

INTERNATIONAL COURT OF JUSTICE

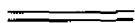
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

**CASE CONCERNING DELIMITATION  
OF THE MARITIME BOUNDARY  
IN THE GULF OF MAINE AREA**

(CANADA/UNITED STATES OF AMERICA)

VOLUME II

Memorial of the United States of America



COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

**AFFAIRE DE LA DÉLIMITATION  
DE LA FRONTIÈRE MARITIME  
DANS LA RÉGION DU GOLFE DU MAINE**

(CANADA/ÉTATS-UNIS D'AMÉRIQUE)

VOLUME II

Mémoire des Etats-Unis d'Amérique



The case concerning *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, entered on the Court's General List on 25 November 1981 under number 67, was the subject of a Judgment delivered on 12 October 1984 by the Chamber constituted by the Order made by the Court on 20 January 1982 (*Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 246*).

The pleadings and oral arguments in the case are being published in the following order:

- Volume I. Special Agreement; Memorial of Canada.
- Volume II. Memorial of the United States of America.
- Volume III. Counter-Memorial of Canada.
- Volume IV. Counter-Memorial of the United States of America.
- Volume V. Replies of Canada and the United States of America.
- Volume VI. Commencement of Oral Arguments.
- Volume VII. Conclusion of Oral Arguments; Documents submitted to the Court after closure of the written proceedings; Correspondence.
- Volume VIII. Maps, charts and illustrations.

Canada filed its pleadings both in English and in French. Although Canada has two official languages, only the English text of those documents is reproduced on the ensuing pages of these volumes, as Canada has informed the Registry that the English text should be seen as authoritative for the purposes of interpretation.

Certain pleadings and documents of this edition are reproduced photographically from the original printed text.

In addition to the normal continuous pagination, the Volumes feature on the inner margin of pages a bracketed indication of the original pagination of the Memorials, the Counter-Memorials, the Replies and certain Annexes.

In internal references, bold Roman numerals (in the text or in the margin) are used to refer to Volumes of this edition; if they are immediately followed by a page reference, this relates to the new pagination of the Volume in question. On the other hand, the page numbers which are preceded by a reference to one of the pleadings relate to the original pagination of that document and accordingly refer to the bracketed pagination of the document in question.

The main maps and charts are reproduced in a separate Volume (Vol. VIII), with a renumbering, indicated by ringed numerals, that is also added in the margin in Volumes I-VII wherever corresponding references appear; the absence of such marginal reference means that the map or illustration is not reproduced in the present edition.

Neither the typography nor the presentation may be used for the purpose of interpreting the texts reproduced.

---

L'affaire de la *Délimitation de la frontière maritime dans la région du golfe du Maine*, inscrite au rôle général de la Cour sous le numéro 67 le 25 novembre 1981, a fait l'objet d'un arrêt rendu le 12 octobre 1984 par la Chambre constituée par ordonnance de la Cour du 20 janvier 1982 (*Délimitation de la frontière maritime dans la région du golfe du Maine, arrêt, C.I.J. Recueil 1984, p. 246*).

Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant :

Volume I. Compromis; mémoire du Canada.

Volume II. Mémoire des Etats-Unis d'Amérique.

Volume III. Contre-mémoire du Canada.

Volume IV. Contre-mémoire des Etats-Unis d'Amérique.

Volume V. Répliques du Canada et des Etats-Unis d'Amérique.

Volume VI. Début de la procédure orale.

Volume VII. Suite et fin de la procédure orale; documents présentés à la Cour après la fin de la procédure écrite; correspondance.

Volume VIII. Cartes et illustrations.

Le Canada a déposé ses pièces de procédure écrite en anglais et en français. Bien que le Canada ait deux langues officielles, seul le texte anglais de ses écritures est reproduit dans les volumes ci-dessus, le Canada ayant fait savoir au Greffe que, en cas d'interprétation, c'était le texte anglais qui devait faire foi.

Certaines pièces de la présente édition sont photographiées d'après leur texte imprimé original.

Outre leur pagination continue habituelle, les volumes comportent, entre crochets sur le bord intérieur des pages, l'indication de la pagination originale des mémoires, des contre-mémoires, des répliques et de certaines de leurs annexes.

S'agissant des renvois, les chiffres romains gras (dans le texte ou dans la marge) indiquent le volume de la présente édition; s'ils sont immédiatement suivis par une référence de page, cette référence renvoie à la nouvelle pagination du volume concerné. En revanche, les numéros de page qui sont précédés de l'indication d'une pièce de procédure visent la pagination originale de ladite pièce et renvoient donc à la pagination entre crochets de la pièce mentionnée.

Les principales cartes sont reproduites dans un volume séparé (VIII) où elles ont reçu un numérotage nouveau indiqué par un chiffre cerclé. Dans les volumes I à VII, les renvois aux cartes et illustrations du volume VIII sont portés en marge selon ce nouveau numérotage, et l'absence de tout renvoi à la présente édition signifie qu'une carte ou illustration n'est pas reproduite.

Ni la typographie ni la présentation ne sauraient être utilisées aux fins de l'interprétation des textes reproduits.

---

## CONTENTS - TABLE DES MATIÈRES

	<i>Page</i>
<b>Memorial of the United States of America - Mémoire des Etats-Unis d'Amérique</b>	
<b>INTRODUCTION</b> . . . . .	3
<b>SUMMARY OF ARGUMENT</b> . . . . .	5
<b>PART I. THE FACTS</b> . . . . .	8
Introduction . . . . .	8
<b>Chapter I. The geographical setting</b> . . . . .	9
Section 1. Geography . . . . .	9
A. Macrogeography . . . . .	9
B. The Gulf of Maine area . . . . .	11
Section 2. The geomorphology of the Gulf of Maine area . . . . .	12
A. Northeast Channel . . . . .	12
B. Georges Bank . . . . .	13
C. Scotian Shelf . . . . .	14
D. Gulf of Maine Basin . . . . .	14
Section 3. The geology of the Gulf of Maine area . . . . .	14
<b>Chapter II. The marine environment</b> . . . . .	16
Section 1. The waters . . . . .	16
A. Circulation patterns . . . . .	16
B. Other characteristics . . . . .	17
1. Scotian Shelf . . . . .	17
2. Gulf of Maine Basin . . . . .	17
3. Georges Bank . . . . .	18
C. Fronts . . . . .	18
Section 2. The food chain . . . . .	18
A. Phytoplankton . . . . .	18
B. Zooplankton . . . . .	19
C. Benthos . . . . .	19
Section 3. Fish and shellfish of commercial importance . . . . .	19
Section 4. Summary . . . . .	21
<b>Chapter III. Activities of the Parties and their nationals in the Gulf of Maine Area</b> . . . . .	23
Section 1. <i>Fishing</i> . . . . .	23
A. Early development . . . . .	23
B. Development of fisheries on Georges Bank . . . . .	25
C. Development of fisheries during the 20th century . . . . .	27
D. Foreign fishing on Georges Bank and the reaction of the United States . . . . .	29

	<i>Page</i>
Section 2. Continental shelf . . . . .	33
A. United States . . . . .	34
B. Canada . . . . .	38
Section 3. Other relevant activities . . . . .	38
A. Aids to navigation . . . . .	38
1. The measurement of the sea: charting and surveying . . . . .	39
2. Electronic aids to navigation . . . . .	41
3. Other aids to navigation . . . . .	42
B. Scientific research . . . . .	43
C. Search and rescue . . . . .	46
D. Defense . . . . .	46
Chapter IV. History of the dispute . . . . .	48
PART II. THE LAW . . . . .	62
Introduction . . . . .	62
Chapter I. Delimitation of fishery jurisdiction . . . . .	64
Section 1. Early developments . . . . .	64
Section 2. Delimitation between neighboring States . . . . .	65
The <i>Grisbadarna</i> case . . . . .	65
Section 3. The principle of conservation . . . . .	70
A. Emergence of the principle of conservation . . . . .	70
B. The failure of conservation by agreement and the develop- ment of 200-nautical-mile fishing zones . . . . .	72
C. Delimitation of 200-nautical-mile fishing zones . . . . .	75
Chapter II. Delimitation of the continental shelf . . . . .	77
Section 1. Early developments . . . . .	77
Section 2. International adjudications . . . . .	79
A. The <i>North Sea Continental Shelf</i> cases . . . . .	79
B. The <i>Anglo-French Arbitration</i> . . . . .	83
C. The <i>Tunisia/Libya Continental Shelf</i> case . . . . .	87
Chapter III. Principles of international law applicable to delimitation of a single maritime boundary beyond the territorial sea . . . . .	92
Section 1. The single maritime boundary must be delimited in accordance with equitable principles, taking account of the rele- vant circumstances in the area, to produce an equitable solution . . . . .	92
Section 2. Equitable principles . . . . .	93
A. The boundary must respect the relationship between the coasts of the Parties and the maritime areas in front of those coasts . . . . .	93
1. Nonencroachment . . . . .	93
2. Proportionality . . . . .	94
3. Natural prolongation . . . . .	95
B. The boundary should facilitate resource conservation and management . . . . .	95
C. The boundary should minimize the potential for international disputes . . . . .	96

	<i>Page</i>
D. The boundary must take account of the relevant circumstances in the area . . . . .	98
Section 3. Methods of delimitation . . . . .	100
A. A line perpendicular to the general direction of the coast . . . . .	101
B. An equidistant line . . . . .	102
PART III. APPLICATION OF THE LAW TO THE FACTS . . . . .	107
Introduction . . . . .	107
Chapter I. The relevant circumstances to be taken into account in this case . . . . .	108
Section 1. Geographical features . . . . .	108
A. The broad geographical relationship of the Parties . . . . .	108
1. The United States and Canada are adjacent States . . . . .	108
2. The general direction of the coast is northeastward . . . . .	108
3. The land boundary lies north of the Gulf of Maine . . . . .	109
B. Geographical irregularities in the relevant area . . . . .	110
1. The four-fold change in direction of the coast creates a short Canadian coastline at right angles to the general direction of the coast . . . . .	110
2. The Nova Scotia peninsula protrudes south of the land boundary . . . . .	111
3. The international boundary terminus is located in a concavity in the coast . . . . .	111
C. The Northeast Channel and the fishing banks of the Gulf of Maine area as special features . . . . .	111
Section 2. The marine environment . . . . .	112
A. The waters above Georges Bank, the Scotian Shelf, and the Gulf of Maine Basin form three separate and identifiable ecological regimes . . . . .	112
B. The Northeast Channel is a significant geomorphological feature that is a natural boundary between ecological regimes . . . . .	112
Section 3. Activities of the Parties and their nationals . . . . .	113
Chapter II. The boundary proposed by the United States is the perpendicular to the general direction of the coast adjusted to take account of the relevant circumstances in the area . . . . .	115
Chapter III. The adjusted perpendicular line produces an equitable solution while the equidistance method would not . . . . .	117
Section 1. The adjusted perpendicular line respects the broad geographical relationship between the coasts of the Parties and the relevant maritime areas in front of their coasts; an equidistant line would not . . . . .	117
A. The adjusted perpendicular line respects the coastal fronts of the Parties in the area; an equidistant line would not . . . . .	117
B. The adjusted perpendicular line produces a proportionate delimitation; an equidistant line would not . . . . .	118
C. Although the natural prolongation principle may be inappli-	

	<i>Page</i>
cable in this case, the Northeast Channel constitutes a relevant circumstance that the adjusted perpendicular line takes into account; an equidistant line would not . . . . .	119
Section 2. The adjusted perpendicular line facilitates conservation and management; an equidistant line would obstruct them . . . . .	120
Section 3. The adjusted perpendicular line minimizes the potential for disputes; an equidistant line would invite disputes . . . . .	121
Section 4. The adjusted perpendicular line takes into account the relevant circumstances in the area; an equidistant line would not . . . . .	122
Chapter IV. Summary of the application of the law to the facts . . . . .	124
SUBMISSIONS . . . . .	125
 <i>Annexes to the Memorial of the United States of America</i>	
Documentary Annexes, Nos. 1 to 11 (Vol. I)	
<i>Annex 1. Certification</i> . . . . .	130
<i>Annex 2. Special Agreement between the Government of the United States of America and the Government of Canada to Submit to a chamber of the International Court of Justice the Delimitation of the Maritime Boundary in the Gulf of Maine area, notified to the Court on 25 November 1981</i> . . . . .	131
<i>Annex 3.</i>	
The Truman Proclamations:	
Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 September 1945, 10 <i>Federal Register</i> 12303 (2 October 1945) . . . . .	132
Proclamation No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas, 28 September 1945, 10 <i>Federal Register</i> 12304 (2 October 1945) . . . . .	132
<i>XIII Bulletin</i> , The Department of State, No. 327, 30 September 1945, pp. 484-486 . . . . .	132
Drafts of the Truman Proclamations given to the Embassy of Canada, 26 April 1945, reprinted in <i>Foreign Relations of the United States</i> , 1945, Vol. 2, pp. 1495-1503 . . . . .	132
Note from the Secretary of State to the Chargé d'affaires of Canada, dated 22 October 1945 . . . . .	132
Note No. 383 from the Chargé d'affaires of Canada to the Secretary of State, dated 23 October 1945 . . . . .	132
I. Brownlie, <i>Principles of Public International Law</i> , Oxford, Clarendon Press, 1966, pp. 202-205 . . . . .	132
A. L. Shalowitz, <i>Shore and Sea Boundaries</i> , Washington, D.C., Government Printing Office, Vol. I, 1962, pp. 182-184 . . . . .	132
<i>Annex 4. The Grisbadarna case (Norway v. Sweden), 1909, Hague Ct. Rep. (Scott) 121 (1916)</i> . . . . .	148
<i>Annex 5.</i>	
Convention on the Continental Shelf, done at Geneva, on 29 April 1958, UN doc. A/CONF.13/L.55, 499 <i>UNTS</i> 311 . . . . .	170

