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Recent Developments in the Law of the Seas II: A Synopsis

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Recent Developments

Recent Developments in the Law of the Seas II: A Synopsis

INTRODUCTION

The following materials are a compilation of events relevant to law of the seas that took place from March 15, 1970 to March 1, 1971. While it is fairly complete it is far from exhaustive, due to the lack of continuity and organization of source materials. Major sources include the *New York Times*, the *Environmental Reporter*, and the *United States Code Congressional and Administrative News*, as well as a little help from our friends. The format used is basically the same as that used last year when the first synopsis was published.* For those of our readers who found the previous synopsis informative, we hope that this second annual synopsis will be of equal benefit.

CONSERVATION

Cape Cod National Seashore, Pub. L. No. 91-252 (May 14, 1970), 84 Stat. 261 5 U.S. CODE CONG & AD. NEWS 1346 (1970): Congress enacted Cape Cod national seashore legislation in 1961¹ to au-

* *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627 (July 1970).

1. 16 U.S.C. § 459b-8 (1964).

thorize the expenditure of \$16 million to establish the seashore. This figure proved insufficient due to incorrect estimates and appreciated land values. The present legislation increases the authorization to \$33.5 million. The purpose of the seashore is to provide meaningful natural area reasonably accessible to heavily populated regions.

Coral Reef Conservation Act, Pub. L. No. 91-427 (Sept. 26, 1970), 84 Stat. 884, 11 U.S. CODE CONG & AD. NEWS 4092 (1970): Act authorizes the expenditure of \$4.5 million for the conservation of coral reefs through research in starfish control.

The rapid increase in Crown of Thorn Starfish threatens coral reef destruction. For example, 23 miles of Guam's coral reef has been virtually destroyed by the infestation since 1967. Loss of the coral reef would decrease fishery production and expose the island to typhoon and shoreline erosion.

The cause of the starfish increase is probably due to man's interference with the reef ecosystem. Dynamite blasting of the reef has destroyed much of the living coral, a predator of juvenile starfish. Also the removal of the triton, the starfish's chief predator, has aided the increase.

Gulf Islands National Seashore, Pub. L. No. 91-660 (Jan. 8, 1971), 84 Stat. 1967, 16 U.S. CODE CONG & AD. NEWS 8005 (1971): Act appropriates approximately \$18 million for acquisition and development of land to establish the Gulf Islands National Seashore. The seashore will contain approximately 7,737 acres in Florida and Mississippi.

Alameda Conservation Association v. California, No. 22,961 (9th Cir., Jan. 19, 1971): An action was filed by a group of eight conservationists against California to stop the state from completing a sale of San Francisco Bay lands to the Leslie Salt Company, who planned to fill the area for its own use. The plaintiff alleged that the sale would interfere with the public's rights to the waterways and the wildlife of the region, and asked for an injunction to halt the land exchange. The district court dismissed the complaint as failing to state claim upon which relief could be granted, stating the plaintiff did not have standing to question the proposed land exchange.

The circuit court reversed, holding that there did exist a possible

basis for standing, although the non-profit conservation association, without more than public interest in protecting the bay area, did not constitute sufficient standing. It reasoned that to allow clubs and organizations to question acts of public officials that did not involve any rights or property of the organization, could "wreak havoc with the administration of both federal and state governments."² The court did find standing in the fact that four of the association members owned property bordering on the San Francisco Bay, or properties which are on lagoons flushed periodically by the Bay. The remaining four members owned land one to six miles from the navigable waters of the Bay and all, therefore, had a sufficient personal interest in the protection of fisheries and wild-life in the area to constitute standing.

York Cove Corp. v. United States, 317 F. Supp. 799 (E.D. Va. 1970): York Cove brought an action against the United States under the Federal Tort Claims Act³ seeking damages for the destruction or diminution in value of oyster grounds in that portion of York River, Virginia that had been leased to plaintiff by the State of Virginia. The injuries were a result of dredging undertaken by the Navy pursuant to plans to expand the nearby Yorktown Naval shipping facilities.

The court⁴ found that the area covered by the lease was deeded to the United States in 1918 by Virginia⁵, and the state failed to reserve for itself any authority in the cession statute. Therefore, no valid leases could be granted giving rights superior to federal claims to the area. The court went further and stated that assuming the lease was validly granted by the state, it was subservient to the government claim since the construction of the pier and dredging incident thereto was pursuant to a dominant navigational servitude that acted as a defense to any action for damages as a result of exercising that servitude.⁶

Anadromous Fish Conservation Act, Pub. L. No. 91-249 (May 14, 1970), 84 Stat. 214, 5 U.S. CODE CONG & AD. NEWS 1343 (1970): Act amends the Anadromous Fish Conservation Act of 1965⁷ by increasing research grants to \$32 million. Also provided is an increase in federal expenditure when two or more states join to-

2. No. 22,961 (9th Cir. 1971).

3. 28 U.S.C. §§ 1346(b), 2671-80 (1964).

4. The cause was heard before Federal District Court for the Eastern District of Virginia.

5. Act of March 16, 1918 (Va. 1918), ch. 382.

6. 33 U.S.C. §§ 1, 3 (1964).

7. 16 U.S.C. § 757a (1968).

gether in a research or conservation effort to enhance anadromous fish resources.

Fisheries Loan Program Act, Pub. L. No. 91-387 (Aug. 24, 1970), 84 Stat. 829, 10 U.S. CODE CONG & AD. NEWS 3725 (1970): An Act to amend section four of the Fish and Wildlife Act of 1956, as amended⁸ to extend the terms during which the Secretary of the Interior can make loans available under the Act.

Congress created the loan fund in 1956, as instability of the industry made it difficult for fisheries to get loans. This amendment to the Act extends the authorization for loans to June 30, 1980 and appropriates \$20 million for the program. Also United States nationals from American Samoa are for the first time made eligible to apply for the loans.

Pacific Marine Fisheries Compact-Consent to Amendment, Pub. L. No. 91-315 (Aug. 7, 1970), 84 Stat. 415, 8 U.S. CODE CONG & AD. NEWS 2439 (1970): The Pacific Marine Fisheries Compact consists of the States of Alaska, California, Idaho, Oregon and Washington. The amendments to the compact agreed to by Congress do two things:

(1) Give the compact's commission the duty of inquiring into ways of conservation and prevention of depletion and physical waste of fisheries, marine, shell and anadromous, in all areas in the Pacific where the compact's signatories have jurisdiction. The commission is authorized to draft legislation and submit it to the governors of the respective states in the aid of conservation and to advise state agencies and recommend the adoption of regulations within the jurisdiction of said agencies.

(2) Accept funding on the basis that 80 percent of the cost is to be borne by states bordering the Pacific, five percent by the other member state and the balance by member states in proportion to the catch made by their commercial vessels.

Jellyfish Control Act, Pub. L. No. 91-451 (Oct. 14, 1970), 84 Stat. 922, 12 U.S. CODE CONG & AD. NEWS 4452 (1970): Jellyfish are a detriment to commercial and recreational use of the seas. This Act extends the program of jellyfish control along the coastal United States until June 30, 1973.

8. 16 U.S.C. § 742c(c) (1964).

Sea Grant Colleges Appropriations, Pub. L. No. 91-349 (June 23, 1970), 84 Stat. 448, 8 U.S. CODE CONG & AD. NEWS 2479 (1970): Congress authorized a \$15 million dollar grant in 1966 for education and research in marine programs.⁹ The effect of the present legislation is to extend the life of the program to June 30, 1973 and increase the amount of the grant to \$30 million annually.

Florida Dredging Stopped: The Secretary of the Army, in late November, 1970, blocked plans of the city of Dunedin, Florida to dredge nine million cubic yards of fill from the Gulf of Mexico to add 120 acres to Honeymoon Island in the Gulf. The Secretary's upholding of the Army Corps of Engineers' denial of the St. Josephs Sound dredging application is a victory for both state and federal agencies who stated the plan had little justification and would cause irreversible damage to the environment and to fish and wildlife.

FISHING

Russians Accused of Harassing Canadian Fishermen: British Columbian fishermen are demanding that their government file a protest with the Soviets dealing with an alleged deliberate near collision with Canadian salmon boats. The incident occurred on July 25 when a Russian trawler piloted through a group of anchored salmon boats, sideswiping one boat, and quickly disappeared into the gloom.

The Canadians claim that the Soviets are too expert seamen for the incident to have been an accident, and cite as reason for the angry display, Russian reaction to the closing of Vancouver Harbor to Russian supply ships. The harbor was closed as a bargaining lever to compel the Soviets to participate in ocean policy talks with the Canadians and the United States. These talks would include discussions about cooperation among nations, and fishing rights in waters that are internationally owned. Canada is most concerned over the Russian method of floor-fishing whereby Russian fishing vessels over-fish the ocean floor causing a certain biological imbalance of oceanic resources in that immediate area as well as the ocean generally.

Agreement: United States and Canada, Reciprocal Fishing Rights: The United States and Canada agreed to accord the fishing vessels of the other country reciprocal fishing rights in certain of their respective exclusive fishing zones on April 24, 1970. The Fishing Agreement with Canada is to remain in force for two years dur-

9. 33 U.S.C. § 1122(b) (1) (1968).

ing which time vessels making use of the reciprocal rights granted under the agreement must do so subject to regulation by the host nation. The agreement also called for expanded cooperation between the signing parties in conducting both national and joint research programs on species of common interest off their coasts.¹⁰

Agreement: United States-Poland Governing Fishing Rights in the Middle Atlantic: A fishing agreement between the United States and Poland was entered into force on June 3, 1970, by an exchange of letters. The two countries agreed to cooperate in doing fishing research in the western region of the Middle Atlantic by exchanging information obtained by their respective scientists, and, to the extent possible, by allowing scientists of one country to participate in fishery research conducted by vessels of the other.

