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Territorial Waters--Ownership and Control

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Territorial Waters — Ownership and Control

THE UNITED STATES HAS SOVEREIGN RIGHTS TO THE SEABED BENEATH THE ATLANTIC OCEAN LYING BEYOND THE THREE-MILE TERRITORIAL LIMIT TO THE EXCLUSION OF THE ATLANTIC COASTAL STATES.

United States v. Maine,
420 U.S. 515, 95 S. Ct. 1155, 43 L.Ed. 2d 363 (1975).

The United States filed a complaint against the Atlantic Coastal States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida, alleging that it had exclusive sovereign rights over each of them in the submerged lands beneath the Atlantic Ocean located beyond 3 miles seaward from the outer limits of each respective state's coastal waters and the outer edge of the continental shelf.[1] The federal government claimed such rights for the purposes of exploration and exploitation of the resources to be found in these submerged lands. It requested declaratory and other "appropriate" relief from the United States Supreme Court.[2] Except for Florida and New York,[3] all of the defendant states contended that they each had title to the area by virtue of succeeding to the title formerly held by England before the adoption of the Constitution.[4] According to their argument, the states never divested themselves of any interest in this property when they entered the Union. They maintained that previous holdings to the contrary by the Court were either factually distinguishable or should be reversed.[5] Originally, the Court ordered the appointment of a Special Master after the United States had introduced a motion for summary judgment.[6] The Special Master, based on the evidence presented to

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[1] 420 U.S. 515 at 517.

[2] *Id.*

[3] New York argued that it was the successor to the title formerly held by Holland. Florida asserted that it had title to the seabed in certain places beyond 3 miles seaward from its coastline by virtue of a statute enacted by Congress in 1868. It also contended that the Florida Straits were located in the Gulf of Mexico and not in the Atlantic Ocean. This controversy was decided by the Supreme Court in a separate case, United States v. Florida, 420 U.S. 531, 95 S. Ct. 1162, 43 L. Ed. 2d 375 (1975). Here the court rejected both of Florida's arguments.

[4] 420 U.S. 515 at 517-518.

[5] *Id.* at 518-519.

[6] *Id.*

him by the parties, found in favor the United States.[7] The Court affirmed this finding and held that the United States had dominion and exclusive sovereign rights over the seabed beneath the Atlantic Ocean from a point seaward more than 3 geographical miles from the ordinary low water mark of the defendant states' coastline and inland waters (i.e. the 3-mile territorial limit).[8]

I. HISTORICAL PERSPECTIVE

The significance of the *Maine* decision and the Court's reasoning therein can be better understood by a knowledge of the history of the law of this area. The sea is generally considered to consist of three zones: 1) the internal or inland waters; 2) the territorial or marginal sea as measured from the end of a coastline; and, 3) the high seas.[9] This discussion is concerned with the second category of this classification.

A. *International*

Traditionally, nations have not been at all uniform in their claims regarding territorial waters. One author commenting on this problem almost 50 years ago noted this inconsistency had the effect of impeding:

> beneficial economic intercourse among the states, to say nothing of the ill-feeling frequently caused in diplomatic circles when one state has exceeded what another state conceives to be the reasonable rule. . . . A confusion of laws on such a vital point of world-wide significance has led . . . to dangerous friction.[10]

Many nations historically established a 3-mile territorial limit. The rationale behind the adoption of such a position was based on the so-called "cannon shot" theory. According to this principle, a country only was able to assert jurisdiction over the sea to the extent of the shooting range of its cannons. This theory was originally adopted sometime early in the 17th century.[11] Later,

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[7] *Id.* at 519.

[8] *Id.* at 526.

[9] Note, *Right Title and Interest in the Territorial Sea: Federal and State Claims in the United States*, 4 GA. J. INT'L & COMP. L. 463 (1974).

[10] Fraser, *The Extent and Delimitation of Territorial Waters*, 11 CORNELL L. Q. 455 (1926) at 456.

[11] *Id.* at 457-465. *See also* FULTON, THE SOVEREIGNTY OF THE SEA 563 (1911) and Note, *Conflicting State and Federal Claims of Title in Submerged Lands of The Continental Shelf*, 56 YALE L. J. 356 (1947) at 365.

during this same century, two scholars (Grotius in 1625 and Gerber in 1639) mentioned it in their writings.[12] By the 18th century, the theory began to attain international prominence when Cornelius van Bynkershoek, a Dutch legal scholar, coined the phrase, "potestatim terrae finiri, ubi finitur armorun vis."[13] The range of cannon shot was expressed in terms of a fixed distance at about this time when an Italian emissary to France declared that 3 miles was the range of a cannon.[14] During the 19th century, the 3-mile territorial limit gradually began to gain acceptance in other countries and was declared by statute, decree, treaty or other proclamation.[15]