	Page
Convention on the High Seas, done at Geneva, on 29 April 1958, UN doc. A/CONF.13/L.53, 450 <i>UNTS</i> 82 . . . . .	170
Convention on the Territorial Sea and the Contiguous Zone, done at Geneva, on 29 April 1958, UN doc. A/CONF.13/L.52, 516 <i>UNTS</i> 205 . . . . .	170
Convention on Fishing and Conservation of the Living Resources of the High Seas, done at Geneva, on 29 April 1958, UN doc. A/CONF.13/L.54, 559 <i>UNTS</i> 285 . . . . .	170
<i>Annex 6.</i> Exchange of Notes concerning the Conference of Ottawa, 23 September 1920, for Cooperation in Scientific Investigation of Deep Sea Fisheries, reprinted in <i>Foreign Relations of the United States</i> , 1920, Vol. I, pp. 406-409 . . . . .	171
<i>Annex 7.</i> Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of Canada, 24 February 1977, 28 UST 5571, TIAS No. 8648 . . . . .	176
<i>Annex 8.</i> Fishery Conservation and Management Act of 1976, 16 USC, Secs. 1801-1882, as enacted . . . . .	185
<i>Annex 9.</i>	
Outer Continental Shelf Lands Act, 43 USC, Secs. 1331-1343 (1976); as amended, Secs. 1331-1356 (1976, Supplement III) . . . . .	207
Notice of Proposed Authorization for Geological and Geophysical Exploration of Atlantic Outer Continental Shelf, 25 <i>Federal Register</i> 8759 (10 September 1960) . . . . .	207
Regulations for Geological and Geophysical Explorations of the Outer Continental Shelf, 45 <i>Federal Register</i> 6344-6352 (25 January 1980) . . . . .	207
Regulations for Geological and Geophysical Explorations of the Outer Continental Shelf, 41 <i>Federal Register</i> 25891-25897 (23 June 1976) . . . . .	207
<i>Annex 10.</i>	
National Environmental Policy Act of 1969, 42 USC, Secs. 4321-4347, as enacted . . . . .	263
Coastal Zone Management Act of 1972, 16 USC, Secs. 1451-1464, as enacted . . . . .	263
Endangered Species Act of 1973, 16 USC, Secs. 1531-1543, as enacted . . . . .	263
Marine Protection, Research and Sanctuaries Act of 1972, 33 USC, Secs. 1401-1444, as enacted . . . . .	263
<i>Annex 11.</i>	
Canadian laws:	
The Public Lands Grants Act, 1950, <i>Canada Revised Statutes</i> (1952), Chap. 224, pp. 115-117 . . . . .	306
Oil and Gas Production and Conservation Act of 1968-1969, <i>Revised Statutes of Canada</i> , 1970, Chap. 30 (1st Supp.), Sec. 3 . . . . .	306
Canadian Regulations:	
Canada Oil and Gas Land Regulations and Canada Oil and Gas Drilling and Production Regulations, 6 June 1961 (SOR/61-253), paras. 24-40, <i>Canada Gazette</i> , Part II, Vol. 95, pp. 805, 813-817, 28 June 1961 . . . . .	306



	Page
Documentary Annexes, Nos. 12 to 44 (Vol. II)	
<i>Annex 12.</i> S. E. Morison, <i>The Maritime History of Massachusetts: 1783-1860</i> , Boston, Northeastern University Press, 1979, Chap. II, "The Colonial Background: 1602-1760", pp. 8-26, and Chap. XIX, "Cape Cod and Cape Ann: 1820-1860", pp. 300-313 . . . . .	319
<i>Annex 13.</i> H. A. Innis, <i>The Cod Fisheries: The History of an International Economy</i> , New Haven, Yale University Press, 1940, pp. 111-119 . . . . .	319
<i>Annex 14.</i> L. Sabine, <i>Report of the Principal Fisheries of the American Seas</i> , Washington, D.C., The Treasury Department of the United States, Robert Armstrong, Printer, 1853, p. 174 . . . . .	320
<i>Annex 15.</i> <i>Journals of the Continental Congress, 1774-1789</i> , Vol. XIV, 1779, Washington, Government Printing Office, 1909, pp. 960-962 .	320
<i>Annex 16.</i> Treaty of Peace, 1783, United States-Great Britain, 8 Stat. 80, TS No. 104, reprinted from <i>Treaties and Other International Agreements of the United States: 1776-1949</i> , Charles Bevans, ed., Vol. 12, pp. 8-12 . . . . .	321
Map depicting the coasts covered by the Convention of 1818 (from C. C. Tansill, <i>Canadian-American Relations: 1875-1911</i> , New Haven, Yale University Press, 1943, facing p. 1) . . . . .	321
Convention on Fisheries, Boundary and Restoration of Slaves, 1818, United States-Great Britain, 8 Stat. 248, TS No. 112, reprinted from <i>Treaties and Other International Agreements of the United States: 1776-1949</i> , Charles Bevans, ed., Vol. 12, pp. 57-60 .	321
<i>Annex 17.</i> R. McFarland, <i>A History of the New England Fisheries</i> , New York, University of Pennsylvania Press, by D. Appleton and Co. Agents, 1911, Chap. XIX, "The Fisheries Question", pp. 321-337 .	331
List of Treaties . . . . .	331
<i>Annex 18.</i> G. B. Goode, <i>The Fisheries and Fishery Industries of the United States</i> , Washington, D.C., Government Printing Office, 1887, Vol. I, "History of the Fresh Halibut Fishery", pp. 29-34 . . . . .	331
—, Vol. I, "The Georges Bank Cod Fishery", pp. 187-198 . . . . .	331
—, Vol. II, p. 201 . . . . .	331
—, Atlas, Plate 4, "George's Well Smack — 1836 to 1847" . . . . .	331
—, Atlas, Plates 30-35, "The Georges Bank Cod Fishery" . . . . .	331
<i>Annex 19.</i> Table of Gloucester Ships and Men Lost on Georges Bank: 1837-1 July 1873 (adapted from a list from G. H. Proctor, <i>The Fisherman's Memorial and Record Book</i> , Gloucester, Proctor Brothers Publishers, 1873) . . . . .	331
<i>Annex 20.</i> United States Department of Commerce, <i>Fishery Industries of the United States: 1928</i> , Washington, D.C., Government Printing Office, 1929, Bureau of Fisheries Document No. 1067, p. 471 . . . .	332
<i>Annex 21.</i> R. M. Doherty, G. P. Draheim, D. J. White, and C. L. Vaughn, "Sea Scallop Industry of Canada", printed in <i>Commercial Fisheries Review</i> , No. 7, July 1963, pp. 11-16 . . . . .	332
<i>Annex 22.</i> Food and Agriculture Organization of the United Nations, "Review of the State of World Fishery Resources", Committee on	

	Page
Fisheries, 14th session, FIRM/C710 (Rev.2), COFI/81/Inf. 5, March 1981, pp. 4-5, 29-30 . . . . .	332
Annex 23. C. Southack, <i>The New England Coasting Pilot</i> (1718) . . . . .	332
Annex 24. P. Pinkham, <i>A Chart of Georges Bank Including Cape Cod and Nantucket</i> (1797) . . . . .	333
Annex 25.	
E. M. Blunt, <i>New Chart of the Northeastern Coast of North America extending from Lat. 37° 20' N. Long. 75° 20' W. to Lat. 47° 55' N. Long. 62° 5' W</i> (1821) . . . . .	333
E. M. Blunt, <i>A New Chart of the Atlantic or Western Ocean</i> (1826) . . . . .	333
E. M. Blunt, <i>The Northeastern Coast of North America from New York to Cape Canso Including Sable Island</i> (1844) . . . . .	333
Annex 26. G. Eldridge, <i>A New Chart of the Coast of New England from Mount Desert Rock to Gay Head Including Georges Bank and Shoals</i> (1856) . . . . .	333
Annex 27. C. Wilkes, <i>Chart of Georges Shoal and Bank</i> (1837) . . . . .	333
Annex 28.	
United States Coast and Geodetic Survey, Chart No. 1000: An Index of Hydrographic Surveys conducted by the United States between 1842 and 1928 from Cape Sable to Cape Hatteras . . . . .	334
United States Coast and Geodetic Survey, Chart No. 1000: An Index of Hydrographic Surveys conducted by the United States between 1929 and 1939 from Cape Sable to Cape Hatteras . . . . .	334
United States Coast and Geodetic Survey, Chart No. 1000: An Index of Hydrographic Surveys conducted by the United States between 1940 and 1975 from Cape Sable to Cape Hatteras . . . . .	334
Annex 29.	
United States Coast and Geodetic Survey, Chart No. 3075: Georges Bank, Eastern Part, Special Chart for Fishing Industry (June 1934) . . . . .	334
United States Coast and Geodetic Survey, Chart No. 3076: Georges Bank, Western Part, Special Chart for Fishing Industry (1942) . . . . .	334
Annex 30.	
Canadian Hydrographic Service 1980 Annual Activities Report: "Status of Surveys", pp. 44-45 . . . . .	334
Canadian Hydrographic Service Chart — Approaches to the Bay of Fundy, Canadian Chart 425, First Edition, 1924 . . . . .	334
Annex 31. Agreement on Establishment of Long Range Aid to Navigation (LORAN-C) Station in Newfoundland, 1964, United States-Canada, 15 UST 1835, TIAS No. 5657 . . . . .	335
Annex 32. United States Congress, Joint Resolution No. 22, 9 February 1871, <i>Congressional Globe</i> , 41st Cong., 3rd Sess., Appendix, p. 398 . . . . .	335
Annex 33. H. Bigelow, "Physical Oceanography of the Gulf of Maine", Washington, D.C., Government Printing Office, 1928, in <i>Bulletin of the United States Bureau of Fisheries</i> , Vol. XL, 1924, Part II, pp. 513-521 . . . . .	335
Annex 34. North American Council on Fishery Investigations, <i>Proceedings: 1921-1930</i> , No. 1, 1932, p. 27 . . . . .	335
Annex 35.	
Search and Rescue Agreement between the Royal Canadian Air Force and the United States Coast Guard, dated 7 October 1957 . . . . .	336
Search and Rescue Agreement between the Chief of Defence Staff,	

	<i>Page</i>
Canadian Forces, and the Commandant, United States Coast Guard, dated 6 August 1965, amended 19 April 1966 . . . . .	336
Search and Rescue Agreement between the Chief of Defence Staff, Canadian Forces, and the Commandant, United States Coast Guard, dated 25 October 1974 . . . . .	336
<i>Annex 36.</i> Map depicting Flight Information Regions (FIR) in the Atlantic Area, as adopted by ICAO (Air Navigation Plan, North American and Pacific Regions, 10 ed., 1977, doc. 8755/10, International Civil Aviation Organization . . . . .	336
<i>Annex 37.</i> Map depicting Air Defense Identification Zones of the New England Region . . . . .	336
United States Regulations: 14 CFR, Sec. 99 (1981) . . . . .	336
Canadian Regulations: Security Control of Air Traffic Order, <i>Consolidated Regulations of Canada</i> , Vol. 1, Chap. 63, 1978, pp. 432-438 . . . . .	336
<i>Annex 38.</i> Geological Survey of Canada, "Canada's Conventional Oil and Gas Resources", Open-File 767, March 1981, pp. 10-14 . . . . .	337
<i>Annex 39.</i> A map of selected physiographic regions of eastern North America . . . . .	337
<i>Annex 40.</i> Permits for exploratory work including the northeast portion of Georges Bank . . . . .	338
Sample exploration permit: OCS Permit E2-68, issued to Exploration Surveys, Inc., dated 2 April 1968 . . . . .	338
<i>Annex 41.</i> United States Geological Survey, "North Atlantic Summary Report", Open-File Report 82-16, 1 April 1982 update, p. 10 . . . . .	345
<i>Annex 42.</i> Selected documents relating to outer continental shelf lease sale No. 42: Call for Nominations, 40 <i>Federal Register</i> 25608-25609 (17 June 1975) . . . . .	345
The covers and tables of contents for the draft and final Environmental Impact Statements for Outer Continental Shelf Lease Sale No. 42 . . . . .	345
Department of the Interior press releases, dated 17 June 1975, 2 January 1976, 12 October 1976 and 7 December 1976 . . . . .	345
44 <i>Federal Register</i> 56042-56049 (28 September 1979) . . . . .	345
44 <i>Federal Register</i> 66149-66173 (16 November 1979) . . . . .	345
<i>Annex 43.</i> Selected documents relating to outer continental shelf lease sale No. 52: Call for Nominations, 47 <i>Federal Register</i> 18805-18823 (30 April 1982) . . . . .	346
The covers and tables of contents for the draft and final Environmental Impact Statements for Outer Continental Shelf Lease Sale No. 52 . . . . .	346
<i>Annex 44.</i> Table I: Zooplankton: Spring Distribution of Taxa in Terms of Percentage Composition of the Total Biomass (May 1977) Species Composition (October 1974) . . . . .	346

	<i>Page</i>
Table II: Zooplankton: Spring Distribution of Taxa in Terms of Percentage Composition of the Total Biomass (May 1977) . . . . .	346
Table III: Benthos: Distribution of Dominant Taxa in Terms of Percentage Composition of the Total Biomass . . . . .	346
<b>Documentary Annexes, Nos. 45 to 51 (Vol. III)</b>	
<i>Annex 45.</i>	
International Convention for the Northwest Atlantic Fisheries, done at Washington, on 8 February 1949, 157 <i>UNTS</i> 157 . . . . .	347
Map depicting the subareas established by the International Convention for the Northwest Atlantic Fisheries . . . . .	347
<i>Annex 46.</i>	
International Commission for the Northwest Atlantic Fisheries, <i>Statistical Bulletin</i> , Vol. 2 for the year 1952 . . . . .	347
<i>Annex 47.</i>	
International Commission for the Northwest Atlantic Fisheries, <i>Statistical Bulletin</i> , Vols. 3-28, for the years 1953-1978, selected pages — including Table 1 for each year indicating total landings by country and subarea . . . . .	347
Northwest Atlantic Fisheries Organization, "Provisional Nominal Catches in the Northwest Atlantic, 1980", by the Assistant Executive Secretary, Serial No. N366, NAFO SCS doc. 81/VI/15 (Rev. 6 July 1981) . . . . .	347
<i>Annex 48.</i>	
International Commission for the Northwest Atlantic Fisheries, "Mesh Regulation to Increase the Yield of the Georges Bank Haddock Fishery", by H. W. Graham, <i>Second Annual Report</i> , 1951-1952, pp. 23-33 . . . . .	348
International Commission for the Northwest Atlantic Fisheries, Report of Panel 5, Administrative Report for the Year Ending 30 June 1952, <i>Second Annual Report</i> , 1951-1952, p. 7 . . . . .	348
International Commission for the Northwest Atlantic Fisheries, Reports of the Committee on Research and Statistics and Panels, Panel 5, Mesh Regulation, <i>Second Annual Report</i> , 1951-1952, pp. 13-14 . . . . .	348
<i>Annex 49.</i> International Commission for the Northwest Atlantic Fisheries, Reports of Meetings of Panels, <i>Annual Proceedings</i> , Vol. 19, 1968-1969, pp. 24-28 . . . . .	348
<i>Annex 50.</i>	
International Commission for the Northwest Atlantic Fisheries, Report of the 23rd Annual Meeting, June 1973, <i>Annual Report</i> , Vol. 23, 1972-1973, pp. 50-51 . . . . .	349
International Commission for the Northwest Atlantic Fisheries, Report of the 3rd Special Meeting, 15-19 October 1973, Report of Panel 5, <i>Annual Report</i> , Vol. 24, 1973-1974, pp. 18-20 . . . . .	349
International Commission for the Northwest Atlantic Fisheries, Report of the 3rd Special Meeting, 15-19 October 1973, Press Notice, <i>Annual Report</i> , Vol. 24, 1973-1974, pp. 32-33 . . . . .	349
<i>Annex 51.</i> P. Finkle, "The International Commission for the Northwest Atlantic Fisheries: An Experiment in Conservation", in <i>Dalhousie Law Journal</i> , Vol. 1, October 1974, pp. 526-550 . . . . .	349

