San Diego Law Review

Volume 7
Issue 3 *Law of the Sea II*

Article 13

7-1-1970

Recent Developments in the Law of the Seas: A Synopsis

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RECENT DEVELOPMENTS IN THE LAW OF THE SEAS: A SYNOPSIS

This synopsis is an attempt to summarize legally significant events relevant to the law of the seas on a continuing yearly basis. This initial effort encompasses significant state, national, and international events which occurred between July 1, 1969, and March 15, 1970, indexed chronologically within each topic heading. The selection of the included events is arbitrary, due to the incompleteness of available resource materials and the lack of any established indices of significance. Of the numerous resources utilized, primary reliance was placed on the *New York Times*, the *United States Code Congressional and Administrative News* and the West Publishing Company's National Reporter System advance sheets.

The San Diego Law Review extends special appreciation to Professor H. Gary Knight, Assistant Professor of Law at the Louisiana State University School of Law, who conceived the idea and assisted in formulating the scope of the synopsis.

CONSERVATION

DOMESTIC

Authorizations for Point Reyes National Seashore, Pub. L. No. 91-223 (Apr. 3, 1970):[1] Point Reyes National Seashore, created by President John F. Kennedy in September 1962, is presently an inadministratable patchwork of dirt rather than a park. The seashore park is not just a beach but a 100 square-mile peninsula forty miles north of San Francisco. The 1962 Act, 16 U.S.C. § 459c (1964), envisioned a 53,000 acre park. Half of the land was to be acquired by the federal government through purchase, condemnation, or exchange while the remainder was to be retained as privately owned farm land. The initial appropriation of $14 million was considered adequate, but land speculators caused prices to soar and by 1969 the government had acquired only 22,000 acres at a cost of $19 million. The present park is a patchwork and it is impossible to reach all areas without crossing private property. Because of the skyrocketing land values, private owners find that tax levels far exceed farming

1. N.Y. Times, Aug. 5, 1969, at 39, col. 1.

revenue and surveyors have begun mapping out private sectors for future subdevelopment.

Present government estimates call for the expenditure of an additional $38 million to complete the park. Numerous bills authorizing the expenditure of the additional funds were introduced in the House and Senate during the first session of the 91st Congress. One of the house bills, H.R. 3786, 91st Cong., 1st Sess. (1969), bore fruit and was signed into law on April 3, 1970.

Maryland Coastal Land Sale Suit:[2] In Maryland, conservationists have complained about the adverse effects of private development of submerged lands in Assawoman Bay, west of Ocean City, on fish and other wildlife in the area. Some of the land involved was deeded to a developer for $100 per acre and was resold by him after dredging and subdividing for between $5000-$7300 per lot, several of which fit into an acre. A taxpayers' suit has been filed against the state seeking to void the sale and to return the wetlands to public ownership, alleging that the Board of Public Works acted fraudulently in disposing of public lands without receiving fair compensation. As an excutive response to the complaints, on July 12, 1969, the Governor called a one year moratorium on all transfers of wetlands by the state to private interests so that a study of the problem can be made.

Conservation Lawyers Meet:[3] A two day meeting, by invitation only, was held during the week of September 14, 1969, in Warrenton, Virginia, behind closed doors. The conference was sponsored by the Conservation Foundation, which is financed by the Ford Foundation and the Conservation and Research Foundation of New London, Connecticut. Seventy-five of the nation's leading conservation lawyers were in attendance. The lawyers concluded that radical changes must be made in our form of jurisprudence to accomodate the increasing public dissatisfaction with a deteriorating environment. Among the problems in the present system are: (1) burden of persuasion; (2) the difficulty of obtaining expert witnesses for the plaintiff, since industry (the defendant) has absorbed most of the experts; (3) a cause of action usually does not arise until after some damage has been done; and (4) the question of enforceability of a federal order

2. N.Y. Times, July 13, 1969, at 37, col. 1.
3. N.Y. Times, Sept. 14, 1969, at 78, col. 4.

to all departments to consider environmental and ecological consequences of all their actions. The conferees projected an increased use of: (1) suits to abate a nuisance; (2) the mass-action suit; (3)the development of the theory that lands and natural resources are held in trust for the people by the government and therefore legally protected from arbitrary disposition; and (4) the use of the ninth amendment to protect the public from increasing encroachments upon their privacy, peace, and pursuit of happiness.

Connecticut Wetlands Act.[4] Connecticut passed a bill, Senate Bill No. 419, effective October 1, 1969, to preserve the state's coastal wetlands from dumping and filling, therefore conserving the natural surroundings and maintaining the ecological balance. The law was largely due to the lobbying of 180 girl students from the Thomas School in Rowayton. The girls became aroused when an outdoor marshland classroom had been converted into a dumping-ground by local contractors.

Maine Clam Digging License Ordinance.[5] The municipality of Jonesport, Maine, passed a local ordinance October 6, 1969, prohibiting non-resident holders of state clam digging licenses from digging clams within the city. The ordinance was passed in order to protect one of the city's limited natural resources from being poached by outsiders. The legal dispute centers around the city's power to usurp the power of the sovereign state to issue licenses supposedly valid state-wide.

President Proposes Conservation Plan.[6] On October 18, the Administration released several proposals offered by the National Council on Marine Resources and Engineering Development. The plan concerns problems of use and abuse of the national coasts and seas. The President selected five major areas for attention during the next fiscal year:

1. Establishment of a new federal policy to promote the rational development of coastal areas and the Great Lakes. The federal government would encourage local governments to plan and manage their own coastline by matching state funds. The purpose is to prevent unplanned development of coastal land and water resources;

4. N.Y. Times, Oct. 5, 1969, at 69.
5. N.Y. Times, Oct. 7, 1969, at 49.
6. N.Y. Times, Oct. 19, 1969, at 45.

2. Stepped up research in the Arctic to permit the development of untapped resources while insuring that such exploitation does not damage the environment;

3. The establishment of coastal marine laboratories to accelerate marine research to ensure proper management of coastal activities. The laboratories, supported by the federal government, would attempt to assess the effect of man and his pollution on the environment;

4. Funding to support international exploration of the oceans during the 1970's;

5. A pilot program to study pollution of the Great Lakes and measures needed to restore the lakes.

The proposals stemmed from a report representing a two year study made by the National Commission on Marine Science, Engineering, and Resources. The report, issued in January 1969, was reviewed and partly incorporated in the above proposals of the Council.

Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1970, Pub. L. No. 91-144 (Dec. 11, 1969), 83 Stat. 323, 13 U.S. CODE CONG. & AD. NEWS 2426 (1969): An act appropriating in excess of $4.7 billion for public works during fiscal year 1970. Provides funds for water, harbor, shore, and wildlife preservation and control, including the Corps of Engineers, the Panama Canal, the Federal Water Pollution Control Administration, the Bureau of Reclamation, and other agencies.

National Environmental Policy Act of 1969, Pub. L. No. 91-190 (Jan. 1, 1970), 83 Stat. 852, 13 U.S. CODE CONG. & AD. NEWS 2712 (1969): An act based on Congress's recognition that each person should enjoy a healthful environment and that each person has a duty to contribute to the preservation and enhancement of the environment. The act establishes an executive council of five men, the Council on Environmental Quality, to assist the President and advise him on national policies and programs related to the natural environment of land, air, and water. The new Council will: (1) prepare an annual report setting forth an inventory of the American environment, together with an estimate of the future trends upon our environment for the

President to review and submit to Congress; (2) review federal programs and activities as they may affect the environment; and (3) develop and recommend to the President national policies that will promote environmental quality.

An Act Relating to Coastal Conveyance of Petroleum, H. P. 1459-L. D. 1835 (Feb. 5, 1970): An act amending Chapter 3 of Title 38 of the Maine Revised Statutes. The Maine legislature declares that the state seacoast should be preserved as a source of public and private use for recreation, fishing, lobstering, the gathering of other marine life for food, and other commercial activities. As the transfer of petroleum and their by-products is a hazardous undertaking often leading to spills or discharges, the legislature has conferred upon the state power to deal with such spills. Any company transferring petroleum products between vessels, or between vessels and onshore facilities, within the jurisdiction of the state and state waters will pay annual license fees. The fees will be computed on the basis of one half cent per barrel of oil or oil by-product and will be credited to the Maine Coastal Protection Fund. The fund will be used for costs of oil clean-up in case of spills, for oil pollution research and development, payment of applicable third party claims, and payment of arbitration costs.

An Act to Regulate Site Location of Development Substantially Affecting Environment, H. P. 1458-L. D. 1834 (Feb. 5, 1970): An act amending section 361 of Title 38 of the Maine Revised Statutes. The act declares that it is the intention of the legislature to provide for the economic and social well being of its citizens by controlling the location of commercial and industrial development in order to protect the natural environment of the state. The location of such developments is too important to be left only to the determination of the owners of such developments and regulatory discretion concerning location is vested in the state authority. State control will be exercised over developments of a single structure or parcel of structures containing a ground area of 60,000 square feet or more, a development contemplating excavation of natural resources, or which occupies a land area in excess of 20 acres.

Fishermen Bring Suit to Prevent Chemical Plant Construction.[7] A large German chemical firm has proposed to

7. N.Y. Times, Feb. 1, 1970, at 40; N.Y. Times, Feb. 12, 1970, at 42.

build a $200 million chemical processing plant in Beaufort County, one of South Carolina's last remaining unspoiled coastal areas. Despite the economic need for increased employment in the county, local opponents fear the resultant water pollution would heavily damage tourism and local fishing. Opponents plan to hold public hearings and undertake legal efforts to keep the plant out. On February 11, three South Carolina companies filed suit in the District Court under the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (Jan. 1, 1970), 83 Stat. 852, 13 U.S. CODE CONG. & AD. NEWS 2712 (1969), to prevent the plant's construction. The companies, all commercial shrimpers, contend that the plant's treated sewage would either kill or render the sealife unfit for human consumption. The Department of the Interior has also expressed concern because of the possibility of water pollution. In early April the German firm announced suspension of construction plans until the pollution problems can be resolved.

Hickel Orders Canal Study:[8] A Cross-Florida Barge Canal was authorized by Congress in 1942, Pub. L. No. 77-657 (July 23, 1942), in order to protect shipping from German submarines while passing from the Gulf of Mexico into the Atlantic Ocean. The project lay dormant until revived by President John F. Kennedy. The 107 mile canal will cost about $169 million to complete.

President Richard M. Nixon was asked in February to halt construction on the canal until a full study could be made of its environmental impact. The President referred the problem to the new Environmental Quality Council which has a list of higher priority items and has not even considered the project. However, the Secretary of the Interior has ordered that a study be submitted by the end of March, examining the effect on environment and upon the Oklawaha River, once recommended for preservation as a national wild river. Whatever the report concludes, any change in the project would have to come from Congress.