In addition, both nations agreed to refrain from fishing entirely between January first and April 15th in the area of the Middle Atlantic designated in the treaty. Further, in order to protect certain endangered species of fish, specialized fisheries designed to catch these species were totally banned within designated areas.

Under the agreement, Polish vessels are now allowed to conduct loading operations in the waters of the nine mile fishing zone contiguous to the territorial sea of the United States, with vessels of any nation with which the United States maintains diplomatic relations. Each government further agreed to facilitate and provide for appropriate entry into its ports of the fishing vessels of the other. The right of mutual inspection to ensure compliance with the terms of the agreement was also guaranteed.¹¹

*United States-Japan Agreement on Fishing Rights:*¹² The United States and Japan have signed two agreements relating to fishing rights, including an agreement setting crab quotas in the East Bering Sea. The first of these allows Japan to continue fishing in water within 12 nautical miles of the United States coast for two

10. Fishing Agreement with Canada, Apr. 24, 1970, — U.S.T. —, T.I.A.S. No. 6879.

11. Fishing Agreement with Poland, June 13, 1970, — U.S.T. —, T.I.A.S. No. 6890.

12. Agreement with Japan Concerning Certain Fisheries Off the Coast of the United States, Dec. 11, 1970, — U.S.T. —, T.I.A.S. No. 7020; Agreement with Japan Regarding the King and Tanner Crab Fisheries in the Eastern Bering Sea, Dec. 11, 1970, — U.S.T. —, T.I.A.S. No. 7019.

more years. In addition, the agreement designates three more ports where Japan can transfer her catches and supplies thereby increasing to eight the number of American ports used by the Japanese for this purpose.

A separate agreement relating to crab fishing restricts Japanese red crab fishing. At present, only king crab fishing is restricted.

*United States-Soviet Agreement on Fishing Rights:*¹³ The United States and the Soviet Union agreed on December 11, 1970, to increase from three to three and one-half months the time which the Middle Atlantic offshore fishing area will be closed to vessels of both nations catching red hake, scup or porgy, and flounder. The agreement was viewed as a triumph for conservationists because the extra one half month protects the entry of hake into their spawning grounds at a critical time in their reproduction cycle. The agreement was attacked by several senators and American fishing interests, however, who claim that Washington failed to bargain hard enough with the Russians. These interests had hoped that Russian competition with American fisherman could have been limited more by the treaty.

MINERALS

Rationale for Lease Sale Disclosed: In October 1970, Secretary of the Interior Walter Hickel announced the sale by the federal government of oil and gas leases on 127 tracts of submerged land comprising part of the outer continental shelf off Louisiana. Hickel stated that the following factors were instrumental in his decision to grant the leases: (1) a new source of natural gas and low sulphur resources; (2) no alternative energy sources immediately available east of the Rockies; (3) shortage of natural gas in early 1970's; (4) geologic stability of the offshore Louisiana area; and (5) improved regulations and supervision decrease the threat of pollution.

Oil Discovered in the North Sea: The British Petroleum Company announced on October 19, 1970, that it had made a major oil strike in the North Sea. The well which lies in 350 feet of water was producing 4,700 barrels daily at the time of the announcement. The seabed in this area has long been considered promising for the production of oil, but drilling conditions have been difficult and the results up to this time scanty.

The interest in the North Sea began on April 27 when Phillips Petroleum Company announced its initial strike off the coast of Nor-

13. Fishing Agreement with U.S.S.R., Jan. 1, 1971, — U.S.T. —, T.I.A.S. No. 7009.

way. Tennaco followed suit with the discovery of a strike producing 2,000 barrels daily in May. Since that time the British Government has granted 30 exploratory licenses in 8,000 square miles of Britain's continental shelf. The companies awarded the licenses have pledged to expend \$81.6 million to develop the oil resources of the North Sea region.

South Vietnam Approves Off-Shore Exploration Bill: In early December, South Vietnam President Nguyen Van Thieu approved a law¹⁴ allowing foreign oil companies to explore the continental shelf of Vietnam for oil deposits. The bill was approved by the Vietnamese National Assembly after a seismic study found the shallow continental shelf surrounding South Vietnam to be a good oil risk.

According to the provisions of the bill, the South Vietnamese government will be entitled to 12.5 percent of all oil deposits or its equivalent in dollars. A meeting of all prospective bidders for the rights had been set for February 1971, but it now appears that bureaucratic problems have caused a delay that may push the meeting date sometime into March or later. It was hoped by Thieu that wildcat drilling might begin by the end of 1971, however, the fact that the fall presidential elections will interfere with negotiations makes this possibility improbable. To date, the only American oil company investment in exploration consists of an offshore survey which cost a bare \$1 million.

POLLUTION

DOMESTIC POLLUTION

Mercury Found In Fish: On December 15, 1970, the Food and Drug Administration (FDA) announced that levels of mercury exceeding the maximum allowable amount of 0.5 parts per million had been found in 23 percent of canned tuna. A study and recall of some tuna was announced.

Unacceptable levels of mercury in swordfish was announced December 23, 1970. The FDA stated 89 percent of swordfish tested in store freezers exceeded safe levels. A similar study and recall was announced.

14. Law No. 011-70 (1970).

The State of Ohio in January 1971, recalled 15,000 cans of tuna and 600 pounds of swordfish, with 1.6 mercury levels up to 1.124 parts per million, according to the Ohio agriculture department's food, dairy and drug division.

Dr. Robert White of the National Oceanic and Atmospheric Administration announced in January 1971 a cooperative program with the FDA to define the nature and extent of heavy metal contaminants in fish.

DDT Contaminated Fish Seized: In the first seizures of DDT—contaminated salt water fish on record, officers of the Food and Drug Administration seized 8000 pounds of tainted kingfish in Los Angeles on December 31, 1970. The seizure was ordered when tests revealed that the fish contained about 19 parts per million of the deadly insecticide—14 parts over the maximum allowable limit. The fish were seized from the State Fish Company, of San Pedro and were caught within 20 miles off the coast near Los Angeles. An attorney for the fish company said that it would not contest the action taken.

San Francisco Oil Spill: Two tankers owned by Standard Oil Company of California collided early on the morning of January 8, 1971, in dense fog just inside San Francisco's Golden Gate Bridge. The collision, according to the captain of the ramming ship the *Arizona Standard*, occurred as a result of the blending of the images on his radar screen of the Golden Gate Bridge and his sister ship, the *Oregon Standard*. The collision resulted in the spilling of approximately 840,000 gallons of oil into the San Francisco Bay. It was the worst spill in the history of San Francisco Bay, and the first major spill to occur inside a naturally protected harbor of that size. Immediate clean-up operations resulted in the recovery of some 411,000 gallons of the oil. However, the bulk of the oil floated out to sea forming an enormous oil slick stretching from Point Reyes, 35 miles northwest of San Francisco, to Pacifica, 15 miles to the south.

Many sea birds and migratory species became engulfed in the slick, making it necessary for the California State Department of Fish and Game to set up three receiving centers to clean the oil from the feathers of stricken birds. Since the solvent used to remove the oil also removes vital natural oils from the feathers of the birds, thus rendering them unable to fly or swim, they must be cared for until they grow new feathers—a process which usually takes a year to complete. In addition, Fish and Game officials predicted that approximately 90 percent of the "rescued" birds would eventually die from the effects of the oil.

Countless law suits have been filed against Standard Oil Co. as a result of the accident, including a class action filed by two Stinson Beach residents asking for \$3.5 billion in damages.

Oil Spill in Long Island Sound: The Humble Oil and Refining Company's tanker, *Esso Gettysburg*, ran aground in fog and light snow on January 23, 1971, at the mouth of New Haven Harbor spilling 385,000 gallons of oil into Long Island Sound. The accident was caused by a misplaced buoy which had been pushed out of position by ice floes in the harbor. A Humble Oil spokesman said that none of the oil had reached the shore, and barring such an occurrence, a complete cleanup could be effected in three days. Moreover, no harm to marine life or waterfowl was reported. This was due, in large measure, to the fact that the spill occurred in a highly polluted area which is almost totally devoid of any life except for sea gulls. In addition the spilled oil was of a low density, and it was predicted that trace amounts which could not be recovered by cleanup operations would evaporate.

Dumping Consequences Disclosed: Bostwick H. Ketchum of the Woods Hole, Massachusetts, Oceanographic Institute told the Water Pollution Control Federation that the evidence is clear that dumping sewage sludge off New York harbor has had profound ecological effects on bottom dwelling marine life in a ten square mile area. Fish which migrate through the area can contract and carry disease to more distant parts of coastal waters. The sludge does not dissipate, but accumulates on the bottom. The oxygen content of water near the bottom is much less than that required by many marine organisms.

Maurice Feldman, Department of Water Resources commissioner for New York City, said observations have shown no effect on adjacent beaches in the New York area from the dumping.

Robert Dean, chief, Ultimate Disposal Research Activities, Federal Water Quality Administration, said the ocean is unsuitable for materials that float, are poisonous, or accumulate in the food chain with toxic effect, or for sludges that blanket the bottom of the sea and cause aerobic conditions and upset the ecology of food resources.