## Documentary Annexes, Nos. 52 to 91 (Vol. IV)

*Annex 52.*

- United Nations, Convention on the Continental Shelf (1958), Ratification by Canada, 4 March 1970, "Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1981", UN doc. ST/LEG/SER.E/1 at p. 604; see also 716 *UNTS* 390 (1970); see also Letter C.N. 21.1970. Treaties-2 of 4 March 1970 . . . . . 350
- United Nations Convention on the Continental Shelf (1958), Communication from the United States of America, 13 August 1970, "Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1981, UN doc. ST/LEG/SER.E/1 at p. 607; see also 737 *UNTS* 394; see also Letter C.N. 119.1970. Treaties-3 of 13 August 1970 . . . . . 350

*Annex 53.*

- Letter from the Assistant Director for Lands and Minerals, Bureau of Land Management, United States Department of the Interior, to the Department of Northern Affairs and Natural Resources of Canada, dated 1 April 1965 . . . . . 351
- Letter from A. D. Hunt, Chief, Resources Division, Department of Northern Affairs and Natural Resources of Canada, to L. T. Hoffman, Assistant Director for Lands and Minerals, Bureau of Land Management, United States Department of the Interior, dated 8 April 1965 . . . . . 351
- Letter from L. T. Hoffman, Bureau of Land Management, United States Department of the Interior, to D. G. Crosby, Department of Northern Affairs and Natural Resources of Canada, dated 14 May 1965 . . . . . 351
- Letter from A. D. Hunt, Chief, Resource Management Division, Department of Northern Affairs and Natural Resources of Canada, to L. T. Hoffman, Assistant Director — Lands and Minerals, Bureau of Land Management, United States Department of the Interior, dated 28 May 1965 . . . . . 351
- Letter from A. D. Hunt, Chief, Resource Management Division, Department of Northern Affairs and Natural Resources of Canada, to L. T. Hoffman, Assistant Director — Lands and Minerals, Bureau of Land Management, Department of the Interior, dated 16 June 1965 . . . . . 351

*Annex 54.*

- Letter from Robert K. Olson, Second Secretary of the United States Embassy, to J. W. McNeil, Director, Research Development Branch, Department of Mines and Technical Surveys of Canada, dated 16 August 1966 . . . . . 354
- Letter from the Undersecretary of State for External Affairs of Canada, to Robert K. Olson, Second Secretary of the United States Embassy, dated 30 August 1966 . . . . . 354

*Annex 55. Aide-mémoire from the United States Department of State to the Embassy of Canada, dated 10 May 1968 . . . . . 355**Annex 56.*

- Note from the Department of State to the Embassy of Canada, dated 5 November 1969 . . . . . 356

	<i>Page</i>
Note No. 366 from the Embassy of Canada to the Department of State, dated 1 December 1969 . . . . .	356
<i>Annex 57.</i> Notice of Reservation of Exploration and Exploitation Rights of the United States and Its Nationals, 35 <i>Federal Register</i> 3301 (21 February 1970) . . . . .	358
<i>Annex 58.</i> Bartlett Act, 16 USC Secs. 1081-1086 (1966) . . . . .	360
<i>Annex 59.</i>	
Note from the Secretary of State to the Ambassador of Canada, dated 18 January 1974 . . . . .	361
Secretary of State's Circular Note to the Governments whose fishermen have been known to or currently do fish in the Northwest Atlantic Ocean off the coast of the United States and others concerned with Northwest Atlantic Fisheries, dated 18 January 1974 . . . . .	361
Note from the Secretary of State to the Ambassador of Canada, dated 11 September 1974 . . . . .	361
Secretary of State's Circular Note to the Governments whose fishermen have been known to or currently do fish in the waters adjacent to the coast of the United States of America, dated 5 September 1974 . . . . .	361
<i>Annex 60.</i>	
Letter from Digicon, Inc., to the United States Geological Survey, dated 1 February 1974 . . . . .	366
Letter from the United States Department of the Interior, United States Geological Survey, to Digicon, Inc., dated 13 February 1974 . . . . .	366
Note No. 1126 from the Department of External Affairs to the Embassy of the United States, dated 19 September 1974 . . . . .	366
Note from the Embassy of the United States to the Department of External Affairs, dated 11 October 1974 . . . . .	366
<i>Annex 61.</i>	
Note from the Department of State to the Embassy of Canada, dated 15 May 1975 . . . . .	367
Note No. 180 from the Embassy of Canada to the Department of State, dated 3 June 1975 . . . . .	367
<i>Annex 62.</i>	
Note No. 52 from the Embassy of Canada to the Department of State, dated 2 February 1976 . . . . .	369
Note from the Department of State to the Embassy of Canada, dated 10 February 1976 . . . . .	369
<i>Annex 63.</i>	
Territorial Sea and Fishing Zones Act, Proposed Fishing Zones of Canada (Zones 4 and 5) Order, 110 <i>Canada Gazette</i> , Part I (EXTRA), No. 101, 1 November 1976, pp. 1-6 . . . . .	371
Territorial Sea and Fishing Zones Act, Fishing Zones of Canada (Zones 4 and 5) Order, 111 <i>Canada Gazette</i> , Part II (EXTRA), 1 January 1977, pp. 1-5 . . . . .	371
<i>Annex 64.</i>	
Maritime Boundaries between the United States and Canada, Department of State, Public Notice 506, 41 <i>Federal Register</i> 48619-48620 (4 November 1976) . . . . .	372
Department of State Press Release No. 543, dated 4 November 1976 . . . . .	372

	<i>Page</i>
Fishery Conservation Zone, Notice of Limits, Department of State, Public Notice 526, 42 <i>Federal Register</i> 12937-12940 (7 March 1977) . . . . .	372
<i>Annex 65.</i>	
Aide-mémoire from the Embassy of Canada to the Department of State, dated 22 December 1976 . . . . .	375
Aide-mémoire from the Department of State to the Embassy of Canada, dated 30 December 1976 . . . . .	375
<i>Annex 66.</i>	
Note No. 626 from the Embassy of Canada to the Department of State, dated 22 December 1976 . . . . .	378
Note from the Department of State to the Embassy of Canada, dated 16 February 1977 . . . . .	378
<i>Annex 67.</i>	
Note No. 221 from the Embassy of Canada to the Department of State, dated 26 May 1977 . . . . .	380
Aide-mémoire from the Embassy of Canada to the Department of State, dated 26 May 1977 . . . . .	380
Note from the Department of State to the Embassy of Canada, dated 27 June 1977 . . . . .	380
Aide-mémoire from the Department of State to the Embassy of Canada, dated 7 July 1977 . . . . .	380
<i>Annex 68.</i> "U.S., Canada to Negotiate Maritime Issues", 77 <i>Bulletin</i> , the Department of State, No. 1992, 29 August 1977, p. 282 . . . . .	382
<i>Annex 69.</i>	
Note No. GNT-067 from the Department of External Affairs to the Embassy of the United States, dated 3 November 1977 . . . . .	383
Note from the Department of State to the Embassy of Canada, dated 2 December 1977 . . . . .	383
<i>Annex 70.</i>	
Note from the Department of External Affairs to the Embassy of the United States, dated 25 January 1978 . . . . .	384
Department of State Press Release No. 53, dated 27 January 1978 . . . . .	384
Note from the Department of State to the Embassy of Canada, dated 3 February 1978 . . . . .	384
<i>Annex 71.</i>	
Note No. FLP-130 from Marcel Cadieux, Special Negotiator of Canada, to Lloyd Cutler, Special Negotiator of the United States, dated 10 April 1978 . . . . .	387
Letter from Lloyd Cutler to Marcel Cadieux, dated 11 April 1978 . . . . .	387
<i>Annex 72.</i>	
Letter from Marcel Cadieux to Lloyd Cutler, dated 2 June 1978 . . . . .	392
Note No. FLM-0092 from the Department of External Affairs to the Embassy of the United States, dated 2 June 1978 . . . . .	392
Note from the Embassy of the United States to the Department of External Affairs, dated 2 June 1978 . . . . .	392
Department of State Press Release No. 237, dated 2 June 1978 . . . . .	392
<i>Annex 73.</i>	
Territorial Sea and Fishing Zones Act, Proposed Amendment to the Fishing Zones of Canada (Zones 4 and 5) Order, 112 <i>Canada Gazette</i> (EXTRA), No. 79, 15 September 1978, pp. 1-4 . . . . .	395

	<i>Page</i>
Territorial Sea and Fishing Zones Act, <i>Fishing Zones of Canada</i> (Zones 4 and 5) Order, Amendment, 113 <i>Canada Gazette</i> , No. 3, 26 January 1979, pp. 482-483 . . . . .	395
<i>Annex 74.</i>	
Aide-mémoire from the Department of State to the Embassy of Canada, dated 14 September 1978 . . . . .	396
Note from the Department of State to the Embassy of Canada, dated 20 September 1978 . . . . .	396
Note from the Department of State to the Embassy of Canada, dated 15 February 1979 . . . . .	396
<i>Annex 75.</i>	
Note No. 160 from the Embassy of Canada to the Department of State, dated 29 March 1979 . . . . .	399
Note from the Department of State to the Embassy of Canada, dated 2 April 1979 . . . . .	399
<i>Annex 76.</i> Letter from Ronald Reagan, President of the United States, to Senator Charles Percy, Chairman, Committee on Foreign Relations, United States Senate, dated 6 March 1981 . . . . .	400
<i>Annex 77.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, Series A, <i>Limits in the Seas</i> , No. 2, Continental Shelf Boundary: Norway-Sweden . . . . .	402
<i>Annex 78.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 83, Continental Shelf Boundary: Bay of Biscay, France-Spain . . . . .	402
<i>Annex 79.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 86, Continental Shelf Boundary: Chile-Peru . . . . .	402
<i>Annex 80.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 88, Continental Shelf Boundary: Peru-Ecuador . . . . .	402
<i>Annex 81.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 69, Continental Shelf Boundary: Colombia-Ecuador . . . . .	403
<i>Annex 82.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 79, Continental Shelf Boundary: Colombia-Panama . . . . .	403
<i>Annex 83.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 73, Continental Shelf Boundary: Brazil-Uruguay . . . . .	403
<i>Annex 84.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 64, Continental Shelf Boundary: Argentina-Uruguay . . . . .	403
<i>Annex 85.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 85, Continental Shelf Boundary: The Gambia-Senegal . . . . .	404
<i>Annex 86.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 68, Continental Shelf Boundary: Guinea-Bissau - Senegal . . . . .	404
<i>Annex 87.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 92, Continental Shelf Boundary: Kenya-Tanzania . . . . .	404



	Page
<i>Annex 88.</i>	
Treaty on Demarcation of Marine Areas and Maritime Cooperation between the Republic of Costa Rica and the Republic of Panama, signed 2 February 1980, entered into force 11 February 1982 . . . . .	404
A map of the maritime boundaries between Costa Rica and Panama . . . . .	404
<i>Annex 89.</i> Treaty of Delimitation between the Republic of Venezuela and the Kingdom of the Netherlands, signed on 31 March 1978, entered into force 15 December 1978 . . . . .	405
<i>Annex 90.</i> United States Department of State, Bureau of Intelligence and Research, Office of the Geographer, <i>Limits in the Seas</i> , No. 96, Continental Shelf Boundary: Greece-Italy . . . . .	405
<i>Annex 91.</i>	
Working paper submitted by the delegations of Argentina and Canada, "The Special Case of Fish Stocks Which Occur Both Within the Exclusive Economic Zone and in an Area Beyond and Immediately Adjacent to It"; submitted at the second part of the ninth session of UNCLOS III, Geneva, 1980 . . . . .	406
Working paper on management of the living resources of the sea, submitted by Canada, Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond the Limits of National Jurisdiction, pp. 164-174, UN doc. A/AC.138/SC.II/L.8 . . . . .	406
Documentary Annexes, Nos. 92 to 99 (Vol. V)	
<i>Annex 92.</i>	
C. H. M. Waldock, "The International Court and the Law of the Sea", the First Cornelis van Vollenhoven Memorial Lecture, 22 May 1979, Cornelis van Vollenhoven Foundation, T. M. C. Asser Institute, 1979, pp. 1-17 . . . . .	419
C. H. M. Waldock, "The Legal Basis of Claims to the Continental Shelf", the Grotius Society, <i>Transactions</i> , 1950, Vol. 36, pp. 115-148 . . . . .	419
<i>Annex 93.</i> A. Gros, "La Convention sur la pêche et la conservation des ressources biologiques de la haute mer", <i>Recueil des cours</i> , tome 97, 1959, pp. 1-89 . . . . .	419
<i>Annex 94.</i> T. W. Fulton, <i>The Sovereignty of the Sea</i> , Edinburgh, William Blackwood and Sons, 1911, pp. 581, 609-610, 612, 616-617, 630-640, 701-711 . . . . .	419
<i>Annex 95.</i>	
D. J. Driscoll and N. McKellar, "The Changing Regime of North Sea Fisheries", in <i>The Effective Management of Resources: The International Politics of the North Sea</i> , C. M. Mason, ed., London/New York, 1979, pp. 125, 128-139 . . . . .	420
A. Underdal, <i>The Politics of International Fisheries Management: The Case of the Northeast Atlantic</i> , Oslo, Universitetsforlaget, 1980, pp. 61-99 . . . . .	420
<i>Annex 96.</i> S. Oda, "Proposals for Revising the Convention on the Continental Shelf", <i>Columbia Journal of Transnational Law</i> , Vol. 7, Spring 1968, No. 1, pp. 1-31 . . . . .	420

	<i>Page</i>
<i>Annex 97. S. Rhee, "Sea Boundary Delimitation between States before World War II", American Journal of International Law, Vol. 76, No. 3, 1982, 555, pp. 556-558 . . . . .</i>	420
<i>Annex 98.</i>	
<i>Knight v. Wilder, 56 Mass. (2 Cush.) 199 (1848) . . . . .</i>	421
<i>Wonson v. Wonson, 96 Mass. (7 Allen) 71 (1867) . . . . .</i>	421
<i>Spath v. Larsen, 20 Wash. 2d 500, 148 P.2d 834 (1944) . . . . .</i>	421
<i>Driesbach v. Lynch, 71 Idaho 501, 234 P.2d 446 (1951) . . . . .</i>	421
<i>Annex 99. Chart of proportionality test applied to an equidistant line: area determined by reference to the base points which determine that line . . . . .</i>	421



**MEMORIAL OF THE  
UNITED STATES OF AMERICA**

**MÉMOIRE  
DES ÉTATS-UNIS D'AMÉRIQUE**

## INTRODUCTION

1. This Memorial is filed in accordance with the 1 February 1982 Order issued by the International Court of Justice fixing 26 August 1982 as the time-limit for the filing of Memorials by the United States of America and by Canada (the "Parties") in the case concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area, and with the Order of 28 July 1982 issued by the President of the Chamber of the Court formed to deal with the case extending that time-limit to 27 September 1982.

