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of rights in the outer continental shelf, litigation may well continue into the next century until the issues are finally rendered moot by the exhaustion of the oil and gas reserves—unless, of course, there is something else of value out there to be exploited.

ANDREW W. ANDERSON

Florida's Slice of the Offshore Pie

The multibillion dollar question of who owns the seabed and natural resources in the seabed off Florida's coastline was answered by the United States Supreme Court, which, in affirming its special master's report,¹ *held*: Under the Submerged Lands Act of 1953,² Congress granted the State of Florida title to and ownership of the seabed and the natural resources of the seabed lying within the state boundaries approved by Congress,³ *but in no event more than 3 geographical miles*⁴ into the Atlantic Ocean or 3 marine leagues⁵ into

1. A special master may be appointed by the Court to aid it in obtaining facts and deciding issues in complicated litigation. His powers are specified by the Court and his reports and recommendations are advisory only, subject to objections and exceptions by the parties. The Court will determine all critical motions and grant or deny the ultimate relief. It will, however, accept the master's report unless it is clearly erroneous. R. STERN & E. GRESSMAN, *SUPREME COURT PRACTICE* 408-09 (4th ed. 1969).

2. The Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-15 (1970), is an affirmative quitclaim grant from the federal government to the states of the title to and ownership of the lands beneath the navigable waters within the boundaries of the states, as those terms are defined under the Act. *See note 3 infra*.

3. The Submerged Lands Act of 1953, 43 U.S.C. § 1301(b) (1970), defines the term "boundaries" to include:

the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1321 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean or more than three marine leagues into the Gulf of Mexico. (emphasis added).

The Court generally approved the special master's findings as to the location of these boundaries. The exceptions of the United States to the finding that a portion of Florida Bay was a "juridical" bay and to the drawing of "closing" lines around three groups of islands (Dry Tortugas, Marquesas Keys, and "lower" Florida Keys) were referred back to the special master for further consideration. *See notes 38-40 infra* and text accompanying notes 37-45 *infra*.

4. A geographical or nautical mile equals 6,076.11549 feet.

5. A league is approximately 9 geographical miles. Florida's claim of up to a 3 league boundary off its Gulf coast under the authority of the Submerged Lands Act was previously established in *United States v. Florida*, 363 U.S. 121 (1960). This decision left several important questions unanswered, however, such as the location of the boundary between the Atlantic Ocean and the Gulf of Mexico.

the Gulf of Mexico from its present boundaries. *United States v. Florida*, 95 S. Ct. 1162 (1975).

The suit for a declaration of federal rights relative to those of the coastal states in the natural resources of the continental shelf lying more than 3 miles seaward from the coastline was originally initiated by the United States against the thirteen Atlantic coastal states.⁶ The controversy between the United States and Florida was eventually severed from the initial action,⁷ however, because Florida's claim to ownership of the seabed was based upon different premises than those relied upon by the other states. Whereas the other Atlantic states claimed ownership based upon boundaries derived from grants made by various European Crowns,⁸ Florida's position was exceptional in its foundation upon two distinct theoretical bases. In part, Florida's claim was justified under the theory that congressional approval⁹ of its 1868 constitution¹⁰ formed a grant to the state of title to all of the submerged land within the boundaries stated within that constitution; and in part, the claim rested upon the contention that the Straits of Florida and the Florida Keys were in the Gulf of Mexico and not in the Atlantic Ocean, so that the Submerged Lands Act made an ipso facto grant of 3 leagues, rather than merely 3 miles, to Florida in these areas.

The first contention was rejected by the Court in affirming its special master's report, because neither an express nor an implied grant was found in the congressional approval of the 1868 constitution. Rather, it was concluded that *United States v. California*,¹¹ *United States v. Louisiana*¹² and *United States v. Texas*,¹³ all decided prior to the passage of the Submerged Lands Act, fixed the paramount rights in the territorial sea and seabed in the federal

6. *United States v. Maine*, 420 U.S. 515 (1975). Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida were joined as defendants. Connecticut was not joined since its coast borders on the inland waters of Long Island Sound and not on the Atlantic Ocean.

7. This severed action was consolidated with a similar proceeding against Florida which had been severed from still another action initiated by the federal government against the Gulf coastal states, *United States v. Louisiana*, 403 U.S. 950 (1971), and heard under the Supreme Court's original jurisdiction.

8. New York traced its claim back to grants from the Dutch Crown, while the other 11 states traced their claims to grants from the English Crown.

9. Act of June 25, 1868, ch. 70, § 1, 15 Stat. 73.

10. FLA. CONST. art. I (1868).

11. 332 U.S. 19 (1947).