INTERNATIONAL

North Pacific Fur Seal Treaty Extended: T.I.A.S. No. 6774, effective on September 3, 1969, extended the Interim Convention of the North Pacific Fur Seal of 9 February 1957, 8 U.S.T. 2283,

8. San Diego Union, March 9, 1970, § A, at 13, col. 4 (home ed.).

T.I.A.S. No. 3948, 314 U.N.T.S. 105 *as amended* 15 U.S.T. 316, T.I.A.S. No. 5558, 494 U.N.T.S. 303, between Canada, Japan, the Soviet Union, and the United States. The Interim Convention was negotiated in order to preserve the fur seal resources so as to provide for a maximum continuing yearly production of sealskins. The parties to the convention agreed to coordinate research to that end and to create the North Pacific Fur Seal Commission to provide a regular forum for discussion.

Unilateral Soviet Conservation Measure:[9] The Soviet Union on January 7, 1970, unilaterally took steps to conserve the badly depleted herds of Pacific seals and Kamchatka beaver by increasing its claim to territorial seas surrounding the Komandorski Islands from twelve to thirty miles. No shipping, fishing, or any other work, including the setting up of navigational signs, will be allowed within the thirty mile zone.

International Environmental Study Program:[10] Plans are being drafted for a global network of stations equipped to monitor changes in the earth's environment that threaten the life forms which inhabit it. The Soviet Union and the United States are key actors in the plan. On February 10 and 11, a task force met in Washington at the National Academy of Science to discuss plans for the prototype station. A proposal is to be submitted to the congress of the International Biological Program in Rome next September. The idea derives from the increasing number of chemicals and manmade substances that are bombarding the environment, with unknown effects on birth and heredity. Plans now call for twenty or more major stations in 1972 in representative sections around the world.

Sea Level Canal:[11] Scientists at the Smithsonian Tropical Research Institute in the Canal Zone fear marine ecological imbalance if and when a sea-level canal is constructed across Central America. Studies are presently under way to determine the effect of the waterway, which threatens to be the most spectacular interference with nature that man has attempted. A rapid and extensive migration of Atlantic and Pacific organisms into the other ocean might result in massive upset and could imperil the fishing industries in both oceans.

9. N.Y. Times, Jan. 8, 1970, at 81, col. 6.
10. N.Y. Times, Feb. 12, 1970, at 1.
11. San Diego Union, March 1, 1970, § A, at 12, col. 4 (home ed.).

See also FISHING: *Multilateral Treaty for Conservation of Ground Fish; Multilateral Treaty for Conservation of Atlantic Tuna; Denmark, Rejects High Seas Salmon Fishing Ban, infra.*

FISHING

South American Coastal Fishing Dispute:[12] Delegations from Chile, Ecuador, Peru, and the United States conferred in Buenos Aires August 1-19, 1969, to suggest practical solutions to problems concerning fishing rights off the South American coast in the Southeast Pacific. No decisions were reached but all parties agreed to continue the talks at a later time. The heart of the dispute concerns the claim of the South American countries to sovereign control over coastal waters extending 200 miles from shore. In order for the American tuna fleet to fish there, the Latins contend that fishermen must pay licensing and similar fees. The United States strongly advocates freedom of the high seas and recognizes territorial sovereignty of only three miles but has been willing to concede exclusive fishing rights out to twelve miles. United States fishermen, who estimate that 20 percent of their annual catch comes from these waters, have refused to pay the licensing fees and have come under continual harassment. From January 1961 to December 1969, South American nations have seized 88 United States tuna boats and forced their owners to pay large sums for their release. As an example, early in 1970 the *Day King* was seized by Ecuador and released after her owners paid a fine of $94,000.[13] In Washington the dispute is considered to be one of the most controversial problems straining United States—South American relations. Representative Thomas M. Pelly, Seattle, introduced a bill in the House that would authorize the prohibition of imported fish or fishing products from any nation that seizes a tuna boat of the United States. H.R. 10607, 91st Cong., 1st Sess. (1969).

Multilateral Treaty for Conservation of Atlantic Tuna: On October 1, 1969, President Richard M. Nixon proclaimed the adoption of the Conservation of Atlantic Tuna Treaty *done at* Rio de Janeiro on May 14, 1966, to have entered into force on March 21, 1969. T.I.A.S. No. 6767. The agreement includes all tuna-like

12. N.Y. Times, Aug. 3, 1969, at 29; 61 DEP'T STATE BULL. 216 (1969).

13. Figures are based on data compiled by the American Turnabout Association. One Tuna Lane, San Diego, California, 92101.

fish within the Atlantic Ocean and adjacent seas. Through this agreement, the contracting parties agree to enter and thereafter maintain an International Committee for the Conservation of Atlantic Tunas, the function of which is to undertake studies and research into the abundance, biometry, ecology, oceanography of the environment of the tuna, and the effect of natural and human factors upon their abundance. The agreement will remain in force for a ten year period and thereafter until a majority of the contracting parties agree to terminate the agreement.

Size of Fish Catches Increase in Gulf of Mexico:[14] On January 15, it was reported that commercial fishing catches in the Gulf of Mexico have increased by an average of 600 pounds each as an indirect result of the presence of off-shore oil platforms in the Gulf. After an installation has been in place for any length of time, simple marine life attaches to the installation, either actually or figuratively, and larger fish are attracted to the area for feeding.

Multilateral Treaty for Conservation of Ground Fish:[15] On February 21, Canada's Fisheries Minister, Jack Davis, announced that 15 nations have agreed to conserve ground fish (e.g., halibut, cod, and flounder) which feed on the sea bottom on the continental shelf, by refraining from fishing for them during March and April in two areas normally heavily exploited for such fish. Parties to the agreement are Japan, the United States, the United Kingdom, the Soviet Union, Spain, Portugal, Romania, Poland,Norway, Italy, Iceland, Germany, France, Denmark, and Canada.

Massachusetts Lobster Dispute:[16] Massachusetts lobstermen have petitioned Congress for national assistance to protect their lobster grounds. They contend that present federal laws and enforcement procedures are inadequate. Fishing nets dropped by fisherman cut through the lines attached between the buoys marking the traps and the lobster traps themselves. The incompatability of joint fishing and lobster grounds caused the federal government to establish areas restricted solely for the purpose of lobster gathering. Because the restricted areas are not openly fished, fishermen find it profitable to tap this area in

14. N.Y. Times, Jan. 15, 1970, at 78, col. 3.
15. San Diego Union, Feb. 22, 1970, § AA, at 7, col. 6 (home ed.).
16. N.Y. Times, Aug. 18, 1969, at 37.

violation of the restrictions. Since the fishing vessels carry radar, patrol vessels are normally detected when they set out to patrol and thus allow the illegal fishermen to depart the area before any interception can be accomplished. Thus far, no national legislation has come under consideration.

Denmark Rejects High Seas Fishing Ban:[17] Since the migratory trails of the Atlantic salmon were plotted a decade ago, man has been able to take large catches by the use of high seas trawlers working their nets across the trails. In order to conserve the salmon, it was proposed at last year's meetings of the 17 nation North Atlantic fisheries group that a 10 year ban be placed on trawler catches. At that time, Sweden, Denmark, and West Germany voted against the proposal.

In early March 1970, the United Kingdom, supported by 13 other North Atlantic fishing countries, formally requested that Denmark prohibit all trawling for salmon for 10 years. The Danes refused. They fear an introduction of limitations on their national sovereignty which could harm the nation greatly. Denmark has, however, indicated that it might be willing to accept less drastic restrictions to aid in the conservation of salmon, for example, the use of nets with larger holes to permit the younger, smaller fish to escape. Bilateral talks between Denmark and the United Kingdom will soon begin in the hope of affecting an equitable compromise.

MINERALS

Major Oil Deposits Indicated in Santa Barbara Channel:[18] On July 9, 1969, Humble Oil Company announced that exploratory wells within the Santa Barbara Channel indicated a major oil deposit in the area. The wells were drilled on a federal lease 15 miles southwest of Point Conception, California. However, to date, much of the petroleum industry has been generally disappointed by what they have found in the Channel. Conservationists have urged that the federal government revoke all leases in the Channel and refund the $603 million received for them as well as expenses incurred by the oil companies. Any large discovery would make this far more difficult to accomplish.

17. L.A. Times, March 9, 1970, § 1, at 18, col. 1.
18. N.Y. Times, July 10, 1969, at 51, col. 3.

Oil Companies Oppose Public Hearings:[19] Following the Santa Barbara blowout, the Department of the Interior proposed to tighten federal leasing of mineral rights on the Outer Continental Shelf and to hold public hearings concerning further leasing. Numerous oil companies were emphatically opposed to the proposal, especially concerning the possibility of public hearings. E.L. Petree, vice president of Gulf Oil Company's exploration and production department, based Gulf's objection on the grounds that public hearings would allow persons or organizations having no real interest in a proposed lease to prevent further exploration. The result would be detrimental to "the proper and timely development of these mineral resources by creating so much delay as to discourage Gulf and other companies from participating in these lease sales."[20]

The Pan American Petroleum Company of Tulsa, Oklahoma, objected to public hearings on the grounds that such hearings would direct attention away from the needs of national defense while providing nothing other than an emotional attack on the oil industry. Written objections were also voiced by Pennzoil United, Inc., Texaco, Inc., Standard Oil Company of California, and other oil interests. The proposal to hold public hearings created greater opposition than Secretary Walter J. Hickel's proposal to tighten the leasing restrictions themselves. The objections were filed with the Bureau of Land Management, which supervises the program.

Resumption of Santa Barbara Channel Drilling:[21] The Sun Oil Company was allowed by the Secretary of the Interior to resume offshore drilling in the Santa Barbara Channel on August 15, 1969. Drilling had been suspended after the Union Oil Company blowout in the Channel on January 29. Secretary Hickel authorized the drilling after a careful review of geological and engineering data led him to believe that the continued drilling would more rapidly reduce pressure by a depletion of the subsurface oil pool and thereby lessen the peril of leakage.

Japanese Oil Discovery:[22] Japanese geologists, during the week of August 26, 1969, discovered what preliminary

19. N.Y. Times, Aug. 3, 1969, at 37.
20. *Id.*
21. N.Y. Times, Aug. 16, 1969, at 12.
22. N.Y. Times, Aug. 28, 1969, at 1.

investigations reveal to be a huge oil deposit in the East China Sea in the area of Senkaku Island northeast of Taiwan. If this deposit is verified, an extensive dispute over title to the oil is expected. Senkaku is administered by the United States as being an administrative part of the Ryukyu Island chain, but Senkaku is expected to be returned to Japan within the next few years. Presently, neither Communist nor Nationalist China (Senkaku is 100 miles from Taiwan and 270 miles from Mainland China) is expected to dispute the reversion. But, if a major oil strike is confirmed, both Chinese governments could dispute title. The dispute could be based on Japan's reversionary interest or on her right to exploit the mineral resources. As to the former, the Ryukyu Islands are not truly Japanese, although the Ryukyuans are related to the Japanese by blood and language and have been within the Japanese sphere of influence since the 17th century and were a formal part of the Japanese Empire from 1874 to 1945. As to Japan's right to exploit the oceanic resources, that issue would be based on the location of the oil. If the oil lay close to Senkaku, the Japanese could claim the oil as being within the island's contiguous zone similar to the jurisdictional enunciation of the Truman Proclamation of 1945, 59 Stat. 884 (1945). If the oil lay far from the island's shore, the issue would become more complex as neither China nor Japan is a signatory of the 1958 Geneva Convention on the Continental Shelf. If the principles of the Continental Shelf Convention were used, the question involved would be which of the three nations was the coastal state.