Samuel Fader, plant manager of an E.I. DuPont de Nemours and Company titanium dioxide plant at Wilmington, Delaware, de-

scribed barging waste acids 38 miles out to sea for dumping. He stated that barging was vital to the industry and that there are no practical alternatives.

Battle over the Continuation of Oil Drilling Off Santa Barbara Rages On: Since the Union Oil well "blow-out" of January, 1969, considerable measures have been proposed in an attempt to curtail the possibility of a future disaster in the channel. In January, 1970, Secretary of the Interior Walter Hickel proposed cancellation of 20 existing federal leases to drill in the channel. The proposal was in response to demands of GOO, a Santa Barbara group entitled "Get Oil Out", the Sierra Club, and several California politicians.¹⁵ Last June President Nixon carried the proposal to Congress and asked that the leases be cancelled and the area be developed as a federal wildlife sanctuary. However, the proposal would not have effected the 50 other existing leases in the channel, and it was unlikely that the action would satisfy conservation groups or the citizens of Santa Barbara. The proposal died in congressional committee hearings last term. However, California Senator Allan Cranston (D-Calif.) and California Representative Charles Teague (R-Calif.) plan to introduce a bill "this session" that would cancel many of the existing leases and impose a five year moratorium on future drilling.

As an alternative move, Ed Reinecke, Lt. Governor of California, issued a statement calling for a moratorium and a halt on further drilling. In his statement, Reinecke accused the Department of the Interior of already having made up its mind to grant new leases, and was merely going through the motions of holding public hearings on the possibilities of a moratorium.

Recently, a 12-month study financed by the oil and gas industry at the University of Southern California concluded that the massive well "blow-out" in Santa Barbara caused little permanent damage to the environment. Conservation groups including GOO, attacked the study as being a white wash sponsored by those most likely to benefit by continued drilling.

Meanwhile, the State Land Commission approved on January 28, 1971, the first oil well to be drilled in state-controlled off-shore waters since the Santa Barbara disaster. The Commission assured that the new well would be "fail-safe" as it has double the required safety equipment necessary on all off-shore drilling equipment.

15. *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 648-49 (1970).

DOMESTIC POLLUTION CONTROL-FEDERAL

Oil Eating Bacteria proposed: Scientists at Florida State University, Tallahassee, report that bacteria which eat spilled oil, then self destruct, may offer a new way to fight oil spills. Research supported by the Federal Water Quality Administration has come up with two types of bacteria, one which is destroyed by starvation, another which is consumed by other organisms. Scientists believe the bacteria must be tested in a mock spill, subject to Federal Water Quality Administration and state and local clearance.

Citizen Action Endorsed: The Legal Advisory Committee of the Council on Environmental Quality has recommended removal of legal impediments to private litigation against polluters. The Committee specifically urged: (1) that the defense of lack of standing and sovereign immunity be removed; (2) the creation of a statutory right to proceed in federal court; and (3) an alteration in the extent to which administrative decisions are sustained unless they appear to be arbitrary and capricious.

Clearance Denied Polluters: Acting pursuant to the Water Quality Improvement Act of 1969,¹⁶ Commissioner of Customs Miles Ambrose announced¹⁷ that the Customs Bureau is refusing clearance to vessels on navigable waters where a vessel's owner or operator is subject to civil penalty for knowingly discharging harmful quantities of oil into or on navigable water. Clearance will be granted only when the Coast Guard withdraws the request or customs is informed that survey satisfaction with the Coast Guard has been filed.

Navy Ordered to Halt Dumping Oil Waste into Oceans: On the heels of a major dumping incident, Secretary of the Navy John H. Chafee ordered that all naval vessels discontinue the routine practice of dumping bilge oil wastes in the oceans and rivers of the nation as of December 3, 1970. The order was in response to an oil slick consisting of 20,000 gallons of oil that threatened the Florida shoreline for a time. Two United States barges are claimed to be responsible for the discharge, a practice that has been routine with the Navy for the past two years without incident. Chafee told the Senate Public Works Subcommittee on Air and Water Pollution

16. Pub. L. No. 91-224 (Apr. 3, 1970).

17. 35 Fed. Reg. 15637 (1970).

that the Navy was at fault in dumping the oil, but denied that the Navy was in violation of any existing laws including the Oil Pollution Act of 1961,¹⁸ which exempted Naval vessels.

Senator Edmund Muskie (D-Maine) stated that the exemption Chafee was referring to was only for emergency situations, and felt it was incredible that an arm of the government would violate the 1961 act. Senators Jennings Randolph (D-W.Va.) and John Sherman Cooper (R-Ky.) have urged Secretary of Defense Melvin Laird to hold the Navy responsible for any damage, asserting that the dumping is a violation of the Water Quality Improvement Act¹⁹ passed last spring.

Executive Reorganization Plans Take Effect: Two reorganization plans submitted to Congress on July 9, 1970, have taken effect due to congressional failure to oppose them.²⁰ The plans, which create the Environmental Protection Agency and the National Oceanographic and Atmospheric Administration, were submitted pursuant to 5 U.S.C. § 90(a) (1964), which gives the President the power to affect reorganization of governmental agencies in the absence of congressional disapproval within 60 days.

The Environmental Protection Agency (E.P.A.), which is to be independent, consists of:

- (1) the Federal Water Quality Administration, which is now under the Department of Interior;
- (2) parts of the Environmental Control Administration, now under H.E.W.;
- (3) the Pesticide Research and Standards Administration, now setting programs of the Food and Drug Administration of H.E.W.;
- (4) the National Air Pollution Control Administration, now under H.E.W.;
- (5) a pesticides registration authority, now exercised by the Department of Agriculture;
- (6) an authority to perform general environmental research, now a function of the Council on Environment Quality;
- (7) certain pesticides research programs, now conducted by the Department of the Interior;
- (8) the environmental radiation protection standard setting function of H.E.W.; and
- (9) the functions of the Federal Radiation Council, which is abolished.

The new agency will have a budget of \$1.4 billion for 1971 and will employ 5,650 people.

The National Oceanographic and Atmospheric Administration

18. 33 U.S.C. § 1001 (1964).

19. Pub. L. No. 91-224 (Apr. 3, 1970).

20. 35 Fed. Reg. 15627 (1970).

(N.O.A.A.) is a part of the Department of Commerce, and will include:

- (1) all functions of the Environmental Science Services Administration which is abolished;
- (2) elements of the Bureau of Commercial Fisheries from the Department of the Interior other than those going to E.P.A.; the Bureau will be abolished;
- (3) the Marine Sport Fisheries and Wildlife from Interior;
- (4) the Marine Minerals Technology Center of the Bureau of Mines;
- (5) the Office of Sea Grant Programs from the National Science Foundation;
- (6) elements of the United States Lake Survey from the Army Corps of Engineers; and
- (7) after N.O.A.A. is established, the Navy's National Oceanographic Instrumentation Center and the Coast Guard's National Data Buoy Project.²¹

Robert M. White on January 28, 1971, was nominated by President Nixon to be the administrator of N.O.A.A. Dr. White, a meteorologist and former chief of the Weather Bureau, had been the acting administrator of the Administration since October of 1970.

Oil Discharge Regulations promulgated: Acting under the authority of the Federal Water Pollution Control Act, as amended,²² Secretary of the Interior Hickel issued regulations²³ September 10, 1970 restricting the discharge of oil into the oceans. A discharge of oil is prohibited if it causes a film or sheen upon the water, or causes discoloration. Also forbidden by the regulation is a discharge that discolors the adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water.

Excepted from the regulation are discharges for ballasting under the International Covenant for Prevention of Pollution of the Sea by Oil, 1954, as amended.²⁴ Also excepted are oil discharges from a properly functioning vessel engine, except for accumulated oil in a vessel's bilges.

Missing from the regulations is the definition of an "Act of God", which was proposed to mean an act occasioned by unanticipated grave natural disasters.

21. 1 ENV. REP. 265 (July 10, 1970).

22. 33 U.S.C. § 1161 (1970).

23. 35 Fed. Reg. 14306 (1970).

24. 12 U.S.T. 2989, T.I.A.S. No. 4900.

Hazardous Materials Regulations Changed: On October 31, 1971, the Department of Transportation announced amendments to the Hazardous Materials Regulations.²⁵ Pursuant to these amendments, any carrier must report by phone any incidents during the loading, transportation, unloading or temporary storage of hazardous materials in which such materials cause a fatality, cause injuries requiring hospitalization, result in property damage exceeding \$50,000 or present a continuing danger to life. A subsequent written report is required within five days. Foreign vessels must comply when in United States navigable waters. American vessels are bound by the regulation throughout the world.

The proposed regulation called for telephonic notice when property damage of \$5000 or greater occurred, but fear that this would lead to a deluge of calls lead to an increase of the jurisdictional limit to \$50,000.

Anti-pollution Litigants Granted Tax Exemption: The Internal Revenue Service issued a ruling on November 12, 1970²⁶ laying down the guidelines for a litigating anti-pollution organization to qualify as tax exempt under section 501(c)(3) of the Internal Revenue Code. Before an organization may qualify, it must demonstrate that it: (1) represents the broad public interest; (2) not receive fees for its services; (3) not be disruptive of the judicial system or engage in illegal activities; (4) must file a description of the cases it litigated over the course of the year and its rationale for determining that such a case benefits the public generally; (5) must not be a part of a private law firm; and (6) must not attempt to influence legislation nor may it carry on publicity to that end. Testifying before a subcommittee of the Senate Labor Committee, Internal Revenue Commissioner Randolph Thrower assured members that the Service would not attempt to decide what the public interest is, but would look to whether the group was untainted by private interest.

