilling was through sedimentary rock, the Mid-Atlantic Ridge boring will penetrate hard extruded material of the earth's crust.

The Project, which has as its main sponsor the National Science Foundation and is managed by Scripps Institution of Oceanography,

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117. *Id.* at 66.
118. *Id.* at 67.
119. *Id.* at 796.
120. *Id.* at 795.
121. Earlier, in 1974, two other seabed mining consortia were organized, the Kennecott Copper group and the Deepsea Ventures organization.
122. 121 CONG. REC. S 6094 (daily ed. Apr. 17, 1975).
123. San Diego Union, Oct. 23, 1975, § A, at 11, col. 1.
124. Smith, *Record Probe Set Into Atlantic Floor,* San Diego Union, Nov. 16, 1975, § B, at 1, col. 2.

has become an international venture. English, Japanese, Russian, and West German agencies are helping to finance the Project, with France to join shortly.

Ocean Thermal Energy Conversion Studied as an Alternative to Plutonium Breeder Reactors: In June of 1975, Rogert Douglass of TRW Systems, a California-based engineering firm, announced that ocean thermal energy may be a viable alternative to plutonium-based powerplants. Ocean Thermal Energy Conversion Units, consisting of floating platforms in the ocean, use the difference in temperature between surface water and deep water to generate electricity. Ocean thermal energy conversion was developed in response to widespread concern regarding hazards of nuclear power.

Costs and energy output considerations also played an important role in its development. TRW estimates research and development costs of between $500 million and $1 billion. In contrast, the plutonim breeder's research and development costs are estimated at $10 billion. Estimated electrical output of ocean thermal energy conversion is expected to be 30,000 megawatts by 1990, with a resource potential of 700,000 megawatts in the Gulf Coast area alone. Nuclear powerplants currently produce about 30,000 megawatts.

The technology needed for the development of Ocean Thermal Energy Units is available now. The only obstacle to commercial success lies in the development of an aluminum condenser to replace the more expensive titanium model currently being considered.[125]

SHIPPING

New United Nations Draft Convention On Shipping: In 1969, the United Nations Commission on International Trade Law created a Working Group on International Legislation on Shipping, and charged it with revising international rules relating to bills of lading. After years of work, the Working Group produced a draft entitled "Convention on the Carriage of Goods By Sea" at its eighth session, held from February 10 through 21, 1975. Alternative drafts of articles were included in those cases where the 21 nations composing the Working Group could not agree. Among the draft's pro-

125. 121 CONG. REC. E 3444 (daily ed. June 23, 1975).

visions were those covering limits and duration of carriers' liability, shippers' liability, arbitration, preselected forum, and definitions of terms. The draft will be considered at the March-April 1976 session of the United Nations Commission on International Trade Law.[126]

President Ford Signs the Deepwater Port Act of 1974: Deepwater ports, or superports, are offshore oil transportation facilities designed to handle supertankers ranging in size from 200,000 to 500,000 dead-weight tons, up to 12 times the capacity of conventional tankers. Although there are a wide range of offshore terminal designs, the one most widely used (which has also been proposed for installation off the United States), is the single point mooring buoy (SPM). These SPM terminals usually consist of mooring buoys which are anchored to the ocean floor and feed into submarine pipelines to shore.[127]

Proponents argue such facilities offer a cheap means of transporting imported petroleum supplies without adverse environmental impacts. They say the use of supertankers and deepwater ports would reduce risks of grounding, collisions and oil spills. However, environmentalists fear use of submerged pipelines and supertankers will increase the likelihood of oil spillage.[128]

On January 3, 1975, President Ford signed into law the Deepwater Port Act of 1974.[129] The Act, designed to regulate deepwater facilities located off United States shores beyond the territorial sea, forbids the Secretary of Transportation from issuing deepwater port licenses without first determining that the construction and operation of the port is in the best interests of the nation and that the facility does not interfere with adjacent states' coastal management plans.[130] The applicant is also required to provide data on oil-spill prevention measures, cleanup capability requirements, construction standards and operational constraints.[131] Review by the EPA is mandatory. If the Secretary of Transportation approves the application, a license may be issued for up to 20 years, with renewal periods not exceeding ten years each.[132]

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126. 12 U.N. MONTHLY CHRON., March 1975, at 46.
127. S. REP. No. 93-1217, 93d Cong., 1st Sess. 5 (1974).
128. *See generally Recent Developments in the Law of the Sea V: A Synopsis*, 11 SAN DIEGO L. REV. 691, 722 (1974).
129. Deepwater Port Act of 1974, 33 U.S.C.A. § 1501 (1975).
130. *Id.* § 1503(c)(6).
131. Proposed Dep't of Trans. Reg. §§ 148, 149, 150, 40 Fed. Reg. 19956 (1975).
132. Deepwater Port Act of 1974, 33 U.S.C.A. § 1503(h) (1975).