Several other nations, although adopting the basic principle of a territorial water boundary, proclaimed such limits in terms of different distances. The Scandinavian countries of Norway and Sweden developed laws establishing a 4-mile territorial limit, while Spain became an example of a nation which adopted a 6-mile limit.[16] Several other countries have declared a territorial limit of 12 miles, including Iran, Yemen, Sana, Morocco, Aden, France and Oman.[17]

There has been no total international agreement as yet regarding territorial limits, although there have been several international conferences where uniformity has been discussed. A recent attempt took place in 1974 at Caracus, Venezuela.[18] Although no definite standard was reached, there was evidenced a growing sentiment to adopt a 12-mile territorial sea. The primary contingencies

[12] *Id.* at 458.

[13] van Bynkershoek, DeDomino Maris Cap. II quoted in Fraser, *supra* note 10, at 458.

[14] *Id.*

[15] *Id.* In 1818, the United States and England became the first two nations to consummate a treaty providing for the 3-mile limit. The treaty concerned an agreement reached between the two nations regarding their respective fishing rights in North America.

[16] *Id.* Norway declared such a limit in 1747. This proclamation apparently stemmed from a desire to maintain exclusive fishing rights as against foreign interests. By 1788, Sweden had established a limit of one Scandinavian marine league (equal to four English miles) for neutrality purposes. Spain first proclaimed a 6-mile limit in 1760.

[17] Grandison and Meyer, *International Straits, Global Communications, and the Evolving Law of the Sea*, 8 VANDERBILT J. TRANSNAT'L L. 393 (1975) at 404.

[18] Buzan, *Time-lag Could Jeopardize Progress Toward Law of the Sea*, INTERNATIONAL PERSPECTIVES (1974) at 26. Other prior conferences in this regard include the 1930 Hague Codification Conference established by the League of Nations and the Geneva Conference on the Law of the Sea in 1959 and 1960. *See* Note, *The Three-Mile Limit: Its Juridical Status*, 6 VALPARISO U. L. REV. 170 (1972) at 182.

surrounding the adoption of such a policy were assent to free transit through straits and agreement on a 200-mile exclusive economic zone.[19]

B. *United States*

The United States made its first statement regarding the adoption of a 3-mile territorial limit in 1793 when the then Secretary of State Thomas Jefferson declared that a zone of this distance would be recognized and enforced for purposes of neutrality.[20] Almost a century later, by means of dictum in *Manchester v. Massachusetts*,[21] the Supreme Court recognized 3 miles (or one marine league) seaward from the coast as the minimum limit of the territorial jurisdiction of a nation over tide waters. The 3-mile rule was specifically affirmed by the Court in 1923 when it asserted:

> It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other enclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles.[22]

However, in recent years, there have been indications that the United States is considering changing its position. Such a change of position was advocated by this country at the 1958 Geneva Conference on the Law of the Sea,[23] and in 1971 a treaty was executed approving a 12-mile territorial "coastal zone" for purposes of the testing of nuclear weapons on the seabed.[24]

II. The Conflict Between the Federal Government and the States

There was widespread disagreement leading up to the *Maine* decision between the federal government and the states regarding rights to the seabed beneath territorial waters. Although it is well-settled that the lands underlying inland waters are subject to ex-

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[19] Grandison and Meyer, *supra* note 17, at 393.

[20] 6 Valpariso U. L. Rev. 170 at 177. *See also* Wilson, International Law (3rd ed. 1939) § 38.

[21] 139 U.S. 240, 11 S.Ct. 559, 35 L.Ed. 159 (1891).

[22] Cunard S. S. Co. v. Mellon, 262 U.S. 100, 122, 43 S.Ct. 504, 507, 67 L.Ed. 894, 902 (1923).

[23] 6 Valpariso University L. Rev. 170 at 179.

[24] *Id.* at 182.

clusive state ownership,[25] the law with respect to the lands beyond this point has not been so clear.

In 1945, President Truman declared that the natural resources of the submerged lands beneath the seas bordering the coastline of the United States were to be under its exclusive jurisdiction and control.[26] This declaration has been generally referred to by commentators as the Truman Proclamation.[27] However, on the same day this proclamation was asserted, Truman also issued an executive order which had the effect of limiting it. The order stated in significant part:

> [the] proclamation shall not be deemed to affect the determination by legislation of judicial decree of any issues between the United States and the several states, relating to the ownership and control of the subsoil and seabed of the continental shelf within or outside of the three-mile limit.[28]

The Supreme Court first ruled on the conflict in 1947. In *United States v. California*,[29] it was held that the federal government and not California owned the 3-mile marginal belt off its coastline and that incidental to this ownership was dominion over

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[25] United States v. Mission Rock Co., 189 U.S. 391, 23 S.Ct. 606, 47 L.Ed. 865 (1903). The Supreme Court held that the state of California had title to the land under the San Francisco Bay, reasoning that it had become subject to state ownership when California joined the Union. Half a century earlier, the Court had determined that Alabama had title to the land underlying the navigable waters within its boundaries as against the federal government in Pollard's Lessee v. Hagen, 44 U.S. (3 Howard) 212, 11 L.Ed. 565 (1845).