2. As provided in Article 40, paragraph 1 of the Statute of the Court, this case was brought before the Court by notification of a *Special Agreement*. The *Special Agreement* is annexed to the Treaty between the Government of the United States of America and the Government of Canada to Submit to Binding Dispute Settlement the Delimitation of the Maritime Boundary in the Gulf of Maine Area. The Treaty and Special Agreement were signed in Washington on 29 March 1979 and, as subsequently altered, entered into force upon the exchange of instruments of ratification in Ottawa on 20 November 1981. On 25 November 1981, the Ambassador of the United States of America to the Netherlands and the Ambassador of Canada to the Netherlands, by a joint letter, transmitted to the Registrar of the International Court of Justice a certified copy of the Special Agreement, and certified copies of the Treaty and the Protocol of Exchange recording the exchange of instruments of ratification<sup>1</sup>.

3. The Special Agreement provides for the submission of the dispute to a Chamber of the International Court of Justice, composed of five persons, to be constituted after consultation with the Parties, pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court, and in accordance with the Special Agreement. The requirements of the Statute and Rules of the Court having been met, the Court on 20 January 1982 issued an Order forming a Chamber to hear the case.

4. Article II, paragraph 1 of the Special Agreement sets forth the precise question the Parties have agreed to submit for binding decision:

"1. The Chamber is requested to decide, in accordance with the principles and rules of international law applicable in the matter as between the Parties, the following question:

What is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States of America from a point in latitude 44°11'12"N, longitude 67°16'46"W to a point to be determined by the Chamber within an area bounded by straight lines connecting the following sets of geographic coordinates:

---

<sup>1</sup> The instruments referred to in this paragraph are contained in I.C.J., 1981 General List: No. 67, reproduced here at Annex 2, Vol. I.

latitude 40°N, longitude 67°W; latitude 40°N, longitude 65°W; latitude 42°N, longitude 65°W<sup>1</sup>”

By Article III, paragraph 1 of the Special Agreement, the Parties have agreed that the single maritime boundary to be established by the Chamber shall serve for all purposes relating to the claim or exercise of sovereign rights or jurisdiction:

“1. South and west of the maritime boundary to be determined by the Chamber in accordance with this Special Agreement Canada shall not, and north and east of said maritime boundary the United States of America shall not, claim or exercise sovereign rights or jurisdiction for any purpose over the waters or seabed and subsoil.”

5. In compliance with Article 49 of the Rules of Court, this Memorial of the United States of America is divided into the following parts:

Part I contains a statement of the relevant facts including the geographical setting (geography, geomorphology, and geology); the marine environment (the waters, the food chain, and fish and shellfish of commercial importance); the activities of the Parties and their nationals; and the history of the dispute.

Part II contains a statement of the applicable law.

Part III contains the application of the law to the facts of this case.

The final part of the Memorial sets forth the United States' Submissions to the Chamber. In addition, a Summary of Argument is at the beginning of the Memorial, and a 5-volume Annex containing various documents to which the Memorial refers is included.

---

<sup>1</sup> The starting point (44°11'12"N, 67°16'46"W) and the triangle described by straight lines connecting the specified sets of geographic coordinates (40°N, 67°W; 40°N, 65°W; 42°N, 65°W) require explanation. The starting point is the first point of intersection south of the international boundary terminus of the fishery limits claimed respectively by the United States and Canada upon the extension of fisheries jurisdiction to 200 nautical miles in 1977. Landward of this point there is a dispute as to sovereignty over Machias Seal Island and North Rock. The starting point was chosen to ensure that the issue of sovereignty over those islands is not before this Court. The triangle was established to avoid the possibility of the decision in this case prejudicing the determination of the outer edge of the continental margin or other questions arising in determining the outer limit of the 200-nautical-mile zone. This Court may terminate its delimitation at any point in the triangle. No point in the triangle is more significant than any other.

### SUMMARY OF ARGUMENT

6. The United States and Canada have asked this Court to resolve a dispute over the location of their maritime boundary off the east coast of North America. The Parties have agreed that the single maritime boundary to be delimited by this Court will serve for all purposes under international law as between the Parties.

7. The question before this Court is one of first impression. There are no judicial decisions delimiting between neighboring States a single maritime boundary beyond the territorial sea. There is, however, a large body of law relating to the delimitation of fishing zones, to the delimitation of the continental shelf, as well as to other boundaries. That body of law serves to delineate the principles that govern delimitation of this single maritime boundary.

8. The cardinal principle in delimiting a single maritime boundary is that the delimitation shall be in accordance with equitable principles, taking account of the relevant circumstances in the area, to produce an equitable solution. The equitable principles to be applied include the following: principles regarding the relationship between the relevant coasts of the parties and the maritime areas lying in front of those coasts, including nonencroachment, proportionality, and natural prolongation; the principle of effective conservation and management of the natural resources of the area; the principle of conflict avoidance; and the principle of taking into account the relevant circumstances of the area. Any method or combination of methods that produces an equitable solution may be used to delimit the single maritime boundary.

9. The United States proposes that the course of the single maritime boundary in the Gulf of Maine area should follow a line drawn perpendicular to the general direction of the coast from the starting point for delimitation specified in Article II of the Special Agreement between the Parties, into the triangle described in that Article, but adjusted during its course to avoid dividing two fishing banks on the Scotian Shelf, Browns Bank and German Bank, both of which would be left in their entirety to Canada. Figure 30, para. 304. Canada has relied principally on the equidistance method of delimitation during the course of this dispute. Figure 32, para. 310. The adjusted perpendicular boundary line proposed by the United States (the "adjusted perpendicular line") is consistent with each of the principles governing delimitation of the single maritime boundary and produces an equitable solution. An equidistant boundary line is not consistent with any of these principles and does not produce an equitable solution.

10. The circumstances relevant to the delimitation of the single maritime boundary in this case include the following: the geographical setting, the marine environment, and the activities of the Parties and their nationals. The relevant area (the "Gulf of Maine area") is bounded by the coasts on both sides of the international boundary terminus from Nantucket Island, Massachusetts to Cape Canso, Nova Scotia, and extends seaward to the limit of coastal State jurisdiction.

11. The relevant geographical circumstances that must be taken into account include: (1) the broad geographical relationship of the Parties, with Canada to the north and the United States to the south; (2) the northeastern trend of the east coast of North America and of the coasts of the Parties in the Gulf of Maine area; and (3) the radical changes in direction of the coastline of Canada creating: (a) the

short secondary Canadian coastline at a right angle to the east coast of North America and across from the land boundary terminus, and (b) the protrusion of the Nova Scotia peninsula south of the land boundary. This protrusion combines with the curvature of the New England coast to create the concavity that is the Gulf of Maine. Special geographical features in the Gulf of Maine area are: (1) Georges Bank, (2) Browns Bank, German Bank, and other fishing banks located on the Scotian Shelf, and (3) the Northeast Channel, dividing Georges Bank from the Scotian Shelf.

12. The relevant circumstances of the marine environment that must be taken into account include the separate and identifiable ecological regimes associated with the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf, respectively. The different characteristics of the waters of each regime and the seabed over which they flow define the biological communities within each regime. These different characteristics also integrate such biological communities, including stocks of commercially important fish, and separate those communities from similar communities in the other regimes.

13. The Northeast Channel, dividing Georges Bank from the Scotian Shelf, is important as both a special geographical and special geomorphological feature. It is the only significant break in the surface of the continental shelf along the east coast of North America from Florida to the Laurentian Channel. The Northeast Channel also separates the ecological regime of Georges Bank from that of the Scotian Shelf, as well as most of the commercially important fish stocks associated with those regimes.

14. The following activities of the Parties and their nationals in the Gulf of Maine area are relevant to this delimitation: United States fishermen have fished longer and to the largest extent; United States fishermen alone developed the fisheries of Georges Bank; until recently, Georges Bank was fished exclusively by United States fishermen; the United States and its nationals have provided aids to navigation, including the detailed surveying and charting; the United States has conducted and coordinated search and rescue operations; the United States has provided for defense; the United States has conducted most of the scientific research; and the United States proposed and led international efforts to protect the fisheries.

15. The adjusted perpendicular line respects the relationship between the relevant coasts of the Parties and the maritime areas lying in front of those coasts. The line takes into account the broad geographical relationship between the Parties as adjacent States located on coasts having a northeastern direction. The line also respects the most prominent geomorphological feature in the area—the Northeast Channel. The adjusted perpendicular line leaves to the Parties areas lying in front of each of their respective coasts. These areas are reasonably proportional to the length of the Parties' coastlines in the area. Application of the equidistance method ignores the broad geographical relationship of the Parties in the area, and instead gives effect to a few selected base points on the Parties' coasts. The equidistant line swings halfway across the length of the coastline of the United States in the Gulf of Maine area. It reaches a point 285 nautical miles south of the international boundary terminus, at approximately the same latitude as Philadelphia, Pennsylvania. The equidistant line thus would encroach upon areas lying in front of the coast of the United States, and allocate to Canada an area disproportionate to its short secondary coastline.

16. The adjusted perpendicular line facilitates the conservation and management of the natural resources of the Gulf of Maine area. The line respects the integrity of the ecological regimes associated with Georges Bank and the Scotian Shelf. It allocates to Canada two important fishing banks, German Bank and Browns Bank, parts of which lie in front of the coast of the United States. An equidistant line, by contrast, divides the ecological regime of Georges Bank, so that jurisdiction to conserve and to manage most of the commercially important fish stocks associated with that regime would be divided between the Parties. An equidistant line would also divide jurisdiction over other activities within the ecological regime of Georges Bank, such as development of the mineral resources of the seabed, which could threaten the fishery resources found throughout such regime.

17. The adjusted perpendicular line minimizes the potential for disputes. The line ensures that stocks are, to the extent practicable, managed by a single State, minimizing the need for agreement on particular conservation measures or on allocation of the resource. Moreover, because it borders the Northeast Channel, the adjusted perpendicular line can be identified easily by fishermen and is in an area of little fishing activity. An equidistant line, by contrast, would split Georges Bank, mandating the need for joint management and, thereby, significantly increasing the potential for disputes between the Parties. By passing through the Bank, an equidistant line could not be identified as readily and would cross an area of intense fishing activity, increasing the potential for disputes.

18. The adjusted perpendicular line takes account of, and balances, the relevant circumstances. In addition to respecting the broad geographical relationship of the Parties, the special geographical and geomorphological features such as the Northeast Channel, and the principal ecological regimes in the area, the adjusted perpendicular line takes into account the predominant interest of the United States and its nationals in the relevant area, particularly as regards Georges Bank. The line leaves to the United States an area within which it has fished the longest and to the largest extent (and indeed until recently, an area it fished exclusively). The adjusted perpendicular line also leaves to the United States an area in which it has exercised a broad range of responsibilities (in many instances with the express agreement of Canada). In contrast, an equidistant boundary would leave a large part of Georges Bank to Canada, in disregard of these relevant circumstances and, in particular, of the predominant interest of the United States and its nationals established through continuous activities for more than 200 years.



**PART I**  
**THE FACTS**

**INTRODUCTION**

19. This Part will describe the factual context of the maritime boundary dispute submitted to this Court by the Parties. This Part is divided into four chapters: (1) the geographical setting, including geography, geomorphology, and geology; (2) the marine environment, including the waters, the food chain, and fish and shellfish of commercial importance; (3) the activities of the Parties and their nationals; and (4) the history of the dispute.

## CHAPTER I THE GEOGRAPHICAL SETTING

### SECTION 1. Geography

#### A. MACROGEOGRAPHY

20. The United States of America and Canada are neighbors on the North American continent. Canada lies north of the United States, except for the state of Alaska. Figure 1. The principal international boundary extends from the Pacific Ocean to the Atlantic Ocean in a generally west-to-east direction. It follows parallels of latitude or natural features along its course. From its western end at the entrance to the Strait of Juan de Fuca, the boundary runs through the Strait, then follows the 49th parallel of North latitude due east for approximately one-half the width of the continent, until it reaches the Lake of the Woods. The boundary then continues eastward, following rivers and lakes, including the Great Lakes and the St. Lawrence River, and then the 45th parallel of North latitude, the Connecticut River, the highlands forming the watershed between the St. Lawrence drainage basin and the Atlantic drainage basin, and the St. Croix River. The boundary meets the sea on the east coast at Passamaquoddy Bay, at about the 45th parallel of North latitude. The international boundary then runs through Passamaquoddy Bay and terminates at a point (the "international boundary terminus") between Canada's Grand Manan Island and the United States mainland<sup>1</sup>.