Australia Postpones Offshore Drilling:[23] Australia has postponed plans to drill for oil on an exploratory basis in the area of the Great Barrier Reef until a study is completed as to the possible effects upon the ecology of the area. The government fears possible problems similar to those being experienced by the United States in the offshore wells in the Gulf of Mexico and the Santa Barbara Channel.

Oil Lease Abandoned: In early March 1970, Humble Oil Company, one of 71 lessees of government oilfields in the Santa Barbara Channel, abandoned an oil drilling operation in the Channel due to a lack of oil. The relinquished leasehold was a nine-square-mile tract directly south of the Union Oil Company

23. N.Y. Times, Jan. 24, 1970, at 49, col. 7.

platform that was responsible for the blowout of January 29, 1969. Humble had paid the government $45 million two years ago for the lease. Officials said adverse public reaction to Union's leakage had nothing to do with the company's lease abandonment.

See SEABED: *United Nations Resolution on Mineral Extraction.*

NAVIGABLE WATERS

Title to Landfill in Navigable Waters: United States v. 222.0 Acres of Land, 306 F. Supp. 138 (D. Md. 1969). In 1967 the federal government filed a series of land condemnation proceedings in United States District Court in order to acquire Assateague Island which is situated off the eastern shore of Maryland and Virginia. Earlier, in 1955, the Assateague Island Bridge Corporation was formed in Maryland for the purpose of constructing a toll bridge between the island and the mainland. Land on the island was conveyed to the corporation and the Maryland Roads Commission and the Maryland Public Service Commission approved the construction. Capital was gathered and the corporation constructed a causeway by dredging and filling but never did build the bridge. At issue at trial was the nature and extent of the property interest of a number of parties in the land-fill portion of the causeway property.

The court stated that the waters involved in the fill were navigable under either the federal or state tests. The owner of land adjacent to navigable waters has a common law right to any land formed by accretion or reliction, but this does not extend to land formed by filling. The adjacent land owner also has the right to gain access to the waters and in doing so may create docks and piers, etc., on the submerged land, subject to both federal and state regulations.

Under MD. CODE Art. 54 § 46 (1957), the owner of land adjacent to navigable waters of the state is entitled to make improvements into the waters adjacent to his land, and these shall pass to the successive owners of the land. The right is conditioned on not interfering with the navigation of the river. Maryland law is unsettled as to what exactly an improvement is. It is uncertain whether: (1) a riparian has a right under that section to fill the land adjacent to his shore, thus creating more fast land; (2)

whether the riparian owner of the state owns the newly filled land; (3) if owned by the riparian, what is the nature of his title; and (4) whether the right, title, or interest can be terminated by the legislature without payment of just compensation.

The court found it unnecessary to answer any of these four questions in this case because this was an extraordinary situation. Because of the nature of the various permissions given to the bridge company, the court concluded that the state had authorized the creation of 28 acres of fast land by dredging and filling. Under the state and national authority to control and protect navigable waters, the authorities could require that the fill be removed at any time without compensation, if it interfered with navigation. Furthermore, since the Public Service Commission authorized the sale of lots on the causeway to finance bridge construction, those who purchased in good faith are the owners of a determinable fee subject only to the paramount right of the state and federal government. That portion of the causeway platted for roads is owned by the County. That portion that has not been conveyed should be considered an improvement or the equivalent under Art. 54 § 46, with title in the bridge company. The court then determined that the bridge company held a determinable fee interest in the land that remained in it. Therefore, all parties would be entitled to just compensation for the taking of that land by the federal government.

Army Dredging Permit Limited to Navigational Question: Zabel v. Tabb, 296 F. Supp. 764 (M.D. Fla. 1969), *appeal docketed*, No. 27555, 5th Cir., Mar. 27, 1969. Plaintiffs owned property in Boca Ciega Bay, Florida. They wanted to dredge and fill on their property in order to form an island in the bay. Plaintiffs sought permission from various local, state, and federal authorities. Their dredging plan was opposed by state and local authorities but a county permit for dredging was issued pursuant to a court order from the Florida Circuit Court. Plaintiffs applied for a Department of the Army permit to dredge under Section 9 of the Rivers and Harbors Act, 1899, 33 U.S.C. § 403 (1964). The uncontested facts were that the dredging would not be detrimental to anything other than the fish and wildlife resources in the Boca Ciega Bay. Defendant, Department of the Army, denied the permit application on grounds that the dredging would be harmful to the fish and wildlife resources in the bay and would be contrary to the public interest. Defendant admitted the

dredging would not obstruct navigation but stated they had the authority to deny the permit based on the supplementary authority residing in the Secretary of the Army derived from the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. § 661 et. seq. (1964). The United States District Court for the Middle District of Florida granted summary judgment for plaintiffs. The court held that Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 (1964), only authorized the Secretary of the Army discretionary authority to deny a dredging permit when he has factually ascertained that the dredging would interfere with navigation. Defendant did not have authority to limit the use of private property under either act and any taking or limiting of the use of private property was for the legislature to authorize under clearly outlined procedures authorized by the Constitution. Defendant was granted a motion to stay the execution of the permit until a timely appeal of the decision is considered and decided by the United States Court of Appeals for the Fifth Circuit.

See also: Case note, *Burns v. Forbes*, 7 SAN DIEGO L. REV. 684 (1970).

POLLUTION

DOMESTIC-INLAND

Federal Crackdown on Water Polluters.[24] On September 3, 1969, Interior Secretary Hickel announced that the Department will intensify its drive to mitigate or eliminate pollution of America's inland waterways because the individual states with primary responsibility have failed to act speedily in this direction. Plans are to use the abatement proceeding provisions of the Federal Water Pollution Control Act of 1965, 33 U.S.C. §§ 466-466g (Supp. IV, 1969). Concerns found to be polluters by the Federal Water Pollution Control Administration will be given 180 days to formulate an abatement plan and time table to alleviate the situation. Failing this, the Secretary is permitted to ask the Justice Department to seek a mandatory injunction for pollution abatement in the federal district court.

24. N.Y. Times, Sept. 4, 1969, at 1, col. 4.

Criminal informations were filed in United States District Court in Brooklyn, New York, on January 14, against seven industrial concerns alleging pollution of New York City waterways and creating hazards to navigation in those waterways over the past 18 months. This is the first concerted crackdown on domestic polluters since Secretary Hickel's announcement of September 3, 1969. On January 29, two of the seven defendants pleaded guilty to the charges and were given 15 days to file motions prior to sentencing. The maximum penalty is a $2500 fine for each offense. 33 U.S.C. § 441 (1965). Four other defendants have pleaded not guilty and the seventh accused has been given a week's adjournment to enter a plea.

On January 15, 1970, informations were filed against 13 companies in Federal District Court in Newark, New Jersey, charging pollution of the tributary waters of New York Harbor in violation of 33 U.S.C. § 441 (1965). Specifically the charges are of depositing oil and acid wastes into navigable river waters which flow into New York Harbor. There is a possibility of a maximum fine of $2500 and imprisonment for up to one year for each offense.

On January 30, two of the thirteen pleaded guilty to three counts each and were fined $750 by Chief Federal District Judge Anthony T. Augelli. Five pleaded not guilty and the other defendants postponed pleading until February 13. A fourteenth company has since been charged with 18 counts of pollution violation.

Federal Water Pollution Conference.[25] The Department of the Interior's Water Pollution Control Administration held a two day conference in Washington on October 23 and 24. The purpose was to exchange ideas on water pollution with the 700 business executives who attended. As the executives represented some of America's largest corporations, Department officials believed the conference might produce more immediate and positive measures concerning water pollution problems. The executives verbally recognized the corporation's responsibility to the public in the form of clean air and water but contended that pollution abatement must be considered in light of the necessity for the corporation to return a profit. Edgar B. Speer, President of the

25. N.Y. Times, Oct. 24, 1969, at 22.

United States Steel Corporation, voiced his company's objection to "treatment [of water] for treatment's sake."[26] John E. Swearingen, chairman of the board of the Standard Oil Company of Indiana, noted that the refining industry spent $200 million on water pollution control in 1968. He said the threat of water pollution from the Santa Barbara Channel blowout had been "greatly exaggerated" and that federal surveys had failed to disclose any fatalities "due to oil among whales, sea lions or seals."[27]

The California Water Quality Improvement Act of 1969,[28] ch. 482, (1969) Cal. Stat. 1045, became law on January 1, 1970. The law is a complete revision of the prior water quality laws and has been labeled the toughest in the nation. The heart of the act is the Porter—Cologne Water Quality Control Act. The act continues to allow treated wastes to be discharged into the state's waters but under close regulation by the State Water Quality Control Board and the nine Regional Water Quality Control Boards.

Texas Sewage Pollution:[29] Federal officials are of the opinion that unless action is taken immediately, the Galveston, Texas area will soon be polluting itself into extinction. All along the Houston Ship Channel, industry is dumping its wastes to be carried into the Gulf of Mexico. One and one half million gallons of inadequately treated, almost raw, sewage is being pumped into Galveston Bay daily and into an area of major shellfish production. Today one half of the 500 square miles of shellfish beds are classified as polluted and unfit for human consumption. Despite this, the city often complains of the wastes discharged by passing ships.

Presidential Executive Order, Exec. Order No. 11507, 35 Fed. Reg. 2573 (1970): A statement of governmental intent, signed by the President on February 4, 1970, that "the Federal Government in design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources." The purpose

26. *Id.*

27. *Id.*

28. For an analysis of the act, see Robie, *Water Pollution: An Affirmative Response by the California Legislature*, 1 PAC. L.J. 2 (1970).

29. N.Y. Times, Jan. 19, 1970, at 33, col. 1.

of this order is to ensure that all federal facilities conform to local and federal water quality standards. Actions necessary to meet the requirements are to be completed by December 31, 1972. The applicable federal laws governing water quality are: Clean Air Act, 42 U.S.C. § 1857 (1964), *as amended*, (Supp. IV, 1969); the Federal Water Pollution Control Act, 33 U.S.C. § 466 (1964), *as amended*, (Supp. IV, 1969); and the National Environmental Policy Act of 1969, Pub. L. No. 91-190 (Jan. 1, 1970), 83 Stat. 582, 13 U.S. CODE CONG. & AD. NEWS 2712 (1969).

Presidential Message to Congress.[30] President Nixon, in a lengthy message to Congress on February 11, set forth numerous legislative and executive proposals for improving environmental quality. The proposal was originally promised in the annual State of the Union Address on January 22. The President labeled municipal and industrial wastes as being the most damaging to the environment, but contended America possessed the technology and resources to clean-up pollution. Current estimates to provide clean water would require a total capital investment of $10 billion over a five year period. To fulfill this goal a two-part program of federal assistance was suggested: (1) A Clean Waters Act with immediate funding of $4 billion to cover the next four year period commencing in fiscal year 1971. This would be the federal government's share of a matching fund program. The financial requirement for subsequent years could be reassessed in 1973. (2) Create an Environmental Financing Authority to ensure that every municipality had the opportunity to sell their financing bonds.