[26] Proclamation 2667, Policy of the United States With Respect to the Natural Resources of the Subsoil and Seabed of the Continental Shelf, 3 C.F.R. 67 (1943-1948 Comp.).

[27] 6 VALPARISO U. L. REV. 170 at 177. *See also* Borgese, *Boom, Doom, and Gloom Over the Oceans: the Economic Zone, the Developing Nations, and the Law of the Sea*, 11 SAN DIEGO L. REV. 531, 543-544 (1974). Borgese notes that the Truman Proclamation had a significant impact. The oil industry "kicked and screamed against [it] . . . [and] called it creeping Communism, foreshadowing the end of the oil industry as we know it." Other nations made territorial claims regarding the seabed after the Truman Proclamation including Argentina in 1946, Chile in 1947, and Peru in 1948, which claimed both the ocean seabed and the superjacent waters out of a limit of two hundred miles. Also, the same writer comments that "the Truman Proclamation was universalized in the Geneva Convention on the Continental Shelf, now ratified by forty-nine nations . . . [and] on the part of the developing nations, this was followed by the Declaration of Santo Domingo in 1972, proposing the creation of the 'Patrimonial Sea' and the Yaonunde Declaration, advocating the 'economic zone' of 200 miles."

[28] Executive Order 9633, Reserving and Placing Certain Resources of the Continental Shelf Under the Control and Jurisdiction of the Secretary of the Interior, 3 C.F.R. 437 (1943-1948 Comp.).

[29] 332 U.S. 19, 67 S. Ct. 1658, 91 L.Ed. 1889.

the natural resources to be found in the submerged lands of this area. This case involved a suit by the United States against California, contending that the federal government was the fee simple owner of these lands and the resources and minerals found therein. It also alleged that California had entered into lease agreements authorizing certain persons and corporations to extract natural resources such as oil and gas from the seabed and that this constituted a trespass, since the federal government had paramount power over this area. The federal government thought this to be unlawful even though California, in executing the leases, was acting in accordance with its statutory authority. As its defense, California answered: 1) it had ownership of the area in question because it was within the original boundaries of the state which were formed when it succeeded into the territory formerly held by the Crown of England; 2) the suit was barred by the doctrines of *res judicata* because of the previous Supreme Court decisions in the *Mission Rock* and *Pollard's Lessee* cases;[30] 3) Congress had pursued a policy of acquiescence with regard to the state's purported ownership of this property; and, 4) the federal government was estopped from asserting rights to these lands by its prior conduct. The Court rejected each one of these arguments. First, the Court stated that none of the original 13 states ever acquired ownership to the submerged lands off their coasts and that there was no historical evidence to the contrary. Since none of the original states acquired ownership, California could not because it had been admitted to the Union "on an equal footing with the original states in all respects."[31] Second, the *Mission Rock* and *Pollard's Lessee* cases were factually distinguishable from the *California* case in that they concerned lands under or bordering inland waters as opposed to land underlying the ocean. Third, the Court commented that federal control of the 3-mile belt was essential to national security and interstate commerce. Finally, although it did make reference to some prior conduct by agencies of the federal government such as the Department of the Interior as possibly indicating a belief that ownership of the property in issue resided in California, the Court refused to allow the federal government to be bound by any negligent acts of its agents. This reluctance to apply the traditional rules of agency was justified on the theory that:

> The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by

[30] *See* note 25, *supra*.

[31] 332 U.S. 19, 30.