21. The eastern seaboard of North America is oriented along an axis that runs from southwest to northeast<sup>2</sup>, parallel to the Appalachian Mountains and to the seaward edge of the continental shelf. The east coast is marked by a number of major geographical features—the Canadian islands north of Hudson Strait, the coast of Labrador facing northeast on the Labrador Sea, the island of Newfoundland and the neighboring French islands of St. Pierre and Miquelon, the Gulf of

<sup>1</sup> The final point of the international boundary was established pursuant to Article III of the Treaty in Regard to the Boundary Between the United States and Canada, signed at Washington, 24 Feb. 1925; entered into force 17 July 1925. 44 Stat. 2102; 43 L.N.T.S. 239. The geographical coordinates of the final point are: 44°46'35.346" North latitude; 66°54'11.253" West longitude.

<sup>2</sup> All directions referred to in this Memorial are determined from true north. Directions between primary coastal features along the east coast of North America attest to the southwest-to-northeast axis (see Figure 2):

South Florida to Cape Race, Newfoundland	45.7 degrees
North Florida to Cape Pine, Newfoundland	53.6 degrees
Cape Hatteras, North Carolina to Cape St. Mary's, Newfoundland	54.1 degrees
Cape Henry, Virginia to Cape Breton, Nova Scotia	53.3 degrees
Cape Charles, Virginia to Cape Canso, Nova Scotia	53.9 degrees
Cape Henlopen, Delaware to Pennant Point (Halifax), Nova Scotia	56.6 degrees
Nantucket Island, Massachusetts to Cape Sable, Nova Scotia	56.7 degrees
Boston, Massachusetts to Yarmouth, Nova Scotia	56.9 degrees
Cape Ann, Massachusetts to the Chignecto Isthmus	54.5 degrees
Portsmouth, New Hampshire to Saint John, New Brunswick	56.6 degrees

St. Lawrence, Prince Edward Island, Cape Breton Island, the Nova Scotia peninsula, the concavity in the North American coast at the Gulf of Maine, and the two large coastal curvatures in the coast of the United States between Cape Cod and Cape Hatteras, and between Cape Hatteras and southern Florida. Figure 2.

21 22. Parallel to the coast is the continental shelf. There are no major breaks in the surface of the continental shelf from Florida to Newfoundland, with the exception of the Laurentian Channel (which separates the Grand Banks of Newfoundland from the Scotian Shelf<sup>1</sup>) and the Northeast Channel (which separates the Scotian Shelf from Georges Bank). Figure 3. The continental shelf varies substantially in width. Off Florida it is in some places no more than 4 nautical miles (7 kilometers) wide. Off Cape Hatteras, midway along the United States coast, it is about 20 nautical miles (37 kilometers) wide. The shelf gradually broadens to about 200 nautical miles (370 kilometers) off New England, where it extends to the eastern edge of Georges Bank. Further to the north, off Canada's coast, the shelf continues to broaden, eventually reaching a width of over 260 nautical miles (482 kilometers) on the Grand Banks of Newfoundland<sup>2</sup>.

23. The entire United States continental shelf off its east coast measures approximately 95,000 square nautical miles (326,000 square kilometers). The Canadian east coast continental shelf measures approximately 275,000 square nautical miles (943,000 square kilometers)<sup>3</sup>. There have been no reported discoveries of commercial deposits of oil and gas on the east coast continental shelf of the United States. By contrast, the latest available estimates published by the Geological Survey of Canada indicate that the Hibernia discovery off Newfoundland contains at least one-half billion barrels of recoverable oil, and that the Venture discovery off Sable Island contains commercial quantities of gas exceeding one trillion cubic feet<sup>4</sup>.

24. The United States' 200-nautical-mile fishery conservation zone off the east coast encompasses approximately 266,000 square nautical miles (912,000 square kilometers). The major fishing ground off the east coast of the United States is

<sup>1</sup> The Scotian Shelf is described at para. 34.

<sup>2</sup> The breadths noted in this paragraph are measured from the coastline to the 100-fathom-depth contour for the United States and the 200-meter-depth contour for Canada. Under international law, the continental shelf extends beyond these depths; the use of these depths herein is in no way intended to prejudice the rights of the United States and Canada to the full extent of their continental shelves under international law. The 100-fathom depth is not the same as the 200-meter depth—100 fathoms equals 182.9 meters. Charting practice varies in the means by which depth soundings are depicted. This diverse practice has led to the general acceptance of equating the two depths. The current United States charts referred to in this Memorial depict the 100-fathom-depth contour while the Canadian chart used to calculate the breadths noted in this paragraph depicts the 200-meter-depth contour.

<sup>3</sup> The United States' east coast continental shelf is measured to include the area of the seabed out to the 100-fathom-depth contour from the southern tip of Florida to the boundary proposed by the United States in this case. Canadian charts used in the measurement of Canada's east coast continental shelf vary in their use of the 100-fathom and 200-meter-depth contours. The Canadian east coast continental shelf is measured to include the seabed area out to the 200-meter (or the 100-fathom) depth contour from the boundary proposed by the United States in this case northeastward to the Lincoln Sea in the Arctic Ocean.

<sup>4</sup> See "Potential Evaluation", in *Canada's Conventional Oil and Gas Resources*. Geological Survey of Canada, Open File 767, Mar. 1981, pp. 10-14, Annex 38, Vol. II.

Georges Bank, which lies southwest of the Northeast Channel. The Canadian 200-nautical-mile exclusive fishing zone off the east coast encompasses approximately 599,000 square nautical miles (2,055,000 square kilometers). It includes rich fishing grounds on the Grand Banks of Newfoundland, in the Gulf of St. Lawrence, and on the banks of the Scotian Shelf<sup>1</sup>.

#### B. THE GULF OF MAINE AREA

25. The international boundary between the United States and Canada terminates at the northern corner of the large concavity in the coast of North America known as the Gulf of Maine. Figure 4. The geographical area relevant to this case includes the coasts and geographical features from Nantucket Island to Cape Canso, on both sides of the international boundary terminus, and the marine areas seaward from these coasts to the limits of coastal State maritime jurisdiction. This area will be referred to as the "Gulf of Maine area<sup>2</sup>." The Gulf of Maine area has an interior and an exterior component. The major geographical features in the interior include the Nova Scotia peninsula, the Bay of Fundy<sup>3</sup>, the Gulf of Maine itself, and the curvature of the New England coastline. Seaward of these features lies the exterior component, which includes the Atlantic Ocean to the limits of coastal State jurisdiction, and the submerged features of Georges Bank, the Northeast Channel, and the Scotian Shelf (including German Bank, Browns Bank, Roseway Bank, LaHave Bank, Emerald Bank, Sable Island Bank, Middle Bank, Canso Bank, and Banquereau).

26. From the international boundary terminus, the Canadian coastline, like the eastern seaboard, follows a northeastern direction until it reaches the 17-mile (27-kilometer) wide Chignecto Isthmus, 147 miles (237 kilometers) to the northeast. The Isthmus, which forms the boundary between the Canadian provinces of Nova Scotia and New Brunswick, connects the Nova Scotia peninsula to the mainland. There, the Canadian coastline changes direction dramatically. The coastline plunges back to the southwest, creating the Bay of Fundy. Across from the international boundary terminus the coastline then turns at a right angle to the general direction of the east coast of North America and continues to Cape Sable, 100 nautical miles (185 kilometers) southeast of the international boundary terminus. The coastline then turns to the northeast, parallel to the general direction of the east coast of North America, giving Nova Scotia a long primary coastal front on the Atlantic Ocean.

<sup>1</sup> The United States' 200-nautical-mile fishery conservation zone off its east coast is measured from the southern tip of Florida to the boundary proposed by the United States in this case. Canada's 200-nautical-mile fishing zone off its east coast is measured from the boundary proposed by the United States in this case northeastward to the 66°15' parallel of North latitude, which is the northern limit of the fishing zone claimed by Canada.

<sup>2</sup> In this Memorial, "Gulf of Maine" refers to the seabed and body of water landward of a hypothetical line between Nantucket Island and Cape Sable. It does not include the Bay of Fundy. "Gulf of Maine Basin" refers to the Gulf of Maine, except for that part of the Scotian Shelf and superjacent waters that are in the Gulf of Maine. "Gulf of Maine area" refers to the broader area described in the text. The Gulf of Maine area is also the "relevant area" for determining the relevant circumstances in this case. See Part III, Chap. I, para. 278.

<sup>3</sup> The Bay of Fundy is a long, narrow bay, about 30 nautical miles (56 kilometers) in width and 105 nautical miles (194 kilometers) in length. The entire bay is bounded by the coast of Canada, except for a very short coast of the United States facing Passamaquoddy Bay, in the western corner of the Bay of Fundy.

27. From the international boundary terminus, the United States coastline, like the eastern seaboard, follows a southwestern direction until it reaches the vicinity of Cape Ann. From that point the coastline curves in a more southern direction toward Cape Cod. It then continues to the southwest from Cape Cod toward Long Island.

28. Because of the location of the international boundary and the configuration of the coasts, the single maritime boundary to be determined by this Court must reach the open waters of the Atlantic Ocean through the Gulf of Maine, although all of the Gulf of Maine is south of the international boundary terminus. In the Gulf of Maine, the coastline of the United States is several times longer than the Canadian coastline. Both coasts are deeply indented and cut into, and in some places are fringed with small islands, rocks, and shoals. The short Canadian coast in the Gulf of Maine is convex, while the long New England coast is concave. The coasts of the two countries are adjacent where the international boundary meets the sea, they are adjacent in the seaward area beyond the Gulf of Maine, and they are adjacent in their broad geographical relationship in the Gulf of Maine area.

29. The geographical features of the Gulf of Maine area are aligned with the northeastern direction of the east coast of North America. In the interior, the coast in the vicinity of the international boundary terminus forms a straight line from Cape Ann to the Chignecto Isthmus, along a northeastern bearing. In the exterior of the area, seaward of a line between Nantucket Island and Cape Sable, the features similarly are situated along a northeastern bearing. The Bay of Fundy, the Nova Scotia peninsula, Georges Bank, and the continental shelf all stretch in a similar northeastern direction. Both the Northeast Channel and the short coastline of Nova Scotia facing onto the Gulf of Maine, however, are perpendicular to the general direction of the east coast of North America.

## SECTION 2. The Geomorphology of the Gulf of Maine Area

30. The continental shelf in the Gulf of Maine area is a part of the North American Atlantic continental margin, which extends from the Straits of Florida in the southwest to beyond the Grand Banks of Newfoundland in the northeast. (21) Figure 3. The geomorphology (the shape of the sea floor) of the Gulf of Maine area consists of banks and ledges, together with shallow depressions known as basins, and a channel that marks a significant break in the surface of the continental shelf. All of these features were cut by fluvial erosion and later modified by glacial action. The four principal geomorphological features in the Gulf of Maine area are the Northeast Channel, Georges Bank, the Scotian Shelf, and the Gulf of Maine Basin.

### A. NORTHEAST CHANNEL

31. The Northeast Channel is a deep, wide channel that separates Georges Bank from the Scotian Shelf and connects the floor of the Gulf of Maine Basin to the continental slope. It measures up to 25 nautical miles (46 kilometers) in width, averages 123 fathoms (225 meters) in depth, and reaches a depth of 127 fathoms (232 meters) where it joins the continental slope. Landward, the Northeast Channel descends gradually into the Georges Bank Basin, which reaches a depth of 206 fathoms (377 meters). The Northeast Channel is one of only two significant breaks in the surface of the continental shelf off the east coast of North America.

The other such break, the Laurentian Channel, separates the Scotian Shelf from the Grand Banks of Newfoundland to the northeast. The formation of the Northeast Channel began approximately 40 to 45 million years ago, when the sea level fell and the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf were dry land for long periods of time. Inland rivers and streams extended their courses through the entire area. Two major drainage systems developed. One flowed to the sea in the vicinity of the Northeast Channel, while the other drained over what is now the western part of Georges Bank. Within the past 1 million years, huge glacial ice sheets from the north advanced and retreated through the area several times. During the most recent period of glacial activity, occurring about 17,000 years ago, a tongue of the ice sheet covering the Gulf of Maine advanced through what is now the Northeast Channel, reaching the open sea. The scouring action by the ice sheet widened and deepened the Channel, and gave it its present U-shaped profile.

#### B. GEORGES BANK

32. Georges Bank is an extension of the Atlantic Coastal Plain into and under the sea<sup>1</sup>. It extends approximately 200 nautical miles (370 kilometers) from Nantucket Shoals to the Northeast Channel. The maximum width of the Bank is about 100 nautical miles (185 kilometers). The area of the Bank is approximately 18,100 square nautical miles (62,200 square kilometers)<sup>2</sup>. The depth of the waters over the Bank averages 27 fathoms (50 meters), with some areas, such as Georges Shoals, as shallow as 1.5 fathoms (3 meters).

33. Georges Bank is capped by a layer of surficial sediments less than 25 meters thick. These sediments consist for the most part of unconsolidated materials deposited as "glacial outwash", i.e., by the runoff of streams and melt water from the frontal edge of the ice sheet, which was prevented from advancing over all but the northeastern part of the Bank by the steep northern edge of the Bank. These unconsolidated materials consist primarily of sand, with lesser amounts of gravel in certain local areas, particularly on the northeast portion of Georges Bank. Over the last 10,000 years, large sand waves and shoals have formed on Georges Bank. Some of these sand waves measure as much as 15 meters in height and over 750 meters in length. The southern edge of Georges Bank rapidly descends to the deep ocean floor and has an irregular surface, incised by a number of deep submarine canyons and gullies. On the southwestern part of the Bank, the glacial outwash inundated, or "choked", the western drainage system. The remnant of the western drainage system (the Great South Channel) is an ill-defined, shallow depression on the southwestern part of Georges Bank. It reaches depths of no more than 46 fathoms (85 meters) and does not extend to the seaward edge of the continental shelf. By contrast, the Northeast Channel is as

<sup>1</sup> The Atlantic Coastal Plain is one of three distinct physiographic regions on the east coast of North America. The Coastal Plain reaches from Florida to Long Island. It extends to the shoreline, where it plunges beneath the sea to form the continental shelf extending to the northeastern edge of Georges Bank. Long Island, Martha's Vineyard, Nantucket Island, and Cape Cod are eastward extensions of the Coastal Plain that are above sea level. Further inland are the Appalachian Highland Province, from Alabama to New Brunswick, and the Canadian Shield, north of the Gulf of St. Lawrence. A map showing these physiographic regions is found at Annex 39, Vol. II.