The President also proposed that current funding be allocated where it was most needed and where the greatest improvements could be realized. To achieve the desired goal the President recommended that precise water quality requirements be established and that adequate enforcement measures be implemented. Such enforcement measures would include subpoena and discovery power, injunctive relief, and court-imposed fines of up to $10,000 a day.

Florida Pollution Suit Filed.[31] On February 28, the State of Florida filed a $1 million suit against Mercandia International of

30. San Diego Union, Feb. 11, 1970, § A, at 4 (home ed.).

31. San Diego Union, March 1, 1970, § A, at 7, col. 1 (home ed.).

Denmark, the owners of the tanker *Merc Buccaneer*, as a result of its having rammed on oil barge in the St. Johns River, alleging improper operations after dark; failure to maintain a proper lookout; violation of both federal and state laws regulating navigation of the river; and failure to observe signals. Florida is also seeking in federal court to place a $1 million holding bond on the tanker.

The collision occurred on the evening of February 26 at a narrow bend in the river about halfway between the Atlantic Ocean and Jacksonville. Seven thousand gallons of crude oil were spilled into the already heavily polluted river. Within 48 hours, the immediate danger was over but possible long range damage caused by the spill is speculative.

California Constitutional Proposal.[32] On March 6, it was reported that the California Assembly Committee on Environmental Quality was drafting an antipollution "Bill of Rights" as a constitutional amendment. Approval would be required by the state's voters. In considering the draft, the Committee reviewed cost figures from the State Water Resources Board estimating that water clean-up over the next five years would require $888 million, $300 million in state funds and the remainder in federal and local funds.

Senate Legislation Proposed: A Senate bill S. 3568, 91st Cong. 2d Sess. (1970), was introduced March 9, to give private citizens standing to sue governmental agencies or private persons engaged in environmental pollution. The bill would allow private citizens to contest the Department of the Interior's continued permission of offshore oil drilling. Presently, a private citizen lacks sufficient interest to sue and the Department's rejection of public hearings has left the private citizen with no direct recourse. A House bill, H.R. 15578, 91st Cong. 2d Sess. (1970), was introduced January 27, to provide for class actions in United States District Courts against persons responsible for water or other environmental pollution. The purpose of the bill is to provide a forum and a remedy for the private citizen who is otherwise without one.

32. L.A. Times, Mar. 6, 1970, § 2, at 4.

DOMESTIC-COASTAL

Santa Barbara Spill Aftermath

1. *First Anniversary:*[33] As the first anniversary of the Santa Barbara spill passed, the beaches were generally clean and the leakage from block 402 practically eliminated. Despite the calm, residents of the coastal city remain mentally prepared for the next disaster; they feel that the unstable geological nature of the area, especially along the Channel bottom, makes one inevitable. After the big spill of January 1969, Secretary Hickel closed down all production in the Channel, but since June 1969, he has allowed operations to resume ostensibly to relieve the pool pressure in the area of the leakage, although some drilling has been authorized in more remote areas. Since the spill there have been periodic accidents of lesser magnitude.

Block 402 leakage is claimed to be down to about eight barrels (336 gallons) per day. This amount is negligible when compared to the natural leakage at Coal Tar Point, west of the city, which is estimated to be from 50 to 70 barrels per day. Even though the platform leakage is under control, residents of Santa Barbara claim that a chronic slick is present in the area of the platforms in the Channel and is periodically pushed ashore. There has been no comprehensive assessment of the ecological damage caused by the big spill.

To celebrate the first anniversary, the January 28 Committee of Santa Barbara organized a day-long national environmental conference which was held in a glass-walled auditorium overlooking the Channel. At the conference Senator Alan Cranston, D-Calif., announced that he and Senator George Murphy, R-Calif., are introducing legislation which, if enacted, would create a 16 mile-long sanctuary off the coast and revoke 20 of the 71 existing leases in the area. Those who held revoked leases would be compensated in cash or by grants of comparable leases elsewhere.

The president of the Sierra Club, Phillip Barry, stated at the conference that the United States Geological Survey has not yet fulfilled its promise to make public the information on which was based the decision to permit remedial oil removal in the Channel.

33. N.Y. Times, Jan. 29, 1970, at 19, col. 1.

The National Audubon Society proposed that an independent federal agency be created to police the enforcement of all state and federal regulations relating to drilling and removal of off-shore oil.

2. *ACLU Files Suit:* On July 10, 1969, the American Civil Liberties Union (ACLU) filed suit on behalf of 17 named plaintiffs in United States District Court in Los Angeles against Secretary of the Interior Hickel and others, including Mobil, Gulf, Union, and Texaco Oil companies seeking to enjoin any further drilling for or extraction of petroleum in the Santa Barbara Channel.

The complaint alleges that personal rights (the right to live in and enjoy a pollution-free environment) and property rights (the right to the ownership, use and enjoyment of individual and state and federally owned property free from pollution) are protected by the fifth amendment of the Constitution, and these rights have been violated and foreseeably will be violated by the contamination of ocean waters, seashore, and beaches by crude oil deposits. Further, the ACLU asserts a violation of due process in the disposition of public property in that Secretary Hickel has decided to continue to allow drilling and extraction in the Channel, without public hearing, the basis of his decision to do so being kept secret but having been formed on information supplied by an interested party (the oil industry). Also, to justify the granting of the permanent prohibition, the plaintiffs allege immeasurable and irreparable injury in the event of a future accident of similar magnitude.

In August 1969, the district court refused plaintiffs' relief and the matter was appealed to the Ninth Circuit Court of Appeals. On November 15, 1969, the court issued a 10 day restraining order against the Army Corps of Engineers to restrain the issuance of further oil drilling permits in the area of the Channel. An amicus curiae brief in support of plaintiffs' position was filed by California Attorney General Thomas Lynch on December 24. The case should be argued before the court in mid March. Since January 1969, 60 new shafts have been drilled on federal leases beyond the 3 mile limit, justified largely for the purpose of relieving pressure in the pool of oil which feeds the leak.

Several other suits are pending as a result of the January spill: (1) the State of California and the City and County of Santa

Barbara v. Union Oil Co. of Calif. and others, filed in United States District Court and seeking $500 million in damages; (2) a parallel suit against the Department of the Interior on charges of misfeasance in leasing and regulating the drilling in the Channel; and (3) a class action with as many as 17,000 possible claimants against Union Oil for $1.3 million, in which the United States District Court has appointed a panel of three special masters as fact finders.

3. *New Leakage:*[34] On December 23, the Union Oil Company's infamous platform A sprang a new leak in the Santa Barbara Channel. Local officials, who have opposed the continued drilling, said the new leak proved their contention that despite the new federal regulations governing oil operations in the Outer Continental Shelf, 34 Fed. Reg. 13544 (1969), oil exploitation would inevitably pollute California's waters and beaches. The Union Oil Company was asked how the new leak could occur after company assurances that leakage would not happen again. The Company's spokesman had no explanation. The leak was sealed within five days after an estimated loss of 200 barrels but natural seepage continued.

4. *Suit Filed:*[35] Santa Barbara District Attorney, David D. Minier, filed a 343 count criminal complaint against Union Oil, Mobil, Texaco and Gulf Oil in connection with the continuing leakage of oil in the Santa Barbara Channel on January 13, 1970. The number of counts was based on the number of days for which the crude oil had been flowing into the Channel from the federal leasehold five and one-half miles off the coast. Mr. Minier risked the possibility of a federal contempt action because a Federal District Court injunction obtained last April by the oil companies to prohibit Mr. Minier from prosecuting or otherwise harassing the oil producers was still in force.

5. *Proposed Legislation:* Senator Edmund Muskie, D-Maine, has introduced a bill, S. 3516, 91st Cong., 2d Sess. (1970), which would require the Interior Department to take control of the Union Oil platform that was the scene of the big spill in Santa Barbara, California and attempt to stop the continuing leak. The measure would also ban all new exploration or drilling in the

34. N.Y. Times, Dec. 24, 1969, at 9.
35. N.Y. Times, Jan. 14, 1970, at 23, col. 1.

Channel and would permanently terminate all existing operations and provide for the removal of all existing platforms.

6. *New Leakage Reported:*[36] On March 15, 1970, it was reported that a new slick had appeared in the Santa Barbara Channel from an Atlantic-Richfield Company platform situated on state tidelands. The oil company denied the leak and Mrs. Lois Sidenberg, president of GOO (Get Oil Out), flew over the area of the reported slick and observed that there was no actual leak but merely an extraordinarily large amount of of oil in the area from natural sources.

7. *Senate Committee Hearings:*[37] The Senate Subcommittee on Minerals, Materials, and Fuels is presently considering several bills dealing with the Union Oil well blowout in the Santa Barbara Channel January 28, 1969. In testifying before the committee during the week of March 9, 1970, Senator Alan Cranston of California proposed a halt in drilling on federal leaseholds until adequate means of controlling oil pollution are discovered. This proposal has been introduced in the form of a bill, S. 3351, 91st Cong., 2d Sess. (1970). He called Santa Barbara and similar areas guinea pigs in a dangerous experiment that threatens not only beaches and wildlife but the ocean itself. Cranston cited recent oil disasters in Louisiana, Florida, and Alaska as proof that the oil industry does not have sufficient technology to deal effectively with oil spills and fires on water. California State Controller, Houston Flourney, in agreement with Cranston, urged the committee to consider public hearings in any area where leases are proposed in federal offshore lands. The bills under consideration include a proposal by Senator Georgia Murphy, also of California, to exchange the Santa Barbara leases for leases in the Elk Hills Reserve in Kern County, California. S. 2516, 91st Cong., 1st Sess. (1969).

The national president of the Sierra Club, Phillip S. Barry, challenged Secretary Hickel's authority to grant leases of offshore reserves and stated that such leasing, without adequate pollution controls, was obviously poor policy. Barry advocated suspending the leasing authority until technology to control pollution caught up with the present capacity to create pollution.

36. San Diego Union, March 16, 1970, § A, at 1, col. 1 (home ed.).

37. L.A. Times, Mar. 15, 1970, § 1, at 17.

Fire Island Oil Pollution.[38] Ten miles of Fire Island, New York, beach were littered by globs of oil, apparently the result of a passing ship emptying its bilges. Only one fifth of a mile of coast was badly polluted and officials stated that they were able to effectively clean the soiled areas. Off shore, a slick, five by one hundred yards, was spotted by a Coast Guard helicopter.

All vessels must periodically discharge bilge material, but by the International Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, 12 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3, *as amended* April 11, 1962, 17 U.S.T. 1523, T.I.A.S. No. 6109, they are prohibited from doing so within 50 miles of land. Art. III; Appendix A (1). In the area of New York City, the prohibition extends 100 miles out to sea. Appendix A (1)(b)(i). It would appear that some vessel had violated the Convention, but officials state that locating the offending party would be almost impossible because of the frequency of passage into and out of New York Harbor.