The new law also prohibits discharge of oil, within a safety zone of 500 meters, from any vessel which has received oil from another vessel or the deepwater facility.[133] Civil penalties are set at a maximum of $10,000 for each violation.[134] In addition, the owner and operator of the vessel are jointly liable without regard to fault for all cleanup costs and damages up to $20 million or $150 per gross ton of the vessel involved, whichever is less.[135] Failure to promptly report the discharge can result in maximum fines of $10,000 or one year in jail, or both.[136]

Three deepwater ports, now in advanced planning stages, may be operational by mid-1978. They are the Louisiana Offshore Oil Port (LOOP), located about 18 miles off the Louisiana coast at Bayou Lafourche; SEADOCK, 30 miles south of Freeport, Texas, and AMERPORT, 35 miles south of the Mississippi-Alabama state line. LOOP and SEADOCK are oil company consortia proposals, while AMERPORT is a joint Mississippi-Alabama project. These three deepwater ports, by servicing less than ten supertankers, would be able to handle approximately half of the United States daily crude oil requirements.[137]

Suez Canal Reopens: On June 5, 1975, Egyptian President Anwar Sadat proclaimed the opening of the Suez Canal to international shipping "as a gift to the world" and as a step towards Middle East peace.[138] He led a procession of ships from several countries along the 103-mile canal, the first ships to use the route since it was closed by the Arab-Israeli War of 1967.

Britain, France, the United States and the U.S.S.R. contributed to the formidable task of preparing the waterway for safe navigation.[139] Twenty-eight tons of wrecked ships, tanks, and airplanes, and 7,500 pieces of unexploded ordinance had to be cleared from the lane, along with 700,000 mines and other explosives which had

133. *Id.* § 1593.
134. *Id.* § 1593(a)(2).
135. *Id.* § 1593(d).
136. *Id.* § 1593(b).
137. 5 BNA ENVIR. REP. CURRENT DEVELOPMENTS 1510 (1975).
138. L.A. Times, June 6, 1975, pt. 1, at 1, col. 6.
139. The cost of the United States contribution was estimated at $30 million. Wall Street J., March 31, 1975, at 6, col. 4 (city ed.). (The *Wall Street Journal* is bound in the eastern edition.)

to be removed from the banks.[140] Then 15 freighters, trapped in the canal for eight years by the Six-Day War, had to be removed.[141] A work-force of 13,000 is now required for the canal's various operations.

In the last full year of operation before closing in 1967, 14 percent of the world's shipping moved through the canal.[142] Although Egypt hopes to increase the volume of cargo moving through the canal and to double the pre-1967 annual revenues received from the canal tolls, shipping experts doubt that an increase will soon occur for two reasons. First, although the canal route can shorten a voyage from the Persian Gulf to Northern Europe by 12 days,[143] many shippers feel that it is nevertheless more expensive than the longer route. One factor is that Egypt has doubled the tolls over the 1967 rate. The rate is figured in "Special Drawing Rights," which the International Monetary Fund originated to avoid currency fluctuations. Another factor is insurance costs. Groups such as the American Cargo War Risk Reinsurance Exchange imposed a surcharge of as much as .25 percent on Suez shipping. However, this was dropped in September 1975, because of relaxed dangers of Middle East war.[144]

The second reason for experts doubting a raise in Suez shipments is the increasing size of tankers being used in international trade. Before the canal closed, 70 percent of the ships passing through it were carrying crude oil or petroleum products.[145] However, because tankers have been built much larger since 1967, only 27 percent of all tankers currently used in world shipping can pass through the canal.[146] The Suez Canal Authority plans to enlarge the canal from its current capacity of a 38 foot draft and total ship weight of 60,000 tons to 53 feet and 150,000 tons within three years and 67 feet and 260,000 tons in six years.[147]

In the first two months of operation after reopening, 1,065 vessels had used the canal, paying over $25 million in tolls. The average

140. Tanner, *Egyptians Reopen Canal Amid Pomp*, N.Y. Times, June 6, 1975, at 9, col. 5; Morse, *After Eight Years, World's Shipping Is Moving Through Suez Canal*, SMITHSONIAN, Oct. 1975, at 60, 61.

