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

INTRODUCTION

This third synopsis is part of our continuing effort to present annually a summary of legally significant events of relevance to the law of the seas.* This synopsis encompasses events which occurred between March 1, 1971, and February 1, 1972. Primary resources utilized included the *New York Times*, the *Environment Reporter*, the *United States Code Congressional and Administrative News* and the *Congressional Record*. The almost daily incidence of new developments evidences the growth of concern at local, national and international levels for rational planning in the use and development of the ocean and its resources. With the approach of the Third United Nations Conference on the Law of the Seas in 1973, attention is being focused even more sharply on the law of the sea and its importance to man's future. It is our hope that this third annual synopsis will prove of benefit to all who have an interest in this vital area.

* *See Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658 (1971).

CONSERVATION

Long Island Sound Study: Congress has appropriated $100,000 in supplemental funds for a comprehensive study of Long Island Sound, including the shoreline and related lands on the New York and Connecticut coasts. The New England River Basin Commission will coordinate the study, with the goal of producing an action program for the next 15 to 25 years to conserve and develop the sound's water and land resources. It is expected to include planning to preserve and enhance water quality, conserve wetlands, and control conservation and development of the sound's resources. Access and availability of shorelands for commercial, recreational and residential use will be considered, as well as navigation, shore erosion control, and fish and wildlife needs.[1]

Delaware Legislation Bars Heavy Industry from Coasts: The Governor of Delaware, on June 29, 1971, signed a bill banning heavy industrial facilities from the shores of Delaware to preserve the state's Delaware Bay and Atlantic Ocean coastlines for recreation and tourism. The new law will regulate all industry in a coastal zone about two miles wide and 100 miles long. It reportedly will prohibit oil refineries, steel and paper mills, petrochemical complexes, and offshore bulk transfer terminals.[2]

National Advisory Committee on the Oceans and Atmosphere: Congress in August, 1971, enacted legislation establishing a National Advisory Committee on the Oceans and Atmosphere to advise the Secretary of Commerce in his responsibilities for the National Oceanic and Atmospheric Administration.[3] The committee is to have 25 members. The head of the Scripps Institute of Oceanography, Dr. William A. Nierenberg, was appointed chairman of the committee on October 19, 1971. The committee is to be comprised of members from a broad spectrum, from state and local government, industry, science and other areas, including some with backgrounds in conservation, ecology and similar fields. The committee is to assess national oceanic, marine, and atmospheric programs, and recommend courses for the future. The effort is

1. 1 ENV. REP. 1372 (Apr. 9, 1971).
2. 2 ENV. REP. 289 (Jul. 9, 1971).
3. Pub. L. No. 92-125, 85 Stat. 344 (Aug. 16, 1971), 7 U.S. CODE CONG. & AD. NEWS 1700 (1971).

toward establishing a committee with broad expertise to give a unified direction to oceanic efforts of both the public and private sectors.

California Coastline Preservation: Legislation aimed at protecting California's coastline squeezed through the California Assembly on September 22, 1971. The measure, A.B. 1471 by Alan Sieroty (D-Los Angeles), had the backing of many conservation groups and cities and counties involved. The bill was subsequently killed in the Senate.

The bill calls for setting up a coastal zone commission and the spending of $600,000 to do so. A new statewide planning agency would be created along with six regional boards. Both the statewide and the regional commissions would have veto power over coastal development projects approved by city and county planning commissions. The boards would be given interim authority to place a moratorium on some kinds of coastal development, while statewide development plans and criteria are being developed.

In the interim there would be a ban on all projects which reduce public access to the ocean or which call for dredging or filling along the coast. This plan would be designed to protect a zone extending from three miles at sea to the highest elevation in the nearest coastal mountain range. In San Diego, Orange, and Los Angeles counties, the planning zone would extend to the highest elevation of the range or five miles inland, whichever is nearest.

Nuclear Power Plants on the East Coast: On November 24, 1971, the Atomic Energy Commission announced its ruling that permitted construction work to continue at four nuclear plants while surveys of the probable environmental effects were being completed. The United States Court of Appeals in Washington, D.C. ruled on June 23, 1971, that the commission must make such a determination concerning one of the plants—at Calvert Cliffs, Maryland, on the shore of Chesapeake Bay. The court action resulted from suits brought by Maryland civic groups and two national organizations, the Sierra Club and the National Wildlife Federation.

The other three plants on which rulings were announced by the commission are Yankee atomic power station, Lincoln County, Maine; Fitzpatrick nuclear power plant, near Oswego, New York; and the Oconee nuclear power station in Oconee, South Carolina.

The fundamental issue was whether or not it is likely that continued construction during the period of environmental review would have a significant adverse effect on the environment. In its decision late last July the court ruled that the commission's licens-

ing proceedings did not comply with the dictates of the National Environmental Policy Act of 1969[4] in guarding against damage to the environment from new proposed power plants.

In a statement accompanying its announcement, the commission said that the court of appeals' decision had required review of the environmental impact of new plants in uncontested as well as contested cases. Such action would be limited, however, to nuclear power plants which became licensed after January 1, 1970, when the National Environmental Policy Act of 1969 became effective.

Rules to Protect Wetlands Issued: The New Jersey Environmental Protection Department released on November 23, 1971, proposed regulations banning the use of persistent pesticides, the dumping of garbage, or the driving of vehicles on the state's coastal wetlands. The regulations, the first promulgated under the Wetlands Act of 1970, are designed to preserve the wetlands' value as fish and wildlife breeding areas.

The Environmental Department is in the process of mapping the state's estimated 250,000 acres of wetlands. Wetlands are those lands less than one foot above extreme high tide that are capable of supporting certain ecologically important grasses.

The new orders establish a permit system that requires owners of wetlands to obtain the permission of the Environmental Protection Department before engaging in any construction or any other permitted activity, such as agriculture, on their own lands. Exempt from the regulations are "non-commercial owner-enjoyments" activities such as swimming, fishing, boating, and hunting.

The department held public hearings in January, 1972, on how the regulations would affect two areas in Ocean and Salem counties. In June, 1971, the department halted forty dredging and filling projects along the shore that it contended were violating the state's interest in tidelands.

Suit Filed: The United States government filed a $6 million damage suit on November 27, 1971, charging a developer with illegal dredge and fill operations in building an expensive community around man-made canals leading into the Gulf of Mexico. The suit, filed in a Miami, Florida district court, charged Raymond Lutgert,

4. 42 U.S.C. § 4321 (1970).

owner and developer of Park Shore Subdivision in northwest Collier County, with obstructing navigable waters in violation of an 1899 federal law, the Rivers and Harbors Act.[5] A further charge alleged that the developer had uprooted mangrove trees without proper authorization. These mangroves were an extremely valuable marine resource in that those areas produce important commercial and sport fishes.

The developer contends that (1) the canals and landscaping did not infringe on any navigable waters, and (2) the Rivers and Harbors Act had never been applicable in other waterfront developments in the Naples, Florida, area, and that no other developers had obtained permits from the Army Corps of Engineers.

In addition to Raymond Lutgert, the suit names as co-defendants the Trans-State Dredging Company and Wilson, Miller, Barton & Soll, an engineering company in Naples.

Alabama Attorney General Requests Ban on Offshore Drilling: A petition was filed January 10, 1972 by the Attorney General of Alabama requesting that the Army Corps of Engineers deny permission for all offshore drilling in Mobile Bay. The Attorney General stated that drilling would pose a very serious risk to the seafood, wildlife, and recreational resources of the bay, and that current drilling techniques do not provide adequate safeguards against oil well blowouts, particularly those resulting from accidental fires. He indicated that studies had shown that oil reserves in the bay area can be developed just as easily by land wells, and drilling on land would be safer for the environment. He contended that postponement of bay drilling would provide incentive to the oil industry to develop safer drilling techniques.[6]

National Guard Enjoined from Filling of Tidal Marsh: The New York National Guard was ordered to cease filling a tidal marsh with debris and to remove the debris it had already placed there, in a preliminary injunction issued July 29, 1971, by the United States District Court for the Southern District of New York.[7] In what may be the first federal action to protect the ecology of a tidal marsh, the United States sought to have the National Guard restore the marsh to its original condition. The Guard was accused of filling almost half of the four acre marsh with rubble, scrapwood,

5. 33 U.S.C. § 403 (1970).
6. 2 ENV. REP. 1157 (Jan. 21, 1971).
7. United States v. Baker, — F. Supp. —, 2 ENV. REP. CASES 1849 (S.D.N.Y. 1971).

masonry and earth to make a parking lot. The Guard was charged with altering part of New York harbor and the navigable waters of the United States. Government officials said the National Guard had voluntarily suspended filling operations, but the government sought a preliminary injunction to prevent further filling and to require immediate removal of the debris. The court found that the tidal marsh was a part of the navigable waters of the United States as a matter of law, and that therefore the court had jurisdiction under the Rivers and Harbors Act of 1899, 33 U.S.C. § 403. The court held that in view of the irreparable harm which would occur to the marsh if the debris were not removed within the month, the government was entitled to a preliminary injunction.

Washington Shoreline Management Act: Comprehensive coastal zone management legislation, known as the Shoreline Management Act of 1971 was signed May 21, 1971, by Washington Governor Dan Evans with a partial veto regarding the role of the state's Department of Ecology.[8] Although that department now controls most state-owned lands, under the original bill it would have had authority to adopt its own rules, acting as a separate entity like a city or county. Governor Evans objected to such action as being against public policy.

The Shorelines Protection Act, although now law, must nevertheless be submitted to the voters in November, 1972, beside Initiative 43, an alternative plan which has stronger, broader controls centered in the hands of the state. The act gave most control to the local governments.

In addition, the act establishes a control zone of 200 feet inland from ordinary high water. Initiative 43, which was advocated by the Washington Environmental Council, would set control zones of 1,000 feet from ordinary high tide or high water.

The new law also prohibits oil drilling up to a point 1,000 feet inland. Initiative 43 would have stricter oil-drilling controls and would ban all oil drilling, including slant drilling, in Puget Sound, Hood Canal, and the San Juan Islands.[9]

Coastal Zone Management: Among features contained in the Administration's proposed National Land Use Policy Act, H.R. 4332, 92d

8. REV. CODE OF WASH. ch. 90.58 (1971).
9. 2 ENV. REP. 165 (June 11, 1971).

Cong., 1st Sess. (1971), is federal oversight of coastal zones and estuaries. States would develop land use plans for "areas of critical environmental concern," and could receive up to 50 percent of the cost of developing and managing these programs from federal funds. To receive federal assistance, state programs would have to meet federal criteria, including methods for inventorying, designating, and exercising state control over such areas. The state program could not exclude areas of critical environmental concern to the nation, and would have to take into account the unique values and fragile nature of coastal zones and estuaries, particularly coastal wetlands.[10]

FISHING

Northwest Atlantic Fisheries Act of 1950, Amendment:[11] The act amends the Northwest Atlantic Fisheries Act of 1950, 16 U.S.C.A. § 981 *et seq.*, to conform with two protocols approved by the Senate in 1966 and entered into force in December, 1969. It provides the necessary implementation for the United States role in an international convention for the purpose of investigation, protection, and conservation of the fisheries of the northwest Atlantic Ocean in order to make possible the maintenance of a maximum sustained catch from those areas.

A commission appointed by the convention has sought to implement various conservation measures generally related to the use of minimum mesh sizes when fishing for specified species of fish, and to maximum catches and other related matters.

Because of some dissatisfaction within the United States fishing industry as to enforcement of many of the measures, the United States proposed two amendments to the convention. One relates to the time within which member states are to signify approval or disapproval of a regulation, thereby allowing it to be placed in effect at a definite time. The second facilitates an international enforcement plan wherein inspectors from any signatory nation could enforce the conservation regulations with regard to the nationals and vessels of all signatory nations in the area covered by the convention. Under the original convention each signatory nation could enforce the conservation regulations only with regard to its own nationals and vessels. Enforcement under the new procedure was to become effective July 1, 1971.

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10. 1 ENV. REP. 1194 (Mar. 5, 1971).
11. Pub. L. No. 90-87, 85 Stat. 310 (Aug. 11, 1971), 7 U.S. CODE CONG. & AD. NEWS 1657 (1971).

United States-Soviet Agreement on Fishing Rights:[12] The United States and the Soviet Union, on February 12, 1971, entered into an agreement which provides greater protection for king and tanner crab resources on the continental shelf of the United States in the Bering Sea. Under the agreement, the Soviets may continue to carry out commercial fishing for king and tanner crab on the continental shelf of the United States for a period of two years provided the annual Soviet catch does not exceed specified quantities each year. In addition, both nations will increase their efforts in data collection and study of the resources, and will exchange data annually.

The agreement provides that only pots and tangle nets of a specified minimum mesh size may be used. It further provides that no trawling for species other than king and tanner crab may be conducted in the agreed area, and that no female or soft shell king crabs, or any under a minimum size limit may be retained.

Each government agreed to enforce the measures as to its own nationals and vessels, and to permit officers of the other government to board its vessels engaged in king and tanner crab fisheries.

United States-Soviet Agreement on Fishing Operations:[13] The United States and the Soviet Union have entered into an agreement relating to the conduct of fishing operations in the Northeastern Pacific off the coast of the United States. The Agreement provides measures to protect each country's fishing gear from damage by vessels of the other. Each government will take steps to promote the use by its fishermen of day and night marking devices for fixed fishing gear, and for the use of caution by vessels of each party to prevent mutual interference and damage.

Periods are specified in the winter months during which fishing in certain areas near Kodiak Island using mobile gear is prohibited. Small shrimp trawlers and United States vessels engaged in scallop fishing are exempted from that provision.

It was further agreed that Soviet fishing rights do not extend to waters within 12 nautical miles of United States territory.

12. Fishing Agreement with the U.S.S.R., Feb. 12, 1971, 22 U.S.T. 119, T.I.A.S. No. 7044.

13. Agreement with the U.S.S.R. Concerning Fishing Operations, Feb. 12, 1971, 22 U.S.T. 132, T.I.A.S. No. 7045.

United States-Soviet Agreement on Fisheries Problems in the Northeastern Pacific Ocean:[14] The United States and the Soviet Union, on February 12, 1971, entered into an agreement concerning certain fisheries problems in the Northeastern Pacific off the coast of the United States. The primary thrust of the agreement is the prevention of mutual interference by each other's fishing vessels. The agreement provides specified periods of the year for Soviet fishing operations off the United States coast in certain agreed areas in the Gulf of Alaska and Bering Sea. Fishing efforts in the area are not to exceed 1966 levels. Soviet vessels are authorized to conduct loading operations in the nine-mile zone contiguous to the territorial sea of the United States in certain areas near the Aleutian Islands.