Continental Shelf Drilling Regulations: On August 22, the Interior Department released new rules regarding responsibilities of an oil and gas lessee on the Outer Continental Shelf for the control and removal of pollutants. 34 Fed. Reg. 13547 (1969). The purpose of the amendment is to set forth in greater detail the lessee's duty in case of oil pollution resulting from operations on the Outer Continental Shelf. If any pollution threatens to damage or does damage aquatic life, wildlife, or public or private property, the control and total removal shall be at the expense of the lessee. The lessee's liability to third parties, other than for cleaning up the pollutant, shall be governed by applicable law.

Massachusetts Oil Pollution.[39] Extensive mortality to coastal marine life was caused by the spillage of 65,000 to 100,000 gallons of number 2 fuel oil from the barge *Florida* which ran aground on September 16, 1969, off West Falmouth, Massachusetts. The diesel fuel washed ashore on Cape Cod. At least 24 species of fin fish suffered depletion. Among shellfish, scallops were the hardest hit and there have been substantial kills among lobster, crab, and seaworm. Estimated clean-up costs were approximately $100,000. As a direct result of the spill, when oysters and scallops were

38. N.Y. Times, July 6, 1969, at 38, col. 4.
39. N.Y. Times, Sept. 21, 1969, at 80, col. 6.

harvested in the area of the spillage, they were found to be unfit for human consumption.

The Water Quality Improvement Act of 1969, Pub. L. No. 91-224 (Apr. 3, 1970): An act for the purpose of curbing oil pollution, pollution discharged from vessels, and to render oil companies and shippers liable for cleaning up oil spillage. The original two house versions, S. 7 and H.R. 4148, differed considerably on pollution liability. Under the House bill, the shipper or oil company would only be liable for cleaning or cleaning costs if the pollution was willfully or negligently caused. The Senate version called for strict liability and higher monetary limits on liability. Both bills passed their respective houses and were in a Senate-House Conference Committee from October 9 to March 3. The two bills were combined as H.R. 4148 and the joint conference committee approved the more stringent liability measures of the original Senate version. As approved in conference and passed by the Congress in late March, the bill imposes liability of $100 per gross ton of oil or up to $14 million in total cost for accidental spills on a formula that the drafters considered more than adequate to cover clean-up costs. In cases of pollution arising from willful negligence or misconduct, the guilty party will be held strictly liable.

New Jersey Storage Tank Rupture:[40] On October 31, 1969, an eight million gallon storage tank ruptured in Port Reading, New Jersey, spilling an undetermined volume of crude oil into Arthur Kill, the channel that separates Staten Island, New York, from New Jersey.

Spill Prevention Equipment:[41] The United States Coast Guard has begun testing a prototype rubber coated bladder which could be carried by airplane or helicopter to a leaking oil tanker, dropped along side, inflated and linked to the vessel in order to receive up to 140,000 gallons of oil transferred from the stricken vessel in order to prevent or minimize spillage into the sea. When filled, the bladder may be towed to a safe anchorage where the contents can be transferred to another vessel. Included with the kit will be a diesel power source, submersible hydraulic pump, flexible transfer piping, fittings, assembly tools, and a specially trained Coast Guard salvage crew.

40. N.Y. Times, Nov. 1, 1969, at 17, col. 3.
41. N.Y. Times, Nov. 13, 1969, at 93, col. 1.

Gulf Coast Well Blowout: On January 12, 1970, an oil rig 15 miles from the Texas Gulf coast blew out and caught fire. However, the well casing collapsed under the heat of the flames and fell back into the well,plugging it and stopping the fire.

Louisiana Oil Pollution:[42] An oil slick, 15 miles long by 20 feet wide, washed ashore on the resort island of Grand Isle, Louisiana, on January 26, 1970. The slick killed many birds and fish. Much of the island is already marginally polluted because of regular blowouts in the Gulf off-shore wells. The most serious threat involved the continuing pollution of young shrimp which constitute a major Gulf Coast industry.

It was first suspected that either of the two major oil operators in the area were responsible, but both denied any leakage and promised to investigate the cause. On January 30, it was announced that upon chemical analysis the quality of the oil proved to be a highly refined product rather than crude oil. This would indicate that off-shore platforms were not responsible. The most likely source is the 150 barrel crankcase from the Greek freighter *Thelisis* which exploded and burned about 180 miles southeast of New Orleans three days before the slick appeared.

Alaska Oil Pollution:[43] On February 6, oil began to wash ashore along the southwestern coast of Alaska and the eastern edge of the Kodiak Island chain intermittently spattering over 1000 miles of shoreline. Officials claimed that the pollution was of major proportions although it did not approach the severity of the Santa Barbara spill. They speculated that had it occurred during the commercial salmon season the disaster would have been greatly amplified. Conservative estimates of sea bird mortality stand at about 10,000 fatalities. Because of the remoteness of the area nothing could be done to minimize fatalities. There were no reports of mammal deaths but several seals were found with oil on them.

It is suspected that the slick was the result of legal discharge of bilge material on the high seas carried to the coast by the severe weather. Nothing can be done to remove the deposited pollutant.

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42. N.Y. Times, Jan. 26, 1970, at 21, col. 1; N.Y. Times, Jan. 31, 1970, at 20, col. 5.

43. San Diego Union, March 7, 1970, § A, at 1, col. 1 (home ed.); San Diego Union, March 9, 1970, § A, at 13, col. 1 (home ed.).

Canadian Pollution Suit Filed:[44] Long term pollution is expected from oil spillage from the Greek tanker *Arrow* that ran aground off Nova Scotia in early February 1970. The Canadian government, under legislation passed in 1969, is holding both the ship's owner, Aristotle Onassis, and Imperial Oil Company, Ltd., the charterer, financially liable for the damages resulting from the spill.

Gulf Coast Oil Fire:[45] A Chevron Oil Company oil drilling platform along the Gulf Coast Main Pass area caught fire on February 10, 1970, and continued to burn until March 10. The platform is 11 miles east of the Louisiana coast. Without the fire, the extent of the disaster intensified as oil continued to spread unchecked into the Gulf. Department of the Interior officials stated that the situation could produce history's largest oil slick, with the resultant destruction of shellfish and wildlife on the nearby coast. Secretary Hickel blamed Chevron for failing to adhere to the Department's drilling regulations that were effective last August. 34 Fed. Reg. 13544 (1969). The wells, which spewed up to 1,000 barrels daily into the Gulf, lacked the required storm choke, an $800 safety shutoff valve. On February 22, Secretary Hickel ordered Chevron to stop all off-shore oil drilling in the Main Pass area. The action was taken to allow engineers and technicians from the United States Geological Survey to inspect fire abatement equipment on each of the off-shore platforms. By March 13, the United States Coast Guard estimated the slick covered a 52 square mile area. The oil company used chemicals to fragment the oil slick and disperse oil on the platforms to make them safe for the workers. However, officials of the Louisiana Wildlife and Fisheries Commission believed that an excessive amount of chemicals may have been used, causing much of the oil slick to sink to the ocean bottom. When the oil is sunk, it can do more damage to marine life than if it remained on the surface. Furthermore, the reaction of the chemicals normally used with the crude oil can reduce the oxygen content of the water, thus further endangering marine life. Members of the Federal Water Pollution Control Agency began testing Chevron's chemicals during the week of March 16 to ascertain the chemicals' potential effect on marine life.

44. N.Y. Times, Feb. 16, 1970, at 26.
45. NEWSWEEK, April 6, 1970, at 77.

On March 13, Louisiana oyster fishermen filed suit against the Chevron Oil Company in United States District Court. The fishermen seek up to $31.5 million for potential damages from oil pollution to 400,000 acres of shallow oyster beds along the Gulf Coast. The state of Louisiana threatened to file suit against both Chevron and the United States based on negligence and the failure to comply with federally-required safety regulations. The Louisiana Shrimp Association, its multimillion dollar industry in dire jeopardy, demanded that more stringent controls be imposed upon off-shore wells to prevent future occurrences.

California Pollution Suit Filed:[46] On February 13, California's Regional Water Control Board for the central coastal area ordered Fort Ord Commander Major General Philip Davidson, Jr., not to add any more sewer connections on the post because of resulting pollution of Monterey Bay. The state based its order on President Nixon's Executive Order No. 11507, 35 Fed. Reg. 2573 (1970), directing all federal installations to comply with state anti-pollution requirements. Because of continued pollution emanating from the army post, California filed suit against General Davidson on March 1.[47] The relief sought was an injunction to prevent the army from continuing to pollute Monterey Bay and $6,000 daily damages dating from December 12, 1969. The state's request for a temporary restraining order against Fort Ord was refused. The cause of action is based on the Executive Order and the recently enacted California Water Quality Improvement Act of 1969, ch. 482, (1969) Cal. Stat. 1045. The case is a test of California's authority to stop water pollution.

New Jersey Sewage Pollution:[48] On February 19, the Governor of New Jersey, William T. Cahill, requested the Army Corps of Engineers to commence dumping sewage at least 100 miles out in the Atlantic Ocean rather than in the present dumping area around Sandy Hook and Ambrose Light off the New Jersey coast. The present dumping practice has produced a dead sea in the dumping grounds area. The Corps rejected the proposal. An eight man marine science team headed by the director of oceanography at the Smithsonian Institution, Dr.

46. San Diego Union, Feb. 14, 1970, § B, at 8, col. 1 (home ed.).
47. San Diego Union, Mar. 2, 1970, § A, at 1, col. 3 (home ed.).
48. N.Y. Times, Feb. 20, 1970, at 1.

William Aron, also rejected the proposal. The science team's rejection was based on their belief that the sewage dumping would result in a new dead sea area wherever it was dumped and the United States had no right to pollute international waters.

Florida Pollution Suit Filed:[49] During the week of March 9, 1970, Florida filed a $250 million damage suit in the United States District Court against the Humble Oil Company and the owners of the tanker *Delian Apollo* for spilling oil into Tampa Bay February 13. The suit joined an earlier suit filed by the Florida attorney general shortly after the spillage occurred. The sum sought was based on estimated losses to the state's tourist trade.

Thermal Pollution Suit Filed:[50] On March 13, the Justice Department filed suit in United States District Court, on recommendation of Secretary Hickel, against the Florida Power and Light Company, seeking an injunction to halt thermal pollution (the discharge of hot water) into Biscayne Bay and Biscayne National Monument to the detriment of local marine life. The complaint contains four counts alleging violations of the 1899 Rivers and Harbors Act, nuisance against United States' property, and the establishment act for Biscayne National Monument, 16 U.S.C. § 450qq (Supp. IV, 1969). The Justice Department has moved for a preliminary injunction to terminate the thermal pollution which will allow the power company to continue operation only if it cools its water before discharging it.