The controversy was initiated by the attempt of the Natural Resources Defense Council, a litigating anti-pollution organization, to achieve tax exempt status. The Service had expressed concern over the lack of standards if tax exemptions were provided for every group desiring to litigate on behalf of the public interest, in that opposing sides in a law suit involving substantial private interest would claim to be acting in the public interest in order to achieve tax-exempt status.

25. 35 Fed. Reg. 16832 (1970).

26. 1 ENV. REP. 75 (May 22, 1970).

Pollution control write-off Rules Disclosed: On December 29, 1970, the Internal Revenue Service and the Environmental Protection Agency jointly announced plans for amortization and certification of pollution control facilities.²⁷ Under the plan, industries will be allowed to amortize pollution facilities over a sixty month period, but only for facilities added to plants which were in operation before January 1, 1969. The regulation is made under section 704 of the Tax Reform Act. An estimated revenue loss of \$40 million is projected in 1971 due to the write-off.

President Orders Dumping Ban: On December 23, 1970, President Nixon imposed procedures to require federal permits for dumping into United States waters. The permits, which are to be issued by the Army Corps of Engineers, cannot be obtained unless the industries receive certification from state agencies that the discharges meet existing water quality standards. Additionally, veto power on the issuance of the permits will be in the hands of the Environmental Protection Agency.

The President chose to rely on the Refuse Act, which makes it unlawful to discharge "any refuse matter of any kind or description whatever other than that flowing from street and sewers and passing therefrom in a liquid state"²⁸ into any navigable water of the United States, except as authorized by the Secretary of the Army. Violation is a misdemeanor²⁹ punishable by a maximum fine of \$2500 per day and a minimum fine of \$500. Jail penalties of thirty days to a year may be imposed as well. Also civil action by the United States for damages is provided. There is no requirement of scienter under the act. The order is expected to affect about 40,000 industrial applicants, which must submit applications for permits no later than July 1, 1971, and about 1000 new plants per year.

Dumping Ban Announced Near San Francisco Bay: The Bay Area Water Quality Control Board, a state agency located in San Francisco, has ordered a complete ban on ocean dumping in the Gulf of Farallones, an area fanning out about forty miles from San Francisco Bay. The order became effective January 1, 1971, as well

27. 1 ENV. REP. 937 (Jan. 1, 1971).

28. 33 U.S.C. § 407 (1964).

29. 33 U.S.C. § 411 (1964).

as a companion order banning dumping in the Bay itself. Excepted from the January first deadline are United States Steel, Standard Oil of California, the Oakland Scavengers, and the Army Corps of Engineers, all of whom were granted an additional four to twelve months to halt their dumping activities.

Stronger Environmental Policy Urged: In his call for a strengthening of the National Environmental Policy Act,³⁰ Senator Henry M. Jackson (D-Wash.) urged the addition of a provision providing that every citizen has a "fundamental and inalienable right to a healthful environment." Such language is reminiscent of a proposed constitutional amendment introduced in the 91st Congress,³¹ and the original draft of the National Environment Policy Act. Jackson expressed disappointment with the performance of federal agencies under the Act. He cited as the reason for his disappointment the failure of the agencies to prepare timely environmental impact statements.

Muskie Introduces Pollution Control Legislation: Senator Edmund Muskie (D-Maine) on February 2, 1971, introduced S. 523 authorizing a five year, \$25 billion program for sewage plant construction. One-half of the cost of the program would be borne by the federal government while the states and cities affected would be responsible for the other half. Senator Muskie's legislation offers an alternative to the administration's proposed solution to the problem which was sent to Congress on February 10th. The administration's version would authorize a three year, \$12 billion program the cost of which would also be shared on a 50-50 basis.

A comparison of the Muskie bill with the administration's reveals that the annual authorized appropriations under Nixon's bill would be \$500 million dollars less than that proposed by Muskie, \$2.5 billion as against \$2 billion. With regard to deadlines for conformance the Muskie bill is much tougher, allowing the states three months to adopt the standards and a plan to meet them. The administration on the other hand would allow the states one year to make the necessary adjustments.

The two bills also differ in their provision for treatment of the problem of effluent discharges from industries and municipal sewage plants. Although both bills require the administrator of the Environmental Protection Agency to promulgate regulations dealing with these discharges, the Muskie version includes an additional feature, a compliance schedule for the states.

30. Pub. L. No. 91-190 (Jan. 1, 1970).

31. H.R.J. Res. 1294, 91st Cong., 2d Sess. (1970).

Additionally, the Muskie bill requires that any new building or facility use the latest control technology. As a practical matter, this means that they would be prohibited from dumping any wastes, whether treated or untreated, into streams, lakes, or bays. Instead, these facilities would have to install "closed cycle systems" as they become commercially feasible.

Nixon Proposes Environmental Program: In a February 8, 1971, message to Congress, President Nixon proposed the following environmental measures:

(1) Extension of federal-state water quality standards to all navigable waters, ground waters, and waters of the contiguous zones. Included is a requirement that standards include specific effluent limitations for individual sources of pollution;

(2) An increase of fines to a maximum of \$25,000 a day for administratively imposed fines, and to \$50,000 a day for court imposed fines for repeated violators of water quality standards;

(3) Injunctive relief where water pollution constitutes imminent danger to health or threatens irreversible damage to water quality, rather than the "cumbersome enforcement conference and hearing mechanisms;"

(4) Legal action by individuals against polluters;

(5) A \$25 million budget to develop better techniques to prevent oil spills and provide more effective surveillance;

(6) Ratification of two new international conventions on oil spills and amendments to the 1954 oil spills convention;³²

(7) Establishment of permit system to control dumping in the ocean. This proposed bill, the Marine Protection Act of 1971, will implement the recommendations of the Council on Environmental Quality made public by the President in the fall of 1970. The bill

32. *International Convention Relating to Intervention on the High Seas in Cases of Pollution Casualty (Public Law Convention)* 9 INT'L LEGAL MATERIALS 25 (1970). *International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention)*, 9 INT'L LEGAL MATERIALS 45 (1970); *International Convention for Prevention of Pollution of the Sea by Oil*, May 12, 1954, 12 U.S.T. 2889, 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. For further details, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627 (1970).

would forbid the dumping of waste materials, including dredge spoil, solid waste, garbage, sewage sludge, munitions, chemicals, biological and radiological warfare elements, radioactive materials, wrecked and discarded equipment, cellar dirt, and industrial materials, into the ocean, coastal waters, or the Great Lakes without permission from the administrator of the Environmental Protection Agency. The newly created independent federal agency would issue such permits only upon a showing by the applicant that the proposed dumping would not unreasonably degrade or endanger human health or amenities or the marine environment.

Maritime Administration Announces Oil Spill Program: The Maritime Administration has begun a ten point Oil Spill Action Plan³³ designed to abate accidental or intentional oil spillage and eliminate it by 1980. Included in the plan is the development of better oil terminals in the various ports; the deadweight tanker, which would result in a 65 percent decrease in spillage when grounding occurs; and the perfection of the load on top procedure. The plan will be funded by an estimated one cent increase in gasoline taxes.

DOMESTIC POLLUTION CONTROL-STATES

Coastline Protection Bill Introduced in California: On January 5, 1971, a coastline conservation bill³⁴ was introduced in the California Assembly that would give the state government a veto over any plans to develop the California coast by a city or other political subdivision. The bill will affect any development extending 1,000 yards inland to three-miles offshore along the entire coast. The new bill is identical to one defeated in the Senate during the last session of 1970.

Senate Bill is Introduced to Ban Oil Exploration in California Tidelands Region: State Senator, Peter Behr, (R-San Rafael) introduced a bill³⁵ on February first that will, if passed, ban all exploration in the California tidelands for oil that may lie in this region. Under present law,³⁶ the State Lands Commission has the authority to grant geophysical surveys which allow oil companies the right to explore the tidelands for rich oil deposits all along the coast of California. Senator Behr sees the present law as an invitation to possible future platform drilling along the entire coastline.

33. 1 ENV. REP. 1118 (Feb. 12, 1971).

34. A.B. 16, Reg. Sess. (Jan. 5, 1971). This act would amend CAL. GOV. CODE § 65302 (West Supp. 1971); CAL. PUB. RES. CODE § 6301 (West 1956).

35. S.B. 198, Reg. Sess. (1971).

36. CAL. PUB. RES. CODE §§ 6826, 6826.1, 6871.2 (West 1964).

The new bill provides that the Lands Commission cannot approve further geophysical surveys and that all existing permits must expire when the bill is signed. The bill was assigned to the Governmental Organizations Committee on February 4, 1971.

Florida Enacts Anti-pollution Legislation: The 1970 session of the Florida Legislature has enacted legislation³⁷ increasing civil penalties for violation of pollution laws to \$5000. All sewage intended for ocean outfall is required under the new legislation to have at least secondary treatment. Existing treatment systems must conform by January 3, 1974, or operators will be subject to a \$50 per day fine.

Maine Puts Forth Pollution Plan: Maine's Governor Kenneth M. Curtis has outlined a two year water pollution abatement program designed to clean-up approximately 455 miles of polluted rivers and coastline. The cost of the project was estimated to be \$60 million with the state's share amounting to 30 percent. The federal government will pay 55 percent of the total cost while the local entities which will directly benefit from the program will be required to pay between 15 to 20 percent.