12. 339 U.S. 699 (1950).

13. 339 U.S. 707 (1950). Both *California* and *Texas* were expressly reaffirmed in *United States v. Maine*, 420 U.S. 515, 1160 (1975). For a discussion of this case see 30 U. MIAMI L. REV. — (1975).

government as incidents of national sovereignty, regardless of a state's historical boundaries at the time of its admission to the Union.¹⁴ Thus, Florida was found to have no valid claim to ownership of the seabed or the subsoil thereunder based upon a grant by Congress, either express or implied, prior to passage of the Submerged Lands Act.

Under the Act,¹⁵ however, Congress exercised this right by granting to the coastal states ownership of the seabed within their "boundaries,"¹⁶ limited by the stipulation that the term "boundaries" was a line not to be interpreted as more than 3 geographical miles from the coastline along the Atlantic or Pacific Oceans, nor more than 3 marine leagues from the coastline along the Gulf of Mexico.¹⁷ Therefore, since Florida's claim was found by both the special master and the Court to be totally dependent upon the Submerged Lands Act, its claim of boundaries upon its interpretation of its 1868 constitution was rejected in favor of the 3 miles—3 league limit granted by the Submerged Lands Act.¹⁸

Following this conclusion, the special master next confronted the determination of the location of the line separating the Gulf of Mexico from the Atlantic Ocean. Rejecting Florida's contention that the entire Straits of Florida were a part of the Gulf of Mexico, the special master accepted instead the boundary adopted by the International Hydrographic Bureau which runs from Cuba,

14. Report of special master at 8-11, *United States v. Florida*, 95 S. Ct. 1162 (1975) [hereinafter cited as *Master's Report*].

15. 43 U.S.C. § 1301-15 (1970). The Act was upheld as a constitutional exercise of Congress' absolute power to dispose of federal property. *Alabama v. Texas*, 347 U.S. 272 (1974).

16. The Act specifies that the term "boundaries" shall include the seaward boundaries of a state as they existed at the time of its entry into the Union or as approved by Congress, but in no event extending from the coastline more than 3 miles into the Atlantic or more than 3 marine leagues into the Gulf of Mexico from its present boundaries.

17. 43 U.S.C. § 1301(b) (1970). According to customary international law, as modified in the Convention on the Continental Shelf, April 29, 1958, [1964] 1 U.S.T. 471, T.I.A.S. No. 5578, 449 U.N.T.S. 311, a coastal nation exercises sovereign rights over the continental shelf for the purpose of exploiting its natural resources. The continental shelf includes submerged lands out to a depth of 200 meters, an area which is at least as large as Florida's grant of 3 marine leagues or 9 miles from the Gulf Coast shoreline. The Submerged Lands Act quitclaimed only submerged *lands*, and should not be construed to give any state jurisdiction for law enforcement purposes over the water column or surface above those lands. Therefore, the extent of Florida's jurisdiction over the water column and water surface above the submerged land beyond the 3 mile territorial sea continues to be unresolved.

18. The special master also rejected Florida's claim to boundaries based upon its 1868 constitution on the grounds that Florida's interpretation of the boundaries described in its constitution was erroneous and that the 1962 amendment of Florida's constitution redefining state boundaries constituted an abandonment of any claim to boundaries based upon its 1868 constitution. *Master's Report* at 11-18.

[N]orthward along the meridian of 83° W to the latitude of the South point of the Dry Tortugas (24° 34'N) along this parallel Eastward to Rebecca Shoal (82° 35'W), thence through the shoals and Florida Keys to the mainland at the eastern end of Florida Bay, all the narrow waters between the Dry Tortugas and the mainland being considered to be within the Gulf.¹⁹

The effect of this finding, also affirmed by the Court, was to limit Florida's southern boundary off the Keys, for the purposes of the Submerged Lands Act, to a line 3 geographical miles from its coastline, rather than a line 3 leagues from its coastline.

The final crucial issue raised by Florida's claim was the determination of its "coastline" and the method for measuring the 3 mile—3 league limit from it. In its second *United States v. California* decision²⁰ (*California II*), the Supreme Court had held that a "coastline"²¹ was to be interpreted as identical with the baseline for the measurement of the territorial sea under the Convention on the Territorial Sea and the Contiguous Zone.²² Under this construction,²³ the boundary of the United States' territorial sea would be identical with that of the seabed of each coastal state under the Submerged Lands Act except in the Gulf of Mexico.²⁴ In *United States v. Louisiana*,²⁵ the Court further held that the "coastline" from which the Submerged Lands Act grant was to be measured was ambulatory—that is, it would change as a result of erosion, accretion or the construction of permanent harbor works,²⁶ such as jetties or breakwaters. Thus, the coastline—baseline from which the territorial sea and Submerged Lands Act boundary is to be measured is

19. INTERNATIONAL HYDROGRAPHIC BUREAU, LIMITS OF OCEANS AND SEA (Special Pub. No. 23, 3d ed. 1949). The Bureau was created in 1921 for the purpose of creating the best hydrographic methods for charting as well as for providing uniformity among seafaring nations in the use of such charts. No reason was given by the master for accepting the Bureau's definition of the boundary separating the Gulf of Mexico from the Atlantic Ocean, rather than the one proposed by the State of Florida.