INTERNATIONAL

Japanese Seacoast Pollution:[51] Japan's rapid industrialization has resulted in wide-scale pollution of the most popular beaches of Tokyo and Central Japan. The low level of general sanitation resulted in a mid-summer declaration by the Health and Welfare Ministry that most beaches near Tokyo, Yokohama, and other big cities were not suited for swimming. The Ministry has instructed Tokyo, and other prefectures, to take steps to remove the causes of pollution. Legislation granting the government stronger power to deal with the sources of pollution has been

49. L.A. Times, Mar. 14, 1970, § 1, at 13.
50. San Diego Union, March 14, 1970, § A, at 1, col. 4 (home ed.).
51. N.Y. Times, Aug. 17, 1969, at 13.

introduced in Parliament but, due to strong partisan clashes, has not been acted upon.

European Accord on North Sea Oil Pollution:[52] Belgium, Denmark, France, the Federal Republic of Germany, the Netherlands, Norway, Sweden, and the United Kingdom entered into the Agreement Concerning Pollution of the North Sea by Oil, done at Bonn, June 9, 1969, and entered into force August 9, 1969, Council of Europe Doc. 2697 of January 13, 1970. The agreement generally provides for mutual aid and assistance in discovering surface oil pollution, exchanging information in dealing with the pollution, and cooperating in its dispersal.

European Coastal Pollution Conference:[53] Sweden is becoming a leader in international efforts to combat ocean and water pollution. In September 1969, Sweden convened a meeting of officials from Finland, the Soviet Union, Denmark, East and West Germany, and Poland to discuss joint measures to combat coastal oil pollution. All parties agreed upon the need for action but the conference broke down over a political dispute concerning diplomatic recognition of East Germany. The pollution problem is especially acute in the Baltic, and various areas are lifeless due to rising concentrations of poisonous hydrogen sulfide in the water. Sweden has commenced extensive studies, and a joint East-West academic effort known as the Baltic Oceanographers is also being created. As a result of Swedish initiative, the United Nations General Assembly decided to hold a United Nations Conference on Human Environment in 1972.

Torrey Canyon Suit Settled:[54] On March 18, 1967, the *Torrey Canyon* ran aground off Cornwall, England. Unsure of their rights under international law, for ten days the Royal Navy attempted to contain the crude oil pouring forth and attempted to tow the stricken vessel out to sea. When all other attempts failed, on March 27, the hulk and its cargo were bombed and set afire. By then, however, much of the oil had reached the English beaches. To dissipate the oil deposits the British used detergents which, in retrospect, probably did more damage to marine life than the oil would have. By April 9, the slick had reached France where chalk was used to sink the oil, but damage to marine life

52. 9 INT'L LEGAL MATERIALS 359 (1970).
53. N.Y. Times, Oct. 26, 1969, at 17.
54. N.Y. Times, Nov. 12, 1969, at 1, col. 2.

and the shore was still severe. By the summer of 1968, the beaches in both France and England were clear but the balance of nature remained upset.

Suit was instituted by the French and English governments against Union Oil of California which had chartered the *Torrey Canyon* from Barracuda Tanker Corporation, a company formed for the sole purpose of transporting crude petroleum for Union. Under maritime law, a plaintiff must lay his hands upon some valuable property of the defendant, usually a ship. While a sister ship stopped over in Singapore, government agents of the United Kingdom with a writ seized the vessel. The ship was held in Singapore until the owners posted an $8.4 million bond for its release. The French agents missed the ship in Singapore but were able to catch it in Rotterdam where the same procedure was effected.

Trial was to have begun in Singapore in late September or early October 1969, but was postponed because of settlement negotiations. The suit has since been settled, with Union Oil agreeing to pay $7.2 million to be divided equally between France and Great Britain. Few felt that either nation would have prevailed in trial because of several complex issues, e.g., how to estimate the extent of damage caused by the spill, what body of law would be applied to the facts, and whether under international law an oil tanker could be held liable for pollution damage. However, had the case gone to trial it would have provided some precedent for the future. As it stands after the settlement, nothing has been decided save for the indication of willingness of a major oil producer to settle for a sizable sum. This could make an impression on other oil and tanker companies. In addition, Union agreed to pay a total of $60,000 as compensation to private complainants. Claims are not expected to be large or many because most have already been settled by the governments. The settlement amount, about one half of the sum claimed as damages, will be paid by Union's several insurers.

Conventions on Oil Pollution Liability.[55] On November 13, 1969, 49 nations began a two week conference in Brussels under the auspices of the Intragovernmental Maritime Consultive Organization, an agency of the United Nations, to consider two

55. N.Y. Times, Nov. 29, 1969, at 58, col. 1.

draft conventions concerning marine oil pollution. Initial views among the 200 delegates differed as to the scope of the two conventions. The United States proposed, with support from the United Kingdom and Canada, that the conventions not be limited to oil pollution, but should be extended to all hazardous or noxious substances. Other delegations, notably France, were equally adamant in restricting coverage to oil and petroleum products. A number of nations favored unlimited financial liability for pollution damage, while the larger shipping powers favored less liability with a maximum set by agreement. The United States delegation, although internally split on the issue of financial liability, generally favored a strict liability rule with maximum liability set at $25 million.

By November 28 the delegates had agreed on the content of the two conventions. The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualty (Public Law Convention), 9 INT'L LEGAL MATERIALS 25 (1970), states that if there is imminent danger of substantial oil pollution as a result of some mishap on the high seas, the endangered coastal state may immediately intervene to protect its seacoast and territorial waters, even to the extent of destroying the offending vessel. Some restraint against possible overreaction by the coastal state is insured by a provision that the owner of a vessel be compensated for damage caused by unjustified actions. If the parties involved cannot agree to a negotiated settlement, they are forced into binding arbitration. The Public Law Convention is applicable to all ocean going vessels, except state-operated vessels in commercial service and warships. This convention will enter into effect 90 days following the date that 15 states have signed it without reservation as to ratification, acceptance or approval, and have deposited appropriate instruments with the Secretary-General of the United Nations.

The International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention), 9 INT'L LEGAL MATERIALS 45 (1970), represents a substantial compromise in that it imposes strict liability on shipowners for any damage done with a limit on liability of $135 per gross ton of the vessel to a maximum of $14 million per disaster. All vessels are to be insured for such liability and are to carry certificates of insurance. Shipowners will not be held liable for pollution that results from

acts of war, acts of nature, or negligence of the coastal state, e.g., improper channel markings causing an innocent tanker to go around and spill its cargo. This second convention will enter into force on the 90th day following the date on which eight states, including five states with not less than one million gross tons of tanker tonnage, have signed and ratified the convention and deposited the appropriate instruments with the Secretary-General of the United Nations.

Both conventions were approved by a substantial majority of participating states, with Canada abstaining on the Public Law Convention and voting against the Civil Liability Convention, and the Soviet Union abstaining on both. Also issued by the conference was a Resolution on International Cooperation Concerning Pollutants other than Oil, and a resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage. 9 INT'L LEGAL MATERIALS 65, 66 (1970).

In October of 1969, the Intragovernmental Maritime Consultive Organization amended the International Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, 12 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3, *as amended* April 11, 1962, 17 U.S.T. 1523, T.I.A.S. No. 6109. The amended version will take effect one year after two thirds of all present signatories ratify the changes.[56]

French Continental Shelf Polluted.[57] Marine pollution in the industrial areas of France is becoming so extensive that controls must soon be enacted to protect the environment. In one area, of 13 species of food fish that were abundant before the Second World War, nine have disappeared and the other four are growing scarce. Raw sewage is still pumped into the rivers and ocean. Ships illegally dump refuse off-shore to litter the beaches of southern France with flotsam and oil globs. To some, the primary threat is not petroleum, but rather sewage, detergents, and pesticides, the latter being undetectable and virtually indestructable, ingested by fish and shellfish and harmful to humans when consumed. Gérand Bellan, a French marine pollution specialist, predicts that unless controls are implemented

56. 9 INT'L LEGAL MATERIALS 1 (1970).

57. N.Y. Times, Jan. 18, 1970, at 11, col. 1.

now, the Continental Shelf will become "one sterile stretch of black muck from the Spanish to the Italian border."[58]

SALVAGE

High Seas:[59] An English company, Titanic Salvage, has announced plans to raise the transoceanic liner *Titanic* from the ocean floor, some 430 miles southeast of Newfoundland, Canada. By mid-January, plans had progressed to the point where the group was attempting to obtain photographs of the liner where it now rests on the ocean bottom. The project should cost about $4.8 million and if successful, would raise the *Titanic* by the beginning of 1971.

The raising of a sunken vessel is one type of salvage service for which a salvage award is available, i.e., an amount in compensation is given the salvor for his voluntary service in the recovery of another's property, not in the nature of a *quantum meruit,* but rather as a reward. In maritime law, even if a vessel is abandoned without hope of recovery, the title of the owner of the property is neither lost nor divested, although it may become the subject of a salvage service. The salvor obtains a right of possession in the property salvaged and acquires a lien on that property, but does not acquire title. His lien is enforceable by a claim of salvage award. While the property of the owner is in his possession, the salvor is obligated to exercise care over the property. The salvor, unless the parties can agree to a settlement, must bring the salvaged property before an Admiralty Court where the owner may claim his property upon payment of the award. If the property is neither claimed nor the award settled, the property will be arrested and sold by order of the court. The proceeds of the sale are then paid into the court for eventual distribution between the salvor and the owner.[60]

SEABED

Joint Soviet-American Draft Treaty Submitted for United Nations Action: On October 7, 1969, a joint draft treaty concerning the placement of weapons of mass destruction on the seabed was presented to the Conference of the Committee on

58. *Id.*
59. N.Y. Times, Jan. 12, 1970, at 31, col. 6.
60. M. NORRIS, THE LAW OF SALVAGE §§ 2, 31, 150 (1958).

Disarmament at Geneva by the Soviet Union and the United States. Because of objections to some provisions, a revised draft was submitted on October 30.

There is still severe criticism of the draft treaty as to its weapons scope, i.e., it does not prohibit weapons other than those designed for mass destruction, that it does not provide adequate verification procedures, and that it overlooks the interests of non-nuclear coastal states and of the technologically less developed nations. Such opposition could prevent United Nations' action on the treaty.[61]

See 7 SAN DIEGO L. REV. 504 (1970).

United Nations Resolutions on Mineral Extraction: There is general agreement at the United Nations that an international regime should be created to assure an equitable distribution of the riches of the seabed. There is considerable fear among the have-not nations that the great industrial states will be able to exploit the marine resources before they will because of the technology required to do so. The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction met August 11-28, 1969, to attempt to establish principles governing exploration and exploitation of the seabed beyond the limits of national jurisdiction.

To the end of protecting the seabed riches for equitable distribution, a four part resolution was presented to the General Assembly for consideration. U.N.G.A. doc.A/Res/2574 (XXIV).[62] The resolution provided:

A. That the Secretary-General ascertain the desirability of an international conference to review the existing questions of the Continental Shelf and its seaward boundary, conservation of marine resources and fishes, definition of the seabed, etc.