Limitations are provided as to mesh size, and as to rigging and operation of trawling gear, for conservation of immature fish. Both governments have agreed to the arrangement of visits of fishing representatives to each other's fishing vessels in the area at appropriate times, and to various measures for conservation study and the exchange of scientific and statistical data on fisheries in the area.

Measures to Protect Whale Resources: The International Whaling Commission, established by 17 nations in 1946, with no enforcement powers, began setting yearly kill quotas in 1949 for all except the sperm whale. Quotas for sperm whales in the North Pacific were established in 1970, but unlimited killing is permitted everywhere else. Quotas have dropped sharply in the Antarctic since 1949, but many conservationists have taken the view that restrictive actions of the commission have been too little and too late. The controls are somewhat limited. There are some 22 coastal whaling stations around the world not bound by the international commission's rules and quotas, although some countries have their own. Killer boats go out from those stations for short sorties, towing back catches for processing ashore. Their catch in 1970 was reported to be 11,719 whales.

The three major whaling nations, Japan, the U.S.S.R. and Norway, on September 27, 1971, initialed an agreement to allow international observers on board their whaling fleets in the Antarctic to monitor this season's kill. One observer would be permitted aboard each of the factory ships operating in the area with its accompanying killer boats, refrigerator ships and tankers. The So-

14. Fisheries Agreement with the U.S.S.R., Feb. 12, 1971, 22 U.S.T. 143, T.I.A.S. No. 7046.

viets and Japanese each have three factory ships and about 40 killer boats. Norway has one small combination killer-factory ship. The three nations reported killing 11,770 whales in 1970. The international observers were to be present to insure that kills did not exceed quotas set by the International Whaling Commission, and to watch for the killing of protected species, mothers with babies, and undersized whales. In the first week of October, 1971, before the agreement could be ratified and observers could get on board, the Soviet fleets sailed, so observers did not sail with the Japanese fleet either. Officials indicated that the Soviet vessels could easily have waited a few days, since the season did not open until December 5. The agreement is valid only for one year and will have to be renegotiated in 1972.

Japanese and Soviet negotiators also agreed to permit an exchange of observers for whaling operations in the North Pacific beginning in the Spring of 1972, but that agreement has not yet been ratified by the governments concerned.

In December, 1971, Secretary of the Interior Morton, expressing disappointment that the International Whaling Commission was not adequately enforcing its own regulations, announced an embargo against imports of any whale products, and the beginning of the first total ban on whaling from the United States. He noted that the commission had agreed unanimously at its June meeting in London that all member nations should implement the international observer plan for the current whaling season. Mr. Morton further indicated that "[i]f the commission cannot move quickly and surely to meet its international obligations, a moratorium on all whaling is the only solution."

Resolutions passed both houses of Congress during the 1971 session calling for a 10-year moratorium on the killing of whales.[15] While not binding on foreign nations, the action could have substantial impact overseas through incorporation into United States foreign policy.

The product import ban was reported to be having significant effect in its beginning. The ban included all whale products, refined or raw. This includes banning foreign cars containing a whale

15. H.R. Con. Res. 387, 92d Cong., 1st Sess., 117 CONG. REC. H 10200 (1971); S.J. Res. 115, 92d Cong., 1st Sess., 117 CONG. REC. S 10122 (1971).

oil additive in transmission fluids. Some other affected items in which whale products are used include margarines, lipsticks and other cosmetics, soap and certain lubricants, some perfumes, and pet foods.

Swordfish Seizure: The Federal Government filed suit in United States District Court for the Southern District of New York on July 8, 1971, to condemn more than five tons of frozen swordfish from Japan and Taiwan, claiming it was mercury tainted. The fish, destined for markets in New York and New Jersey, had been held in a Manhattan warehouse for tests of mercury content since late in 1970. The United States Attorney said it was the largest attempted seizure of swordfish.[16]

Fishing Rights for the Common Market: Fishing rights for member nations, adopted by the six existing members at the beginning of negotiations for admission of new members, allow fishermen from anywhere in the market to fish without restrictions in the coastal waters of any community country. The fishing waters of the six members of the market—France, West Germany, Italy, Belgium, The Netherlands and Luxembourg—are far less rich than those of Britain, Norway, Denmark and the Irish Republic, the countries seeking to join. The applying nations all objected to the new rules, which became a major issue in the negotiations. In an effort to reach a solution, the market members proposed a ten year stay before the new nations would be required to grant other community countries access to their waters. During this period they would be allowed a six-mile coastal limit and a 12-mile limit in certain areas. Norway, the world's largest fish exporter and possessor of fishing grounds said to be the richest in the world, is insistent on a permanent exception from the free-access rule, demanding retention of exclusive rights 12 miles from its own coast. Britain, the Irish Republic, and Denmark reached agreement on the issue in December, but Norway refused to accept the terms, and has made it clear that she would withdraw unless there is an acceptable solution. Britain has reserved the right to reopen negotiations in the event that Norway obtains a more favorable agreement on the fishing issue.

Fisheries Protection: On December 23, 1971, the President signed into law a bill amending the Fishermen's Protective Act to prohibit the importation of fish products from any nation whose vessels or nationals fish in such a way as to endanger the domestic conservation programs of Atlantic salmon.[17] A prime target of the legisla-

16. 2 ENV. REP. 304 (Jul. 16, 1971).
17. Pub. L. No. 92-219, 85 Stat. 786 (Dec. 23, 1971).

tion is Denmark, although it applies to all nations and seas. The Atlantic salmon, prized as a game fish, has reportedly been seriously over-harvested in recent years. The Senate Commerce Committee said the use of sonic gear enabled Danish fishermen to locate schools of salmon and to increase their catch in 1969 to 900 tons, compared to a worldwide catch in 1965 of 36 tons. In recent years about three million pounds of young salmon have been harvested annually in Davis Strait off West Greenland, reportedly mostly by the Danes. A meeting of the 15-nation International Commission for Northwest Atlantic Fisheries in June in Halifax, Nova Scotia, was unable to reach any agreement to end the high seas fishery for Atlantic salmon in the Davis Strait.

MINERALS

Lawmakers Ask for a Moratorium on the East Coast: East coast legislators, until recently only less than interested bystanders in the congressional fight over oil rights, have come out for a moratorium on oil drilling near their shores. Senator Gaylord Nelson, with the support of several east coast senators, has introduced a bill calling for a two-year moratorium on drilling.[18]

Bills are under study by the Senate Interior Committee which would establish oil-free sanctuaries off the California coast. Nelson's bill is similar to the west coast version offered by Senators Alan Cranston and John Tunney of California.[19] It would ban oil drilling or exploration in a vast area off the eastern seaboard with a clause added to give compensation to oil companies who hold advance leases.

Cranston's and Tunney's measures had gone nowhere in the Senate last year, mainly because of opposition from the Interior Department.

Offshore Oil Leases: The matter of sales of offshore leases by the Federal Government was a source of continuing interest during the year. On March 9, 1971, Interior Secretary Morton indicated that the Interior Department was considering resubmitting legislation to Congress to terminate certain existing leases and to create a national energy reserve in the Santa Barbara Channel. The 91st Con-

18. S. 2971, 92d Cong., 1st Sess. (1971).
19. S. 1446-1452, 92d Cong., 1st Sess. (1971).

gress failed to act on similar legislation. The final decision on proposing the legislation was to be made after reviewing the draft environmental impact statement on exploratory drilling in the channel.[20]

Exploratory drilling operations on 14 oil and gas leases in the channel was suspended by the Interior Department on April 21 to allow completion of a final environmental impact statement. The suspension on the leases was lifted on July 31, after what was described as a thorough assessment of environmental factors and the legal rights of the lessees.

The leases include ten contiguous leases, approximately 89 square miles in area, off Ventura, California, and four non-contiguous leases of about 22 square miles off Santa Ynez. The leases were purchased in February, 1968, for a total of $92 million in bonus payments, prior to enactment of the National Environmental Policy Act.[21]

However, offshore oil drilling continues elsewhere. In Sacramento, California, the State Lands Commission approved plans by the City of Long Beach to sign a new contract leasing 250 acres of oil lands off the mouth of the Los Angeles River. The current contract, held since 1957 by Richfield Oil Corporation, expires in March, 1972. Bids were opened December 8, 1971, for a new contract running until the end of February, 1989. The parcel produces about 8,200 barrels of oil a day, yielding about $250,000 a month in royalties shared by the city and the State of California.

On June 15, the Interior Department announced a stepped-up schedule for oil and gas leasing on the Outer Continental Shelf, which would include a sale of leases off eastern Louisiana by December, 1971. The tentative five-year schedule contemplated at least two major oil and gas lease sales each calendar year through 1975, chiefly in the Gulf of Mexico, but also in the Gulf of Alaska and along the Atlantic Coast. In addition to sales off Texas and Louisiana, sales are tentatively scheduled off the coasts of Mississippi, Alabama, and Florida during 1973. The schedule is designed to allow ample time for evaluation of the environmental impact of each proposed sale, it was announced.

According to the findings of explorations by a consortium of thirty-four oil companies conducted in the summer of 1971, oil and natural gas deposits in commercial quantities exist on the continental shelf as close as thirty miles off the coast of Long Island.

20. 1 ENV. REP. 1246 (Mar. 12, 1971).
21. 2 ENV. REP. 408 (Aug. 6, 1971).

Thirty-four wells have already been drilled off the Atlantic coast of Canada as close as forty miles offshore by Shell of Canada.

Interior Secretary Morton, on September 20, rejected requests for permits to build two new oil platforms in the Santa Barbara Channel "because of overriding environmental considerations." In denying the permits sought by Sun Oil Company and Union Oil Company, Mr. Morton noted that the Administration proposed legislation, S. 1853, 92nd Cong., 1st Sess. (1971), to establish an oil-free federal sanctuary off Santa Barbara, and called for termination of 35 oil and gas leases in the channel. Therefore, he said, new platforms to be installed on federal leases seaward of the existing California sanctuary would be incompatible with the concept of the federal sanctuary.[22]

Following that decision, on September 23 four major oil companies, Union Oil Company of California, Gulf Oil Corporation, Mobile Oil Corporation, and Texaco, Inc., filed suit in federal district court in Los Angeles challenging the department's action. The suit asked that the decision denying the permits for the new platforms be rescinded by the court. The companies argued that in 1968 they had paid the government $61.4 million to lease the offshore continental shelf for oil exploration and that their investment now exceeded $100 million.[23] In November, 1971, Sun Oil Company likewise brought suit against the United States, also for breach of contract, for damages totaling $201 million.

In November, Interior Secretary Morton stated that there will be no exploratory drilling for oil and gas in the Outer Continental Shelf (OCS) off the Atlantic coast until a thorough study has been made of the environmental impact and the affected states are consulted. He indicated that the issue of sea bed jurisdiction is a paramount consideration, and noted that the question of who holds sovereign rights to the resources of the OCS is still in litigation between the United States and the Atlantic coastal states before the United States Supreme Court. The Secretary indicated that no action toward leasing procedures on the Atlantic OCS can be undertaken until the Supreme Court decides that boundary issue, or the states and the Federal Government make interim arrange-

22. 2 ENV. REP. 623 (Sep. 24, 1971).
23. 2 ENV. REP. 634 (Oct. 1, 1971).

ments for leasing pending the Supreme Court decision. There is precedent for such arrangements in the agreement between the United States and Louisiana under which any sale proceeds are held in escrow pending final resolution of the jurisdictional boundary dispute.[24]

On November 4, 18 tracts on the Outer Continental Shelf of Louisiana were sold for leasing, and later in November it was announced that a sale of 78 tracts off the coast of eastern Louisiana for oil and gas leasing would be held December 21, 1971. Stringent safety and environmental stipulations were imposed on the sale. Eight other tracts originally to be included in the sale were withheld because of their proximity to Delta Migratory Waterfowl Refuge and Breton Wildlife and Waterfowl Refuge. It was stated that these tracts were being held back until sufficient information was obtained on potential effects on marshlands and estuaries supporting substantial bird and sea life communities.[25]

On November 29, the Interior Department invited requests for tracts on the Outer Continental Shelf off the coast of Texas for a competitive lease sale contemplated in late 1972.[26]

On December 8, Secretary Morton stated that there will be no exploratory oil drilling on the Atlantic Outer Continental Shelf for at least two years. He indicated that present efforts were entirely of a fact-finding nature, and that even if all environmental conditions were met and all legal hurdles crossed, it would be another seven to ten years before there would be significant production from the Atlantic OCS. He indicated that the Interior Department would not begin proceedings leading to an environmental impact statement—a necessary first step to further development—until the jurisdictional boundary issue is resolved by the Supreme Court, or until the states and Federal Government make interim arrangements for leasing.[27]

On December 16 the United States District Court for the District of Columbia granted a preliminary injunction blocking the sale of the 78 tracts of offshore oil and gas leases, covering 300,000 acres, on the OCS off Louisiana. The plaintiffs, Natural Resources Defense Council, Friends of the Earth, and the Sierra Club, contended, and the court held, that the Interior Department's Final Impact Statement failed to comply with the requirements of the

24. 2 ENV. REP. 835 (Nov. 12, 1971).
25. 2 ENV. REP. 889 (Nov. 26, 1971).
26. 2 ENV. REP. 920 (Dec. 3, 1971).
27. 2 ENV. REP. 944 (Dec. 10, 1971).

National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) (1970), in that it did not adequately discuss alternatives to the lease sale. The Interior Department requested a bond of $750,000 plus some $2.5 million per month to cover expected revenue losses, but the court found that such a bond would defeat the purposes of the National Environmental Policy Act by effectively denying such nonprofit environmental groups as the plaintiffs an opportunity to obtain judicial review of the department's actions. Bond was set at $100.[28] The order was affirmed January 14, 1972, by the United States Court of Appeals for the District of Columbia.[29] The appellate court suggested, however, that the Interior Department might be able to meet the conditions specified by the lower court by issuing a study of possible alternatives. The court authorized the Department to receive and hold the bids for the tracts unopened pending further court action. The Department submitted new environmental studies, and on January 19, asked the trial court to lift the injunction, but the judge said he could not decide the case that quickly. Consequently, on January 20, 1972, since the deadline for holding the bids had been reached, the Department cancelled the lease sale.[30]

Safety Regulations Proposed: The National Transportation Safety Board recommended, on October 6, 1971, federal safety regulation of the offshore oil-drilling industry. Declaring that the voluntary standards have been ineffective, the Board said the action was needed to prevent recurrence of accidents like the Gulf of Mexico explosion and fire that killed nine workmen off Galvaston, Texas. The explosion occurred December 1, 1970, and caused eleven wells to catch fire. The fires were not put out until the end of March, 1971. The wells were owned by the Shell Oil Company.