141. Several vessels had changed ownership many times, and most insurance claims were long ago settled. Foisie, *Suez Canal's Ships Sail to Freedom*, L.A. Times, May 8, 1975, pt. I, at 12, col. 1.

142. Wall Street J., April 2, 1975, at 36, col. 2 (city ed.). (The *Wall Street Journal* is bound in the eastern edition.)

143. Tanner, *supra* note 140, at col. 1.

144. Wall Street J., Sept. 8, 1975, at 7, col. 1 (city ed.). (The *Wall Street Journal* is bound in the eastern edition.)

145. Wall Street J., *supra* note 142 (city ed.). (The *Wall Street Journal* is bound in the eastern edition.)

146. Morse, *supra* note 140, at 66.

147. *Id.*

of 20 to 25 ships per day during this period was well below the pre-1967 average of 63. Countries of Western Europe, Eastern Africa, Asia, and particularly the Persian Gulf, are expected to receive the most commercial gain from the reopening.[148] The U.S.S.R is expected to benefit more than other nations militarily because the canal provides a much shorter route from its Indian Ocean bases to the Black Sea.[149] During the first months of operation, Russia was the heaviest user of the canal.

Panama Canal Negotiations Continue: In September of 1973, United States Ambassador-at-Large Ellsworth Bunker and Panama's Foreign Minister Juan Antonio Tack began a new round of negotiations aimed at replacing the 1903 Hay-Bunan Viaillia Treaty, which granted the United States perpetual sovereignty over the 550 square mile Panama Canal Zone.[150] This marked the third time since 1964 that the United States and Panama have attempted to work out an agreement which would give Panama greater control over the Canal.[151]

The Panamanian government is seeking to eliminate the perpetuity concept by proposing a new treaty with a maximum length of 25 years. Ambassador Bunker has agreed to accept the 25-year jurisdictional termination date, but has demanded a 50-year United States right to defend the Canal Zone. Panama also wants a reduction in the size and location of the land and water areas devoted to the canal's operation and defense until it resumes control of the canal.[152] Although treaty opponents see this as a threat to the United States military and economic security, backers of the negotiations contend the military value of the canal is marginal, at best, given its vulnerability to sabotage and unsophisticated weaponry. Furthermore, they point out only about ten percent of the total United States trade passes through the canal, with an effect of less than one percent of the nation's gross national product.[153]

148. N.Y. Times, May 4, 1975, at 11, col. 1.
149. Tanner, *supra* note 140, at col. 2.
150. Tharp, *Treaty Troubles: Panama Negotiations Could Affect More Than The Canal Zone*, Wall Street J., Aug. 21, 1975, at 1, col. 1 (city ed.). (The *Wall Street Journal* is bound in the eastern edition.)
151. *Id.*
152. *Id.*
153. Leeds, *The Canal Problem: A Way Out for Ford*, L.A. Times, Oct. 1, 1975, pt. II, at 7, col. 1.

The 1975 session of the talks was marred by congressional opposition. In March, 37 Senators, enough to block the necessary two-thirds needed for ratification, endorsed a resolution opposing any giveaway of United States sovereignty. Later, in June of 1975, the House approved a measure aimed at cutting federal funds "to negotiate the surrender or relinquishment of United States rights in the Panama Canal."[154]

However, the attitude of Congress changed in October of 1975, when the House adopted a motion to recede from its June position by a vote of 212 to 201. The House then went on to approve a congressional resolution calling on the Administration to protect United States interests in any new Canal pact. The State Department viewed the resolution as a major step in giving United States negotiators authority to continue serious treaty discussions.[155]

First Session on the Establishment of an International Maritime Satellite System Held: Representatives of 43 nations attended the first session of the International Conference on the Establishment of an International Maritime Satellite System held April 23 through May 9, 1975, in London. The purpose of the Conference was to investigate the establishment of a more effective and capable maritime communications system. The delegates also considered communications developments in the fields of maritime safety, both in the area of navigation and response to distress.[156]

United States and Canadian Officials Hold West Coast Tanker Traffic Talks: Discussions between the United States and Canada concerning west coast tanker traffic were held in Washington, D.C. on January 17, 1975. The talks focused on the environmental problems of marine transit and coastal refining in the Puget Sound-Juan de Fuca area.