<sup>2</sup> The area of Georges Bank is measured from the western edge of Nantucket Shoals, eastward within the 100-fathom-depth contour to the Northeast Channel.

much as four to five times deeper and does extend to the seaward edge of the continental slope.

### C. SCOTIAN SHELF

34. The geomorphology of the Scotian Shelf is complex in comparison to the Georges Bank portion of the continental shelf off New England, which is one continuous topographic feature. The Scotian Shelf consists of a series of banks and interspersed basins extending off the Nova Scotia peninsula from the Northeast Channel to the Laurentian Channel, from German Bank and Browns Bank at the southwestern end, through Roseway Bank, LaHave Bank, Emerald Bank, Sable Island Bank, Middle Bank, and Canso Bank, to Banquereau at the northeastern end. The seaward edge of the Scotian Shelf, from the Northeast Channel northeastward for a considerable distance, descends to the deep ocean floor more gradually than does the seaward edge of Georges Bank, and has a more regular surface, marked only by occasional gullies. The width of the Scotian Shelf ranges from approximately 70 nautical miles (130 kilometers) off Cape Sable to approximately 138 nautical miles (256 kilometers) off Cape Canso. The long southwest-northeast axis of the Scotian Shelf is approximately 400 nautical miles (740 kilometers) in length. It is more than two-and-one-half times as large as Georges Bank, with an area of approximately 48,400 square nautical miles (166,000 square kilometers)<sup>1</sup>. The banks on the Scotian Shelf, other than Sable Island Bank, lack the large sand shoals and other wave-like configurations found on Georges Bank. The glacial and fluvial deposits on these banks are less thick than the materials on Georges Bank.

### D. GULF OF MAINE BASIN

35. The Gulf of Maine Basin, a large rectangular depression with an area of approximately 21,430 square nautical miles (74,180 square kilometers) and an average depth of 82 fathoms (150 meters), is landward of Georges Bank and west of the Scotian Shelf. On the floor of the Gulf of Maine Basin are many small basins, separated by ridges, ledges, and knolls. This irregular surface was caused primarily by the rivers and glaciers that traversed the area when it was dry land, and eroded the softer sedimentary rocks more deeply than the harder rocks.

## SECTION 3. The Geology of the Gulf of Maine Area

36. The subsurface geological structure underlying the entire North American Atlantic continental margin, including the Gulf of Maine area, is believed to be essentially continuous. The basic trend of this structure generally parallels the coast. The geological basement of the continental margin is composed of hard igneous and metamorphic rock, formed primarily by volcanic activity and the hardening of molten materials. A thick layer of sedimentary rocks, which in some places exceeds 10 kilometers, gradually covered the geological basement. The sedimentary rocks obscure the basement structure.

37. The precise characteristics of individual basement features in the Gulf of Maine area can be ascertained only by more extensive deep drilling than has occurred to date. The geological structure of the area has been studied extensively,

<sup>1</sup> The area of the Scotian Shelf is measured from the coastline of Nova Scotia to the 200-meter-depth contour.

however, through seismic surveys and other *inferential means*. A number of features have been identified. For instance, a series of deep basins and stable platforms are known to underlie the seabed in the area. These *geological basins*, filled with sedimentary rocks, are to be distinguished from geomorphological basins, such as those that characterize the floor of the Gulf of Maine Basin. The Georges Bank basin, which is the collective name for a number of geological basins, lies beneath much of Georges Bank itself. To the northeast, the Scotian basin underlies the seaward side of the Scotian Shelf. Landward of these basins are three stable basement platforms: the Long Island, the LaHave, and the Gulf of Maine platforms. A faulted transitional zone separates Georges Bank basin from these platforms, and contains a number of features, including a broad depression known as the Yarmouth sag, and an elongated, uplifted area known as the Yarmouth arch. The precise nature of these features and their relationship to one another cannot be stated with certainty without extensive deep drilling.



## CHAPTER II

### THE MARINE ENVIRONMENT

38. The marine environment of the Gulf of Maine area is characterized by three principal ecological regimes: those of the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf. These separate and identifiable ecological regimes play a major role in determining the distribution and abundance of commercial fish and shellfish in the Gulf of Maine area. The location of the fishery resources has, in turn, shaped human activities in the area <sup>1</sup>.

39. The geomorphological features of the three principal ecological regimes in the Gulf of Maine area, together with the Northeast Channel, largely determine the circulation patterns of the overlying waters. The circulation patterns and other physical characteristics of the overlying waters, in turn, largely shape the communities of flora and fauna within them. Thus, distinct communities of life forms inhabit each regime at all levels of the food chain, from microscopic plant life (phytoplankton) to small animal organisms (zooplankton) to fish and shellfish. Although no such community is totally isolated, the community within each regime has its own distinctive characteristics and, in important respects, does not interact with the communities of the other regimes. The location and maintenance of the commercial fishery resources in the Gulf of Maine area are dependent upon these regimes.

#### SECTION 1. The Waters

40. The different characteristics of the waters overlying the Scotian Shelf, the Gulf of Maine Basin, and Georges Bank, and of the seabed over which they flow, define and integrate the biological communities within each of the three ecological regimes. Thus, the distribution of flora and fauna is a function of the patterns of water circulation and the preferences of marine organisms for areas characterized by certain temperatures, salinity, and bottom sediments. Furthermore, transition zones, or fronts, occur where these bodies of water meet. Some of these zones, particularly the one between Georges Bank and the Scotian Shelf, limit movement and exchange between regimes of many species of marine organisms.

#### A. CIRCULATION PATTERNS

② 41. The pattern in which the waters flow through the Gulf of Maine area is illustrated in Figure 5. The water flowing over the Scotian Shelf comes from the Gulf of St. Lawrence and the subarctic region to the north. It flows generally southwestward over the Shelf, parallel to the Nova Scotia peninsula. Some of this water continues southwestward seaward of the continental shelf. The remainder curves around Cape Sable, with a portion of it forming a clockwise gyre over Browns Bank, and the bulk of it feeding into the surface waters of the Gulf of Maine Basin and the Bay of Fundy. Water also flows rapidly into the bottom of the Gulf of Maine Basin through the Northeast Channel. This water, which

<sup>1</sup> The pioneering study on this subject was that of H. B. Bigelow, "Physical Oceanography of the Gulf of Maine", *Bulletin of the United States Bureau of Fisheries*, Vol. XL, 1924, Part 2 (Document 969), pp. 513-521. (Introduction to this study), see Annex 33, Vol. II.

originates seaward of the continental shelf, is highly saline. As it fills the bottom of the Basin, it lifts the upper, less saline, and therefore less dense, layers of water. Within the Basin, the water moves in a complex counterclockwise gyre. Water moves from the Gulf of Maine Basin to Georges Bank in a variety of ways. Surface water spins out of the gyre in the Gulf of Maine Basin and flows onto Georges Bank. In addition, water wells upward onto Georges Bank from the depths of the Gulf of Maine Basin<sup>1</sup>. Lastly, a strong current develops that flows eastward along the steep northern edge of Georges Bank and turns southward along the eastern end of the Bank. A separate clockwise gyre forms over Georges Bank. As this water circulates, some of it leaves Georges Bank and flows onto the southern New England shelf.

## B. OTHER CHARACTERISTICS

42. The water in each of the three principal ecological regimes has distinctive seasonal temperature and salinity characteristics, and varies in the extent to which it is either stratified or mixed vertically. These differences are a function of the source of the water, the extent to which it is mixed with water from other sources, and the depth of the water.

### 1. Scotian Shelf

43. The surface water over the Scotian Shelf is less saline, and its average temperature significantly colder, than the waters of the Gulf of Maine Basin or Georges Bank. The waters over the Scotian Shelf are relatively low in salinity, due to the mixing of the fresh water from the St. Lawrence River with the ocean waters. The waters over the Scotian Shelf are relatively cold due to their northern origins. Limited vertical mixing occurs over the banks of the Scotian Shelf. The waters surrounding and between the banks of the Scotian Shelf are stratified into layers of different temperature and salinity during the summer, and are mixed during the winter.

### 2. Gulf of Maine Basin

44. The waters of the Gulf of Maine Basin reach depths of approximately 206 fathoms (377 meters). The water entering the surface of the Gulf of Maine Basin from the Scotian Shelf is relatively low in salinity, whereas the water entering the bottom of the Basin through the Northeast Channel is highly saline and rich in nutrients. The bottom water remains relatively constant in temperature throughout the year, while the surface water varies greatly in temperature seasonally. During the winter, the surface water cools and tends to sink; consequently, the top 82 to 109 fathoms (150 to 200 meters) of the water column are mixed vertically. Salt and nutrients from the deeper water are mixed into the rest of the water column at this time. During the spring and summer, the water in the Gulf of Maine Basin is more stratified because the surface waters are warmed by the sun, while the inflow through the Northeast Channel continues to maintain the temperature of the bottom layer. Between the surface and the bottom waters, a cold intermediate layer, a remnant of the winter cooling, remains and slowly dissipates through the summer.

<sup>1</sup> Some of this water also upwells onto Nantucket Shoals.

### 3. *Georges Bank*

45. Over Georges Bank, the water column is well-mixed from top to bottom year-round due to the shallowness of its water and the strong tidal currents. The water column warms in the summer, reaching temperatures comparable to those off southern New England. Because of their origins and because of the mixing action above Georges Bank, these waters are more saline than the waters over the Scotian Shelf and the surface waters of the Gulf of Maine Basin.

### C. FRONTS

46. Marked fronts exist where bodies of water with differing temperature, salinity, density, and other characteristics come together. These fronts are similar to the familiar weather fronts that separate cold air masses from warm air masses. Such fronts occur between the waters of Georges Bank and those of the Scotian Shelf. A slightly less well-defined front also occurs between the waters of Georges Bank and those of the Gulf of Maine Basin.

## SECTION 2. The Food Chain

47. The distribution and abundance of phytoplankton and zooplankton, the initial links in the marine food chain, determine to a large extent the location of other species, including commercial fish and shellfish, that feed upon them. The distribution and abundance of plankton in the Gulf of Maine area depend upon the characteristics of both the seabed and the waters of the separate ecological regimes in the area.

### A. PHYTOPLANKTON

48. Phytoplankton are food for herbivorous organisms, including zooplankton, larval fish, larval benthos, some adult fish, and many adult benthos<sup>1</sup>. Phytoplankton have either a rudimentary or no form of locomotion, and are transported passively by water currents. Consequently, they are usually retained in the Gulf of Maine Basin by its counterclockwise gyre, and over Georges Bank and Browns Bank by their respective clockwise gyres. Thus, it is not surprising that phytoplankton species are not uniformly distributed throughout the area. Those on Georges Bank tend to be larger (net) plankton, characteristic of the continental shelf to the southwest. By contrast, phytoplankton species along the edge of the Gulf of Maine Basin and on the Scotian Shelf are generally smaller (nanno) plankton.

49. Because they are plants, phytoplankton need light and nutrients to grow. They grow best in shallow, well-mixed waters, where nutrients on the bottom are churned upward and reach the sunlit surface waters. In the Gulf of Maine area, phytoplankton are most plentiful in the well-mixed waters along the coast, in the mouth of the Bay of Fundy, and over Georges Bank. Phytoplankton are also plentiful over the shallower banks of the Scotian Shelf. They are not plentiful in the Northeast Channel or in the center of the Gulf of Maine Basin. Relative phytoplankton distribution is shown by satellite imagery. Figure 6.

---

<sup>1</sup> Many species of whales also rely on plankton as a primary food source.

### B. ZOOPLANKTON

50. Zooplankton congregate in areas of high phytoplankton production. Like phytoplankton, they are usually kept in the Gulf of Maine Basin by its counterclockwise gyre, and over Georges Bank and Browns Bank by their clockwise gyres. There are differences in the species composition and quantity (biomass) of the respective zooplankton communities of the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf. Although the dominant species of zooplankton are similar throughout the area, each community includes species that do not appear in the others<sup>1</sup>.

### C. BENTHOS

51. An important source of food for fish are benthos—bottom-dwelling organisms, such as crustacea, starfish, worms, snails, sponges, barnacles, crabs, lobsters, and scallops. The benthic communities of Georges Bank, the Scotian Shelf, and the Gulf of Maine Basin differ from each other in species composition and quantity (biomass)<sup>2</sup>. These differences result to a large extent from variations in bottom sediment, water temperature, and phytoplankton production. Georges Bank, like areas of the shelf off southern New England, is shallow and consists largely of sandy sediments. The benthic community on Georges Bank is typical of those found on sandy sediments, and is dominated by burrowing and surficial sand dwellers, including crustacea, molluscs, free-living worms, and echinoderms. The Scotian Shelf, by contrast, includes large areas of coarser sediments, such as gravels, cobbles, and boulders, as well as sandy sediments, silts, and muds. As a result, the benthic community on the Scotian Shelf is characterized by a greater variety of organisms than the community on Georges Bank. These organisms include attached forms such as plume worms, barnacles, lamp shells, sponges, coelenterates, and bryozoans. The Gulf of Maine Basin consists largely of silts and muds. The benthos that inhabit the Basin include brittle stars, sea urchins, sea squirts, and tube-dwelling worms.

## SECTION 3. Fish and Shellfish of Commercial Importance

52. Approximately 200 species of fish and shellfish can be found in the Gulf of Maine area, of which some 40 to 50 species are of commercial significance. Each of these species has preferred habitats. That is, the species are found in areas where the water temperature, salinity, depth, bottom sediments, and other ecological features are suitable for survival of the species. Many species of fish and shellfish, distributed over large portions of the Gulf of Maine area, are divided into separate stocks associated with the area's ecological regimes. A "stock" is a community of fish or shellfish that, under normal circumstances, is capable of maintaining itself without immigration from other communities of the same species. Damage done to the fish in one stock, whether by overfishing or other human activities, will affect the stock throughout the ecological regime in which it lives. Such damage would not, however, have any significant impact on maintenance of other stocks of the same species associated with different ecological

<sup>1</sup> For tables showing the spring and fall species composition of zooplankton, see Annex 44, Vol. II.

<sup>2</sup> For a table showing the species composition of benthos, see Annex 44, Vol. II.

regimes. A fish stock, rather than a species, is the appropriate subject of fisheries conservation and management efforts<sup>1</sup>.