On October 18, 1971, another offshore oil platform, containing five wells, caught fire in the Gulf of Mexico. The burning wells sent oil slicks up to twenty miles long into the Gulf but did not threaten the Louisiana coast. The platform was operated by Amoco Production Company and was located in the Eugene Island area forty miles from the coast.

28. Natural Resources Defense Council v. Morton, — F. Supp. —, 3 ENV. REP. CASES 1473 (D.D.C. 1971), *aff'd* — F.2d — (D.C. Cir. 1972).
29. 2 ENV. REP. 1140 (Jan. 21, 1972).
30. 2 ENV. REP. 1186 (Jan. 28, 1972).

United States-Rumanian Negotiations: Rumania is in an advanced state of negotiations with United States corporations for joint ventures in offshore oil drilling in the Black Sea. If these negotiations are successful, it will be the first time that a communist government has entered into partnership with United States private capital for joint operations in the politically sensitive field of petroleum. Plans are being discussed with a group of oil companies in Houston, Texas.

North Sea Explorations: Fifteen sections of the North Sea were auctioned off to oil and industrial groups for a total of $89.2 million by the British government in August, 1971. The fifteen blocks run southwest to northeast off Orkney and Shetland off the north coast of Scotland; this is an area along the border between British and Norwegian waters from the north of Shetland to Newcastle-upon-Tyne, including scattered blocks in the gas-producing areas off the English coast from Hull to Norfolk and blocks parallel to the north Cornish coast. Blocks in the English Channel had been withheld because of shipping-traffic hazards.

These auctioned-off sections are a small portion of a new area put up by the British government for bid or application; this area contains 436 blocks encompassing 38,600 square miles. Some of these sections are adjacent to the British Petroleum and Shell-Esso discoveries made earlier 110 miles northeast and 150 miles southeast of Aberdeen.

Britain's Minister of Industry Sir John Eden declared that his government's latest offer is only the "beginning of the oil-discovering era on the continental shelf."

Norway, too, has been busy manuevering to strengthen its "position" in the petroleum market through offshore oil drilling. Norsk-Hydro, a diversified industrial concern largely owned by the Norwegian government, is participating heavily in the oil discoveries in the Norwegian sector of the North Sea. However, only one field is yet approaching commercial production anywhere in the North Sea, and even it has encountered difficulties. This is the Ekofisk field developed by the Phillips Petroleum Company 185 miles southwest of Stavanger, Norway. Norsk-Hydro holds a seven percent interest in Phillips.

Premier Trygve Bratteli of Norway has declared that oil exploration in the Norwegian sector of the North Sea would be based on national and community interests; this enterprise will have to be placed under state management and "a complete measure of state control." Later, Pan Ocean Oil Corporation and Bow Valley In-

dustries, Ltd. were awarded a production license covering block 25/4, containing about 135,000 acres.

On the basis of present discoveries alone, the British and Norwegian sectors combined should be producing one million barrels of high-quality crude oil a day by the mid-seventies.

Other waters of the world have similarly received attention from oil companies. The Atlantic Richfield Company recently purchased fifty-one percent of a concession for exploration in a 15,440 square mile area in the Strait of Malacca off Sumatra. And Mobil Oil Corporation signed a partnership agreement with the National Iranian Oil Company to explore about 1,500 square miles off Iran in the Strait of Hormoz at the eastern end of the Persian Gulf.

Not to be outdistanced in the oil race, President Suharto of Indonesia inaugurated a $60 million offshore oil well on September 2, 1971 that is expected to be producing 75,000 barrels a day by the end of 1972. The project is jointly owned and operated by the American Oil Company, Atlantic Richfield Company, and Indonesia's state-owned oil company, Pertamenia.

Other countries are also interested in offshore oil. Representatives of seven South Pacific nations and territories, known as the "Preparatory Meeting for Establishing a Coordinating Body for Offshore Prospecting in Countries of the South Pacific", called for an extension of regional cooperative efforts in offshore prospecting for oil and other minerals. The seven are Australia, British Solomon Islands, Fiji, New Zealand, Papua-New Guinea, and Tonga.[31]

Magnesium Harvesting in the Ocean: The Hughes Tool Company (of California) has started construction on a 324 foot barge to work in conjunction with a 526 foot mining vessel whose specifications would enable the vessel to operate at depths ranging from 12,000 feet to 18,000 feet. The primary purpose of such an operation is the harvesting of magnesium nodules and, possibly, other deep sea minerals.[32]

Vietnam Oil and United States Policy: The Nixon administration has been accused by several antiwar groups of prolonging the

31. 8 U.N. MONTHLY CHRON. (No. 8) 86 (1971).
32. L.A. Times, Jan. 17, 1972, pt. 1, at 3, col. 4.

war in South Vietnam to protect potential American oil interests in Southeast Asia. On March 16, 1971 Secretary of State William P. Rogers declared that reports of large oil deposits off the shore of South Vietnam have absolutely no effect on United States policy. He stated that the United States did not even know about the rumors of oil wealth until recently.

Mr. Rogers sent two letters to Senator J. W. Fulbright informing him that (1) the South Vietnamese government passed a law in December of 1970 authorizing exploitation of its continental shelf by foreign petroleum companies, and that (2) of the two American oil companies in Vietnam—Standard Oil of New Jersey and Caltex—only Standard Oil expressed an interest in the offshore oil.

On March 30, 1971 Senator Philip A. Hart followed Rogers' lead and also condemned rumors that the United States was involved with Vietnam for its offshore oil. As head of the Senate Antitrust & Monopoly Committee, Hart countered that no American oil company held concessions from the South Vietnamese government, and that there were no producing oil wells in South Vietnam.

However, on June 10, 1971, South Vietnam announced that a 160,000 square mile area of its coast was officially open for petroleum exploration and exploitation. Bidding was to be by open letters.

Eighteen American oil companies had applied for permission to bid on these concessional rights. The closing date of such applications was August 15, 1971.

POLLUTION

DOMESTIC POLLUTION

Tankers Collide and Pollute San Francisco Bay: On January 10, 1971 two tankers collided beside the Golden Gate Bridge and spilled 840,000 gallons of oil into San Francisco Bay and along sixty miles of Pacific coast.[33] As a result of four days of hearings in late January, the Coast Guard announced on March 16 that the ships' captains had been found negligent in performing their duties on the tankers owned by the Standard Oil Company of California.[34]

Most of the cleanup work, in which hundreds volunteered, was completed in two weeks. But after two months, efforts were still

33. *See Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658, 666 (1971).

34. On June 14, 1971, the United States Coast Guard suspended the captains licenses, 2 ENV. REP. 182 (June 18, 1971).

going on to save some of the sea birds fouled by the oil. A volunteer army of bird lovers dragged oil-soaked wildfowl from the water for days, cleaned them up, and sent them to shelters for recuperation. The birds were sent to the San Francisco Zoo and the Richmond Bird Care Center, a private bird sanctuary. Of about 7,000 birds caught in the oil slicks, half were dead or dying when recovered. Only 305 birds survived despite one of the most intensive wildlife rescue efforts in history.

Atlantic Coast Beaches Oiled: Thick, sticky oil was washed up on the Coney Island Beach July 15, 1971, from Bayonne, New Jersey, and on other city beaches, where nearly 40,000 gallons of oil spilled from a Navy ship two days before. A mile and a half stretch of public beach was affected. Oil was also sighted on a mile-long portion of Rockaway Beach in Queens, New York and on Midland Beach and South Beach on Staten Island. The exact damage was not immediately clear; the beach was closed to swimming.

It seems that while "Bunker C" oil (heavy and not well refined) was being pumped from one tank to another aboard a ship docked at the Military Ocean Terminal in Bayonne, an engineer apparently turned a wrong valve which led to the discharge into the water. New York City was not informed of the spill until twenty-four hours later, and the viscosity of the oil made it difficult to clean up. Mayor John Lindsay said he would "send the bill to Uncle Sam" for city expenses in cleaning up.

On July 24, 1971, an oil slick approximately half a mile long washed up on parts of Atlantic and Long Beach beaches in Long Island. The Coast Guard believed it to be the result of bilge pumping by a passing tanker. The beaches were closed for several hours the next day while the slick was cleaned up.

Western White House Beach Cannot Escape Oil Spilled: While the oil tanker *U.S.S. Manatee* was refueling the aircraft carrier *U.S.S. Ticonderoga* August 20, 1971, approximately 230,000 gallons of heavy oil spilled into the ocean causing great patches of scum to cover a 65-mile stretch of the California coast. The spill occurred while the ships were participating in war games near San Clemente Island, seventy-five miles off the coast. A Navy investigation team was assigned to find out how the spill occurred, why it went unchecked for three hours, and why it went unreported for two

days. Federal and state environmental agencies ordered separate investigations of the mishap and had threatened possible court actions.

The Navy has acknowledged the incident to be its worst West Coast oil spill, and Navy Secretary John H. Chafee authorized up to $1 million for payment of claims for damage to private property and pleasure boats. After fouling beaches around Dana Point and San Clemente, the kidney-shaped oil slick, thirty-five miles long at times, moved southward past the Marine Corps base at Camp Pendleton, and washed ashore on the beaches of Oceanside, Del Mar, La Jolla, San Diego's Mission Bay and Point Loma, and down to the Mexican border below Imperial Beach. President Nixon's private beach at the western White House was one of the beaches fouled by the oil slick.

Two days after the spillage the Navy began two weeks of only partly-successful attempts to disperse the oil slick and prevent more of the residue from reaching the beaches. It ordered its oil skimming and scooping vessels back into port and announced that "the worst is over." However, many surfers, yachtsmen, and property owners were still battling clumps of oil at several beaches and small boat anchorages from San Diego to the Mexican border. The Navy kept 245 sailors and marines at work for several more days on the beaches.

Small Slicks in the East: In the latter part of August, 1971, three oil slicks were discovered by the Coast Guard between Block Island, Rhode Island and Cape Cod Bay. One was near Cuttyhunk Island (fifty yards wide); another was about six miles long near Block Island; and a very small concentration of oil was located 2½ miles west of Falmouth, Massachusetts.

Soviet Ships Leave after Dumping Oil: A ten-ship Soviet naval task force left Hawaiian waters on September 15, 1971, after dumping thousands of gallons of oil into the Pacific while refueling twenty miles south of Diamond Head. This discharge of fuel was in violation of international agreements which specify that no oil shall be emptied into the sea within fifty miles of a coast.

A Coast Guard helicopter reported the pollution, and the commandant of the 14th Coast Guard District radioed the commander of the Soviet task force asking him to "take appropriate action" to terminate the discharge of oil immediately.

Another San Francisco Bay Spill: In early September, 1971, between 15,000 and 30,000 gallons of oil leaked from the Swedish tanker *Jacob Malmaros* when she slipped her moorings at the Rich-

mond Long Wharf. A 120-man cleanup crew worked through the night and the next day to clean up all the oil. The Coast Guard said that no wildlife was injured.

On September 23, 1971, between 100 and 200 gallons of oil spilled into San Francisco Bay at a Shell Oil Company dock. It was cleared shortly thereafter. A thirty yard oil slick was formed outside Martinez Marina as a result of a ship's coupler breaking while the tanker was taking on fuel. The tanker is owned by the Keystone Steamship Company. There appeared to be no damage to waterfowl or the local ecology.

Oil Spill Study is Planned: New York City's fire department, in March, 1971 received a $340,000 federal grant for developing and testing ways to control oil spills in the waters surrounding the city. The demonstration grant for the first year of a four-year, $1 million program will be used to develop a "battle plan" to minimize the ecological damage of oil spills. The funds for the grant come from the Federal Environmental Protection Agency.

Robert O. Lowery, New York City's fire commissioner, said the "battle plan" would enable fire boats, Coast Guard vessels, and cleanup units to take concerted action against spills in order to protect the shorefront. Mr. Lowery also stated that charts would be prepared with the aid of aerial photographs to predict the likely course of spills in the harbor under various conditions of tide, wind, and other weather conditions, and to determine places where the spills could best be trapped. Decisions would also be made for determining priorities for protecting beaches and shorefronts.

Techniques to control spills would be tested under field conditions in the program. Alpine Geophysical Associates of Norwood, New Jersey, is to be the fire department's scientific and technical adviser for the project.

DOMESTIC POLLUTION CONTROL—FEDERAL

Marine Protection Act: The Nixon Administration's proposals on ocean dumping were introduced in February, 1971. The Marine Protection Act, H.R. 4723, S. 1238, 92d Cong., 1st Sess. (1971) declares a federal policy of regulating dumping of all types of material in the oceans, coastal and other waters, and of vigorously limiting the dumping of material which could have an unfavorable effect.

The proposed act would prohibit the transportation of material from the United States for the purpose of dumping it into the oceans, coastal and other waters, except when permitted by the Administrator of the Environmental Protection Agency. The act also prohibits the dumping of material in that part of such waters which is within the territorial jurisdiction of the United States, or in the contiguous zone of the United States when the dumping affects the territorial sea or territory of the United States, again except as permitted by the EPA Administrator.

The act broadly defines dumping as any disposition of material. Certain discharges are specifically excluded from coverage by the act however, including effluent discharges from any outfall structure and routine discharges incident to the propulsion of vessels. The act authorizes the Administrator to establish and issue various classes of permits, and to limit, deny, or revoke permits. The Administrator must consider likely environmental effects of any proposed dumping, along with alternative locations and methods of disposal, including those on land.

The act would make its provisions the exclusive authority for permit issuance and would terminate regulatory authority vested in all other officers and employees of the government. Exception is made to this provision in the case of the Atomic Energy Commission, but the Commission would be required to consult with the Administrator before conducting any activities which would otherwise be covered by the act. Actions taken pursuant to the Rivers and Harbors Act of 1899 prior to the enactment of the proposed act will also be excepted.

Violators of the act will be subject to a civil penalty of up to $50,000 for each violation. Each day of a continuing violation will constitute a separate offense. A penalty of up to one year imprisonment and/or a $50,000 fine are provided for knowing and willful violations.

In Congressional testimony, Environmental Protection Agency Administrator William D. Ruckelshaus indicated that under the proposed act the dumping of some materials, such as chemical warfare materials and toxic industrial wastes, would be stopped immediately. He said it would not be feasible or desirable to ban all dumping at once, however, because of the lack of immediate availability of other less environmentally harmful waste disposal methods. The dumping of such materials as sewage sludge and solid wastes would be discontinued as soon as possible, and no new dumping sources would be allowed. Mr. Ruckelshaus stated that it might not be

necessary to halt the dumping of some inert, nontoxic materials, although the dumping would be closely regulated to prevent damage to estuarine and coastal areas.[35]

Cross-Florida Barge Canal: The President on January 19, 1971, ordered a halt in construction of the cross-Florida barge canal. This followed the action of a federal judge in the District of Columbia granting a preliminary injunction on January 15, 1971, to halt construction of the canal. The canal would have extended 107 miles from Mayport on the east coast of Florida to Yankeetown on the Gulf of Mexico.