61. Union of Soviet Socialist Republics and the United States of America Draft Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, (revised draft) U.N.G.A. Doc. A/7741 of Nov. 3, 1969. The first draft can be found at LXI DEP'T STATE BULL. 365, 367 (1969). The revised joint draft treaty may be found at LXI DEP'T STATE BULL. 480, 483 (1969) or 9 INT'L LEGAL MATERIALS 392 (1970). In LXI DEP'T STATE BULL. 425 (1970) the American representative to the conference discusses verification procedures under the draft treaty. *See also*, G.A. Res. 2602 (XXIV) of Jan. 21, 1970, adopted Dec. 16, 1969, welcoming the submission of the treaty for the consideration of the General Assembly.

62. The full text of the four part resolution as well as a complete explanation of the United States delegation vote may be found at LXII DEP'T STATE BULL. 89 (1970).

B. That the Sea-Bed Committee make further recommendations as to the creation of an international regime and the economic and technical conditions and rules for resource exploitation in the context of that regime.

C. That the Secretary-General prepare a study of the types of international machinery required for the regime, its status, structure, functions, and powers so that it can control and supervise all activities pertaining to exploration and extraction of the seabed resources for the benefit of mankind as a whole.

D. Pending the establishment of the regime, all states and persons are to refrain from any exploitation of resources beyond the limits of national jurisdiction; and no claim to any portion of the seabed or to its resources shall be recognized.

On December 15, 1969, the General Assembly voted in favor of the resolution to delay exploitation of the seabed by a vote of 62 to 22 with 28 abstentions. The United States denounced the resolution's adoption as unwise and a step backward. The Soviet Union and other communist bloc nations joined with the United States, the United Kingdom, and France in voting against the measure.

SHIPPING

An amendment of section 502(b) of the Merchant Marine Act of 1936, Pub. L. No. 91-40 (July 8, 1969), 83 Stat. 44, 7 U.S. CODE CONG. & AD. NEWS 972 (1969), *amending* 46 U.S.C. § 1152(b) (Supp. IV, 1969): The act extends until June 30, 1970, the present 55 percent ceiling on construction-differential subsidy payments on new vessels and 60 percent on reconstruction of passenger vessels. The subsidy allows American shipping firms to buy locally-built ships at prices competitive with foreign produced ships. The American-foreign price differential is computed by comparing the lowest cost foreign yard price with the lowest bid from an American yard for construction of a similar ship. Due to the higher American labor and other production costs, the subsidy is believed essential by Congress for the welfare of the United States merchant marine and shipping industry.

Appropriations for Maritime Programs, 1970, Pub. L. No. 91-85 (Oct. 10, 1969), 83 Stat. 132, 9 U.S. CODE CONG. & AD.

NEWS 1392 (1969): The act authorizes appropriations for various maritime programs of the Department of Commerce. The act provides: (1) $145 million for acquisition, construction, or reconstruction of vessels for the United States merchant marine; (2) payment of obligations incurred for operating-differential subsidy, $212 million; (3) research and development expenses, $12 million; (4) research fleet expenses, $5,174,000; (5) reimbursement of the vessel operations revolving fund for losses resulting from expenses of experimental ship operations, $2 million; and (6) appropriations for maritime training and education.

Proposed Amendment to Merchant Marine Act: On October 23, in a message to Congress, the President proposed a ten year, $3.8 billion program to rebuild the merchant marine. The proposal would authorize the building of 300 new ships over the next ten years. The President's proposal has been submitted to the House by Representative Edward A. Garmatz of Maryland. H.R. 15424, H.R. 15425, 91st Cong., 1st Sess. (1969). On February 3, the House Merchant Marine and Fisheries Committee opened hearings on the above proposed amendment to the Merchant Marine Act, 1936, 46 U.S.C. § 1101, et seq. (1964), *as amended* (Supp. IV, 1969).

The proposed changes encompass two major areas; construction differential and operational differential subsidies. The bill proposes a complicated structure of interconnected subsidies founded in large part on the 1936 Act. One of the basic changes would be to extend subsidies for constructing vessels for use in bulk trades (e.g., wheat). Since 1936, such subsidies have gone only to vessels in the liner trade. The 1936 subsidy is no longer realistic, since in today's trade, 85 percent of American cargo is in bulk trade while only 15 percent is in the liner trade. A gradual lowering of subsidies from the present 55 percent of total cost to 35 percent by the end of fiscal year 1976 is also being considered. The continued subsidy would enable American shipbuilders to compete with foreign shipbuilders but would encourage them to improve efficiency in construction techniques, such as block-building, because of the decreasing subsidies. Tax deferrment for future ship construction would also be extended to all American shippers rather than the limited number now receiving such benefits.[63]

63. For comments and excerpts from the Committee hearings, *see* MARITIME, Feb. 1970, at 1-14.

Tort Liability: Moragne v. States Marine Lines, Inc., 409 F. 2d 33 (5th Cir. 1969), *review granted*, 38 U.S.L.W. 3169 (U.S. Nov. 10, 1969) (No. 175). The case involves the death of a longshoreman aboard a vessel in state navigable waters. The Florida wrongful death statute does not create a cause of action for a death caused by unseaworthiness of a vessel. The Supreme Court will consider whether national maritime law or state negligence law should be applied under the state wrongful death statute for a death that occurred on navigable waters within the state.

Suez Canal Anniversary:[64] One hundred years ago, on November 17, 1869, the Suez Canal was formally opened by a procession of ships led by the French Imperial yacht with the Empress Eugenie aboard. Two days later the column reached the southern mouth of the canal. In June of 1967, the canal was unofficially closed by Israeli occupation of the Sinai Peninsula and has not been reopened. Even before closing, the relative importance of the Suez Canal had been challenged by the introduction of the supertanker into the oil transportation market, a vessel too large to transit the canal fully loaded. Oil shipments have been responsible for about 75 percent of all cargo passing through the canal.

While closed, officials and planners of the Suez Canal Authority, which has operated the canal since the United Arab Republic nationalized it in 1956, are confident of the reopening once Israel leaves the Sinai. Plans have been formulated for the clearing and enlargement of the channel to accommodate the optimum sized tanker. A parallel pipeline is also planned to serve until the canal is reopened and thereafter to lighten larger tankers so that they may pass. The Authority is confident of continued use because passage is far safer than the voyage around the Cape of Good Hope.

Ship Construction Disclosure: Congress amended 46 U.S.C. § 362(b) (Supp. IV, 1969) regarding the disclosure of construction details. Pub. L. No. 91-154 (Dec. 24, 1969), 83 Stat. 427, 13 U.S. CODE CONG. & AD. NEWS 2527 (1969). This amendment eliminates the requirement for all foreign and domestic passenger vessels to publicly disclose their conformity to

64. N.Y. Times, Nov. 16, 1969, at 88, col. 1.

United States safety standards. The public disclosure by advertisement or notice is no longer necessary since all passenger ships sailing from local ports with United States nationals aboard since November 2, 1968, have been required to conform to uniform safety standards. Therefore, the request for disclosure is superfluous and is no longer required.

Supertanker Insurance Losses:[65] British business circles report that supertanker insurers are extremely concerned over losses at sea and the resulting high payments to the insured. In the latter part of December, three supertankers, the *Marpessa, Mactra,* and *King Haakon VII,* suffered explosions and sank at sea. The three ships cost about $16.5 million each and insurers face a loss of $11 million on the 207,000 ton *Marpessa* alone. The financial burden may increase as Japanese shipyards are planning on building tankers of 500,000 tons. A conference of tanker owners was held at Shell Petroleum Company's Shell Center in London during January to discuss the fire dangers.

Tort Liability: Hellenic Lines Ltd. v. Rhoditis, 412 F.2d 919 (5th Cir. 1969), *review granted,* 38 U.S.L.W. 3247 (U.S. Jan. 12, 1970) (No. 661). The question presented is whether a Greek seaman may maintain an action under the Jones Act to recover for injuries suffered in a United States port on a Greek flag vessel whose controlling Greek corporation is almost wholly owned by a Greek citizen who has resided in the United States for 20 years as the Greek representative to the United Nations.

SOVEREIGNTY

JURISDICTION

United States Sovereignty over Continental Shelf: The United States brought suit against some enterprising individuals who had hopes of establishing an island nation on coral reefs off the coast of Florida, near Miami. The United States District Court for the Southern District of Florida awarded plaintiff United States a permanent injunction against construction on the reefs. The court held it was unlawful to build there without a statutory permit from the Secretary of the Army. The government had also sought an injunction on grounds that the proposed construction would interfere with an area that is subject to the

65. BUS. WK., Jan. 10, 1970, at 48.

jurisdiction of the United States. The court refused the injunction on the latter grounds. While admitting that the government had sovereign rights in the reefs, the court concluded that those rights are limited and insufficient grounds for granting injunctive relief. *United States v. Ray*, 294 F. Supp. 532 (S.D. Fla. 1969), *noted in* 6 SAN DIEGO L. REV. 487 (1969). On appeal, the Fifth Circuit upheld the injunction on the first count and reversed the lower court's denial on the second count. In reversing, the court pointed to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1332(a) (1964), and to the Geneva Convention on the Continental Shelf, June 10, 1964, art. 2, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311, as statutory and international recognition of United States sovereignty in the area. The court held that neither ownership nor possession was a requirement for the granting of injunctive relief. The interests of the United States in preserving the coral and marine life from destruction and in preventing a navigational hazard from endangering pleasure craft were vital interests and protectable by injunction. *United States v. Ray*, 38 U.S.L.W. 2427 (5th Cir. Jan. 22, 1970).

Proposed Senate Resolution on the Continental Shelf: Jurisdictional questions over the administration of offshore resources and the territorial extent of the adjacent nations is presently an open question. A Senate resolution, S. Res. 33, 91st Cong., 1st Sess. (1969), would provide some answers to these questions. The resolution would establish an international licensing authority to license exploration and exploitation activities of States and their nationals. A precise Continental Shelf boundary would be established at a depth of 550 meters or a distance of 50 miles from shore, whichever would be further seaward. The resolution includes a declaration of legal principles for governing the activities of nations regarding development of the seabed and subsoil and use of the high seas. The resolution, if passed, would direct the President to seek the implementation of such principles through the United Nations.

Territorial Waters:[66] The State Department stated on February 25 that it will continue to recognize the width of the territorial sea at three miles although it does favor an increase to 12 miles and it shall do so until international accord can be

66. San Diego Union, Feb. 26, 1970, § A, at 16, col. 1 (home ed.); San Diego Union, Feb. 27, 1970, § B, at 5, col. 2 (home ed.).

reached. Two problems are of great concern to the United States in extension of the limit to 12 miles: (1) fishing rights; and (2) freedom of navigation through straits which would no longer be high seas upon the adoption of that extended limit. However, Ecuador and its South American neighbors, Peru and Chile, will continue to claim a 200 mile limit for the express purpose of protecting their marine resources. At present, the seafood industry in those nations is small, but they wish to protect a certain area of sea so as to make the industry a primary one in the future. Presently, at least forty countries claim 12 miles of territorial seas and 11 claim more, up to the 200 miles claimed by Peru, Chile, and Ecuador.