> the ordinary court rules designed particularly for private disputes over individually owned pieces of property, and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.[32]

The Court had occasion to address similar issues in 1950 in *United States v. Louisiana*[33] and *United States v. Texas*.[34] The *Louisiana* case involved a complaint by the United States that it had exclusive ownership and rights in the submerged lands in an area extending from the low water mark on the Louisiana coastline to a point extending 27 miles into the Gulf of Mexico. The federal government also contended that because Louisiana had executed leases to persons and corporations for the purpose of drilling wells for the extraction of oil and other resources from the seabed and had received rents and other financial benefits in consideration therefrom, the state should be enjoined from continuing to trespass in this area and should be required to account for any money obtained from such leases after June 23, 1947. Louisiana asserted that its claim to the lands in issue was based upon statutory authority[35] and that they constituted the state's southern boundary. The state also argued: 1) it had ownership of the property in issue by virtue of its continuous and undisputed possession dating from the time Louisiana attained statehood; and, 2) in the alternative, even if the federal government was deemed to have paramount rights and control over the area in issue, that Louisiana could still lawfully execute and derive funds from the leases since this practice conflicted with no existing federal laws. The Court upheld the claim of the United States, declaring the rights of the federal government to be paramount in this property and rendered the requested relief. The *California* case was cited as precedent. The Court determined that the question to be decided in the case was whether the state had paramount authority to the exclusion of the federal government over the property in issue. Its answer was that Louisiana, like California, had never acquired ownership in the submerged lands of the marginal 3-mile belt. Since the *California* case established the principle that the federal government had ownership and control of the 3-mile belt, the Court presumed that any area beyond this point would be governed by the same rule.[36]

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[32] *Id.* at 40.

[33] 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 216 (1950).

[34] 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221 (1950).

[35] 339 U.S. 699 at 703.

[36] The Court specifically commented in its opinion that:

The *Texas* case concerned a claim by the United States that it had ownership rights to the submerged lands from a point beginning at the ordinary low water mark of the Gulf of Mexico off the Texas coastline extending seaward to the outer edge of the continental shelf. The federal government petitioned the Court for an injunction against Texas to prevent that state from continuing to trespass on this property and also sought an order requiring that state to make an accounting for all income derived therefrom after June 23, 1947. Texas contended that although the federal government might have paramount powers over this area with regard to navigation (pursuant to the Commerce Clause of the Constitution) these powers do not extend to ownership or the right to control the extraction of oil and other resources from the submerged lands. Also, although somewhat different in form from the arguments previously asserted by California and Louisiana,[37] Texas argued that it had title to this property. According to its argument, Texas was an independent nation before it attained statehood and as such had possession and control over the property and the resources therein. These rights were allegedly recognized by the federal government when Texas joined the Union and since that time Texas had maintained undisputed control, possession and jurisdiction over the property. The Court ruled in favor of the federal government and granted the relief requested, commenting that even if Texas had had both ownership and control over this property during the time she was an

> If, as we held in California's case, the three mile belt is in the domain of the nation rather than that of the separate states, it follows *a fortiori* that the area beyond that limit also is. The ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commence than is the marginal sea.

339 U.S. 699 at 705.

[37] In its opinion the Court distinguished Texas' argument from California's as follows:

> The sum of the argument is that prior to annexation Texas had both *dominium* (ownership or proprietary rights) and *imperium* (Governmental powers of regulation and control) as respects the lands, minerals, and other products underlying the marginal sea. In the case of California, we found that she, like the original thirteen colonies, never had *dominium* over that area. The first claim to the marginal sea was asserted by the National Government. We held that protection and control of it were indeed a function of national external sovereignty. . . . The status of Texas, it is said, is different: Texas, when she came into the Union, retained the *dominium* over the marginal sea which she had previously acquired and transferred to the National Government only her powers of sovereignty — her *imperium* — over the marginal sea.

339 U.S. 707 at 712-713.

independent nation, she divested herself of any claim to the marginal sea or seabed when she was admitted into the Union on an "equal footing" with the existing states.[38]

However, Congress severely limited, if not implicitly overruled the holdings of these cases (especially with regard to the *California* decision) when it enacted the Submerged Lands Act in 1953.[39] This statute provided that the states had ownership of the 3-mile marginal belt off their coastlines.[40] However, the federal government was to retain paramount rights to this area for purposes of navigation, commerce, national defense, and international affairs.[41] It should be noted that this statute implicitly placed a limit on state rights to the 3 miles from their respective coastlines and made no provision for the extension of state boun-

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[38] The "equal footing" clause was originally interpreted to give states ownership as against the federal government to shores and submerged lands under navigable rivers within their boundaries. The Court notes that here it "works the same way in the converse situation presented by this case. It negatives any implied, special limitation of any of the paramount powers of the United States in favor of a State." *Id.* at 717.

[39] 43 U.S.C.A. §§ 1301 *et seq.* (1964).

[40] The applicable provision of the Act states that:

> The seaward boundary of each original coastal state is approved and confirmed as a line three geographical miles distant from its coastline. . . . Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. . . .

Id. § 1312.

> § 1313 of the Act enumerates several exceptions to the above rule, including . . . all lands expressly retained or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built-up, or otherwise reclaimed by the United States for its own use . . . under claim of right.

Id. § 1313.