The canal, initially authorized by Congress in 1942, was aimed at reducing the distance for barges to travel from the Atlantic Ocean to the Gulf of Mexico. Approximately twenty-six miles had been completed. The President said it would cost about $180 million to complete the project and that his order was to prevent "a past mistake from causing permanent damage."

Ocean Dumping Regulation: The proposed Marine Protection, Research, and Sancutaries Act of 1971, H.R. 9727, 92d Cong., 1st Sess. (1971), was passed by the House and sent to the Senate September 9, 1971. After substantial amendments it passed the Senate on November 24, 1971, as the Marine Protection and Research Act, and at the time of this writing was in a joint Senate-House conference.

Title I of the House bill would provide for a total ban on the dumping of chemical, radiological and biological warfare materials. A permit system to regulate dumping other wastes into territorial, coastal, and contiguous waters of the United States, and the Great Lakes, would be provided. Also regulated would be transportation of such wastes by United States vessels from such waters to the high seas for dumping. The House bill, while empowering the Environmental Protection Agency to establish dumping criteria and to issue permits when appropriate, would continue the authority of the Army Corps of Engineers over dumping of dredge and fill materials. Surveillance and enforcement would be the responsibility of the Coast Guard. Civil penalties of up to $50,000 per violation could be imposed by the Environmental Protection Agency. Suits for injunction against dumping could be brought either by the Attorney General or by private citizens.

35. 2 ENV. REP. 305 (Jul. 16, 1971).

Title II of the House bill would provide for long and short term research on the effects of ocean dumping on the coastal and ocean environment, under the direction of the National Oceanic and Atmospheric Administration in cooperation with the Environmental Protection Agency and the Coast Guard.

Title III of the House bill would give the Secretary of Commerce discretionary authority to establish marine sanctuaries, in consultation with the State, Defense, Interior, and Transportation Departments, and the Environmental Protection Agency. Designation of a sanctuary within state coastal waters could only be made with the approval of the state.

Major differences in the version passed by the Senate include elimination of Title III providing for establishment of Marine Sanctuaries, because of the international legal problems which would arise in creating sanctuaries in international waters by domestic jurisdiction in the absence of a treaty. The Senate bill also eliminates the permit authority of the Army Corps of Engineers in Title I, and establishes the entire permit issuing function in the Environmental Protection Agency. An additional penalty is provided for persons knowingly violating the proposed act. Further, while the House bill would regulate dumping in United States waters, the Senate bill would extend regulation of dumping to waters beyond the territorial jurisdiction of the United States.

The Senate bill provides that after the proposed act takes effect all licenses, permits, and authorizations not issued pursuant to the proposed act will be void. The House bill exempts those actions taken pursuant to the Rivers and Harbors Act of 1899 before enactment of the bill. That provision was deleted by the Senate. The Senate bill would permit states to retain control of dumping within their three-mile limit, and to adopt and enforce regulations for such areas as long as the standards were within minimum requirements.[36]

New Contingency Plan for Oil Spills: The Council on Environmental Quality on August 20, 1971, announced a new National Oil and Hazardous Substances Pollution Contingency Plan,[37] providing guidelines for all navigable waters, tributaries, and adjoining shorelines, replacing the 1970 Plan. The lead agencies of the plan are the Environmental Protection Agency and the Departments of Defense, Interior, and Transportation. These agencies, chaired by

36. *See* 2 ENV. REP. 568 (Sep. 17, 1971); 2 ENV. REP. 821 (Nov. 12, 1971); 2 ENV. REP. 911 (Dec. 3, 1971).
37. 36 Fed. Reg. 16215 (1971).

the Environmental Protection Agency, constitute the National Response Team (NRT), which will review operations and readiness of regional areas, including the plans of Regional Response Teams (RRT). The Regional Response Centers will be the focus of pollution reponse activities, and will provide communications, information storage facilities, and other facilities for such regional operations. Plans include establishment of various strike forces and emergency task forces; a reporting, surveillance and notification system, a National Center to direct and coordinate operations, and enforcement and investigation procedures. Polluters will continue to be held responsible for cleanup under the new plan.[38]

Coast Guard Oil Spill Rules: Under amendments to the Coast Guard Regulations on Oil Spills adopted April 13, 1971,[39] a special oil spill cleanup fund will reimburse costs incurred in containment, countermeasures, and cleanup and disposal of oil spills. Under the National Contingency Plan,[40] action to be taken is divided into Phase I, Discovery and Notification; Phase II, Containment and Countermeasures, Phase III, Cleanup and Disposal; Phase IV, Restoration; and Phase V, Enforcement. Only Phase II and Phase II action in response to a spill will be reimbursed from the fund. Defensive measures in response to a threatened spill, as opposed to an actual spill, are also not reimbursable. The fund is not intended to pay for removal of spills by offshore facilities coming under the Outer Continental Shelf Lands Act,[41] but it could be used for removal of oil discharged into the contiguous zone. However, claims may not be made on the fund to pay for costs of removal of oil or hazardous materials discharged by a United States public vessel or federally controlled facility. An owner or operator who obtains judgment against the United States in a suit under the act may submit a copy of the judgment to the Coast Guard District Commander who is authorized to reimburse him from the fund. In the event that such a suit is compromised or otherwise settled, the owner or operator must have a certificate from the Attorney General stating that certain sum is owed by the United States before the commander can reimburse him. The commander of each

38. 2 ENV. REP. 503 (Aug. 27, 1971).
39. 33 C.F.R. § 153.301 *et seq.* (1971).
40. National Oil and Hazardous Substances Pollution Contingency Plan, 36 Fed. Reg. 16215 (1971).
41. 43 U.S.C. § 1331 *et seq.* (1970).

Coast Guard district is authorized to allow payment of up to $1 million for a single oil spill.[42]

Waste Treatment on Pleasure Boats: The Environmental Protection Agency announced on May 12 the proposed federal standards for performance of marine sanitation devices and acknowledged that they are high enough to eliminate all available devices except holding tanks. The proposal was scheduled to become law 45 days after its publication in the Federal Register. The regulations require devices to meet the same secondary treatment standards prescribed for all municipal waste facilities. Under the law, initial standards will become effective for new vessels within two-years, and for existing vessels, within five years. The federal standards will preempt state and local laws. The EPA suggested that its rule could be met with boat holding tanks coupled with pump-out devices at marina or with treatment devices aboard the boats; but it also acknowledged that no practical on-board device had yet been developed for pleasure craft and that few marinas were equipped to pump out holding tanks.

EPA Concerned about Possible Dumping into Municipal Sewers: A possible loophole in pollution laws which has concerned the Environmental Protection Agency is the possibility that companies might avoid prosecution for discharging harmful wastes by feeding the wastes through a municipal sewage system rather than disposing of it directly into a waterway. The concern arises from President Nixon's statement that he will rely mainly on the Refuse Act of 1899 to control water pollution by industries.[43] The Act, which was originally designed to protect navigation, prohibits the discharge of injurious substances into waterways, but specifically exempts liquid discharges from municipal sewers. The agency was not certain whether it could proceed successfully in court to block polluters if they went through a municipal system. The agency's efforts had been directed at persuasion of polluters to stop voluntarily, and court action had not been necessary.

Proposal to Permit Individuals to Sue Under Refuse Act: Proposed legislation, H.R. 8355, 92d Cong., 1st Sess. (1971), would amend the Refuse Act of 1899 to give individuals the statutory right to sue violators of the act. The bill would amend section 16 of the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 411-12, to provide that if the U.S. Attorney does not institute a criminal or civil action against the violator within 60 days after receiving information from

42. 2 ENV. REP. 1410 (Apr. 16, 1971).
43. *See Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658, 673 (1971).

an individual concerning the violation, the person furnishing the information may institute a civil action for the monetary penalty against the violator who is subject to the penalty. Half the penalty recovered in a qui tam action will go to the person bringing the action and half will go to a fund in the U.S. Treasury for use by the Environmental Protection Agency to control and abate water pollution. The amendment would also increase the penalties for violating the Act from a minimum of $500 and maximum of $2500 to a minimum of $10,000 and maximum of $25,000.[44]

DOMESTIC POLLUTION CONTROL—STATES

New Jersey Oil Pollution Legislation: Legislation authorizing up to $6,000 in fines for oil spills in New Jersey waters became law on June 1, 1971. The bill, which would also hold the offender liable for up to $14 million in cleanup costs, applies to dumping of other debris as well as to oil spills.[45]

New York Oil Control Bills: Legislation proposed in New York in 1971 would require all operators of oil storage plants, pipelines, and tankers to install antispill equipment. The bill would prohibit discharging any petroleum products, byproducts, or other pollutants into coastal or navigable inland waters. Firms responsible for any such pollution would have to clean it up at their own costs. The Department of Environmental Conservation could arrange for the cleanup and charge the responsible company.

The proposed law would empower the department to regulate transfer of petroleum between ships and ports and to issue licenses to companies engaged in moving oil products near or on the water. The companies would pay a fee, and ships transporting oil would have to maintain on-board antispill equipment approved by the department, and a crew trained to use it. The bill provides for a state coastal and commercial waterways protection fund to be financed by the license fees and penalties levied under the proposed law.[46]

Maine Commission Denies Permit for Construction of Fuel Complex: The Maine Environmental Improvement Commission re-

44. 2 ENV. REP. 81 (May 21, 1971).
45. New Jersey Water Quality Improvement Act of 1971, ch. 173, N.J. ACT (1971).
46. 1 ENV. REP. 1229 (Mar. 12, 1971).

fused a permit to Maine Clean Fuels, Inc., for construction of a $150 million fuel desulfurization complex on the uninhabited Sears Island near Searsport on July 26, 1971.

The Commission concluded that the company failed to make adequate provision for fitting the refinery into the existing natural environment. The Commission was particularly concerned with the effects of oil spills in the area and their effects on fishing and lobstering.

Attorneys for the company planned to take an appeal to the Maine Supreme Court.[47]

New York Enforces Boat Antipollution Law: The New York State Parks and Recreation Department announced early in 1971 that it would begin enforcing a five year old statute prohibiting the discharge of pollution from boats. Section 33-c of the New York Navigation Law,[48] which deals with pollution from marine toilets, was enacted in 1966, but its effective date had been postponed twice. The announcement of pending enforcement aroused concern among boat owners, particularly on Long Island Sound. The law requires that every boat equipped with a marine toilet must also be equipped with an approved anti-pollution device. The only devices that have been approved by the state are recirculating toilets and holding tanks. Thus all sewage must be retained by a boat until it can be pumped out at a shoreside receiving station. While there are a few pumping stations upstate, in Long Island Sound there is only one pump-out station on the north shore to serve the entire sound. The number on the south shore is not deemed adequate for the tremendous number of boats. The chief of the agency responsible for enforcement of the law stated that strict enforcement would be a problem, but contended that it would be primarily a problem for the courts, which would have to decide on the constitutionality of boarding and the fairness of having to have holding tanks with no places to empty them.

The boat antipollution laws have not gone unchallenged. A suit was filed on June 28 to bar enforcement of a New York law regulating discharge of wastes from vessels on navigable waters, scheduled to go into effect on July 1, 1971, in a civil action filed in the United States District Court for the Western District of New York, by 21 vessel companies and two water associations. The plaintiffs contended that the portion of the law relating to marine toilet facilities was unconstitutional.[49]

47. 2 ENV. REP. 411 (Aug. 6, 1971).
48. N.Y. NAVIGATION LAWS § 33-c (McKinney Supp. 1971).
49. 2 ENV. REP. 276 (Jul. 9, 1971).

Florida Oil Pollution Law Declared Unconstitutional: The Florida Oil Spill Prevention and Pollution Control Act,[50] enacted by the state legislature during the 1970 session, imposed unlimited liability without fault on any shipper for oil spills in Florida waters. Onshore and offshore terminal facilities were subjected to the same liability. The act was declared unconstitutional by a three-judge federal district court in Jacksonville on December 10, 1971. The court held that the act intruded into maritime matters that Article III, section 2, clause 3, of the United States Constitution reserves as exclusive federal domain. The court also held that the law, which was scheduled to go into effect on March 15, 1971, was in conflict with the Federal Water Pollution Control Act. The court made permanent a temporary injunction issued on March 12, barring enforcement of the law.[51]

New Jersey Extends Dumping Ban: A stringent law that authorizes regulations which will require most of New Jersey's sewage sludge and industrial wastes to be dumped 100 miles out in the Atlantic Ocean was signed by the Governor on June 1, 1971.[52] Since the law governs material destined for waters over which New Jersey has no sovereignty, state officials expect it to be challenged in the federal courts. Under existing regulations, the Army Corps of Engineers approves applications for sludge dumping at sea, while the state has non-enforceable review power. The effect of the new law may be questionable unless similar legislation is enacted by New York and Pennsylvania, inasmuch as sewage from such cities as New York and Philadelphia has also been dumped into the waters off the New Jersey coast, and the New Jersey law has no interstate effect. The Army Engineers' opposition to the extension to 100 miles is based on the economic and logistic impact of having to transport the large amount of waste an additional 88 miles to sea.

SUITS FILED

Armco Steel Enjoined from Waste Discharge:[53] Armco Steel Corporation, Houston, Texas, was permanently enjoined, on Sep-

50. FLA. STATS. ANN. § 376.011 *et seq.* (West Supp. 1971).
51. Am. Waterways Operators v. Askew, —F. Supp. —, 3 ENV. REP. CASES 1429 (M.D. Fla. 1971).
52. Clear Ocean Act, ch. 177, N.J. ACTS (1971).
53. United States v. Armco Steel Corp., 333 F. Supp. 1073 (S.D. Tex. 1971).

tember 17, 1971, from discharging cyanide and other toxic wastes into the Houston Ship Channel. The court rejected contentions by the company that the court did not have equity jurisdiction to issue an injunction under the Refuse Act of 1899, that the effluents came within the streets and sewers exception of the Act, and that the Federal Water Pollution Control Act superseded the Act. The court did not, however, enjoin the company from drilling injection wells for subsurface disposal of the effluents. The Texas Water Quality Board ordered the drilling of the injection wells, but EPA expressed objections to this method of disposal. The court ruled that it did not have jurisdiction to order a different method of disposal or treatment of the effluents, but did order replugging of abandoned oil wells within a two and one-half mile radius of the injection wells to keep the wastes from escaping into abandoned wells and thence into the sands that bear water used for drinking in Houston. The judge noted that in time of rainfall there was undoubtedly a downstream movement of Armco effluents toward Galveston Bay and the open Gulf, and that expert testimony at trial had revealed that the poison from Armco's plant is lethal within a few minutes to fish and shrimp.