20. *United States v. California*, 381 U.S. 139 (1965) [hereinafter cited as *California II*].

21. "Coastline" under the Submerged Lands Act is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." 43 U.S.C. § 1301(c) (1964).

22. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

23. 381 U.S. at 165. The United States claims a 3 mile territorial sea and a 12 mile contiguous fisheries zone.

24. In the Gulf of Mexico, the United States claims a 3 mile territorial sea, but allows Texas and Florida to claim boundaries out to 3 marine leagues off their coastlines. See note 17 *supra*.

25. 394 U.S. 1 (1969).

26. *Id.* at 5.

the line of mean low water along the mainland, the seaward limits of permanent harbor works, the seaward shore of low tide elevations within 3 geographical miles of the mainland or another island, or the mean low water line along any offshore island,²⁷ whichever is applicable. Therefore, the Court upheld the special master's finding that Florida's Atlantic coastal boundary for the purposes of the Submerged Lands Act is a line 3 geographical miles from its *present* coastline as thus defined, and subject to movement as the coastline changes.

Florida's Atlantic coastline from the mouth of the St. Mary's River at the Georgia border to Fowey Rocks off Key Biscayne is quite regular and is readily identifiable using this prescribed definition. Florida did not dispute the application of the foregoing principles in this area, and consequently, there should be no further litigation concerning rights under the Submerged Lands Act along this portion of the Atlantic coast.

The remaining portion of Florida's Atlantic coastline from Fowey Rocks to the Dry Tortugas, however, is quite irregular, featuring the only living coral reef on the East Coast and numerous fringe islands. Florida contended that the method of straight baselines should be used in determining the location of the coastline in

27. See note 22 *supra* and accompanying text. The pertinent articles of the Convention are as follows:

Article 8

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Article 10

1. An island is a naturally-formed area of land, surrounded by water, which is above water at high-tide.
2. The territorial sea of an island is measured in accordance with the provisions of these articles.

Article 11

1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high-tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

Article 13

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

this area.²⁸ This contention was rejected here as it had been previously in *Louisiana*²⁹ and *California II*³⁰ where it was held that

the choice under the Convention to use the straight-base-line method for determining inland waters claimed against other nations is one that rests with the Federal Government, and not with the individual states.³¹

This conclusion rests on two premises: (1) under international law, only the sovereign may make a declaration that it intends to use straight baselines from which to measure its territorial sea³² and (2) under the Constitution, the federal government has exclusive power to conduct the foreign relations of the United States.³³ Since the United States did not acquiesce in the drawing of straight baselines, the special master and the Court concluded that the coastline off the Florida Keys, like the rest of the Atlantic coast, was to be identical with the baseline for the measurement of the territorial sea.³⁴

Having thus defined the Atlantic boundary, the special master then found Florida's Gulf boundary under the Submerged Lands Act to be that part of the state's 1868 constitutionally declared boundary³⁵ lying within 3 marine leagues of Florida's present coastline.³⁶ In areas where erosion has taken place to the extent that the 1868 boundary is more than 3 marine leagues from the present coastline, the present 3 marine league line becomes the boundary for purposes of the Submerged Lands Act. The converse, however,

28. Under the straight baseline method a baseline is drawn along a coastline which is either irregular or fringed with numerous islands, from which the territorial sea will extend seaward, thereby enclosing the inland waters of the state. Therefore, under this scheme, a Submerged Lands Act grant will be measured from a "straight baseline" and will include a greater amount of territory than if the boundaries were measured from the actual irregular coastline or for each island separately.

29. 394 U.S. 11, 72-73 (1969).

30. 381 U.S. 139 (1965).

31. *Id.* at 168.

32. Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, 1608, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

33. U.S. CONST. art. II, § 2; *Schernig v. Miller*, 389 U.S. 429, 436 (1968).

34. Master's Report at 32-36.

35. The 1868 constitution defined Florida's boundary in this area as follows: "along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland . . ." The special master found the term "northeastwardly" to be indicative of the general direction which the boundary followed *along the western coastline of the keys* and not a term indicating the direction 045 degrees true. Master's Report at 31.