Massachusetts Enacts Environmental Legislation: Massachusetts has enacted legislation³⁸ banning the dumping of mercury or beryllium into state waterways, while the dumping of other restricted substances has been made subject to penalties of up to \$5,000 or six months imprisonment.

The new legislation calls for the immediate cleanup of oil spillage or leakage and holds responsible parties liable for cleanup and damage rectification costs. Polluters may be fined up to \$10,000 a day for as long as the spillage remains, or be subject to imprisonment for as long as two years. Additionally, failure to inform authorities of such accidents may result in fines of up to \$500.

SUITS FILED

Chevron Oil Fined \$1 Million for Violations of Outer Continental

37. FLORIDA STATUTES ch. 376 and 403 (1970), FLORIDA ADMINISTRATIVE CODE ch. 16B-16 and 17-3 (1970).

38. MASS. GEN. LAWS ch. 21 § 27 (10), as amended through St. 1970, c. 827 § 1 (1970) and MASS. GEN. LAWS ch. 91 § 59A, as amended through St. 1969, c. 373 (1970).

Shelf Oil Lands Act of 1953: Chevron Oil Company has been fined \$1 million by a jury in federal district court early last summer. The indictment was the first to be brought under the Outer Continental Shelf Oil Lands Act of 1953,³⁹ charging Chevron with failing to install required safety devices on 90 of the 178 wells it operates in the Gulf of Mexico. A 1969 regulation⁴⁰ imposed by the Department of the Interior, requires the installation of storm chokes or similar devices, at a depth of 1,000 feet or more below the Gulf floor. The device is used to shut off the flow of oil when there is a sudden change of pressure, usually resulting from a malfunction in the well or pumping mechanisms. Chevron was charged with 900 separate violations, each carrying a possible fine of \$2,000 or six months imprisonment.

The indictment was a result of a seven-well fire that began February 10, 1970 that spewed almost 1,000 barrels of oil into the Gulf daily.⁴¹ Chevron acknowledged that the main well involved in the mishap did not have the required safety choke.

Four Oil Companies Fined for Alleged Safety Violations on Off-Shore Wells in the Gulf of Mexico: Three major oil companies were fined more than \$500,000, and a fourth pleaded not guilty, in December 1970, in answer to charges alleging that 74 off-shore wells in the Gulf of Mexico failed to have storm choke safety valves required under federal law.⁴² Humble Oil, Union Oil and Continental Oil companies each received the maximum fine for violations of the Outer Continental Shelf Oil Land Act of 1953;⁴³ Humble being fined \$300,000 on 150 counts involving 33 wells, Continental Oil for 121 separate violations involving 24 wells, and Union Oil on 12 counts involving 12 wells.

Shell Oil Company pleaded not guilty to 170 separate offenses involving 40 wells. Shell had been busy fighting an off-shore fire that broke out on December 1, 1970, in which two men lost their lives. As a result of that explosion and fire, massive oil slicks spread over the waters of the Gulf of Mexico. The Environmental Protection Agency reported oil deposits three inches thick on some parts of the Grand Isle resort. In February 1971, Shell withdrew

39. 43 U.S.C. §§ 1331 *et seq.* (1964).

40. 34 Fed. Reg. 13544 (1969).

41. See *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627 (1970).

42. The safety violations involved in these actions were identical to those used to indict the Chevron Oil Company last June.

43. 43 U.S.C. §§ 1331 *et seq.* (1964). The four oil companies were charged additionally with violations of federal regulations as to the maintenance of the safety requirements.

its not guilty plea and entered one of no contest in answer to these charges. As a consequence, Shell was fined \$340,000 on all 170 counts charged.

Gulf Atlantic Fined: The Gulf Atlantic Towing Corporation was fined \$3,000 by the Federal District Court for the Eastern District of Virginia on August 27, 1970. The fine was a result of a series of spills in Norfolk, Virginia that covered a period of ten months. The action was brought by the United States Attorney under the Refuse Act⁴⁴ while further action under the Oil Pollution Act of 1924⁴⁵ is still pending.

Northeast Petroleum settles: The Northeast Petroleum Company has agreed to pay the town of Falmouth, Massachusetts \$100,000 in an out of court settlement for damage caused in a September, 1969 oil spill.⁴⁶ Action was commenced against the company under two Massachusetts Laws⁴⁷ which prohibit the discharge of oil or the throwing of materials into the water. The settlement is the first known incident of a town recovering for oil pollution.

Ten Oil Companies Challenge Constitutionality of Anti-Pollution Bill: A Maine law, the Oil Discharge Prevention and Pollution Control Act of 1970⁴⁸ providing for one-half cent per barrel charge on oil products imported into the state has been challenged on constitutional grounds by ten major oil companies. Under the statute, the proceeds from the charge are deposited into a coastal protection fund which will be used to defray cleanup expenses when the source of the oil spill is unknown. The basis for the constitutional challenge is the contention by the plaintiff companies that the law constitutes an illegal intervention by the state into foreign and interstate commerce. The suit was filed May 11, 1970, in Kennebec County Superior Court.⁴⁹

California Sues Navy for Oil Spills: The State of California filed suit on September 5, 1970 against the Department of the Navy alleging its ships polluted the Los Angeles, Long Beach, and San Diego

44. 33 U.S.C. §§ 1, 3 (1964).

45. 33 U.S.C. § 431 (1964).

46. For background, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 650 (1970).

47. MASS. GEN. LAWS ch. 21 §§ 42, 130 (1968).

48. MAINE REV. STAT. ch. 572 §§ 541 et seq. (1970).

49. 1 ENV. REP. 55 (May 15, 1970).

harbors. The actions center around violations of the Federal Water Pollution Control Act.⁵⁰ The State prays for \$5,000 in cleanup costs as well as \$6,000 in general damages.

Maritime Corporation Settles: The Maritime Overseas Corporation of New York has settled an Alaska oil pollution suit brought by the Department of Justice for \$8000. The settlement was based on \$6000 for violation of the Oil Pollution Act of 1924⁵¹ and \$2000 for violation of the Oil Pollution Act of 1961, a law which has been replaced by the Water Quality Improvement Act of 1970. The suit grew out of the *S.S. Rebecca's* pumping of its oily bilges into Cook Inlet on February 18, 1968.

People v. Port of New York Authority, 315 N.Y.S.2d 9 (1970): On October 5, 1970, New York Supreme Court Judge, Vincent Lupiano, Jr., held in abeyance a motion by the People of New York seeking an injunction to halt the dumping of oil and jet fuel from Kennedy Airport into Jamaica Bay. In reaching its decision, the court acknowledged the interest of the people of New York in preventing pollution of state property; and the fact that the law does not recognize prescriptive rights to continue wrongdoing, no matter how long the conduct has been continuing. However, the court chose not to grant the injunction on the ground that to do so would require the airport to close down until a solution could be worked out. The motion will be held in abeyance pending a hearing where the state may discuss the practical aspects of any prohibition.

Poultry Firms Charged: Charges were brought by the United States Attorney under the Refuse Act⁵² against the Maplewood Poultry Company and Poultry Processing, Inc., both of Belfast, Maine. The companies were accused of polluting Penabscot Bay by discharging blood, oil, grease and solids into it. The companies moved to dismiss the November 1970 action on the grounds that they were not the only polluters of the bay.

INTERNATIONAL POLLUTION

British Shipping Official Accuses Japan as being World's Worst Polluter: On July 23, John Kirby, vice president of the United Kingdom Chamber of Shipping, accused Japanese tanker companies as being the world's worst polluters. He claimed that this dubious distinction was result of Japan's unique method for cleaning oil tanks on board ship, which entails pumping the oil-contaminated wash water directly into the sea.

50. 33 U.S.C. §§ 466 *et seq.* (1964).

51. 33 U.S.C. § 431 (1964).

52. 33 U.S.C. §§ 1, 3 (1964).

Kirby maintains that 80 percent of the world's tanker fleet employ the "load-on-top system" whereby the wash water is instead discharged with the next load of oil at the refinery where it is separated from the oil. The reason for this practice is that Japanese refineries, unlike those in most other nations, refuse to accept oil with any salt content in it. The amount of oil discharged is substantial, in that Japanese tanker tonnage accounts for ten percent of the world's total oil tonnage.

Russian Skipper Arrested and Released by U.S. Officials for Polluting Gulf of Alaska: Following orders from the 17th Coast Guard District in Juneau, Alaska, a party of Coast Guard officials boarded a Russian tanker in the Gulf of Alaska on April 14 and arrested the skipper for discharging oil within the three-mile limit of the United States. The slick was one mile long and resulted from spillage while refueling a Russian shrimp trawler. The Coast Guard obtains authority to make such arrests where the defendant is charged with violations of the 1899 Refuse Act,⁵³ which provides for a maximum sentence of one year imprisonment and/or \$2500 fine.

The captain was released the following day after United States authorities decided to negotiate a settlement through the paying of a fine prior to the scheduled arraignment. The State Department announced that it had received a \$1500 check from the consular official of the Soviet Embassy in Washington in settlement of the violation.