[41] The statute specifically states that:

> the United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to but shall not be deemed to include proprietary rights of ownership, or the rights of . . . leasing, use, and development of the lands and natural resources . . . vested in and assigned to the respective states . . . by § 1311. . . .

This provision indicates that the states were given control over the extraction and exploitation of the natural resources of this area. *Id.* § 1314(a).

daries beyond this point.[42] During this same year, the Supreme Court upheld the constitutionality of the Act.[43] Also in 1953 the Outer Continental Shelf Lands Act was adopted by Congress. This statute specifically gave the federal government control over the submerged lands beyond the 3-mile marginal belt.[44]

Thus the law on this subject has had a brief but somewhat complicated history. Between 1947 and 1953, the law regarding federal as opposed to state rights to the seabed completely changed. It first accorded the federal government paramount rights to the 3-mile marginal belt and subsequently granted ownership and control over these lands to the respective states. Finally, it subjected the area seaward beyond this point to the dominion and control of the federal government.

III. Reasoning of the Court in the *Maine* Case

Here the Supreme Court adopted the Special Master's findings that the decisions in the *California*, *Louisiana* and *Texas* decisions were controlling. The views expressed in these cases by the states concerning historical interpretation as to the status of title to the lands also advanced by the defendants herein, were rejected. According to the Court, title to the seabed became vested in the federal government when the defendant states were admitted to the Union on an "equal footing" with the original states and that therefore it had the power to determine how the resources in these lands were to be exploited. Even though Congress did grant the states rights to the seabed within the 3-mile belt by the Submerged Lands Act,[45] this was consistent with national power over this area since there was nothing in the above-mentioned cases proscribing the federal government from making such a conveyance.[46] In addition, because this statute only declared that states had rights in the lands underlying the 3-mile belt, there was nothing to defeat federal government rights to the

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[42] 6 Valpariso U. L. Rev. 170 at 178.

[43] Alabama v. Texas, 347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 689 (1954).

[44] 43 U.S.C.A. §§ 1331(a)-1332, (1964). *See also* Rathje, *Saving Byron's Sea: Federal and State Regulation of Oil Pollution from Ocean Petroleum Production*, 22 Hastings L. J. 485, (February, 1971). There the writer comments that "[the Outer Continental Shelf Lands Act] clearly expresses Congressional desire to involve the Federal Government in the lucrative practice of leasing off-shore oil lands to oil companies for petroleum development." *Id.* at 490-491.

[45] *See* Note 39 *supra*.

[46] The Court agreed with the Special Master, commenting that: "the court in its prior cases 'did not indicate that the federal government by Act of Con-

area beyond this point.[47] This principle was expressly affirmed by Congress in the Outer Continental Shelf Lands Act.[48] The Court also noted that the doctrine of *stare decisis* was applicable. Since the decisions in the *California*, *Louisiana*, and *Texas* cases, much business regarding the submerged lands has been conducted in reliance upon the holdings rendered therein as well as on the above-mentioned Congressional enactments. Such conduct should not be disturbed by overruling this body of law.[49] The Court asserted that this judicial and legislative precedent has served to put the states on notice that claims such as those advanced in the *Maine* case are contrary to existing law and will be looked upon with disfavor.

IV. Effect on the Law Appertaining to Seabed Rights

The *Maine* decision serves to clarify the law of the United States regarding federal as opposed to state rights to the submerged lands underlying ocean waters. The present law can be summarized as follows:

> 1) Title and control over submerged lands underlying inland waters resides in the respective states;
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> 2) The states have paramount control and rights to the seabed underlying the ocean waters within the 3-mile territorial belt off their respective coastlines except with regard to commerce, navigation, national defense, and international affairs.[50]

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gress might not, as it did by the subsequently enacted Submerged Lands Act grant to the riparian states rights to the resources of the federal area, subject to the reservation by the federal government of its rights and powers of regulation and the control for the purposes of commerce, navigation, national defense, and international affairs." 420 U.S. 515 at 524-525.

[47] One section of the 1953 Submerged Lands Act specifically states that, at least with regard to natural resources, the statute in no way abrogates federal government rights to the seabed outside of the three mile marginal belt. 43 U.S.C.A. § 1302.

[48] *Id.* §§ 1331 *et seq.*

[49] An especially great amount of business has been transacted during the past two decades in the resources of the seabed. It is noted that:

> since 1953 when this legislation [the Submerged Lands Act and the Outer Continental Shelf Lands Act] was enacted, 33 lease sales have been held, in which 1,940 leases, embracing over eight million acres, have been issued. The Outer Continental Shelf, since 1953, has yielded over three billion barrels of oil, 19 trillion m.c.f. of natural gas, 13 million long tons of sulfur, and over four million long tons of salt. In 1973 alone, 1,081,000 barrels of oil and 8.9 billion cubic feet of natural gas were extracted daily from the Outer Continental Shelf.