Armco officials subsequently indicated that the injunction would require the closing of the firm's coke plant in Houston, and probably a shutdown of the blast furnace, cutting production by 40 percent. Armco requested a stay of the order. The court granted a stay of the section of the order barring discharge of effluents from two other plants, but not from the coke plant.[54]

Massachusetts Enacts Law to Protect Against Oil Spills: A law enacted by Massachusetts on November 16, 1971, authorized the state's director of marine fisheries to establish any regulations necessary for the maintenance, preservation and protection of all marine fisheries resources within 200 miles off the Massachusetts coast.[55] This would include assertion of Massachusetts jurisdiction over Nantucket and Vinyard Sounds to prevent oil drilling operations. The law is directed toward protecting the state's Atlantic fishing grounds from oil spills.[56]

Suits to Halt Ocean Dumping by duPont and City: Suits were filed in the United States District Court for the District of Delaware, in July, 1971, against E.I. duPont de Nemours and Company and the city of Philadelphia to prevent the dumping of wastes on the Continental Shelf. The suits were filed by Joseph M. Boyd, of

54. 2 ENV. REP. 634 (Sep. 24, 1971).
55. Mass. Acts ch. 1104 (1971) *amending* MASS. LAWS ch. 130, § 17.
56. 2 ENV. REP. 874 (Nov. 19, 1971).

Princeton, N.J., representing Consumer Bureau, a nonprofit organization. He charged that Philadelphia was dumping sewage in the ocean 12 miles off Rehobeth Beach, Delaware, and that duPont was dumping dilute sulfuric acid in an area off Ocean City, Maryland, 42 miles southeast of Delaware Bay.[57]

Oil Companies Sued for Discharge from Offshore Platform: In two criminal actions against oil companies under the Rivers and Harbors Act of 1899, 33 U.S.C. § 407, for discharging pollutants from oil production platforms, the United States District Court for the Southern District of Texas held that while a production platform was not one of the specific facilities enumerated in the act, it must be encompassed by the words "wharf, manufacturing establishment or mill of any kind."[58] Discharge from such a structure therefore was held to be within the scope of the act. Moreover, the court ruled that such discharge was *malum prohibitum* under the act, and that a showing of scienter was not required for a charging of the offense.

Legal Action Following Puget Sound Oil Spill: Suit was filed by the Justice Department on June 24, 1971, against Texaco, Inc. and the United Transportation Company for damages for oil spilled into a tributary of Puget Sound on April 26. The government filed the suit in the United States District Court for the Western District of Washington, charging the two companies with criminal violations of the Refuse Act of 1899 and requesting that the companies be ordered to pay the estimated $65,000 cost incurred by federal agencies in cleaning up the spill. The spill allegedly occurred while a barge belonging to the United Transportation Company was being loaded with diesel oil from a Texaco refinery.[59]

On May 5 of the Coast Guard charged two tankermen with negligence in connection with the spill. The two were charged with failing to ensure that a sea suction valve on the United Transportation Company's barge was closed. Approximately 230,000 gallons of diesel oil was spilled, covering large areas of North Puget Sound and killing hundreds of birds. A guilty finding would re-

57. 2 ENV. REP. 379 (Jul. 30, 1971).
58. United States v. Getty Oil, — F. Supp. —, 3 ENV. REP. CASES 1225, (S.D. Tex. 1971); United States v. Humble Oil, — F. Supp. —, 3 ENV. REP. CASES 1226 (S.D. Tex. 1971).
59. 2 ENV. REP. 276 (Jul. 9, 1971).

sult in either revocation or suspension of the men's Merchant Mariner's documents.[60]

An independent research company, Texas Instruments, Inc., of Dallas, Texas, made a study of the spill, which occurred near Anacortes, Washington. It reported to the Environmental Protection Agency that marine bacteria in the Puget Sound region apparently have low metabolic rates which preclude their consumption of large quantities of oil. That means the biological breakdown of oil is slow in Puget Sound, which is the planned unloading area for oil which would be shipped in giant tankers from Alaska if the proposed trans-Alaska pipeline is built.

Government Seeks to Stop Pfizer from Dumping Wastes: Officials of the Environmental Protection Agency were alarmed to learn in April, 1971, that while the Agency was exerting all its efforts toward stopping pollution, another arm of government, the Army Corps of Engineers, had been routinely issuing permits to Pfizer, Inc., in Groton, Connecticut, for 15 years to take its waste by barge about three miles into Long Island Sound and dump it there. The material, dumped about once or twice a week, is reportedly a cake-like substance which is the residue from production of penicillian and other antibiotics. EPA promptly demanded that Pfizer come up with alternative means of disposing of the wastes, basing its demand on the reasoning that it was unfair to make other industries install expensive pollution control equipment while Pfizer continued to use the sound as a free dump. Pfizer subsequently informed the agency that the only alternative disposal method it could offer was to move the dumping site out to sea beyong the jurisdiction of the antipollution laws. Pfizer currently dumps about a million gallons of waste a month in an area of Long Island Sound called "the Race," just off New York's Fischer Island. Pfizer maintains that the dumping of the residues is beneficial, that the material is a good food for fish.

The Environmental Protection Agency maintains that it is difficult to say what damage the waste does beyond using up oxygen in the water in the process of decomposition, but that if Pfizer is allowed to continue dumping, all other companies will want the same right, with the result of highly contaminated water.

The agency, with little or no legal backing, is trying to stop the dumping by Pfizer in order to prevent the opening of what it sees as a dangerous loophole that would allow companies to avoid

60. 2 ENV. REP. 11 (May 7, 1971).

cleaning up their own pollution. But until the stricter ocean dumping legislation introduced by the Nixon Administration is enacted, the agency must rely on the discretion of the Army Corps of Engineers, under whose authority the dumping permits are granted.

Suit Against Fort Ord Not Barred by Sovereign Immunity: In a suit by the State of California against the Commanding General of Fort Ord Military Reservation for pollution of Monterey Bay,[61] the United States District Court for the Northern District of California held that sovereign immunity was not a bar to relief. Reasoning that an amendment to the Federal Water Pollution Control Act, 33 U.S.C. 466(i), eliminated the discretion formerly allowed the executive branch in determining whether to fund efforts to comply with local pollution regulations, the court found that the defendant had exceeded his authority in not complying with the amended federal statute which requires compliance with applicable water quality standards. Having exceeded his authority, he could not raise the defense of sovereign immunity.

Town and Developers Sued for Violating Refuse Act: The Town of Emerald Isle, North Carolina, and three developers were charged in the United States District Court for the Eastern District of North Carolina on May 24 with violating the Rivers and Harbors Act of 1899. The suit was filed against the mayor, city council, and one of the developers charging that they operated a landfill in the town's marshlands. The complaint requested that they be ordered to clean up the landfill or be fined $50,000. One of the other developers was charged with the illegal construction of a dike at Sunset Waterway, and the remaining developer was charged with destroying navigable waters with a causeway being constructed on marshlands near Calabash. The United States Attorney filing the suits said that marshlands were a breeding ground for shellfish and were considered to be navigable waters.[62]

Norwegian Tanker Sued for Pollution: The Justice Department filed suit on June 7, 1971, against the owner of the Norwegian tanker, *Tiberius*, which spilled approximately 550 gallons of oil on June 6 into Casco Bay at South Portland, Maine. The civil action

61. California v. Davidson, — F. Supp. —, 3 ENV. REP. CASES 1157 (N.D. Cal. 1971).
62. 2 ENV. REP. 121 (June 4, 1971).

was filed in the Southern District Court of Maine, together with a request to the Bureau of Customs to cancel the ship's clearance, after the Coast Guard reported that the tanker spilled the oil which coated several beaches. The ship's owner posted a $5,000 bond, twice the maximum penalty provided for under the Refuse Act, and the ship was released.[63]

Various Actions Against Standard Oil Company of California for Polluting San Francisco Bay: Contra Costa County filed a suit against Standard Oil on August 5, 1971 accusing it of violating the state Fish and Game criminal code by allowing twenty to twenty-five barrels of oil to spill from a ship into the bay on July 28, 1971. The ship was loading at the Standard Oil refinery in Richmond. The company could be fined up to $1,000.

Also on July 28, 1971, Standard Oil was responsible for a 30,000 gallon oil spill in the bay. Suit was filed in Richmond, California, and Standard Oil pleaded nolo contendere. On September 30, 1971, Municipal Court Judge Charles H. Baldwin imposed the maximum fine of $1,000 and put the company on two years probation. The terms of the probation require Standard Oil to institute procedures which would prevent oil spills "at the earliest practical time." Standard Oil objected to these terms, because it was already working under a schedule for operation improvements set up with the Coast Guard.

On October 15, 1971, Standard Oil was fined $1,000 for a ten-gallon oil spill in San Francisco Bay.

A federal grand jury indicted Standard Oil and a subsidiary, the Chevron Shipping Company, on October 27, 1971, on charges of polluting San Francisco Bay as a result of a collision of two tankers on January 18, 1971.[64] The indictment was brought under the 1899 Refuse Act, which carries a fine for corporate defendants of not more than $2,500 nor less than $500.

However, Superior Court in San Francisco dismissed two suits on December 22, 1971, totaling $18 million filed against Standard Oil as a result of the January oil spill in San Francisco Bay. The suits were class actions and claimed that Standard Oil should pay persons who aided in cleaning up beaches and rescuing wildlife after the spill. The court ruled that such class actions were "impractical", and each person who had a claim should file an individual action.

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63. 2 ENV. REP. 182 (June 18, 1971).
64. *See* text accompanying note 33 *supra*.

EPA Acts to Halt Alaska Pollution by Sawmill: Legal action against the Alaska Lumber and Pulp Company, of Sitka, Alaska, for alleged water pollution of Silver Bay at Sawmill Cove was requested by the Environmental Protection Agency on May 19, 1971. EPA Administrator William D. Ruckelshaus said, "EPA has recommended that the Attorney General take criminal action under the Rivers and Harbors Act of 1899 because of a fish kill resulting from the company's wastes."

According to EPA, the company's waste discharges killed between 100,000 and a million fish on Sept. 11, 1970, and caused another fish kill in January 1970, for which no data were collected. EPA said that the company discharges wastes containing 95,000 pounds of suspended solids and about 240,0000 pounds of organic wastes each day into coastal waters.[65]

New York suit following Sewage Workers' Strike: An injunction against any new strike by New York City sewage-treatment workers was sought June 8, 1971, by Nassau County, New York, following a one-day strike at New York City's 13 sewage treatment plants. In addition, the suit asked for $1 million in compensatory damages for possible cleanup problems and $5 million punitive damages for "illegal, irresponsible, mischievous and improper conduct." The complaint contended that raw sewage had been emptied into waters abutting Nassau County, with a resulting likelihood of spread of disease, destruction of plant life, and inoperability of the county beaches. It was estimated that 762 million gallons of raw sewage which would otherwise have been treated was dumped into waterways during the 16-hour strike, in addition to the 300 million gallons a day which pour into the waterways without processing. Defendants in the suit were the two employee unions involved in the strike.

Navy Ordered to Halt Pollution: The San Francisco Bay Regional Water Quality Control Board on July 22, 1971, issued cease and desist orders against the Alameda Naval Air Station and the Hunters Point Naval Shipyard, ordering the two installations to complete waste treatment facilities by March 1, 1973.

According to the Board, Alameda dumps 380,000 gallons of highly

65. 2 ENV. REP. 74 (May 21, 1971).

poisonous industrial wastes daily into the bay, and Hunters Point dumps 87,000 gallons of industrial waste into the bay every day.[66]

A suit was filed in the Superior Court in San Francisco in January, 1972, to compel compliance with the Board's order. The suit, filed by the state Attorney General on behalf of the Board, asked for a fine of up to $6,000 per day for continued violation of the cease and desist order, and asked that a permanent injunction be granted restraining the Navy from discharging such wastes.

Santa Barbara Oil Spill Case Dwindles: A municipal court judge dismissed 342 counts of criminal pollution on January 10, 1972, against four oil companies, after they pleaded guilty to a single count of pollution. The companies—Union Oil, Mobil Oil, Texaco, and Gulf Oil—were fined $500 each on the charge stemming from the blowout in 1969 of an offshore oil well platform in Santa Barbara.[67]

Retried Los Angeles Municipal Court Judge Morton L. Barker, who was brought in to hear the case, said the companies had "suffered sufficiently" from civil suits resulting from the pollution. Santa Barbara District Attorney David Minier called the decision "outrageous" and filed an appeal.

INTERNATIONAL POLLUTION

Oil Pollution Conventions Ratified: The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties[68] was ratified by the Senate September 20, 1971. The President completed ratification procedures on October 14. The Convention establishes the right of coastal nations to take any action they deem necessary "to prevent, mitigate, or eliminate" the threat of oil pollution from a maritime accident, except in the case of a warship or a vessel of a state on government, noncommercial service. A nation, before taking such action, must notify all persons or corporations with interests that might be affected by the measures, except in extreme emergency. Measures taken must be proportionate to the threatened damage, and the state must pay compensation for damage caused by measures beyond those reasonably necessary to prevent pollution.

Also ratified by the Senate on September 21 were amendments

66. 2 ENV. REP. 436 (Aug. 13, 1971).
67. For a greater understanding of what occurred off Santa Barbara, *see* Nanda and Stiles, *Offshore Oil Spills: An Evaluation of Recent United States Responses*, 7 SAN DIEGO L. REV. 519, 526 (1970).
68. EX. G., 91st Cong., 2d Sess. (1970).

to the 1954 International Convention for Prevention of Pollution of the Sea by Oil,[69] principally prohibiting the discharge of oil at sea in excess of 60 liters per mile.[70]

Oil Discharging May Be a Crime: On April 8, 1971, England amended the Oil in Navigable Water Act of 1955[71] and Section 5 of the Continental Shelf Act of 1964[72] to further prevent the pollution of the sea by oil. The act makes the discharge of oil by any ship registered in the United Kingdom—in any water outside the territory of the United Kingdom—a crime, under various circustances.[73]

Italian Court Action to Halt Pollution: An Italian court impounded two tanker terminals three miles off the fishing harbor of Fiumicino near Rome and closed the pipelines linking them with an oil refinery inland. Police chained and sealed the equipment of the two steel platforms at which large tankers tie up to unload crude oil for the FINA refinery northwest of Rome. The action was ordered by a Rome judge on the basis of expert opinion that the offshore tanker operations had greatly contributed to soiling the beaches and waters west of the city. The judiciary had been investigating complaints againts the FINA refinery and supply system since the summer of 970 when a pollution scare led to the temporary closing of local beaches. The same judge also ordered Rome's Leonardo Da Vinci Airport, one of Europe's busiest, to clean and overhaul its drainage system immediately, based on evidence that large amounts of aircraft fuel and lubricants were constantly spilling from the airport's drains into the estuary of the Tiber River and into the sea. The judge threatened to close down the airport if his order was not complied with.