Liberian Pacific Glory Collides in English Channel Spilling 70,000 Tons of Crude Oil: The 42,000 ton Liberian tanker, *Pacific Glory*, collided with the 46,000 ton Liberian tanker, *Allegro*, on October 24, 1970, in the English Channel. The *Pacific Glory* erupted in flames, spilling its 70,000 ton cargo of crude oil into the channel. 13 crewmen lost their lives in the collision and fire, and for a time English resort beaches were threatened by the resultant oil slick. The incident occurred while the two tankers were running abreast of one another in the Channel. When a third vessel appeared heading toward them, the *Allegro* took evasive action, running into the *Pacific Glory*.

53. 33 U.S.C. § 411 (1964).

INTERNATIONAL POLLUTION CONTROL

International Chamber of Shipping Issues Safety Guide for the World's Oil Tankers: The International Chamber of Shipping, based in London, issued its first publication of safety guidelines for oil tankers. It lays down procedures for loading and discharging of oil to and from tankers. The new guide is based on the tanker-safety code set forth by the British Chamber of Shipping and will be updated in the future by amendment. Later this year a second guide is slated to appear concerning safe transport of bulk chemicals. The importance of such guidelines is that the Chamber represents sixty-nine percent of the world's tanker tonnage.

Pollution Control No Economic Threat: An international pollution conference of 150 government and industry officials concluded January 17, 1971 that the first nation to impose pollution control standards will pay only a short term economic penalty in the competitiveness of its goods on the international market. Once having taken that step, other nations would be forced to catch up, thus placing their own goods at an economic disadvantage to its goods.

The conference, jointly sponsored by the Atlantic Council of the United States and the Battelle Memorial Institute, called for the establishment of an International Ecological Institute to explore and define physical standards for industrial production which would consider technological and economic factors as well. Also called for was an effort to reduce international economic distortions that could arise out of differences in national pollution control.

NATO Conference Asks a Ban on Pollution at Sea by Tankers by Mid-70's: Delegates to the conference on pollution of the sea by oil conducted by NATO's Committee on the Challenges of Modern Society endorsed a proposal by the United States Secretary of Transportation, John A. Volpe, calling for a complete ban on the intentional flushing of oil into the sea by transoceanic tankers by the mid 1970's. The recommendations of the conference, adopted on November 6, 1970, will be submitted to the Committee on the Challenges of Modern Society for final consideration. If adopted, they will be transmitted to NATO members for action at a conference of the Intergovernmental Maritime Consultative Organization, which should be held next year.

Experts have estimated that at least five million tons of oil per year are intentionally discharged into the sea as a result of the flushing of ballast from tankers.

SHIPPING

Passenger Vessels—Restrictions, Pub. L. No. 91-250 (May 14, 1970), 84 Stat. 215, 5 U.S. CODE CONG. & AD. NEWS 1344 (1970): An Act to amend Section 613 of the Merchant Marine Act of 1936, as amended.⁵⁴

The effect of the act is to lift certain restrictions which were placed on subsidized American passenger ships. Under the new law, such vessels may (1) carry one-way passengers between ports on another operator's regular route, but not on a regular basis and only with the consent of the regular operator; (2) discharge passengers at one domestic port who had not embarked at another domestic port, when such actions are not in competition with another American flag passenger vessel, or with the consent of said vessel; and (3) end a cruise at a port other than on the same seacoast that operator conducts his regular service. The hope of this legislation is to aid American vessels in their competition with foreign flag vessels.

Vessels—Repair Parts and Equipment Duty, Pub. L. No. 91-654 (Jan. 8, 1971), 84 Stat. 1944, 16 U.S. CODE CONG. & AD. NEWS 7977 (1971): Under Section 3114 of the Revised Statutes of the United States, a vessel in foreign trade is required to pay an ad valorem duty of 50 percent on the cost of repairs made to and equipment purchased for such vessel in a foreign country. Shrimp fishers, away on three to five year voyages, find this duty harsh. Nor does the duty, in this instance, serve the protectionist purpose of 3114.

The present act exempts shrimp fishers, but only when they remain away from the United States for two years or more, and exempts only those expenses incurred after the first six months at sea. No exemption was granted for expenditures on nets and netting. Ships' logs are to be inspected for compliance in order to qualify for the exemption.

Fishing Vessels—Construction Assistance Act, Pub. L. No. 91-279 (June 12, 1970), 84 Stat. 307, 6 U.S. CODE CONG. & AD. NEWS 1832 (1970): Extends the provision of the United States Fishing Fleet Improvement Act, as amended (46 U.S.C. § 1402).

Because only domestically constructed fishing boats may be documented as United States vessels and have their catch landed at

54. 46 U.S.C. § 1183 (1964).

American ports, the comparatively high costs of American construction was causing the obsolescence of the United States fishing fleet. Consequently the United States Fishing Fleet Improvement Act, as amended, was adopted in 1964. The law provided a subsidy for American-built fishing craft up to 50 percent.

The present act amends the former law to subsidize the renovation of fishing vessels as well, with a minimum subsidy of 35 percent, and increases the budget for the overall program to \$20 million. It also extends the life of the act to June 30, 1972.

Merchant Marine Act,⁵⁵ Pub. L. No. 91-469 (Oct. 21, 1970), 84 Stat. 1018, 12 U.S. CODE CONG. & AD. NEWS 4569 (1970): The House bill⁵⁶ was amended by the House Merchant Marine and Fisheries Committee to make explicit the ten year and three-hundred ship scope of the bill. The committee also amended the bill to limit the requirement of American origin of material to the hull and superstructure. Additionally provided was an authorization for negotiated contracts. The bill passed the House as reported.

The Senate Commerce Committee amended the bill to require that all material be of American origin. The committee also excluded a commission designed to reduce subsidies from 50 percent to 35 percent, which was in the House bill as introduced. The bill passed the Upper House as reported.

In conference, the Senate agreed to allowing the commission and the House permitted the buy-American provision to continue, except in emergency situations. The bill passed both houses as reported by the conference committee and was signed into law.

Seamen's Service Act, Pub. L. No. 91-603 (Dec. 31, 1970), 84 Stat. 1674, 15 U.S. CODE CONG. & AD. NEWS 6908 (1971): The United Seamen's Service is a private non-profit charitable organization which aids merchant marinemen much as the Red Cross aids servicemen in obtaining lodging, recreation and repatriation of men separated from their vessels by sickness or accidents. The present act aids the United Seamen's Service, in authorizing the government to reimburse service personnel for meals, quarters, space and communication expenses incurred in their duties. It allows them transportation at government expense and free passports.

Two Mishaps in the English Channel Raise Concern Over Efficacy of Keep Right Rule in the Channel: The Panamanian tanker *Texaco Caribbean* collided with a Peruvian ship, the *Paracas*, and exploded killing eight of her crew on January 11, 1971, twenty miles

55. For background, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 663 (1970).

56. H.R. 15425, 91st Cong., 1st Sess. (1969).

off the coast of Dover in the English Channel. The tanker split in two and sank, leaving authorities only to guess at the location of the bow portion of its hull. The following day, the German freighter, *Brandenburg*, found the submerged wreckage by smashing into the remains of the *Texaco*. The *Brandenburg* sank in two minutes taking with it the lives of 21 crewmen.

The British government ordered an inquiry into the disasters and said it hoped to make proposals in March 1971 to the Intergovernmental Maritime Consultative Organization, on changes in Channel safety rules to avert future collisions. Since 1967 shipping has been urged under a voluntary international agreement to keep to the right when travelling in the Channel. However, Trinity House, Britain's chief pilotage and lighthouse authority, has argued that this plan has not lessened the danger of collision, and may, in fact, increase the possibilities of mishap. It points out that in order to adhere to the rule, larger ships must maneuver in shallow water generally inhabited by cross-channel ferries only, and consequently the danger of running aground, or of collision remains high.

Coast Guard Charges Two Masters with Violation of Right-of-Way in Collision: As a result of a 1961 collision between the fishing boat *Amberjack III* and the tanker *Tullahoma* that occurred south of the Ambrose Lighthouse in Massachusetts, the masters of both boats have been charged by the Coast Guard with numerous navigation violations. One passenger aboard the *Amberjack III* lost his life in that collision.

Captain Ardolino, of the *Amberjack III*, was cited for violating two rules covering crossing situations and a duty to slacken speed or reverse in the case of an emergency. He was also charged with knowingly navigating his vessel in an improper sea lane, and for maintaining inadequate navigational lights on his boat.

Captain Gehlmeyer, skipper of the *Tullahoma*, is accused of negligence in his failure to ascertain the position of the *Amberjack III* and failure to render all possible assistance to the survivors of the *Amberjack III*. Gehlmeyer was also charged with failure to discharge his duty of alerting shipping in the area about the mishap.

CASES

Marine Carriers Corporation v. Fowler, 429 F.2d 702 (2d Cir. 1970): Reversed and remanded for trial on the merits the district

court's granting of a motion for summary judgment in favor of the plaintiff on the issue of whether its hybrid vessel was eligible to engage in United States coastal trade. In order to meet the eligibility requirements contained in 47 U.S.C. § 11 (1964), a vessel must have been built in the United States and must be registered to American owners. Further, under 46 U.S.C. § 883 (1968), an American vessel may never regain its eligibility if sold to aliens or operated under alien registry. In addition, a United States vessel which enjoyed the right to engage in coastal trade and was later rebuilt, cannot thereafter reacquire this right unless the whole rebuilding is done in the United States.