420 U.S. 515 at 527-528.

[50] However, federal control over this area is prohibited with regard to the

These latter powers inhere in the federal government as an incident of national sovereignty;

3) The federal government has paramount control and rights to the seabed beyond this 3-mile territorial belt.

V. Possible Future Impact of the *Maine* Decision

The *Maine* decision may be significant in several respects. It could possibly have an effect on the law of other nations, the petroleum industry, the fishing industry, and environmental protection.

A. *Other Nations*

The case may have an impact on other nations where similar disputes have arisen between federal and local governments over submerged lands. One country where such a conflict apparently exists is Australia.[51] This nation issued an edict in the Seas and Submerged Lands Act, enacted by her Parliament in 1973, declaring that the Commonwealth had sovereign rights in the country's continental shelf. However, controversy rages as to the constitutional validity of this statute, especially with regard to the seabed within 3 miles of Australia's coastline. One writer concedes that the local governments have exercised some power over this area during the last century, including the authorization of construction of breakwaters and piers to sewage outlets and the leasing of off-shore mining rights. He argues that despite these "small encroachments" paramount rights to the area reside in the Commonwealth.[52] If this question should be resolved in favor of

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management, leasing, use, development, or proprietary rights to the land or the resources found therein. 43 U.S.C.A. § 1314(a) (1964).

[51] Australia, like the United States, asserts a 3-mile territorial limit. *See* Windeyer, *The Seabed in Law*, 6 Federal L. Rev. 1 (1974) at 13.

[52] *Id.* at 18-19. He specifically asserts that:

> such small encroachments . . . do not in law equate 'dominium' over the whole bed of the territorial sea. They are rather attributable . . . to an unchallenged recognition of acquisitions for the satisfaction by the local governments of local needs not involving any further assertions of title . . . . The Commonwealth of Australia now has the rights that by international law a nation has in its territorial waters. And it is the Commonwealth, not the States, that may need to assert these rights; for the national interests which they protect, defence, health, and quarantine, immigration, overseas shipping, customs dues, are all within Commonwealth control.

It is also somewhat interesting to note that somewhat similar to the United States Supreme Court in the *California, Louisiana* and *Texas* decisions, Windeyer interprets history to support his proposition that the lands in question never

the local governments, a dispute similar to the one in the *Maine* case may arise as to federal and local rights beyond this 3-mile belt.[53] The *Maine* opinion may then be viewed as a possible mode of solution to the problem.[54]

B. *Oil and Other Natural Resources*

Exploitation of the natural resources of the seabed has perhaps been the primary reason for the conflicting federal and state claims in these lands. The facts of the *California*, *Louisiana*, *Texas* and *Maine* cases all dealt partially with the question of whether the federal government or the states had power to execute leases for the extraction of such resources and the derivation of revenue therefrom. Such leases, especially those concerning the drilling of oil wells, constitute a source from which a great deal of money can be obtained, from both the rent paid on the leases and the taxes imposed on the lessees.[55] Under the *Maine* decision, the

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vested in the local governments when they ceased to be colonies of the British Empire. Instead he believes that they became subject to the dominion of the federal government, even if no precise time could be ascertained as to when this actually took place.

[53] The High Court of Australia has held that "Australian waters" of the sea are determined by "geographical and political considerations" and may extend beyond the 3-mile marginal belt. However, the judges sitting on that court apparently disagree as to the question of local boundaries and rights with regard to such waters. *See* Bonser v. La Macchia, 122 C.L.R. 177 (1970).

[54] Canada also has dealt with this problem to some extent but has reached a somewhat different solution than the United States. In 1967, the Supreme Court of Canada held that the federal government had dominion, jurisdiction, and power over the submerged lands both within the 3-mile territorial belt and beyond it as against the province of British Columbia. Incidental to these rights was deemed the power to explore and exploit that natural resources found therein. The court reasoned that not only did Canada have paramount rights to these lands by virtue of national sovereignty, it regarded British Columbia as never being the owner of these lands. *See Reference Re Off-shore Mineral Rights*, 65 D.L.R. 2d 353 (1967).

[55] One writer, in commenting upon the financial effect of such leasing with regard to the federal government, notes that:

> Major leasing commenced in 1968 when the Department of the Interior offered 100 blocks of submerged ocean lands for lease; 75 of the blocks were leased by petroleum companies, and the Federal Government received $603 million from the bids. Only 15 of the blocks have been developed by the petroleum industry to date [as of 1971], but each lease area, after full development, has a potential for 150 wells. Consequently, 11,000 wells may eventually be drilled in the Outer Continental Shelf area as a result of the 1968 leasing. Rathje at 492.