NORTHWEST PASSAGE

In an attempt to find a way to market the oil that will be produced on the Alaskan North Slope, three oil companies, Humble, Atlantic-Richfield, and British Petroleum, invested $30 million to determine if a specially equipped oil tanker could safely negotiate the Northwest Passage. An alternate and secondary means of marketing the oil would be to pipe it from the fields over 800 miles of tundra to the ice-free port of Valdez in the south. The pipeline flow could adequately serve the west coast of the United States but would increase the cost of oil shipped for consumption on the east coast.

The SS *Manhattan* sailed from Chester, Pennsylvania, on August 24, 1969, and by the evening of September 5 had entered the Arctic ice. Nine days and 800 miles later she emerged from the Prince of Wales Strait into Amundsen Gulf on the Beaufort Sea to become the first commercial vessel to transit the Northwest Passage. She arrived at her destination, Point Barrow, Alaska, on September 21, 1969. Although the voyage was nominally a success, the true success will not be known until all of the data gathered during transit is analyzed to determine the feasibility of such journeys on a larger scale and on a regular basis. Decisions on marketing must soon be made for the oil should be ready for delivery by 1972-73.

Since the development of the Alaskan North Slope oil fields and the initially successful passage of a modified oil tanker through the Northwest Passage, great concern has been generated in both the United States and Canada concerning the status of the

right of passage. While no one apparently contests the Canadian claim to the islands of the archipelago and the traditional surrounding territorial sea, the legal status of the waters of the Passage, around and between the islands, is unsettled. A strong element in Canada advocates declaration of sovereignty over the entire area. Prime Minister Pierre Elliott Trudeau would not, however, allow himself to be forced into a hastily-drawn statement on point for fear of adverse international reaction.

Mitchell Sharp, Minister of External Affairs, has assured the Canadian people that the September 1969 passage of the SS *Manhattan* has in no way prejudiced any possible claim to sovereignty. In a statement made on September 18 he stated that Canada welcomes all flags into Arctic waters for purposes of navigation and that Canada will seek only to assure that the Passage is used for peaceful purposes and by vessels of suitable design and safety standards. In that same statement he used the term "Canada's sovereignty" several times without reference to any mile limit.

In November 1969, Trudeau discussed the problem with Secretary-General U Thant and disclosed his plan to assume primary responsibility for the prevention of pollution in the world's last great natural area in the form of stewardship over the area. He also suggested that Canada participate in a proposed international conference on pollution controls for the underdeveloped areas of the world. In February 1970, Minister Sharp stated that Canada regards the Arctic waters as her own and Prime Minister Trudeau, in response to a question in the House of Commons, intimated that before the *Manhattan* would be allowed to re-enter the Arctic waters, there would have to be a guarantee against the danger of oil spillage. By some, this is regarded as a statement of Canadian sovereignty over the Northwest Passage.

The Canadian government proposed legislation on April 8 to extend Canadian sovereignty from the present three-mile limit to 12 miles. Legislation was also presented to provide for pollution abatement and monetary liability for the 100-mile sea corridor around the Canadian Arctic. Both ship and cargo owners would be strictly liable for damages and clean-up costs resulting from dumping or spillage. Prime Minister Trudeau announced that Canada was taking steps to bring any litigation concerning

Canadian sovereignty into Canadian courts rather than the International Court of Justice.

Any claim to sovereignty or stewardship is largely based on the Canadian fear of pollution of the Canadian Arctic and the resulting destruction to the ecology of the area. The life structure of the Arctic is extremely fragile and can be upset or destroyed with little effort. A small fraction of the pollution tolerable in milder climates would cause massive damage in the Arctic. One large oil spill could pollute a very large area for many years with little or no chance to clean up the spill or minimize mortality among the wildlife. Even if the area was accessible so that a spill could be cleaned up, the damage to the tundra caused by a single truck in one day can take from 20 to 50 years to be repaired by natural regeneration. Elimination of the pollutant by natural forces would be slow because oil on ice is slow to evaporate or disintegrate and it cannot seep into the frozen subsoil. The scope of the potential pollution problem is amplified by the fact that a number of nations using the Passage, if opened for general shipping use, would have absolutely no interest in preserving the environment of the area.

Aside from expected international opposition to a unilateral declaration of sovereignty over the Northwest Passage, the problem of such a claim is increased by the fact that the area is largely unpopulated, much of it is seldom seen except by airplane, and it is difficult to assert dominion over an area which cannot be effectively controlled. Furthermore, the costs of controlling or maintaining the Passage will be extreme. Thus far, the United States has rejected any claim to sovereignty over the Passage if unilaterally declared because of the effect of such declaration upon: (1) fishing rights; (2) freedom of passage for warships; and (3) the possibility that this would set an example to be followed by other island nations thus closing many existing high seas areas. In retort to this position, the Canadian government has stated that the United States should prefer that the Passage be controlled by so close an ally, because if it remains an international strait it will create problems of national security for both the United States and Canada.

WATER

Appropriations for the Saline Water Conversion Program, Pub. L. No. 91-43 (July 11, 1969), 83 Stat. 45, 7 U.S. CODE

CONG. & AD. NEWS 973 (1969): The act authorizes the expenditure of $26 million during fiscal year 1970 for the research and conversion of saline or brackish water into fresh water, thus implementing provisions of the Saline Water Conversion Act, 42 U.S.C. § 1951 et seq, *as amended* (Supp. IV, 1969).

Foreign Assistance Act of 1969, Pub. L. No. 91-175 (Dec. 30, 1969), 83 Stat. 805, 13 U.S. CODE CONG. & AD. NEWS 2656 (1969): The act authorizes funding for the design, construction, and operation of a large scale prototype desalting plant in Israel. The purpose of the authorization is to pursue the possibility of low-cost desalination in all countries, including the United States.

WILDLIFE

New Jersey Bird Preserve Dedicated:[67] The World Wildlife Fund dedicated 900 acres of ocean-front marshland property for a bird preserve near Stone Harbor, New Jersey, on July 17, 1969. On the same day, the state of New Jersey announced a six month moratorium on sales of state-owned wetlands so that an in-depth study can be made of the sales from an ecological standpoint. Basing decisions on the results of the study, the state will determine which areas must be effectively zoned with conservation and ecology in mind.

An Act for the Protection of Endangered Species of Fish and Wildlife, Pub. L. No. 91-135 (Dec. 5, 1969), 83 Stat. 275, 11 U.S. CODE CONG. & AD. NEWS 1986 (1969): An act to provide assistance on an international level for the preservation of species threatened with extinction. The Secretary of the Interior is to prepare a list of fish, wild mammals, amphibians, and other wild animals that are threatened with worldwide extinction and to prohibit the importation of any such species into the United States. Limited reservations will be allowed for scientific purposes or on other terms as prescribed by the Secretary. This act also amends other existing laws to facilitate the act's purpose of protecting wildlife.

ZONING

New Hampshire Zoning Suit: A New Hampshire statute on tidal waters, N.H. REV. STATS. ANN. ch. 483-A, §§ 1-5 (1968),

67. N.Y. Times, July 21, 1969, at 68, col. 1.

prohibits filling of any marsh or swamp adjacent to tidal waters without petition to and approval by the New Hampshire Port Authority. An owner of marshland on the landward side of a salt meadow sought permission to fill the land for development purposes. The Fish and Game Department opposed the filling as it would destroy nutrient producing grasses and algae. The Port Authority refused to grant a fill permit and the marsh owner sought judicial relief. The court, in reversing the decision of the Port Authority, construed the statutory intent as applying "to land in or contiguous to tide waters, that is, to land of littoral owners." The court, in finding the contested land not being within the purview of the statute, declared the Port Authority's order void as they held no jurisdiction over plaintiff's property. *Sibson v. State*, ____ N.H. ____, 259 A.2d 397 (N.H. Sup. Ct. 1969).

New York Zoning Suit: Erbsland v. Vecchiolla, 59 Misc. 2d 965, 302 N.Y.S.2d 75 (Sup. Ct. 1969). An action to prohibit the maintenance of a criminal prosecution against the petitioner for a violation of a city zoning ordinance. The petitioner wished to enlarge his mooring facilities on an inlet and the city would not allow it because of a zoning restriction on the area. Petitioner applied to the state and to the Corps of Engineers for permission and began construction. Once construction was started, petitioner was cited for violation of the zoning ordinance. In this action he argued that the land upon which he was building, the bed beneath a navigable waterway, was within the exclusive jurisdiction of the state and the United States. The court decided against the petitioner, stating that the use restrictions created by the ordinance are not enforceable against the state, but that this particular land may still generally be subject to restrictions when in hands other than those of the state. The proposed activity of the petitioner would not enjoy the immunity of the state.

Vermont Zoning Suit: Kedroff v. Town of Springfield, ____ V.R. ____, 256 A.2d 457 (1969). A declaratory judgment action to determine whether a zoning ordinance prohibits the construction of a sewage treatment plant in a residentially zoned area of Springfield, Vermont. The court held that the construction was proper even though in violation of the zoning ordinance because the municipality is merely an instrumentality of the state in the area of assertion of public duties; from this it follows that the state water pollution control statutes are but an amendment

to or repeal of any local zoning ordinance with which they would otherwise come into conflict.

California Coastal Development Proposal:[68] California Lieutenant Governor Ed Reinecke held a special Conference on Ocean Resources on January 29 to propose a moratorium on adverse development of the scenic California coastline by adopting a general plan for coastal zoning. The moratorium was proposed to prevent adverse modification of the coastline during the two year period that state planning and development criteria are being prepared. The zoning plan would prevent indiscriminate dredging and filling, preserve an uncluttered view of the beaches and ocean, and provide public access to the state's beaches. Appropriate legislation has been introduced in both state houses to establish a coastal conservation and development commission. Assembly Bill 730, Senate Bill 371.

During the week of February 9, San Diego County Supervisors discussed the principle of providing a master plan for lagoon development in San Diego County, California. The discussion was prompted by Chairman Henry Boney's attendance at the Conference on Ocean Resources. The Supervisors did not approve the master plan concept but instructed their planning department to identify as effectively as possible lagoon boundaries and proposed uses. For the present, and pending further consideration of the holding proposal, a temporary holding zone could be initiated that would prohibit development of lots smaller than ten acres and apply the zoning to lagoons located in unincorporated territory.

Massachusetts Zoning Suit: The Massachusetts Zoning Enabling Act, MASS. GEN. LAWS ANN. ch. 40A, § 2 (1968), enables town zoning ordinances to prevent construction on land that is subject to seasonal or periodic flooding. The town of Duxbury passed a local ordinance that was interpreted by the town zoning board to mean that no marsh could be excavated or filled. This interpretation was challenged and the court held that the board's position was untenable. The court stated that the purpose of the city in using this ordinance had been to preserve the surrounding coastal wetlands in their natural state. The result was to deprive the owner of any practical use of his property and

68. San Diego Union, Feb. 10, 1970, § B, at 3, col. 7 (home ed.).

such a purpose was beyond the city's power to accomplish within the meaning of the act. *MacGibbon v. Duxbury Board of Appeals*, 38 U.S.L.W. 2429 (Mass. Sup. Jud. Ct., Jan. 29, 1970).

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