Greece Establishes Fines for Polluters: The Greek military regime has declared a scale of fines ranging up to $1,670,000 against ships that pollute Greek waters. The Port Authority has the right to impose fines of from $666 to $26,666 on ship captains for oil spills

69. [1961] 3 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3 (*entered into force* for the United States on Dec. 8, 1961). The amendments are contained in Ex. G., 91st Cong., 2d Sess. (1970).
70. 2 ENV. REP. 601 (Sep. 24, 1971); 2 ENV. REP. 746 (Oct. 22, 1971).
71. Oil in Navigable Waters Act of 1955, 3 & 4 Eliz. 2, c.25.
72. Continental Shelf Act of 1964, c.28.
73. 10 INT'L LEGAL MATERIALS 584 (1971).

and other pollution. Fines up to $1.6 million could be imposed if the Merchant Marine Ministry should decide that pollution of a more serious nature had occurred.

United States Proposes Convention for Licensing of Pollutant Carriers: The United States submitted a draft Convention on the Transportation of Matter for Ocean Dumping at a meeting of the United Nations Intergovernmental Working Group on Marine Pollution held June 14-18, 1971, in London. The Convention would require nations to develop national schemes for the licensing of transportation used in ocean dumping, in order to protect the marine environment and ocean water quality.[74]

United Nations Group Meets on Marine Pollution: The Intergovernmental Working Group on Marine Pollution, one of five groups established preparatory to the United Nations Conference on the Human Environment in Stockholm in June, 1972, had its first meeting in London in June, 1971. Problems discussed included those pertaining to the identification, prevention, and control of pollutants released into the marine environment, sources and routes of pollutants, action against pollution, and the development of regional and national pollution detection methods as the beginnings of a global system to assess the state of the oceans. The second session was held in November in Ottawa, Canada. Discussed were specific measures to save the seas from further degradation: general guidelines and principles for the preservation of the marine environment; measures and approaches at the national, regional, and global levels; and the strengthening of developing countries' capabilities.[75]

Pollution Liability Insurance Dropped: Management of companies causing pollution may no longer be able to invoke the protection of liability insurers. Lloyd's of London notified hundreds of companies that officers and directors insured against stockholder suits for wrongdoing will no longer be protected against suits as polluters under policies coming due September 1, 1971, and thereafter. It was indicated that the exclusion was the result of the rapidly increasing number of lawsuits for pollution. The Insurance Company of North America two years ago announced that it would no longer sell liability coverage against oil spillage or the deliberate pollution of the air and water. Most of the insurance industry quickly followed that step. One rate-making group revised its policies to cover only sudden and accidental discharges

74. 65 DEP'T STATE BULL. 251 (1971).
75. 8 U.N. MONTHLY CHRON. (No. 7) 89 (1971); 8 U.N. MONTHLY CHRON. (No. 11) 155 (1971).

except for oil. This resulted in the formation of an ocean marine pool to cover shipowners and operators liable for oil pollution cleanup costs under federal law.

Both New York and Connecticut have enacted legislation to prohibit industry from purchasing pollution liability insurance, and similar legislation has been proposed in Wisconsin.

SHIPPING

West Coast Dock Strike: On July 1, 1971, the contract under which virtually all west coast dock workers were represented expired. The failure of the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union to reach agreement on a new contract resulted in a hundred day dock strike, the longest in the nation's history. The strike was halted only after the President invoked the Taft-Hartley Act. The Taft-Hartley injunction expired on Christmas day and a resumption of the strike was prevented only by a special agreement between labor and management which extended the old contract until January 18, 1972. Still unable to reach an agreement, the dock workers resumed the strike on January 18. After one hundred forty days on strike, representatives of the Pacific Maritime Association and the striking dock workers reached agreement and the longshoremen returned to work. The new contract calls for a 34% pay raise and fringe benefits including dental care, paid prescription drugs, overtime for working more than six hours a day and thirty-six hours of guaranteed pay a week, even if there is no work to do. By the end of the eighteen month contract a dock worker will be making an extra 100 dollars a week in wages and fringe benefits.

During the strike the Congress gave the President the authority to order the striking workers back to work and impose binding arbitration on the parties. Although the authority was never used, it was an effective method of insuring that the rank and file union member would ratify the agreement that was reached by the negotiators.

An important side effect of the strike has been the settlement of a longstanding jurisdictional dispute between the Teamsters and the Longshoremen as to who was to unload containerized cargo. For the last ten years it has been the contention of the Longshoremen

that increasing use of containerization would result in the elimination of their jobs if the Teamsters were permitted to handle the cargo. As an outgrowth of contract negotiations between the Longshoremen and the Pacific Maritime Association, the Teamsters and Longshoremen agreed that the Teamsters would pay the Longshoremen one dollar per ton for all containerized cargo that they offloaded.

East Coast Dock Strike: East Coast dock workers struck East and Gulf Coast ports at the expiration of their contracts on October 1, 1971. However, the East Coast strike lasted only 57 days before the Taft-Hartley Act was invoked on November 27, 1971. Unlike the West Coast strike an agreement was reached by the International Longshoremen's Association and the New York Shipping Association prior to the expiration of the injunction. The major area of disagreement in reaching an agreement was the subject of a guaranteed annual wage. Management was opposed to continuing the system in its present form due to abuse of the system and the resulting high cost which had greatly reduced the competitive position of the port of New York. Agreement on this subject was reached only after the union accepted a system of fines to be imposed on those workers who refused to work at whatever pier assigned.

Vessel Bridge-to-Bridge Radiotelephone Act, Pub. L. No. 92-63, 85 Stat. 164 (Aug. 4, 1971), 7 U.S. CODE CONG. & AD. NEWS 1519 (1971): The act requires that specified vessels, dredges, etc., moving in navigable waters of the United States be equipped with radiotelephones to make possible bridge-to-bridge communication between masters of vessels approaching each other from opposite directions. The purpose of the act is to foster safe maritime navigation by eliminating one of the causes of collisions. The most recent collision cited by the House committee in discussing the need for the legislation was the San Francisco Bay collision between the *Arizona Standard* and the *Oregon Standard*,[76] resulting in a huge oil spill. The act makes mandatory radio watch on all the vessels involved.

Trawling Ban Urged in Oregon: A moratorium that would prohibit trawling by any fishing vessel over 110 feet long off the Pacific coast was proposed in Portland, Oregon by the administrator of an Oregon fishing industry group. Arthur Paquet, of the Oregon Otter Trawl Commission, said he made the proposal to try to stop Russians from depleting the rock and bottom fish resource off the

76. *See* text accompanying note 33, *supra.*

west coast. He said that many Soviet boats are over 300 feet long, in contrast to the American boats which are no larger than the 110 foot limit.

Mr. Paquet made the proposal during the windup of the fourth Governor's Conservation Congress dealing with marine fisheries resources.

A federal marine resource official told the conference that international fishing agreements in the eastern Pacific Ocean "have not been successful." The official, David H. Wallace, associate administrator for marine resources in the National Oceanic and Atmospheric Administration, also stated that it is becoming more difficult to get fishermen to cooperate with their governments.[77]

Long Island Sound Ship Ban Considered: The New England River Basins Commission, mandated by Congress to conduct a three-year study of Long Island Sound and the land around it, will consider a series of possibilities ranging from a total ban on shipping in the sound to the removal of structural eyesores on the shores. Some of the topics for study include:

—Environmental effects of the various proposed sites of cross-sound bridges and a mid-sound jetport;

—Implications of dredging and filling of coastal areas.

—The use of Long Island Sound waters, including feasibility of the shipping ban.

—The sources of various pollutants discharged in the western sound near New York City and from harbors and estuaries on Long Island and in Connecticut, including sources of what the commission described as "the worst offender—municipal sewage."

—New agencies, including the possible creation of a unit comparable to the bi-state Port of NewYork Authority, but concerned with Long Island Sound.

The commission has a budget of $3 million. However, only $255,000 had been requested by President Nixon in his current budget; the first stage had been budgeted at $1 million.

77. For a detailed discussion of the functions and workings of the Administration *see Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658, 670-671 (1971).

Initial work on the study has revealed that the waters of the central sound are basically unpolluted, and, in fact, if the water were not sea water "would be pure enough for drinking." However, in areas of the western sound near New York City, municipal and industrial sewage have caused "extensive pollution." David Burack, commission staff leader for the Long Island Study Plan Task Force, reported that damage to fish food nutrients by pollution is directly related to municipal sewage.

The commission will also examine the sites of various electrical generating facilities in Connecticut and along the Westchester and Long Island shores, which have either been scheduled or proposed, for their effects on the environment. Mr. Burack said that the commission could recommend that the sites be changed or scrapped, regardless of their stage of planning.

Another area of concern for some commission members is the removal of sand and gravel from the sound's bed. Virtually nothing is known about the ecological effects of such mining. The sand dredged up may drift for several miles, depositing sedimentation on top of oyster beds; it could harm certain species of fish and shell fish.

Injunction Issued Against Maritime Administration: The Maritime Administration was enjoined on June 22, 1971, from paying an unspecified portion of $36.8 million in operating subsidies due eight major steamship lines.[78] The ruling was handed down in the Eastern District Federal Court in New York at the request of Marshal P. Safir, former chairman of Sapphire Steamship Lines, Inc., and is an outgrowth of the company's contention that the eight competitors conspired to drive it out of business. The line, whose ships were seized and auctioned off to satisfy creditors, has been in voluntary bankruptcy since 1966.

The company's trustee is prosecuting a $10.5 million antitrust suit against fifteen United States steamship lines. Mr. Safir, in his separate action, contends that the eight companies—part of the same group of carriers—are not entitled to government operating support for the eleven-month period in 1965-66 during which the alleged conspiracy took place.

The restraining order was comparatively narrow. It stated that the Federal Maratime Administration (FMA) could not pay the money to the eight lines unless it either explained why they were being paid or made sure there was adequate security for a recovery

78. Safir v. Gibson, 330 F. Supp. 225 (E.D. N.Y. 1971).

if it was ultimately determined that the lines were not entitled to subsidies because of illegal competitive activity.

The FMA had ruled in 1967 that the fifteen lines had "conspired" to drive Sapphire out of the business of carrying trans-Atlantic military cargoes. The Maritime Subsidy Board for some time has been conducting hearings to determine whether support paid to the subsidized carriers in the group should be recovered.

International Trade Law: In a resolution of the United Nations Commission on International Trade Law (UNCITRAL) adopted on March 31, 1971, the Commission decided that within the priority topic of international legislation on shipping, the subject for consideration for the time being should be bills of lading. Other topics would be those indicated by the resolution of the Working Group on International Shipping Legislation of the United Nations Conference on Trade and Development (UNCTAD), adopted at its second session held on February 15-26, 1971.[79] In its April, 1971 meetings, UNCITRAL established a new and enlarged working group on international legislation on shipping.[80]

On October 25, 1971 the Sixth Committee (Legal) adopted a seven-power draft resolution on the report of UNCITRAL. In the preamble, the draft resolution would have the General Assembly reaffirm its conviction that reducing or removing legal obstacles to the flow of international trade, especially those affecting the developing countries, would significantly contribute to universal economic cooperation among all peoples, on an equal basis, and to their well being.

Under the operative parts of the draft resolution, the Assembly would note with appreciation the report of the Commission and would recommend that UNCITRAL continue to pay special attention to its four priority topics: international sale of goods, international payments, commercial arbitration, and international legislation on shipping. The Assembly would also recommend that UNCITRAL accelerate its work on training and assistance in international trade law; continue to give special attention to the interests of developing and landlocked countries; and keep its program of work under constant review.[81]

79. 8 U.N. MONTHLY CHRON. (No. 4) 44 (1971).
80. 8 U.N. MONTHLY CHRON. (No. 5) 35 (1971).
81. 8 U.N. MONTHLY CHRON. (No. 10) 112 (1971).

Nuclear Merchant Ship Symposium: An international symposium on nuclear merchant ships was held in Hamburg, Germany, from May 10-15, 1971. About 500 participants from thirty countries attended. Symposium members discussed propulsion plant engineering, design and safety problems, and economic and legal aspects of nuclear merchant shipping.

Oil Tankers Banned: Venice port authorities have banned oil tankers and other ships carying "dangerous" cargoes from Venice's Grand Canal in a move to reduce pollution and accidents.

Wrecks in the Busy Channel are Upsetting Britain: British ship officers and maritime officials are distressed about the standards of seamanship in the narrow, busy English Channel. They charge that, especially among flag-of-convenience vessels, standards are dangerously lax. In the first two months of 1971 alone three freighters and fifty-three lives had been lost in channel accidents. There were several near-accidents. According to officials, ships are ignoring warning lights and buoys and navigating with out-of-date charts. Collisions in the channel average one a month.

Officials of the Board of Trade and of Trinity House, the principal British pilotage and lighthouse authority, said that the government was taking the initiative in proposing a new set of international standards of seamanship and crew training. These proposals have been circulated through the International Labor Office in Geneva and the Intergovernmental Maritime Consultative Organization. But the Trinity House spokesman said it was no use getting new standards and equipment, when the present ones were ignored.

Officials of the United Kingdom Pilots Association said the owners and masters of ships sailing under flags of convenience—Honduras, Liberia, and Panama—were largely to blame for the danger in the channel. In the officials' opinion, the northern European nations followed the sea rules.

In March, 1971, nine ships of the British navy surveyed the English Channel in seeking a safe, temporary lane for westbound traffic because of wrecks in the normal lane. The area surveyed was twenty-five miles long and two miles wide and stretched between the Varne and Dover Ridge Banks, south of Dover.

British Action to Prevent Oil Spills by Ships: While American environmentalists press for tighter regulation of shipping in coastal waters to prevent oil spills arising from collisions and groundings, the British have been agitated by a similar problem arising from tanker accidents in the Dover Strait outside their territorial seas.

Stirred by a series of oil spills on English beaches, Parliament has moved to authorize the British government to sink or seize any oil tanker threatening to pollute Britian's shores, whether inside or outside the three-mile territorial limit that Britain claims. Canada took similar action a year before.

This April, 1971, government action took the form of an emergency amendment which passed the House of Commons at one o'clock in the morning and the House of Lords that afternoon.

Britain is also taking steps to police navigation in the channel. There have been suggestions of a helicopter patrol.