The economic importance from the leasing of these lands was also considered by the Supreme Court in its opinion in the *Maine* case. *See* Note 49 *supra*. Besides oil, there are other significant resources to be exploited in the seabed.

states may execute leases within the 3-mile marginal belt while the federal government has the same opportunity in the seabed beyond this point.

However, another aspect of some importance, especially with regard to oil, is the conservation of such resources. For the past several years the United States, like many other countries, has suffered through a so-called "energy crisis." To make this nation less dependent on other countries for its oil, more national control of the petroleum industry may be necessary. Also, this may be necessary to insure that oil extracted from the seabed off the coastline of a particular state is used for the benefit of the whole country rather than just the inhabitants of the respective states. The *Maine* decision not only provides for exclusive federal regulation over the extraction of such oil beyond the 3-mile territorial limit, but also proposes that it could possess such powers within this limit if national security or commerce was involved.[56]

C. *Fishing*

The fishing industry constitutes an important facet of the United States economy. While regulation by states of the sea and seabed may provide significant financial benefits to local treasuries by taxation of fisheries located off their respective coastlines, national regulation may be essential to insure free competition among private industries and other nations.[57] Under the *Maine* decision, a compromise solution is effected. The states

These include minerals, such as manganese, nickel, copper and cobalt. Through modern mining techniques, such resources may be readily extracted, causing them to be a large potential source for revenue. *See* Muskie, *Forward*, 11 SAN DIEGO L. REV. 535, 537 (1974).

[56] 420 U.S. 515 at 525.

[57] For an interesting economic analysis of the fishing industry from an international perspective, *see* Anderson, *Economic Aspects of Fisheries Utilization in the Law of the Sea Negotiations*, 11 SAN DIEGO L. REV. 656 (May 1974). One specific example of the economic effect of the rule providing for exclusive federal control beyond the 3-mile territorial limit can be seen by considering the plight of Florida. In this state, the shrimp industry nets approximately $16 million annually. The shrimp beds on which this industry is primarily dependent are located approximately fifty miles west of Key West. Before the Supreme Court's decision in United States vs. Florida (*see* Note 3, *supra*), the Florida Department of Natural Resources regulated these beds in such a manner as to prevent their depletion. However, since the beds are located beyond 3 miles from Florida's coastline, they will no longer be subject to state control. This has caused a concern that the harvesting of the beds may not be closely regulated by the federal government, possibly resulting in their economic ruin. Cubbison, *Court Decisions May Peril Shrimp Beds*, St. Petersburg Times, March 18, 1975, at 5A.

can regulate fishing within the 3-mile belt while it is subject to federal control beyond this point.[58]

D. *National Security*

Although the Court in the *Maine* case makes a distinction between the extent of federal and state rights in the seabed, the opinion also comments that the federal government has paramount rights to this area, even that which is within the 3-mile limit, if a question of national security is involved.[59] One aspect of national security which is especially relevant to the seabed is nuclear weaponry. With the increasing sophistication of modern technology, the chances increase that the seabed may be one location where such armaments may be positioned.[60] Another effect of the *Maine* decision is to recognize legally the federal government's regulatory powers over the seabed for this purpose.

E. *The Environment*

The exploitation of the resources of the seabed may have an adverse effect on the environment. Ocean pollution is an example of one possible consequence. The drilling of oil wells may be a significant cause of this pollution.[61] However, the interest in protecting the environment must be balanced against the urgent

[58] A bill has been recently introduced in the United States Senate providing for the creation of a fishing zone of a distance of 197 miles beyond the 3-mile territorial limit over which the federal government would have exclusive control. The purpose of this proposal is to protect the domestic fishing industry as against foreign interests. This bill also narrows the power of the states to regulate resources within the 3-mile limit. As of February, 1976, both the House and the Senate had adopted similar versions of the bill, the primary difference being the date on which law would become effective. *See* Note, *Mare Nostrum, Vastrum Et Clausum: Jurisdiction Over Sea, Seabed, and Subsoil*, 4 UNIVERSITY OF SAN FERNANDO VALLEY L. REV. 131, 143-144 (Spring 1975). *See also*, *A 200 Mile Limit to Protect U.S. Fishing Rights*, U.S. News & World Report, February 9, 1976 at 30.

[59] 420 U.S. 515 at 525.

[60] Gorove, *Toward Denuclearization of the Ocean Floor*, 7 SAN DIEGO L. REV. 504 (1970) at 504.