36. *Id.* at 29-30. This result is reached because the Submerged Lands Act specifies that a "state's boundaries" shall include the seaward boundaries of a state as they existed at the time of its entry into the Union or as approved by Congress; but in no event extending more than 3 marine leagues into the Gulf of Mexico from its *present* boundaries. See note 16 *supra*.

is not true. In places where accretion has taken place to the extent that the 3 marine league line is beyond the 1868 boundary, the 1868 boundary remains the boundary for Submerged Lands Act purposes.

This still left open the location of the seaward limit of the inland waters³⁷ in Florida Bay, and the special master's findings as to this line were referred back to him for further consideration. In so doing, the Court did, however, affirm the master's rejection of Florida's contention that the entire expanse of Florida Bay, bounded by a line drawn 045 degrees true from the northernmost drying rock³⁸ of the Dry Tortugas Islands to Cape Romano, was an historic bay,³⁹ but did not pass upon his determination that a portion of Florida Bay east of a line drawn from East Cape Sable to Knight Key was a juridical bay,⁴⁰ because the parties had not argued this point before him. The master's finding would have meant that all waters east of this line would be considered inland waters of Florida and that the state's boundary for Submerged Lands Act purposes would be 3 marine leagues west of this line, but the Court's action leaves this question unresolved.

The special master was clearly correct in concluding that the three criteria necessary for finding an historic bay, namely (1) the exercise of authority over the area by the state claiming the historic right, (2) the continuity of this exercise of authority, and (3) the attitude of foreign states,⁴¹ were not met. His conclusion is also consistent with the holding in *California II*⁴² that, absent clear and convincing evidence of the exercise of jurisdiction over the disputed area by the state, a disclaimer by the United States that any of the area is historic inland waters would be decisive. The master's finding that the easternmost portion of Florida Bay is a juridical bay is also sound under the Convention on the Territorial Sea and the Contiguous Zone, but the United States contended that the Con-

37. See note 31 *supra*.

38. A drying rock is a low-tide elevation (see note 27 *supra*).

39. Under art. 7, para. 6, of the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, an historic bay is one across whose entrance the coastal state may draw closing lines, even though the requirements of article 7 relating to bays are not met. See note 40 *infra*.

40. A juridical bay is one which meets the criteria of article 7 of the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205. It is a well marked coastal indentation, the mouth of which does not exceed 24 miles, which contains landlocked waters, and whose area exceeds that of a semicircle with a diameter equal to the length of the line drawn across its mouth.

41. *United States v. Louisiana*, 394 U.S. 11, 23-24 n.27 (1969).

42. 381 U.S. at 175.

vention may not be used as a basis for drawing a closing line from which to measure Florida's Gulf coast boundary. The acceptance of this contention, supported by the special master's interpretation of Florida's boundaries as declared in the 1868 constitution,⁴³ would limit Florida's claim under the Submerged Lands Act to a boundary 3 marine leagues from its coastline as it existed in 1868.⁴⁴ It would also deprive Florida of the closing line drawn by the special master as a portion of its coastline as it existed in 1868.⁴⁵

Thus, Florida, like all Atlantic coastal states,⁴⁶ owns the seabed and subsoil off its present coastline for a distance of 3 miles into the Atlantic Ocean and, like Texas,⁴⁷ out to its boundaries as approved by Congress, but not more than a distance of 3 marine leagues into the Gulf of Mexico. The coastline from which these distances are to be measured is ambulatory. Supplementary proceedings are available to the parties should further disputes arise which the parties cannot settle between themselves.

The ambulatory nature of the coastline will, nonetheless, continue to be a problem. Offshore mineral leases in the area of the federal—state boundary are necessarily undervalued because of uncertainty as to future changes in the coastline. Erosion could cause an area leased by the state to come under federal control; construction of permanent harbor works could cause an area leased by the federal government to come under state control. In either case the leasehold would be extinguished. Congressional action to avoid problems in this area seems the most likely and rational solution.

DOUGLAS A. SMITH

Misprision Of Felony Not A Crime In Florida

The defendant Holland, a city manager, visited the home of one of his employees where he noticed several plants which he suspected to be marijuana. He immediately contacted a city police captain who determined through analysis that the plants were indeed mari-

43. See note 35 *supra*.

44. See note 3 *supra*.

45. Closing lines are drawn from point to point along a coast to determine a base line from which the breadth of the territorial sea can be measured. The maximum closing line recognized under customary international law in 1868 was 6 miles.

46. See *United States v. Maine*, 420 U.S. 515 (1975).

47. *United States v. Louisiana*, 363 U.S. 1, 84 (1960).