Lord Sandford, speaking for the government, explained that Britain was not basing its action on any international agreement or convention giving coastal nations the right to protect themselves against pollution. (Such an agreement has been reached since then; see International Pollution section, *supra.*) He said the action was an extension of British jurisdiction to such places as the Goddwin Sands, which, although just outside its territorial waters, are close enough for any mishap there to affect British beaches.

United States and Russia in Understanding on Sea Incidents: United States Navy negotiators announced on October 22, 1971, that they had reached an understanding with a Soviet delegation in Moscow on measures to prevent collisions and other incidents at sea. The new navigational procedures, drafted in eleven days of intensive discussions, were submitted to the two governments. Under-Secretary of the Navy John W. Warner, who headed the delegation, declined to comment on the substance of the discussions. It was understood, however, that both sides recognized the right of their navies to operate anywhere on the high seas, and thus, implicitly, to keep a watchful eye on each other's activities. Considering this mutual freedom of operation, the two delegations, however, were eager to avoid having their naval vessels get into each other's way and thus risk collisions in the course of surveillance at close quarters.

A Soviet statement issued later seemed to suggest that further discussions might be necessary before an agreement could be considered achieved. There was some surprise that even a tentative understanding could have been achieved so quickly. The talks were restricted to "operational and technical measures" for improving safety at sea.

There have been more than 100 near-collisions and other incidents over the years—some unreported—as the vessels of the two countries manuevered dangerously close to one another in efforts to watch exercises, inspect new equipment, and engage in other intelligence activities.

The negotiators took as their starting point the existing international regulations for preventing collisions at sea—the Rules of the Road—and sought agreement on additional measures required for the specific conditions of naval vessels weaving in and out of formations to get a better look.

The talks on incidents at sea were first proposed by the United States in 1968, but the Soviet Union did not display interest in such discussions until November, 1970.

Twenty-One Year Embargo on Trade with the People's Republic of China Ends: President Nixon ended a twenty-one year embargo on trade with the Peoples Republic of China on June 10, 1971. He authorized the export of a wide range of nonstrategic items, and he lifted all controls on imports from China. At the same time he announced a decision to suspend certain shipping requirements that have inhibited the export of wheat and other grains to the Soviet Union and other eastern European countries, as well as China.

Earlier in the year, on May 7, 1971, the Treasury, Commerce, and Transportation Departments joined in granting authorization to United States vessels and aircraft to transport commodities sold to China to ports and airfields not on Chinese territory. Previously, American sea and air carriers had not been permitted to transport goods for China. The authorization permitted American-owned vessels flying foreign flags to call at Chinese ports, but ships under the United States flag could not. Hundreds of American-owned ships sail under foreign flags of convenience, as they are known.

United States oil companies were authorized to refuel ships owned or controlled by China and those of eastern European countries en route to or from it. There was one exception: the servicing of vessels or aircraft owned or controlled by North Vietnam, North Korea, and Cuba or trading with those countries.

Environmental Groups Seek Coast Guard Action to Prevent Oil Spills: In an effort to reduce the risk of oil spills from ship collisions, two environmental groups, the Natural Resources Defense Council and the Sierra Club, petitioned the Coast Guard on March 31, 1971, to establish sea lanes and shore-based radar surveillance systems to control traffic in the nation's major ports. The pro-

posed Ports and Waterways Safety Act, introduced by the Administration in the 91st Congress, would have given the Coast Guard the authority to establish these same safeguards, but Congress failed to act on the measure. Consequently the two environmental groups instituted the petition to have the navigation aids set up on the basis of the enabling authority which allows the Coast Guard to establish "aids to maritime navigation" in order "to prevent disasters, collisions and wrecks."[82] The petition contends that instead of using the law to remedy the problem, the Coast Guard has done little more than use it to establish traditional lighthouses and buoys. According to the petition, the Coast Guard had taken the position that such aids to navigation in congested harbors, including sea lanes and radar, would impose restraints on vessel movements and were not now within the Coast Guard's authority to set up. The Coast Guard has indicated that such lanes and a guidance system for vessels have been instituted for San Francisco Bay (the site of the January, 1971, tanker collision), the Santa Barbara Channel, and Chesapeake Bay. According to the petitioners, however, these are merely suggested lanes without the force of law.

Legislation directed at the specific problem has again been introduced in the 92nd Congress. The proposed Ports and Waterways Safety Act of 1971, H.R. 8140, 92d Cong., 1st Sess. (1971), would permit the Coast Guard to establish vessel traffic systems in congested areas. Ships operating in controlled areas would have to comply with the traffic system, including the use of any electronic or other devices required for effective participation. The Coast Guard would be authorized to control ship movement, routing, and speed when conditions required, as in the case of heavy fog. While the Coast Guard would establish minimum safety equipment standards for structures subject to the Act, states and localities would retain the right to impose stricter standards. While small recreational craft are not exempt, the legislation is permissive, and according to the House report on the bill, the Coast Guard does not intend to impose it on small recreational water craft.[83]

Federal Boat Safety Act of 1971:[84] The act establishes a new

82. 14 U.S.C. § 81 (1970).
83. 2 ENV. REP. 744 (Oct. 22, 1971).
84. Pub. L. No. 92-75, 85 Stat. 213 (Aug. 10, 1971), 7 U.S. CODE CONG. & AD. NEWS 1568 (1971).

program to improve and promote safety in pleasure boating throughout the nation, and authorizes the Secretary of Transportation, through the Coast Guard, to establish, regulate and enforce national safety standards for construction and performance of boats and associated equipment. Despite federal preemption in the field, the Secretary is authorized to grant funds to states in support of their pleasure boating programs which he has approved.

Criminal penalties consisting of a fine of up to $1,000 and imprisonment of up to one year are provided for violations of federal regulations established under the act. Civil penalties are also provided, up to $2,000 per violation of specifically prohibited acts, and up to $500 per violation of any other provision of the act. Any vessel involved in a violation may be proceeded against *in rem* in any district court where the vessel may be found. District courts are given jurisdiction to enjoin violations of the act, and to restrain the sale, importation, or shipment in interestate commerce of any boat or associated equipment determined not to conform to the established federal regulations.

SOVEREIGNTY

Territorial Limits

The Lobster Industry Intrigue: While Latin American countries have recently been harassing and seizing West Coast tuna vessels, Soviet and Polish fishing trawlers have been harassing New England lobster fishermen on the East Coast. On May 14, 1971, the Coast Guard reported that about fifteen Russian fishing trawlers had that night run through the fishing gear of the *Pat-San-Marie*, an American lobster boat, in international waters off Nantucket Island. This was the seventh such incident in ten days. The *Pat-San-Marie* is the sister ship of the *Wily Fox*, which was subjected to harassment by the larger Russian trawlers six times in the previous nine days. In Washington, the State Department demanded that the Russians pay for damage to the *Wily Fox's* gear as a result of a similar incident April 1, 1971; the demand was for $3,349.

Officials of the National Marine Fisheries Service, on State Department orders, arranged a meeting with the commander of the 120-boat Russian fishing fleet off the East Coast. The meeting was held aboard the Soviet fishing boat *S.S. Robert Eykhe* May 19, 1971, and included an eleven-man United States delegation. Donald L. McKernan, special assistant to the Secretary of State for Fisheries, Wildlife and Ocean Affairs, said, at a subsequent briefing aboard the Coast Guard Cutter *Duane*, that at the three-hour

meeting the commander had recognized their position that his boats were violating international law of the seas and agreed to attempt to rectify the situation. Mr. McKernan also added that the commander had stated that he had reprimanded the captains of the fishing trawlers involved in the incidents.

Joseph Gaziano, president of the Prelude Corporation (of Westport Point, Massachusetts), owner of the *Wily Fox* and the *Pat-San-Marie,* said the commander was apologetic and promised to severely punish trawler captains who continue to violate American lobstermen's rights. However, Mr. Gaziano stated that if further incidents occur, his company will escalate its presentations to the Soviet government.

Yet only hours after the meeting, the *Pat-San-Marie* and the *Wily Fox* were being harrassed by many Russian trawlers: the *Pat-San-Marie* claimed that the trawlers were zigzagging various courses at various speeds, "deliberately destroying our gear." The *Wily Fox* reported that twelve trawlers had gone through her gear. This incident took place twenty miles south of Nantucket Lightship and about thirty miles from the site of the meeting. In Washington, Charles Bray, State Department press officer, said that the Russian commander probably had not had sufficient time to contact all of his ship captains since the meeting.

The following day, May 21, 1971, a Polish fishing trawler was reported to have run through the gear of another American lobster boat. The *Susan Y* reported that the trawler was going through her fixed traps and lines fifty-seven miles southwest of Nantucket Island.

This New England conflict with the Russians has come about as a result of their exhausting their usual fishing grounds in the early 1960's. Trawlers, following migrating schools of fish, need wide open spaces to pursue the fish wherever they go. Lobstermen set traps, up to 100 in a string, all bound together by rope or wire line and connected to the surface by buoy lines and markers. The Russians have a quota to meet. The lobstermen are usually caught in the middle—between the Russians and the fish. John Jensen, vice-president of Prelude, feels that the United States should extend its jurisdiction out to include the continental shelf in order to protect the American fishing industry's traditional spawning grounds.

On June 9, 1971, the Prelude Corporation filed a suit in federal court for $377,000 in damages. The complaint named as defendants the owners of several Russian trawlers. It declared that since March 31, 1971, the Russian ships had repeatedly run through and wrecked many lobster trawl lines and traps. The same day, four deputy marshals seized a Soviet freighter as security for the damage suit. The ship, the *Suleyman Stalskiy*, was boarded and attached while tied up at Alameda, California.

Federal District Judge George B. Harris heard arguments June 11-15 on the propriety of attaching the ship and concluded that the ship should be released; the ruling was carried out.

Two New England lobster companies filed claims with the State Department July 2, 1971, to be negotiated with the Soviet Union. The lobstermen charged sizable losses in equipment and profits as a result of a series of incidents earlier in the year. Prelude Corporation claimed $210,000 in damages; DOK Fishing Enterprises, Inc. filed the other suit.

On November 12, 1971, the Soviet fishing fleet and Prelude Corp. agreed on an $89,000 settlement of Prelude's $377,000 damage claim ($177,000 actual damages and $200,000 punitive damages).

Brazil Issues Decree Regulating Fishing: Under the authority of the Brazilian decree of March 25, 1970, which extended Brazilian control over waters extending 200 miles from its coastline, the Brazilian government issued a decree on April 1, 1971, which regulated fishing in the area of extended jurisdiction. Brazil now requires that any vessel fishing within the 200 mile limit must purchase fishing licenses from the Brazilian government. The cost of each license is 500 dollars for one year plus 20 dollars per net registered ton. In addition, licensed boats of foreign flags cannot fish within 100 miles of the Brazilian coastline. This requirement becomes extremely significant when it is noted that most of the prime shrimping is done with 50 miles of the coastline. Last year alone the shrimp catch was estimated at approximately 45 million tons and worth 20 million dollars. The Brazilian exercise of jurisdiction differs from that of other Latin countries in that the door is still left open for bilateral fishing agreements. To date, Trinidad and France have entered into agreements with Brazil. The United States position is that vessels of foreign flags are not required under international law to purchase licenses, and are advised not to buy the licenses. This is tantamount to a refusal by the United States to recognize any expansion of territorial claims in excess of 12 miles and reflects the feeling that to permit the purchase of such licenses would amount to recognition of the jurisdiction claim.

However, on January 13, 1972 a representative of the Brazilian government released a statement that the United States, France, and Trinidad had agreed to enter into talks over the 200 mile limit imposed by Brazil.

U.S. Seizes Soviet Fishing Vessel off Alaska: On January 17, 1972, a United States Coast Guard cutter stopped and seized two Russian ships, the *Lamut* and *Nikoli*, which were found to be transferring supplies within the twelve mile limit. The arrest of the Russians attracted world wide attention when the *Lamut* made a break for the open seas with the Coast Guard party still aboard. The commander of the Coast Guard cutter *Storis* requested and received permission from Washington to fire a warning shot across the bow of the *Lamut*. The *Storis* finally outmaneuvered the Soviet vessel and trapped it in the ice pack without having to fire a shot. The two Soviet ships were then taken to the United States Naval Base at Adak. The skippers of the two ships and the commander of the Russian fishing fleet were flown to Anchorage and charged with illegal fishing activites. The United States complaint seeks forfeiture of the two Soviet vessels, their cargo of herring, and ships gear. Criminal complaints were filed against the three Russians which could result in a 100,000 dollar fine and imprisonment for one year. The Russians have pleaded innocent to the charges, claiming that they were within the twelve mile limit because of bad weather.

The Cuban Mackerel Crisis: Four Cuban fishing boats returned to the open sea March 6, 1971, after touching off hostilities between Florida officials and the United States Coast Guard. The small Cuban boats and their crews were seized near Dry Tortugas, a string of barren coral outcroppings in the Gulf of Mexico about seventy miles west of Key West, Florida. An American fishing boat captain had notified the Coast Guard that the Cubans were fishing within the United States twelve mile limit.

When the Coast Guard seized only one of the Cuban boats—because it was the only one actually observed fishing—the Florida Marine Patrol moved in to seize the other three. Suddenly a confrontation erupted. The Marine Patrol officers manned their machine guns on deck and resisted the Coast Guard cutter *Diligent*, which was maneuvering to protect the three Cuban vessels. The Marine Patrol boats prevailed (probably because the Coast Guard's

guns were without ammunition, according to Lieutenant Commander Richard Clemens, commander of the Coast Guard Station at Key West).

Part of the problem has been Florida's claim that the state's own limits include all the wide body of water lying between the mainland and the Florida Keys. When state law enforcement agents tried to chase Cuban boats out of this area, the federal government secured an injunction against the state, opening up the area to foreign fishermen as long as the normal twelve mile limit continued to be observed.

No sooner had the boats returned to Key West than Havana radio began issuing reports that new armadas of fishing boats would be sent to the area. Havana demanded the immediate release of the boats and crewmen. The broadcast said that radio messages from the captains claimed that they were intercepted between fifteen and seventeen miles off the Dry Tortugas—in direct conflict with the Coast Guard's claim that the Cubans were fishing within the twelve mile limit.

Federal charges were filed against the boats' captains after the American captain who sighted them fishing filed an affidavit. A representative for the four captains paid a total of $25,000 in fines. The maximum penalty for violating the territorial limits is a $100,00 fine and one year in prison on each charge.

On May 26, 1971, four more Cuban boats were seized while fishing within the twelve mile limit near Dry Tortugas, and their eight crewmen were taken into custody. Four crewmen were later released. The four remaining were tried in federal court and were sentenced on June 9, 1971, to six months in prison and fined $10,000 each.