53. The Northeast Channel is a natural division between separate stocks of fish and shellfish found in the respective ecological regimes of Georges Bank and of the Scotian Shelf<sup>2</sup>. In the Gulf of Maine Basin, there is also a division between stocks that follows the line of deepest water in the Basin. This natural division within the Gulf of Maine Basin, and the natural divisions between the Basin and the Scotian Shelf, and between the Basin and Georges Bank, are less well-defined than the division in the Northeast Channel between Georges Bank and the Scotian Shelf. *The following discussion focuses on the natural division between Georges Bank and the Scotian Shelf.*

54. Many stocks over Georges Bank and over the Scotian Shelf are maintained as separate units by the same features that define those two ecological regimes in other respects. For example, the gyre formed by the waters overlying Georges Bank and the gyre overlying Browns Bank keep free-floating eggs and larvae of the fish and shellfish that inhabit these separate areas within their respective ecological regimes, where they mature, grow, and ultimately may be harvested. The water circulation patterns also help to prevent free-floating eggs and larvae of one regime from entering the other. Similarly, mature fish and shellfish of many species normally do not cross the Northeast Channel between Georges Bank and the Scotian Shelf.

---

<sup>1</sup> Canada accepts this point of view:

*"... stocks should be managed as individual units.*

Few species form homogeneous mixtures of individuals throughout the species' range. Rather these individuals tend to be grouped into separate populations or stocks, often associated with particular oceanographic features, such as current systems or distinct shelf areas, with little interchange between the separate groups. Each group will have its own particular set of biological characteristics such as growth rate or mortality rate, dependent on its genetic makeup and the environment which it inhabits. Each will respond to fishing pressure in a different way, depending on the size of the particular stock and its unique characteristics. Management procedures should be designed to take account of the varying characteristics of each stock.

The areas inhabited by such stocks will vary in size, but for coastal species are usually well-defined. For some stocks, the distribution may extend to coastal waters of several adjacent states; for others the distribution will be confined to the adjacent waters of a single state. In any case, the stock must be managed as a whole if management is to be effective. This is not to say that stocks should be managed in isolation from other stocks of the same species, or in isolation from other species. The management system must be effective for exploited species over broad coastal areas; otherwise fishing effort is simply diverted to species or stocks not under regulation."

Working Paper on Management of the Living Resources of the Sea, submitted by Canada to the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the limits of National Jurisdiction, U. N. Doc. A/AC.138/SC.II/L.8, pp.172-173, see Annex 91, Vol. IV.

<sup>2</sup> The separation of stocks at the Northeast Channel has long been recognized and has been reflected in many studies done under the auspices of the North American Council on Fishery Investigations (NACFI), and later, of the International Commission for the Northwest Atlantic Fisheries (ICNAF). See Part I, Chap. III, para. 126.

- ②③ 55. Figure 7 lists 16 commercially important species in the Gulf of Maine area. Separate stocks of 12 of these species are associated with Georges Bank. Separate stocks of 11 of these same 12 species are associated with the Scotian Shelf<sup>1</sup>. Thus, separate stocks of silver hake, herring, haddock, cod, red hake, yellowtail flounder, redfish, scallops, white hake, and lobster are found in each regime. Fishing on Georges Bank of any of these stocks, and management measures relating thereto, would not affect maintenance of the stocks of the same species over the Scotian Shelf. Similarly, fishing of any of these stocks over the Scotian Shelf, and management measures relating thereto, would not affect maintenance of the stocks of the same species over Georges Bank. The same cannot be said of the effect within either regime of fishing for these stocks within any part of that regime. Thus, fishing for a stock on any part of Georges Bank will affect the maintenance of that stock throughout Georges Bank.
- ②③ 56. Stocks of the other four species shown in Figure 7—mackerel, pollock, shortfin squid, and argentine—may migrate from one ecological regime to another, and are not necessarily identified with any one regime. They may be found from time to time in the Northeast Channel.
- ②③ 57. Figure 7 indicates the ranges of stocks of the 16 commercially important species in a zone extending from Block Island (off Rhode Island), across Georges Bank, the Northeast Channel, and Browns Bank, to LaHave Bank on the Scotian Shelf (off the southern coast of Nova Scotia). The range of individual stocks is indicated on the chart by bars<sup>2</sup>. For example, the chart shows that stocks of yellowtail flounder are found on Georges Bank, on Browns Bank, and to the west of Georges Bank on the southern New England shelf. It shows that there is a sharp division marked by a separation between the stocks of yellowtail flounder at the Northeast Channel, and a less well-defined division between the stocks of yellowtail flounder west of Georges Bank. In all, the chart shows sharp stock divisions at the Northeast Channel in 12 of the 16 species depicted. Regardless of the season, most species are not found in fishable quantities in the Northeast Channel. Thus, the Northeast Channel is a natural boundary between fishing activities, as well as a natural division between the stocks of Georges Bank and the stocks of the Scotian Shelf.

#### SECTION 4. Summary

58. Three separate and identifiable ecological regimes exist side by side in the Gulf of Maine area—over Georges Bank, over the Scotian Shelf, and over the Gulf of Maine Basin. These regimes are a result of the unique coincidence of the geomorphological features of the Gulf of Maine area, including the Northeast Channel. The geomorphological features determine the pattern in which the water flows through the area, with the consequence that different marine environments exist in each of the ecological regimes. If these geomorphological features did not exist, there would be a gradual continuum of marine climate, flora, and fauna from Cape Hatteras to the Laurentian Channel. Instead, the Northeast Channel stands between the Georges Bank and Scotian Shelf ecological regimes, and greatly influences the ecological regime in the Gulf of Maine Basin by acting as a

<sup>1</sup> A stock of longfin squid is found in the Georges Bank regime, but not in the Scotian Shelf regime.

<sup>2</sup> The bars indicate the range in which the stocks may be found in fishable quantities.

conduit for the flow of dense water from seaward of the continental shelf into the Basin. The ecological regimes are distinguished from one another by the respective characteristics of their waters and consequently by the food chains found within them. The natural boundary that divides the Georges Bank regime from that of the *Scotian Shelf* also divides many species of fish and shellfish into separate stocks. These stocks have been the subject of intense fishing activities. The division of the stocks at the Northeast Channel makes it both possible and appropriate to manage the stocks over Georges Bank separately from the stocks over the Scotian Shelf.

CHAPTER III  
ACTIVITIES OF THE PARTIES AND THEIR NATIONALS  
IN THE GULF OF MAINE AREA

59. In the Gulf of Maine area, most human activities fall into two broad categories: those of private citizens and those of governments. The activities of private citizens are principally fishing, development of the mineral resources of the seabed (primarily hydrocarbons), maritime commerce, and recreation. Governmental activities include marine surveying and charting, development and maintenance of other aids to navigation, search and rescue services, resource management, scientific research, and defense. As this chapter will demonstrate, both categories of activities have been conducted in the Gulf of Maine area primarily, and on Georges Bank almost exclusively, by the United States and its nationals.

SECTION 1. Fishing

60. The history of fishing in the Gulf of Maine area is bound up with the European settlement of North America and with fishing in the Northwest Atlantic from New England to the coast of Labrador. The United States fishery in New England evolved from a local subsistence industry in the early 17th century into a thriving commercial industry from New England to Labrador by the 18th century. In the 19th century, political disputes with Canada and technological changes in the harvesting, processing, and marketing of fish led the New England fishermen to shift their efforts away from the inshore cod fisheries off Newfoundland and Nova Scotia. The New England fishermen at that time developed the offshore fisheries on Georges Bank and on Browns Bank and the other banks on the Scotian Shelf. By contrast, Canadian fishermen did not develop a significant year-round offshore fishery in any part of the region until the 20th century. When such a fishery did first develop, it was located on the Grand Banks of Newfoundland and on the northern banks of the Scotian Shelf.

61. In the 1950s, other States began to compete with the United States and Canada in the fisheries off Newfoundland and Nova Scotia. Canada began at this time to fish on Georges Bank and was soon followed by other States. In the following years, up to 1977, large harvests on Georges Bank severely depleted several stocks and threatened the continuing existence of the New England fishing industry.

62. In 1977, the United States and Canada extended their fisheries jurisdictions to 200 nautical miles from the coast. The United States asserted exclusive jurisdiction over its traditional fishery on Georges Bank, but did not claim jurisdiction over its traditional fisheries on Browns Bank and the other banks of the Scotian Shelf. Canada asserted exclusive jurisdiction over vast fisheries off Labrador, on the Grand Banks of Newfoundland, in the Gulf of St. Lawrence, and on the Scotian Shelf. At the same time, Canada claimed a significant part of the Gulf of Maine and Georges Bank.

A. EARLY DEVELOPMENT

63. As early as the 16th century, vessels from Europe fished off the coasts of Newfoundland to supply European markets. The fish, mostly cod, were either dried onshore and salted, or packed in salt brine and shipped to Europe. By the be-



ginning of the 17th century, both France and Great Britain were sending expeditions to explore beyond the already well-developed fishing banks off Newfoundland. They found stocks of cod along the shores of the Gulf of Maine rivaling those of Newfoundland. Also, the climate was more hospitable along these shores than in the northern areas. Consequently, seasonal fishing stations and permanent settlements, such as the famous settlement at Plymouth in 1620, began to appear along the Gulf of Maine coast <sup>1</sup>.

64. The early New England settlers were dependent upon the local fisheries for their subsistence. They lacked the vessels to compete with the Europeans on a commercial level in the Newfoundland fishery. New England fishermen began to develop larger vessels and to venture beyond the inshore banks as the New England population grew and the demand for salt cod increased. Additionally, many fishing vessels left England in the middle of the 17th century and adopted New England as the base for their Newfoundland operations. These events, along with an expanding demand for salt cod in the British sugar colonies of the West Indies, transformed the New England fishery from a subsistence activity to a large-scale commercial enterprise. It formed a basis for New England's rise to economic maturity <sup>2</sup>.

65. By the time of the American Revolution (1775-1783), over 650 vessels employed more than 4,000 men in the New England fishery <sup>3</sup>. Fishing rights were one of the United States' most important interests in the peace negotiations at Paris in 1783, as evidenced by the negotiating instructions given to the American Peace Commissioners. They were instructed not to agree to any treaty with Great Britain:

“without an explicit stipulation on her [Great Britain's] part not to molest or disturb the Inhabitants of the United States of America in taking fish on the Banks of Newfoundland, and other fisheries in the American Seas any where, excepting within the distance of three leagues of the Shores of the Territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation—and in the negotiation you are to exert your most strenuous endeavors to obtain a nearer distance in the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia. As to which latter we are desirous, that even the Shores may be occasionally used for the purpose of carrying on the Fisheries by the Inhabitants of these States <sup>4</sup>.”

66. The peace negotiations did not question the rights of United States fishermen to fish on Georges Bank, but only concerned their rights to engage in the more distant inshore fisheries off Newfoundland, Nova Scotia, and in the Gulf of St. Lawrence, as well as to dry fish on the shores north to Labrador. The

<sup>1</sup> For a general discussion of the settlement of New England, see S.E. Morison, “The Colonial Background”, in *Maritime History of Massachusetts 1783-1860*, 1979, Annex 12, Vol. II.

<sup>2</sup> See generally, H. Innis, *The Cod Fisheries: A History of an International Economy*, 1940, pp. 111-119, Annex 13, Vol. II.

<sup>3</sup> See L. Sabine, *Report on the Principal Fisheries of the American Seas*, The Treasury Dept. of the United States, 1853, p. 174, Annex 14, Vol. II.

<sup>4</sup> Continental Congress, Instruction for Negotiating a Treaty of Commerce with Great Britain, 14 Aug. 1779, *Journals of the Continental Congress*, Vol. XIV, pp. 961-962, Annex 15, Vol. II.

American Peace Commissioners succeeded in the negotiations<sup>1</sup>, thus permitting the United States to continue to dominate the fisheries in the Northwest Atlantic.

67. Following the War of 1812, Great Britain restricted fishing in the inshore grounds off Nova Scotia and Newfoundland on the basis that the War had abrogated the 1783 Treaty of Peace. The Convention of 1818 between the United States and Great Britain redefined the rights of American fishermen in the fisheries off Canada<sup>2</sup>. These inshore rights were not as extensive as those in the 1783 Treaty of Peace, but the New England fishing industry continued to dominate fishing in the region. In the 19th century, there were many disputes over the meaning of the provisions of the Convention of 1818<sup>3</sup>. These disputes culminated in the North Atlantic Coast Fisheries Arbitration of 1910, which upheld Great Britain's right to regulate American activities in certain bays and within 3 miles of the Canadian coast<sup>4</sup>.

#### B. DEVELOPMENT OF FISHERIES ON GEORGES BANK

68. Scattered reports of New England vessels landing summer catches from Georges Bank date back to the early 18th century<sup>5</sup>. The severe weather conditions and treacherous shoals of Georges Bank (including Georges Shoal) discouraged early development. Moreover, little reason existed at that time to venture out to Georges Bank because codfish—the industry's mainstay—and mackerel were abundant in safer inshore waters.

69. New England fishermen began sustained operations on Georges Bank in the 1820s<sup>6</sup>. The rapid industrialization and population growth in New England, the mid-Atlantic states, and the American midwest brought about an increased demand for fish, especially fresh fish<sup>7</sup>. The cod taken from Georges Bank, known as "Georges Fish" in the 19th century, gained a favorable reputation<sup>8</sup>. It was soon discovered that halibut, mackerel, and haddock were well-suited to processing as fresh fish. By 1825, portions of the Gloucester, Massachusetts mackerel fleet visited Georges Bank regularly during the summer months. The halibut fishery was established on Georges Bank by New England fishermen by 1828. By 1839, United States fishermen were braving Georges Bank to harvest their catch the year-round<sup>9</sup>.

70. As United States interest in Georges Bank increased, technological innovations were made by New Englanders to facilitate fishing on the Bank. The first

<sup>1</sup> See Art. III of the Treaty of Peace, 1783, Annex 16, Vol. II.

<sup>2</sup> For the Convention of 1818, and a map of its fishing areas, see Annex 16, Vol. II.

<sup>3</sup> Fifteen treaties concerning these fishing disputes were concluded in the 19th and early 20th centuries. For a list of the treaties and a detailed account of the problems concerning the Convention of 1818, see R. McFarland, *A History of the New England Fisheries*, 1911, Chap. XIX, "The Fisheries Question", Annex 17, Vol. II.

<sup>4</sup> 11 R. Int'l Arb. Awards 167.

<sup>5</sup> See C. Southack, *The New England Coasting Pilot*, 1718, Annex 23, Vol. II, and discussion at para. 105, below; and G.B. Goode, *The Fisheries and Fishery Industries of the United States*, Vol. I, p. 187, Annex 18, Vol. II.