In the case at bar, the plaintiff corporation created a new vessel, the *Observer*, by taking the front three-quarters of an American built vessel which had been operated under Panamanian registry, the *Santa Hellena*, and joining it to the rear portion of a full qualified American ship, the *Trustco*. The court held that if the ship were characterized as being a rebuilt *Trustco*, it would be entitled to enrollment in the coastal trade. If, on the other hand, the ship were characterized as a rebuilt *Santa Helena*, it would not be entitled to such enrollment. The court then ruled that the question of which classification the rebuilt ship fell into was one of fact to be determined at a trial on the merits, for although most of the new entity came from the *Santa Hellena*, the portion contributed by the *Trustco* was more costly than the entire remainder of the ship.

Moragne v. States Marine Lines, 398 U.S. 375 (1970): On June 14, the United States Supreme Court handed down a decision that overrules two prior decisions, *The Harrisburg*⁵⁷ and *The Tungus v. Skovgaard*,⁵⁸ which have stood for many years as landmarks in the field of marine tort law. Under this new ruling, there now exists, under general maritime law, a right to maintain an action for wrongful death based on the unseaworthiness of a ship.

Moragne involved a Florida statute that refused to allow a remedy in cases where unseaworthiness, and not an allegation of negligence, was made. The Court said that the state statutes are not to be the sole remedy for actions occurring within state territorial waters, and where limitations are placed on recovery that destroy a party's right to relief, the general maritime law would provide the remedy in accordance with the decision here. Since California's wrongful death statute⁵⁹ is similar to that examined by the Court in *Moragne*, future litigation in California dealing with maritime wrongful death actions may well lean heavily on this decision.

57. 199 U.S. 199 (1886).

58. 358 U.S. 588 (1959).

59. CAL. CODE CIVIL PROC. § 377 (West Supp. 1971).

Weed v. Bilbrey,⁶⁰ involved the Supreme Court's denial for leave to file a third petition for rehearing. The action here grew out of a wrongful death action similar to that in *Moragne*. In a 5-2 decision to deny plaintiff the right to ask for a rehearing, the Court refused to apply the maritime rule of comparative negligence where recovery is impossible by virtue of Florida's contributory negligence statute. Plaintiff argued that the same type of application adopted by the Court in *Moragne* should be applied here, even though her case was given final disposition three weeks before the Court heard the *Moragne* matter.⁶¹

U.S. Hellenic Lines v. Rhoditis, 398 U.S. 306 (1970): The conflict between the fifth and second circuits regarding the question of whether the federal remedy created by the Jones Act extends to a Greek seaman, injured in United States territorial water, aboard a vessel of Greek registry, owned by a Greek national domiciled in the United States, has been resolved by the United States Supreme Court. In extending the act to cover this situation, the Court endorsed the fifth circuit's disposition of the question in the principal case.

Mr. Justice Douglas, speaking for the majority, stated:

We see no reason whatsoever to give the Jones Act a strained construction so that this alien owner, engaged in an extensive business operation in this country, may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act "employer." The flag, the nationality of the seaman, the fact that this employment contract was Greek, and that he might be compensated there are in the totality of the circumstances of this case minor weights in the scales compared with the substantial and continuing contacts that this alien owner has with this country.⁶²

Leather's Best, Incorporated v. S.S. Mormaclynx, 313 F. Supp. 1373, (E.D.N.Y. 1970): This decision held that a large metal container, forty feet long, eight feet high, and eight feet wide, lent by a carrier to a shipper was not a "package" within the \$500 per package loss liability limit imposed by the Carriage of Goods by Sea Act, 46 U.S.C. § 1300 *et seq.* (1964). The result was that the liability imposed on the carrier for the loss of the huge container was limited to

60. 91 S. Ct. 361 (1971).

61. Mrs. Weed filed a petition, requesting that her cause be heard with that of Mrs. Moragne. Her petition was denied. 395 U.S. 971 (1970).

62. 398 U.S. 306, 310 (1970). For an in depth discussion of the problems dealt with in this opinion, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 674 (1970).

\$49,500 rather than \$500 as it had contended.

Shipowners Fund, Inc. Charges Onassis with Campaign to Discourage Shipping Competition: A complaint was filed in New York Supreme Court in January 1971 charging Aristotle Onassis with deliberately waging a worldwide campaign of "vilification and disparagement" against the Shipowners Fund, Inc. of New York, an independent group of shippers recently incorporated to compete with the Onassis' interests. They claim that the magnitude of Onassis' campaign has caused severe damage to the business plans of the corporation. It further argues that besides the massive financial damage inflicted by the disparaging advertisements the Onassis firm placed in the *Wall Street Journal* and the *Financial Times of London*, it has also stifled legitimate competition in the shipping business.

The complaint is accompanied by a motion which seeks a court order compelling Onassis to testify personally and to produce numerous records of his business arrangements. The affidavit attached to the motion alleges that the request for a personal deposition would not be a hardship on Onassis since he enjoys the status of an alien resident by virtue of his personal residence in New York where he and his family reside, as well as his New York based business headquarters.

American Export Isbrandtsen Lines Seeks to Halt Containership Lease between United States Lines and Sea-Land Services, Inc.: American Export has gone before the Federal Maritime Commission in the hopes of persuading that body to disapprove the \$1.2 billion, 20-year ship lease between United States Lines and Sea-Land Services, Inc. Previously, American Export's attempt at an injunction was denied by a federal court in order that the Commission might hear the case first.⁶³

The lease provides for United States Lines to lease its fleet of 16 containerships to Sea-Land. American Export claims that the arrangement, if followed, will effectively close the market to Export. To stop this eventuality, American Export has launched a three-pronged attack on the proposed lease, claiming: (1) that Sea-Land is attempting to monopolize the foreign export trade; (2) conspiracy between United States Lines and Sea-Land to monopolize contrary to anti-trust laws; and (3) that approval of the lease will force American Export out of business.

63. The Commission obtains its jurisdiction under the Shipping Act of 1916 which gives a federal commission the power to approve or disapprove leasing agreements, based on whether such plans are detrimental or discriminatory between or among carriers involved in foreign commerce. 46 U.S.C. §§ 821-22 (1964).

SOVEREIGNTY

TERRITORIAL LIMITS

Canadian Commons Votes to Extend Jurisdiction Over Arctic Waters: The Canadian House of Commons, by a vote of 198-0 voted on April 22, 1970, to extend pollution control over the Arctic waters 100 miles to sea. The proposal would extend pollution control to both open and frozen waters adjacent to the Canadian mainland and islands of the Arctic. It also provides for fines of up to \$100,000 for dumping waste in the waters affected. Under the proposed legislation, ships wishing to use the area would be required to submit to Canadian inspection, and to accept financial responsibility for accidents that cause pollution.

The United States has taken the position that these waters are within the high seas and are, therefore, not subject to Canadian regulation. In a note given to the Canadian Ambassador in Washington, the United States has asked Canada to defer making the proposed Legislation effective until an international agreement on the subject can be reached. If the Canadian government is unwilling to wait, the note went on to say, the United States is in favor of submitting the dispute to the International Court of Justice at the Hague. A settlement via this route is unlikely, however, in view of Canada's prior rejection of the Court's jurisdiction over the controversy.⁶⁴

Fishing—Territorial Waters, Pub. L. No. 91-514 (Oct. 27, 1970), 84 Stat. 1296, 13 U.S. CODE CONG. & AD. NEWS 5334 (1970): An Act to strengthen the penalties for illegal fishing in the territorial waters and the contiguous fishing zone of the United States.

In 1964, Congress enacted 16 U.S.C. 1083 (1964) making it unlawful for any foreign vessel to fish within United States territorial limits of three miles, and imposed a maximum fine of \$10,000 and authorized seizure and forfeiture of any vessel violating the law. In 1966, 16 U.S.C. 1091 (1968) established a nine mile contiguous zone, creating in fact a twelve mile limit. The effect of the present legislation is to raise the maximum penalty to \$100,000 and authorize a maximum payment to informers of \$5,000. It also creates a rebut-

64. For background material relating to the jurisdictional dispute, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 667 (1970).

able presumption that all fish on the vessel when seized were caught illegally. A provision creating a minimum fine of \$25,000 was dropped from the bill.

Three Nations Meet to Discuss Oil Rights: Financial and industrial leaders from Japan, Nationalist China, and South Korea met in Tokyo on December 21, 1970, to attempt to work out a settlement of a title dispute over ownership of the potentially oil rich continental shelf between Japan and Taiwan. A study sponsored by the United Nations' Economic Commission for Asia and the Far East in 1968 triggered the controversy through its report of the possibility of large deposits of oil in the continental shelf of the East China Sea. Since that time, two nations, Nationalist China and South Korea have granted drilling rights in the area to oil companies. Communist China has also entered the dispute by refusing to recognize any settlement by the three countries which will undermine her recently asserted rights in the area.⁶⁵

Justice Department Bars Florida from Seizing Cuban Shrimp Boats: Federal District Court Judge Winston Arnou, for the Northern District of Florida, signed a temporary restraining order barring the State of Florida from interfering with Cuban shrimp boats operating in the Gulf of Mexico. The order declared that seizure of the vessels would be in violation of the international obligations of the United States in the Caribbean and would seriously embarrass the international operations of the United States. Florida has contended that the Cuban boats are in violation of Florida's territorial waters by fishing within the three mile limit.

U.S. Seizes Soviet Fishing Vessel off Alaska: A United States Coast Guard cutter stopped and seized a Russian trawler on February 10, 1971 off the coast of Alaska, for allegedly fishing within the 12 mile limit set by the United States. The vessel was found with her nets in the water and a fresh catch on board. The ship will be detained in Kodiak, Alaska pending action by the United States Attorney.