Perhaps as retaliation for this latest affair, five United States citizens were found guilty in Cuba (by revolutionary tribunals) for having illegally entered Cuban waters in two boats. They were fined a total of $100,000. Four of the Americans arrived at Cabo Cruz aboard a yacht on June 6; the fifth had arrived at Cayo Megano by canoe on May 22. The Cuban newspaper Granma reported that the five admitted having entered Cuban territorial waters and landing illegally on Cuban soil.

On July 7, 1971, the four convicted Cubans were released to Cuban authorities in international waters as part of an exchange being negotiated for the Americans held in Cuba. It seems that one of the Americans, Dr. Bernard Bender, was wanted by the FBI for draft fraud. That same day the five Americans were released

from Cuba. Also released by Cuba was the tug *Battler* with her seven crewmen.

Canadian Minister of Fisheries and Forestry Establishes Effective Date For Extending Jurisdiction Over Arctic Waters:[85] On December 18, 1970, the Canadian Minister of Fisheries and Forestry issued a statement that the amendments to the Territorial Sea Fisheries Acts which were passed by the Canadian Parliament on April 18, 1970, would be published in the *Canada Gazette* on December 26, 1970, and would become effective 60 days thereafter. These amendments purport to extend Canadian territorial jurisdiction over fishing and pollution in Arctic waters to 100 miles from the Canadian coast line. This action, and the surrounding controversy, has been severely criticized by the United States. Of specific concern was the fact that extension was an entirely unilateral move which totally disregarded the United Nations resolution of December 17, 1971, in which nearly all member states, including Canada, agreed to resolve these types of matters by international action. Although there have been no confrontations to date, the Canadian Government has been strengthening its armed forces in the Arctic.

American Tuna Boat Seizures Off the Coast of South America: In 1971 fifty-two American tunaboats were seized by Ecuador, and fines of more than $2.5 million were paid. One boat was seized by Peru. The boats are seized and the fines are levied because of the tuna fleet's refusal to buy $20-a-ton licenses to fish within 200 miles of the Ecuadorian coast. Only six tunaboats have such licenses. Ecuador, as well as other South American countries, recognizes a 200-mile territorial water limit, while the United States recognizes only a 12-mile limit.

The tunaboat owners complain that the State Department, because of the sensitivity of South American relations and fears of stirring new outbursts there against "American Imperialism," refuses to use the authority it possesses to recover the fines. The Fishermen's Protective Act[86] provides that if, on demand, Ecuador or any other nation interfering with American high seas fishing operations fails within 120 days to make restitution of fines or

85. For background material relating to the jurisdictional dispute, *see Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658, 689 (1971).
86. 22 U.S.C. § 1973 (1970).

damages, the amount can be deducted from foreign aid funds allocated to that country. This proviso has never been invoked. Yet on December 14, 1971 the Senate Commerce Committee approved a measure very similar to the Fishermen's Protective Act; the bill had already been passed by the House. The measure provides that a nation that seizes United States fishing boats and fines the captains would have the amount of the fine deducted from United States foreign aid programs in which it participates.[87] The measure provides for a $3 million revolving fund to reimburse the tunaboat owners for the fines they paid in order to free the seized vessels. The intent of establishing the fund is to reimburse the owners more quickly. Presently tuna fishermen can claim reimbursement for fines and other costs related to seizure, including any loss to the catch in the hold and lost fishing time. However, the reimbursements for loss of fishing time and catch granted under the Fishermen's Protective Act are on a fifty percent basis of actual loss. There have been instances of tuna boats being tied up in Ecuadorian ports for "a very long time." Present claim procedures consume up to eighteen months.

In response to the tunaboat seizures, the United States has imposed legislative sanctions against Ecuador. In January, 1971, all United States military sales, credits, and guarantees were suspended for a mandatory one year. And in December, 1971, the House of Representatives approved an amendment to the Foreign Aid Appropriations Bill to cut off all foreign aid to Ecuador. The amendment was offered by Representative Lionel Van Deerlin of San Deigo, California. The amendment is expected to be opposed by the Nixon administration "energetically."

The United States and Ecuador began talks on December 10, 1971, in Quito, Ecuador, aimed at ending the "tuna war." Charles A. Meyer, Assistant Secretary of State for inter-American affairs, held talks with Foreign Minister Jorge Acosta Velasco. The two did not discuss the legal aspects of the problem between the two nations—involving Ecuador's claim to a 200-mile territorial water limit. Rather, they attempted to reach an interim solution to ease the tension between the two nations before the 1973 international maritime conference in Stockholm, Sweden.

Mr. Meyer suggested the possibility of having American fishing vessels purchase licenses "under protest" to fish in offshore waters claimed by the Latin countries. In order for the interim agreement to be workable, Mr. Meyer said that Ecuador, Peru, and Chile must approve it, as well as the United States Congress. These three coun-

87. San Diego Union, Dec. 15, 1971.

tries, as well as Brazil, are some of the eight Latin countries which claim a 200-mile limit. However, Mr. Velasco said that no steps can be taken toward a solution so long as the United States maintains sanctions against Ecuador. In his negotiating session with Ecuadorian President Jose Velasco Ibarra, presidential counselor Robert H. Finch disclosed that Mr. Ibarra turned down a United States offer to pay fishing license money into a trust fund until the 1973 conference. The proposal has been called the "escrow concept." Besides Ecuador, the United States has had a series of talks with Peru, Chile, and Brazil; the talks have been bilateral.

A wire story from Quito, Ecuador, in early January, 1972, said that the Natural Resources Ministry announced that thirty fishing licenses were obtained from the Ecuadorian consulate in San Diego, California. However, Ed Silva, vice-president of the American Tunaboat Association questioned the report's veracity. He said he did not hear of any such licenses being issued.

However, on January 10, 1972, two more tunaboats were seized by Ecuador, making them the first seizures of the new year. The boats are believed to have been part of a group of thirty tunaboats which arrived in the Ecuadorian area with "metriculas," certificates declaring an intent to purchase fishing licenses from the South American country. The metriculas, which are really permits to purchase licenses, were obtained from Ecuadorian consular officials in San Diego and Panama—according to Mr. Silva.

A spokesman for the United States State Department said the value of the metriculas is to provide the purchaser the privilege of radioing ahead to Ecuadorian officials an intent to obtain a license if a gunboat appears. Although tunaboats have always bought these metriculas (according to Mr. Silva), the metriculas, costing $300, have not prevented seizures of the tunaboats.

Mr. Silva also said that Ecuadorian fishing licenses are not valid for twenty-four hours after being purchased. In addition, the United States State Department does not encourage the purchase of licenses, because of the territorial limit dispute.

On January 12, 1972, the two captured tunaboats were released after payment of fines double the usual amount. The double fines, totaling $151,410, were demanded because both vessels had been seized by Ecuador in 1971.

By late January, 1972, Ecuador has seized a total of seven tuna-

boats, realizing $440,000 in fines. Not to be left behind, Peru seized two tunaboats on January 20. This was the first time since March of 1971 that United States tunaboats were captured by Peru. The Peruvian patrol boats seized the tunaboats in an area described by fishermen as "no man's land." It is so named because it is the boundary between Peru and Ecuador, and fishermen never know which country is coming after them.

SEABED

Soviet Block Plans Seabed Study: In the absence of an international regime on the exploration of seabed resources, the Soviet Union and its allies have agreed to embark on a program of surveys and extraction of valuable minerals found on the ocean floor. Bulgaria, Hungary, East Germany, Poland, Rumania, Czechosolovakia, and Russia met in the Baltic seaport of Riga for four days during April and agreed to establish an International Coordinating Center of Maritime Exploration in the Soviet Union. The center will be designed to insure the rational use of the mineral resources of the ocean, and will be open to members of the Council of Mutual Economic Assistance, the economic alliance of the Soviet Union and Eastern Europe. According to G.A. Mirlin, head of the Soviet delegation at Riga, joint expeditions are being planned to the Atlantic and the Indian Oceans to select sites for mineral exploration. As a corollary to the Soviet action, a bill[88] was introduced into the United States Senate which will provide the Secretary of the Interior with the authority to promote the conservation and orderly development of the hard mineral resources of the deep seabed pending the adoption of an international regime thereof.

Treaty Banning Emplacement of Nuclear Weapons on the Seabed:[89] On July 21, 1971, President Nixon transmitted to the United States Senate a message seeking ratification of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and Subsoil Thereof.[90] The treaty was subsequently ratified by the United States on January 15, 1972. The Soviet Union ratified the treaty on June 28, 1971.

Australia and Indonesia Enter into Agreement Determining Seabed Boundries: On May 18, 1971, Australia and Indonesia entered

88. S. 2801, 92nd Cong., 1st Sess. (1971).

89. *Recent Developments in the Law of the Seas II: A Synopsis*, 8 SAN DIEGO L. REV. 658, 694 (1971).

90. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and Ocean Floor, *opened for signature* Feb. 11, 1971, — U.S.T. —, T.I.A.S. No. —, — U.N.T.S. —, (Entered into force for the United States on Jan. 15, 1972).

into a treaty which established the boundries between the countries so that each could exercise its sovereign rights of exploration and exploitation of seabed resources.[91] The treaty provides that disputes will be settled by peaceful negotiations. However, no machinery for settling of disputes is set forth in the treaty.

Pacem in Maribus: The second Pacem in Maribus Conference convened in Attard, Malta, on June 20, 1971. The conference is sponsored by The Center for Democratic Institutions of Santa Barbara, Calif. The center is a privately funded organization devoted to the examination of the problems of the world. The conference was devoted to the discussion of peaceful uses and preservation of the seabed, among other topics. A preliminary draft of an Ocean Space Treaty was presented by Dr. Arvid Pardo, former representative of Malta to the United Nations, and father of the Pacem in Maribus Conference. Seven Hirdman, a member of the Stockholm International Peace Research Institute, discounted as being of little significance the recent treaty prohibiting the emplacement of weapons of mass destruction on the seabed. Mr. Hirdman discounted the treaty on the basis that there was no military interest in fixed undersea installations which were by their nature more vulnerable and easily detected than submarines and therefore not likely to be developed.

Germany, Denmark, and the Netherlands Enter Agreement Establishing Seabed Boundries: As a result of the International Court of Justice Decision of February 20, 1969, a tripartite agreement,[92] was entered into by the Federal Republic of Germany, the Kingdom of Denmark, and the Kingdom of the Netherlands which delineated the continental shelf of the North Sea. The purpose of the treaty was to determine the configuration of the German portion of the continental shelf, and thus eliminate disagreements regarding economic development and exploration of the area. The agreement calls for the settlement of disputes regarding boundaries by an *ad hoc* arbitration court to be convened by the disagreeing parties.

United Nations Committee on the Peaceful Uses of the Seabed: The United Nations Committee on the Peaceful Uses of the Seabed

91. Agreement Between Australia and Indonesia Determining Seabed Boundaries, May 18, 1971, — U.N.T.S. —.

92. Agreement Between Germany, Denmark, and Netherlands establishing Seabed Boundaries, *done*, Jan. 29, 1971, — U.N.T.S. —.

met in Geneva twice in 1971, in March and July. During the course of the March meeting, the committee agreed to formulate three subcommittees and to allocate to them subjects and functions in accordance with General Assembly Resolution 2750 C (XXV) of December 17, 1970.[93]

Allocations to the subcommittees were made with the understanding that due to the controversial nature of the precise definition of the seabed beyond the limit of national jurisdiction, the responsibility for making recommendations concerning the definition of this area would be a function of the main committee. The agreement establishing the subcommittees also retained for determination by the committee the priority of subjects and the peaceful uses of the seabed beyond the limits of national jurisdiction.

Subcommittee I was given the responsibility of preparing draft treaty articles for the establishment of an international regime responsible for the regulation of the area of the seabed beyond the limits of national jurisdiction. In establishing the draft articles, the subcommittee was directed to give special attention to the equitable sharing of benefits by all states, the special interests and needs of developing countries, and the particular needs of landlocked states. Subcommittee I held four meetings during the March session and twenty-seven during the July/August session. Numerous working papers and draft articles were submitted by members of Subcommittee I while a debate of the various issues and problems occupied the majority of the second session.[94]

Subcommittee II was given the responsibility of preparing a comprehensive list of subjects relating to the law of the sea, and the drafting of treaty articles thereon. The issues include specifically: regime of the high seas; the continental shelf; the question of width and breadth of international straits; fishing; and conservation of the resources of the high seas. Three meetings were held during the March session, and twenty during the July/August session. In order to facilitate agreement on a comprehensive list of subjects and issues, the subcommittee established a working group at its final meeting of the year. The working group held two meet-

93. This resolution directed the committee to convene an International Conference on the Law of the Sea in 1973. *See* 8 SAN DIEGO L. REV. 658, 693-694 (1971) for background information as to the reasons behind convening of the conference.

94. *See* 26 U.N. GAOR, Supp. 4, U.N. Doc. A/8421, Comm. on Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of Nat'l Juris. 21 (1971) for a comprehensive list of the members of each of the subcommittees as well as materials used in subcommittee sessions, proposals, working papers, and draft articles submitted by various member states.

ings, but, due to lack of time, was unable to complete the task entrusted.

Subcommittee III was given the responsibility of preparing draft treaty articles for the preservation of marine environment and scientific research. As a result of the fourteen meetings held by the subcommittee, there was general agreement that marine pollution presents grave dangers to the entire marine environment, and several proposals were submitted during the summer session.

During the past year, the main committee engaged in considerable discussion on the subject of the seabed beyond the limits of national jurisdiction. The crux of the problem is the difference in the views of the United States and the various Latin American countries. The Latin American countries propose a twelve-mile territorial sea and two hundred mile patrimonial sea. Coastal states would have exclusive rights over the territorial area, while other countries could fish the patrimonial sea by agreement with the coastal state concerned. This position is advanced primarily because of the desire to protect the natural resources of the area and to collect important revenue, specifically by issuing fishing licenses to other countries. The United States holds the position that no country should be allowed to have jurisdiction beyond twelve miles. This position is advanced on the rationale that to allow a territorial sea greater than twelve miles would greatly restrict movement upon the high seas. Both the United States and Venezeula submitted draft treaty articles advancing their respective positions in the last year. It is disappointing to note, however, that little in the way of a concrete approach to the problem was resolved. In treating this difficult problem, the committee pointed out that if a stable and lasting system were to be established, it must be acceptable to most, if not all, of the countries. A solution imposed by the majority, but not considering the existing realities and interests of various countries, would be neither satisfactory nor workable. Even though no resolutions have yet been made, the mere fact that the three subcommittees have been established is a step forward. Hopefully, they will make the International Conference on the Law of the Seas a successful vehicle for the solution of the many problems related to the oceans of the world.

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