The two countries emphasized the need for joint-vessel traffic management systems in the area. A voluntary traffic separation plan to take effect on March 1, 1975, was announced. Officials at the conference also reviewed the status of proposed offshore tanker routes between Alaska and the West Coast.[157]

SOVEREIGNTY

Iceland Adopts 200-Mile Fishery Limits: On July 15, 1975,

154. *Id.*
155. Binder, *House Stops Bid to Block Panama Pact*, N.Y. Times, Oct. 8, 1975, at 2, col. 3.
156. 121 CONG. REC. E 4091 (daily ed. July 23, 1975).
157. 72 DEP'T STATE BULL. 272 (1975).

Iceland's Ministry of Fisheries issued regulations[158] which established a 200-mile fishery resource zone. The limits were drawn 200 nautical miles seaward of baselines running between designated points, except in the cases where Greenland and the Faeroes were closer than 400 nautical miles, in which cases the limits were set midway. Within the zone, all foreign fishing is prohibited, and certain Icelandic fishing is prohibited during specified periods. The regulations were to take effect October 15, 1975.

Mexico's President Moves to Create 200-Mile Economic Zone: On November 5, 1975, Mexico's President Luis Echeverria Alvarez sent to the Mexican National Congress a decree establishing a 200-mile economic zone off that nation's coast. The decree would give Mexico full control over all natural resources and artificial structures, with corresponding antipollution and conservation duties, within the 772,000 square mile area. Foreign State freedom of navigation and freedom to keep undersea cables is included in the economic zone concept. If the Mexican Congress approves the decree, it will be published in the official gazzette, and will take effect 120 days thereafter.[159]

United States to Have Sovereign Rights Over Atlantic Continental Shelf: United States sovereignty over the Atlantic Continental Shelf was established on March 17, 1975, when the United States Supreme Court held that the United States, to the exclusion of 13 Atlantic coastal states, was entitled to exercise sovereign rights for purposes of exploration and exploitation of resources on the shelf.[160] The United States sovereignty extends over the seabed and subsoil lying in the zone from three miles seaward of the coastline to the edge of the shelf. The Court stated that the states held rights to the three-mile zone adjacent to the coast only because of statutory grant.

The Court found to be without merit claims by 12 of the states that they had acquired sovereign rights from the Crown countries which they had not relinquished when joining the Union. Affirming prior decisions involving California, Texas and Louisiana, the Court determined that dominion over the coastal sea was first ob-

158. 14 INT'L LEGAL MATERIALS 1282 (1975).
159. San Diego Union, Nov. 6, 1975, § A, at 21, col. 7.
160. United States v. Maine, 420 U.S. 515 (1975). *See also Recent Developments, supra* note 1, at 698.

tained by the national government, not the colonies or the states. Whatever interest the states might have had prior to statehood, the Court said, as a matter of constitutional law, paramount rights would exist in the federal government because of its jurisdiction over foreign commerce, foreign affairs, and national defense.

Further, when Congress by the Submerged Lands Act of 1953[161] gave rights in the three-mile marginal sea to the states, this grant was not in repudiation of federal authority over the marginal seabed, but rather in exercise of that authority. That Congress acted in confirmation of national sovereignty is evident, the Court reasoned, from the Act's express reservation of United States jurisdiction and control over the continental shelf lying outside the three-mile zone.

The Court also noted that major legislation and substantial commercial activity had been founded upon the principle of national sovereignty in this zone, and that neither the states nor their putative lessees had been misled.

Lower Cook Inlet Held to Belong to United States: The United States Supreme Court denied Alaska's claim of sovereignty over the submerged lands of Cook Inlet's lower bay on June 23, 1975.[162] The basis of Alaska's claim was the Submerged Lands Act,[163] which confirmed to the states ownership of lands within three miles of the "coastline." The Act's definition of "coastline" includes the seaward limit of "inland waters."[164] Applying the definitions of the Convention on the Territorial Sea and the Contiguous Zone, the Supreme Court stated that since the lower portion of Cook Inlet is over 24 miles wide, it could only be considered an "inland water" if shown to be an "historic bay." Although this term was left undefined by the Convention, the Court recognized three significant factors: an exercise of authority over the area by the claimant, the continuity of that exercise, and acquiescence by foreign States. Evidence offered by Alaska was reviewed by the Court in the order of exercises of dominion by Russia, the United States, and Alaska during their respective periods of sovereignty.