Japan Seeks to Stop Russian Seizure of Fishing Boats off the Southern Kurile Islands: Several islands, part of the Kurile Islands chain, and known to the Japanese as the "northern territories", have been held by the Russians since the end of the Second World War in disregard of Japanese claims to the islands.⁶⁶ The Soviets, in maintaining their sovereignty, have seized 1,136 Japanese vessels since 1946, resulting in the loss of 22 boats and the lives of 32 Jap-

65. *Id.* at 637.

66. The four main islands involved in the dispute include: Kunashira Island, Etorofu I., Shikotan I., and Habomai I. *N.Y. Times*, Jan. 12, 1971, at 2, col. 4.

anese fishermen. All the seized boats were allegedly fishing within the 12 mile territorial limit set by the Soviet Union.

In the hope of reaching an accord, Japanese diplomats embarked in early January 1971 for Moscow to open negotiations with the Soviets. Japanese Premier Sato claims that the Soviet Union has no right to the territory other than that of conquest. The Russians in turn claim that the boundaries have changed as a result of World War II and cannot be changed again without another war.⁶⁷

Ecuador Seizes United States Tunaboats for Violations of 200 Mile Territorial Limit: Two United States tunaboats were seized during 1970 by the Ecuadorian government for violating Ecuador's territorial waters limitation, by fishing within the 200 mile limit set by the Ecuadorian regime. The first seizures of 1971 were made on January 11, when two San Diego boats, the *Bold Venture* and the *Anna Marie* were taken into custody. On January 15, the seiner *Lexington* was seized while fishing 55 miles off the Ecuador coast, and released the next day only after posting a \$34,160 bond. The heart of the dispute lies in Ecuador's claim⁶⁸ that her territorial waters extend 200 miles from her coast.

On January 17, the largest tuna vessel, the 1,800 ton *Apollo*, and the *Hornet* were seized after being fired upon by Ecuadorian planes, believed to have been purchased from the United States. By late January the number of vessels seized totaled 18 with a combined fine of over \$830,000.⁶⁹ All fines paid are reimbursed by the Department of the Interior which in turn has sought reimbursement from the Ecuadorian government.⁷⁰ A spokesman of the Secre-

67. The Soviet Union rejected the San Francisco Peace Treaty of 1951, which required Japan to renounce all territorial rights to the Kurile Islands. Treaty of Peace with Japan, Sept. 8, 1951, 3 U.S.T. 3169, T.I.A.S. No. 2490.

68. See *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 634 (1970).

69. Ships seized and their fines include: *Anna Marie*, \$52,000; *Antonina C.*, \$39,000; *Bold Venture*, \$49,000; *Apollo*, \$92,000; *Ocean Queen*, \$69,100; *Vincent Gann*, \$52,000; *Cape Cod*, \$44,000; *Blue Pacific*, \$56,550; and *J.F.K.*, \$45,000. San Diego Union, Jan. 20, 1971, at A-1, col. 8; *id.*, Jan. 21, 1971, at B-2, col. 7; *id.*, Jan. 30, 1971, at B-2, col. 1.

70. The Ecuadorian government has based its fines on the fixed rate it charges commercial fishers to purchase licenses to fish within the 200 mile limit. The fee is \$20 per registered ton for one, 90-day trip. San Diego Union, Jan. 20, 1971, at A-1, col. 8.

The United States government has urged the fishing industry not to

tary of State has announced that if Ecuador would not cooperate and reimburse the United States government for fines paid, that amount would be deducted from economic assistance this country provides to Ecuador. Under the present administration, the United States provides Ecuador with \$29 million in economic aid annually.

As a further retaliatory measure, Secretary of State William P. Rogers informed Ecuadorian Ambassador, Mantilla-Ortega, that the United States was suspending all military assistance pursuant to section 3B of the Foreign Military Sales Act.⁷¹ The United States has also proposed that the matter be turned over to the International Court of Justice as well as to a proposed conference under United Nations' sponsorship to re-examine the entire 200 mile limit dispute.

Ecuador defended its seizures claiming them to be "legitimate acts in exercise of the national sovereignty."⁷² The official statement accused San Diego fishing interests of provoking Ecuador's action seeking scandal to force the United States into taking reprisals against Ecuador. Ecuador also officially asked the State Department on February 1 to remove its military mission from Ecuador in the near future, since the United States has effectively stopped all military aid to Ecuador.

Latin Countries Agree on Coast Rights: Argentina, Brazil, Chile, Ecuador, El Salvador, Nicaragua, Panama, Peru, and Uruguay signed a statement in Montivideo on May 9, 1970, upholding "the right of maritime countries to dispose of the natural resources of the sea adjacent to their coasts, and the floor and sub-floor of the same sea, to promote the maximum development of their economies and raise the living standards of their people." All the parties to the statement currently claim a 200 mile territorial water limit.

In a related development, fourteen Latin American and Caribbean countries, meeting at the request of the Peruvian government in Lima on August 11, 1970, jointly declared that all nations have the right to claim as much of the seabed as is necessary to protect their offshore wealth—both present and potential. The declaration further provided that seacoast countries have the right to institute controls over and under the adjacent sea to prevent contamination by pollutants or nuclear devices. Venezuela, Bolivia, and Paraguay voted against the resolution fearing that unilateral claims to the seabed would only engender international conflict.

purchase licenses for the extended territorial rights. San Diego Union, Jan. 17, 1971, at B-1, col. 1.

71. 22 U.S.C. §§ 2751 *et seq.* (1964).

72. N.Y. Times, Jan. 14, 1971, at 11, col. 1.

SEABED

United Nations Committee on the Peaceful Uses of the Sea-Bed: The second session of the United Nations Committee on the Peaceful Uses of the Sea-Bed ended on August 28, 1970, without having reached any agreement regarding resolution of the two main problems which must be solved before any meaningful accord can be drafted: legal principles and future enforcement machinery.⁷³

The United States on August 3 had proposed that no claims to national sovereignty be permitted in the "international seabed area" which was defined as the area outside the continental shelf, or seaward of the 200 meter (656.4 feet) depth line. This proposal was an implementation of a statement by President Nixon on May 23rd urging the coastal nations of the world to abandon their claims to the ocean floor outside the adjacent continental shelf. The United States proposal also went into some detail in outlining a way in which its proposal could be carried out. The proposal would create an "international trusteeship area" extending from the continental shelf outward to a depth of 4000 or 5000 feet, and for a small distance along the seabed. This area would be under the nominal control of the coastal state, but this state would turn over from one-half to two-thirds of the licensing revenues collected in this area to an international authority which would redistribute these amounts to land-locked countries. The seabed beyond this area would be administered by the international authority which would possess the sole authority to grant licenses to exploit this area.⁷⁴

However, the South American members of the committee opposed this solution as it would undermine the legitimacy of their claim to sovereignty over the area 200 miles offshore. Any solution measuring jurisdiction by the continental shelf would be obnoxious to at least three of these countries: Chile, Peru, and Ecuador, as they have no continental shelf; the sea dropping to tremendous depths a short distance offshore.

The Soviet Union's refusal to accept any proposal formulating machinery before satisfactory legal principles have been worked out, also effectively obstructed any progress toward a settlement. Although this refusal was nominally based on the contention that

73. VII U.N. CHRON. 40 (1970).

74. For full text of the proposal, see LXII DEP'T STATE BULL. 737 (1970).

any such formulation would be premature, many delegates interpreted it as being a sign that Russia would not be willing to accept any powerful international agency to govern the seabed area.

In a compromise measure, the United Nations General Assembly on December 17, 1970, adopted the Declaration of Principles Governing the Sea-Bed and the Ocean Floor by a vote of 108-14. The declaration stated that the seabed and its resources were the common heritage of mankind and, therefore, should not be subject to appropriation by any country. In order to ensure this, the declaration asked for the establishment of an international regime. The instrument further declared that the area should be open to peaceful use by any state, whether coastal or land-locked, in accordance with the regime to be established.

In related action, the assembly decided to convene a Conference on the Law of the Seas in 1973, which would deal with the establishment of the regime, including international machinery for the international seabed. In addition, the Assembly enlarged from 42 to 86 the membership of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor.⁷⁵

Treaty Bans Emplacement of Nuclear Weapons on the Seabed: On February 11, 1971, a treaty banning emplacement of nuclear weapons in the seabed was signed by representatives of 63 nations. Signing ceremonies were held in Washington, London, and Moscow. The treaty, T.I.A.S. No. —, will enter into force as soon as it is ratified by 22 governments. In the United States, Senate approval of the agreement is expected.

The treaty is the result of work on a joint draft submitted by the United States and the Soviet Union to the Conference of the Committee on Disarmament at Geneva.⁷⁶ It was endorsed by the United Nations General Assembly's Political Committee on November 17, 1970, by a vote of 91-2, and on December 7, 1970, was passed in the General Assembly by a vote of 104-2.

The final version of the agreement includes a provision designed to guarantee compliance with its terms through inspection, and the right to request United Nation assistance.

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75. VIII U.N. CHRON. 37 (1971). For a short history of the seabed controversy, see *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 661 (1970).

76. *Recent Developments in Law of the Seas: A Synopsis*, 7 SAN DIEGO L. REV. 627, 660 (1970). The text of the Soviet-American joint draft may be found at LXII DEP'T STATE BULL. 665 (1970).