[61] One author comments that:

> The development of petroleum resources located in the submerged lands contributes substantially to the discharge of oil into the oceans. Although the amount of oil presently released by the off-shore petroleum industry is not as great as that released by onshore industries, offshore petroleum drilling involves the danger of massive discharges of oil into the marine environment. Such discharges may significantly affect other beneficial uses of marine resources. Moreover, the growth of the ocean petroleum industry may involve an increasing num-

need to develop these seabed resources which has surfaced because of the present "energy crisis."

The problem of environmental protection is made even worse if there is confusion as to what set of regulations (federal or state) must be followed by a company engaged in the extraction of resources from the seabed.[62] The *Maine* decision somewhat clarifies this problem. Since the boundary between federal and state control of the seabed is now the 3-mile territorial limit, those businesses involved in extraction operations will be more certain about which set of governmental rules must be complied with. However, uniformity in regulatory rules would be desirable. It would make for easier administration and better environmental protection if the federal government and the states established a single set of regulations and provided for their enforcement through some sort of cooperative effort.

VI. Conclusion

Thus the *Maine* decision, as the above analysis indicates, is of important significance to the law of the sea and seabed. It clarifies federal and state rights in the submerged lands, using the 3-mile territorial limit as the primary distinguishing factor.

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ber of oil spill incidents unless new ways are found to prevent their occurrence. Rathje at 486.

It should also be noted that there are other possible sources of oil pollution besides undersea oil exploration. These include: 1) oil slicks from oil tankers and other ships running aground or colliding with other ships or objects while at sea, 2) deballasting by oil tanker ships, 3) the cleaning of tanks of oil tanker ships, 4) oil leakage from ships sunk in the oceans, and 5) the seepage of oil from natural sources. There are several possible attributes of oil pollution, such as: 1) an adverse effect on marine life, since certain types of fish are especially susceptible to this and their death could blight to some extent a traditional source of food; 2) an adverse effect on water birds, since these birds seem to have a special attraction to oil slicks and die from drowning, poisoning, exposure, or starvation because of their feathers becoming soaked with oil; 3) damage to beaches and coastal residential property, curtailing swimming (which in turn means a substantial loss of revenue for commercial beach operators) and creating unpleasant odors for occupants of these areas; and 4) causing dangerous and hazardous conditions with regard to navigation and increasing the possibility of a fire. *See* Comment, *Oil Pollution of the Sea*, 10 Harv. Int'l L. J. 316 (1969).

[62] It has been observed that:

> Petroleum companies follow different regulations when drilling in federal waters than when drilling in waters subject to the control of the state. Different administrators and inspectors, following different guidelines, check to determine if oil companies are complying with drilling regulations. In the event of a spill, different agencies are concerned with clean-up procedures. Finally, both the state and federal

However, the effect of this case on the law of this area may be greatly diminished if the United States should abandon its present policy regarding the recognition of this 3-mile territorial limit. There is speculation that this country is now considering the adoption of a 12-mile territorial limit.[63] If this should occur, a dispute may arise as to whether the rights of states in the seabed extend to 12 miles from their respective coastlines or remain confined to a 3-mile marginal belt.[64] The Supreme Court or Congress may then have to take further action to resolve this conflict.[65]

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> administrative agencies have the authority to allow drilling anywhere in the areas of their respective control, despite the protestations of the other government. Inherent in this dual system of regulations and responsibilities is the possibility of error resulting from confusion.

Rathje at 488-489.

[63] *See* Note, *supra* note 9, at 479.

[64] If such a change should formally occur, the states might argue that since their seaward boundaries have been determined as the territorial limit, which traditionally has been three miles from their respective coastlines, such boundaries should automatically extend to twelve miles. An example of a context in which such a dispute might arise is with regard to economic regulation of objects on both sides of the territorial line of demarcation. Under the present law, one writer has hypothecated a situation where:

> . . . a deep water superport located ten miles off the coast would require a pipeline to an inland refinery. As authority is now allocated between the federal government and the states, a pipeline would be controlled by the state for the first three miles and the federal government for the last seven miles. Any conflict in regulations might lead to inconsistent demands being made on the construction of the pipeline. . . . *Id.* at 480.

However, if a 12-mile territorial limit is adopted and state rights to the seabed are extended to this point, such a pipeline would arguably be subject to paramount state regulation.

[65] The United States has already adopted a 12-mile territorial limit for the purpose of regulating nuclear weaponry. In 1971, it executed a treaty proscribing the placement of such armaments beyond a 12-mile zone. *See* Note 24. One writer regards the significance of this action as constituting ". . . an awareness of the trend toward extended territorial seas, if not a tacit recognition of the 12-mile outer limit by the United States as a signatory power." 6 VALPARISO U. L. REV. 170 at 183.