As to the Russian period, the Court found first that the presence of four settlements on the shore was little indication of Russian dominion over the inlet's "vast expanse of waters."[165] Second,

161. 43 U.S.C. §§ 1301-15 (1970).
162. United States v. Alaska, 422 U.S. 184 (1975), *rev'g* 497 F.2d 1155 (9th Cir. 1974). *See also Recent Developments, supra* note 1, at 697.
163. 43 U.S.C. §§ 1301-15 (1970).
164. *Id.* § 1301(c).
165. United States v. Alaska, 422 U.S. 184, 190 (1975).

the fact that a Russian fur trader fired a cannon at an English vessel when it attempted to enter the inlet was held insignificant unless shown to be the act of a government official, and not inconsistent with the position of the United States that Alaska's sovereignty extends only three miles. Third, a ukase of the Tsar prohibiting foreign vessels from a 100-mile Alaskan coastal zone was considered to be little demonstration of authority since it was withdrawn when the United States and England protested.

Five instances wherein the United States exerted dominion in its period of sovereignty were also discussed. These included three Acts of Congress, one executive order, and one instance in which charts were drawn by the United States Bureau of Fisheries employees to aid Canadian delegates after discussions concerning a proposed United States-Canadian agreement regulating salmon fishing in the North Pacific. The Supreme Court pointed out that the purpose behind all of these actions was fish and wildlife management. Since the exercises of authority offered as evidence must be commensurate with the nature of the title claimed, the Court reasoned, to establish lower Cook Inlet as an "historic bay," Alaska must show that the United States attempted to exclude all foreign vessels and navigation from the area. As a matter of law, the Court held "historic bay" status could not be established solely by evidence of enforcement of fish and game regulations. Since four of the five instances cited did not distinguish American from foreign vessels, none of the four was a sufficient exercise of authority. One of the congressional acts cited was aimed at foreign vessels, but the Court also found this inadequate because the act did not by its terms apply to waters outside the three-mile limit, and because there was no evidence that it was ever enforced against foreign vessels.

The Court found the alleged exertions of dominion during the period of United States sovereignty inadequate for a further reason. The third factor relevant to the "historic bay" determination was the acquiescence by foreign States in the exercise of authority. Disagreeing with the lower court, the Supreme Court stated that in this case, without a showing that foreign States recognized the actions as claims of territorial sovereignty, the failure of any States to protest could not prove acquiescence.

During the period of Alaskan sovereignty, Alaskan law enforcement officials had seized two vessels of a Japansese fishing fleet which had sailed into the inlet and left ten days earlier. This occurred more than three miles from the coastline, and was thus clearly an exercise of authority to exclude foreign vessels. Nevertheless, the Court found the seizure insufficient to establish sovereignty over Cook Inlet, for three reasons. First, Alaska had taken no action until the vessels were 75 miles from the bay, and the charges did not relate to the entrance into it. Also, the Court reasoned that since the United States government took no position at the time, it would not be a clear claim to sovereignty from Japan's point of view. Finally, the Court found the element of acquiescence totally lacking; rather, Japan had formally objected to the United States.

Thus, the evidence produced from the three periods of sovereignty was found insufficient to prove the requisite exercise of authority. Since Alaska failed to establish lower Cook Inlet as an "historic bay," the lower bay would not be included within the Alaskan coastline.

Louisiana Coastline Established: On March 17, 1975, in a further development in the long line of proceedings between the United States and Gulf of Mexico coastal States, the United States Supreme Court ordered the United States and the State of Louisiana to prepare for the Court a decree establishing Louisiana's coastline for purposes of determining the extent of its territorial waters.[166] The parties subsequently reached an agreement and returned to the Court, and their proposed decree was accepted in a supplemental decree of June 16, 1975.[167]

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166. United States v. Louisiana, 420 U.S. 529 (1975).
167. United States v. Louisiana, 422 U.S. 13 (1975).