<sup>6</sup> Goode, *op. cit.*, Vol I, p. 197, Annex 18, Vol. II.

<sup>7</sup> Morison, *op. cit.*, Chap. XIX, "Cape Cod and Cape Ann", p. 308, Annex 12, Vol. II.

<sup>8</sup> Goode, *op. cit.*, Vol. II, p. 201, Annex 18, Vol. II.

<sup>9</sup> See generally Goode, *op. cit.*, Annex 18, Vol. II, particularly plates 30-35.

major innovation was the introduction in 1836 of "well smacks"—a new type of fishing vessel designed specifically for the halibut fishery on Georges Bank<sup>1</sup>. This vessel had a shallow draught allowing it to operate in the shallow waters of Georges Bank, and a compartment filled with sea water that enabled the fishermen to keep their catch fresh until they could bring it to port. Another major development occurred in 1839 with the first use of ice to preserve the catch and bait. The growth of the cod and haddock fisheries on Georges Bank in the mid-19th century prompted the development of yet another type of vessel—the Georges Bank schooner, or "George's-men", as these vessels were called.<sup>2</sup> These vessels were swift and, like the well smacks, had shallow draughts that were suited to the shoals of Georges Bank and to the more shallow of New England's ports. The increased level of activity on Georges Bank brought about the development of a specialized marine insurance company to cover the risks associated with the Georges Bank fisheries<sup>3</sup>.

71. The New England fisheries on Georges Bank thrived throughout the 19th century, notwithstanding the dangers. Between 1837 and 1873, 87 schooners and 722 men from Gloucester, Massachusetts alone were lost on Georges Bank<sup>4</sup>. The New England fishing industry persevered, and, in response to expanding demand, established new offshore fisheries on Browns Bank and on Sable Island Bank on the Scotian Shelf, in addition to its exclusive province on Georges Bank. New England vessels also continued to work the traditional inshore grounds for cod, herring, and mackerel, including those off Nova Scotia and Newfoundland and in the Gulf of St. Lawrence. The skill, daring, and resourcefulness of New England's fishermen were legendary. Challenged by an ever-growing market, New England fishermen of the 19th century always searched for new places to fish, new species to develop, and new ways to catch, preserve, package, ship, and market them. New Englanders tinkered with the design of their vessels to make them faster and more seaworthy. They developed specialized vessels and gear for each branch of their trade, and versatile, multi-purpose vessels as well. They were the first to adopt new methods, and the first to abandon them when they no longer offered a competitive advantage. They braved some of the most treacherous waters in the world, under all conditions, the year-round. Individual fishermen sailed together in great fleets and worked for a share of the catch. They considered themselves the best in the world at their trade<sup>5</sup>.

72. The fisheries of the Canadian Maritime provinces in the 19th century presented sharp contrasts. Agriculture, trade, and shipbuilding dominated the local economy, although fish were plentiful on the banks near the coasts of Nova Scotia and Newfoundland, in the Gulf of St. Lawrence, and in the Bay of Fundy. The local population remained sparse. The fisheries were part-time and seasonal. There was little reason for a large, specialized, year-round offshore commercial fishery like New England's because the local Canadian market was small, the bulk of the Canadian domestic market was far away, and the export market was limited primarily to meeting the demand for salted cod. The small offshore fishery

---

<sup>1</sup> Goode, *op. cit.*, Plate 4, Annex 18, Vol. II.

<sup>2</sup> Goode, *op. cit.*, Vol. I, p. 191, Annex 18, Vol. II.

<sup>3</sup> Goode, *op. cit.*, Vol. I, p. 188, Annex 18, Vol. II.

<sup>4</sup> See Table at Annex 19, Vol. II.

<sup>5</sup> See generally Morison, *op. cit.*, Chap. XIX, Annex 12, Vol. II.

was conducted only in the summer months and was located on the Grand Banks of Newfoundland, off the coast of Labrador, and on some of the banks of the Scotian Shelf. Thus, a thorough review of Canadian fishing on the east coast of North America, conducted by the Halifax Commission in 1878, found that only one Canadian vessel had fished on Georges Bank up to that time<sup>1</sup>.

### C. DEVELOPMENT OF FISHERIES DURING THE 20TH CENTURY

73. During the first half of the 20th century, fishing practices changed with innovations in harvesting, processing, and transportation, prompted by a growing demand for fresh fish. As a result, United States nationals increased their fishing on Georges Bank and in the waters off Canada, and Canadian nationals began sustained fishing on the offshore banks of Nova Scotia and Newfoundland.

74. United States innovations in the harvesting and processing of fresh fish included the introduction in Boston in 1921 of filleting. This process reduced shipping weight by 60 per cent, and transportation costs fell. Advertising campaigns were launched in the United States to encourage the consumption of fish as a regular part of people's diets. Prepacked brand name fish of consistent quality found new markets. Several different methods for quick-freezing fillets improved the quality of frozen fish in the mid-1920s. By the 1930s, refrigerated trucking made frozen fish fillets from New England commonly available in much of the United States. The expanded markets resulting from these United States innovations intensified the New England-based fishing effort on Georges Bank and the banks on the Scotian Shelf. New species, such as sea scallops, flounder, and redfish (ocean perch), began to be harvested and marketed successfully by United States fishermen.

75. The most important technological change in the New England fishery was the introduction in 1905 of steam-powered "otter trawlers." These trawlers were first developed for the North Sea fisheries. Previously, most fishing had been done with "line trawls", which were long lines with numerous baited hooks, tended by dories carried to the fishing grounds on sailing schooners. Steam-driven otter trawlers had several advantages over such earlier methods of fishing. Steam-powered vessels were not dependent upon winds and tides and could travel more rapidly to and from the fishing grounds. Nets with "otter boards" on the leading edge (to hold the nets open as they were pulled through the water) could land fish more efficiently than could schooners using dories and line trawls.

---

<sup>1</sup> The Halifax Commission was established pursuant to the Treaty of Washington of 1871, by which Great Britain and the United States accorded reciprocal fishing privileges to each other. The task of the Commission was to determine if either Great Britain or the United States should pay compensation to the other for privileges granted under the Treaty. In presentation of its case, Great Britain argued that Canadian vessels did not fish on United States grounds, and, therefore, that Great Britain was entitled to compensation for the extensive United States fishing off Canadian coasts. A review of the records of the Commission indicates that, while some Canadian fishermen reported fishing on Georges Bank aboard United States vessels out of New England ports, only one Canadian vessel had been reported to have fished on the Bank. The United States sought to show that trade concessions granted to Canadian fish products under the Treaty were sufficient compensation for United States fishing off Canadian coasts. On 3 November 1877, the Commission found for Great Britain and awarded it U.S. \$5,500,000 in compensation. See McFarland, *op. cit.*, pp. 328-329, Annex 17, Vol. II.

76. The increased fishing activity in the first two decades of the 20th century heightened interest in fishery conservation and management. This highlighted the need for better scientific information, leading to the formation in 1920 of the North American Council on Fishery Investigations (NACFI)<sup>1</sup>. The Council originally was composed of fisheries scientists from the United States, Canada, and Newfoundland. French scientists joined in 1922. The Council's functions were to coordinate research activities and to improve and standardize the collection of fisheries statistics. Toward this end, NACFI established statistical areas based on the divisions between major fishing grounds. In the Gulf of Maine area, Statistical Area XXI, designated "Nova Scotia", and Statistical Area XXII, designated "New England", were divided by a line through the Northeast Channel<sup>2</sup>. The resulting line separated Georges Bank from the banks of the Scotian Shelf. Figure 8.

24

77. Only the United States fished Georges Bank in the years leading to World War II. Canada fished off Newfoundland, in the Gulf of St. Lawrence, on the eastern Scotian Shelf, and in the Bay of Fundy. The United States also caught significant amounts from those areas, particularly cod and haddock, and dominated the fisheries on Browns Bank<sup>3</sup>.

78. Following World War II, large mechanized fishing fleets from outside the region increased their catches in the fisheries off the coasts of Nova Scotia and Newfoundland. Because of its interest in these fisheries, the United States proposed an international conference to discuss cooperation in the investigation and, where necessary, conservation of the fishery resources of the Northwest Atlantic. The United States invited the States whose coasts bordered the area, as well as those whose nationals fished there, to a conference held in Washington in 1949. Canada, Denmark, France, Iceland, Italy, Newfoundland, Norway, Portugal, Spain, the United Kingdom, and the United States attended the conference, which produced the International Convention for the Northwest Atlantic Fisheries<sup>4</sup>. The Convention entered into force in 1950. It provided for the scientific investigation of the fisheries (thus taking over the function of NACFI) and for cooperative measures for the conservation of the stocks through the International Commission for the Northwest Atlantic Fisheries (ICNAF). The Convention covered the high seas north of 39 degrees North latitude and west of 42 degrees West longitude, dividing the area into five management regions—Subarea 1 off the west coast of Greenland, Subarea 2 off Labrador, Subarea 3 off Newfoundland, Subarea 4 off Nova Scotia and in the Gulf of St. Lawrence, and Subarea 5 off New England<sup>5</sup>. The dividing line between Subarea 4 (off Nova Scotia) and Subarea 5 (off New England) generally followed the NACFI line through the

<sup>1</sup> The original name was the International Committee on Marine Fishery Investigations. See Exchange of notes between Embassy of Canada and the Dept. of State, *Foreign Relations of the United States*, 1920, Vol. I, pp. 406-409, Annex 6, Vol. I.

<sup>2</sup> That line was subsequently found by the International Commission for the Northwest Atlantic Fisheries to divide separate and distinct stocks of commercially important fish. See paras. 78 and 126, below.

<sup>3</sup> Browns Bank often was described as being off the United States coast. See *Fishery Industries of the United States*, U.S. Dept. of Commerce, 1928, p. 471, Annex 20, Vol. II.

<sup>4</sup> 157 U.N.T.S. 157, Annex 45, Vol. III.

<sup>5</sup> The ICNAF Subareas are shown on a Chart at Annex 45, Vol. III.

(25) Northeast Channel, again separating the Georges Bank fishery from the Scotian Shelf fisheries<sup>1</sup>. Figure 9.

79. In 1952, ICNAF issued a statistical bulletin describing the historical development of the fisheries in the ICNAF Convention Area and containing graphs of the catches of each country by Subarea<sup>2</sup>. This bulletin shows that Georges Bank was fished exclusively by the United States. In contrast, the banks off Nova Scotia and Newfoundland were shared by Canada, the United States, and others. No country other than the United States had any reported catches from Subarea 5 (off New England), including Georges Bank, prior to 1952. The bulletin establishes that the United States also had significant catches in Subareas 3 (off Newfoundland) and 4 (off Nova Scotia) throughout the recorded period. Canada's only catches are shown to have come from Subareas 3, 4, and 2 (off Labrador).

#### D. FOREIGN FISHING ON GEORGES BANK AND THE REACTION OF THE UNITED STATES

80. The United States continued to dominate the fisheries of Georges Bank during the 1950s and to fish actively off the coast of Canada as well. During this period, while Canada's fisheries expanded in Subareas 2, 3 and 4, fishing vessels of third States also began to put pressure on those fisheries. In response, Canadians turned to the Georges Bank fishery and became the first foreign fishermen to report landings from Subarea 5 (off New England). Canada took 1,148 metric tons in Subarea 5 in 1954, as compared to the United States catch of 412,917 metric tons<sup>3</sup>. That same year, the United States took 66,564 metric tons in Subarea 4, as compared with 334,756 metric tons taken by Canada and 49,770 metric tons taken by other States. In Subarea 3, the United States took 31,834 metric tons, Canada 311,078 metric tons, and other States 255,811 metric tons. These figures, except for the Canadian intrusion on Georges Bank and the growth of the fisheries of third States off Canada, reflected the historic pattern of activity in the 20th century. By 1960, third States took 410,893 metric tons in Subarea 3 while the Canadian and United States catches fell to 284,562 and 15,245 metric tons, respectively. In Subarea 4, Canada and other States increased their harvest to 389,376 metric tons and 108,611 metric tons, respectively, while the United States catch fell to 50,552 metric tons. The United States took 411,518 metric tons in Subarea 5 (off New England), about as many as it had taken in 1954, but Canada increased its catch to 31,679 metric tons<sup>4</sup>.

81. In 1961, ICNAF first reported catches in Subarea 5 by third States<sup>5</sup>. By 1964, the Canadian catch had more than doubled from 1960 to 75,178 metric tons while the third-State catch had exploded to 338,024 metric tons. The combined foreign harvest on Georges Bank was larger that year than the United States'

<sup>1</sup> For one Canadian view of ICNAF, see P. Finkle, "The International Commission for the Northwest Atlantic Fisheries: An Experiment in Conservation", *Dalhousie Law Journal*, Vol. 1, 1974, pp. 526-550, Annex 51, Vol. III.

<sup>2</sup> International Commission for the Northwest Atlantic Fisheries, *Statistical Bulletin* [hereinafter *ICNAF Stat. Bull.*] Vol. 2 for the Year 1952, Annex 46, Vol. III.

<sup>3</sup> *ICNAF Stat. Bull.*, 1954, Total Landings, Annex 47, Vol. III.

<sup>4</sup> *ICNAF Stat. Bull.*, 1960, Total Landings, Annex 47, Vol. III.

<sup>5</sup> *ICNAF Stat. Bull.*, 1961, Total Landings, Annex 47, Vol. III.

harvest of 342,520 metric tons<sup>1</sup>. This pattern continued into the 1970s. In 1973, the total Subarea 5 catch exceeded one million metric tons for the first time (1,062,796 metric tons), more than twice the average<sup>2</sup>. The United States took less than one-fourth of this (226,022 metric tons), about one-half of its catch in 1954. Figure 10 demonstrates the massive buildup of third-State fleets in the Northwest Atlantic fisheries in the 1955-1975 period. Figure 10 also shows the relationship of that buildup, first to the increase in total catch and then to the decline in abundance of the stocks. In addition, Figure 10 illustrates the significant increase in the Canadian offshore fishery in Subarea 4 and the incursion of foreign fishermen, including Canadians, into the Subarea 5 fishery.

82. The Georges Bank sea scallop fishery faced a serious challenge from Canada. Since the early 1930s, United States fishermen, primarily from New Bedford, had harvested sea scallops on Georges Bank. Until well after World War II, all Canadian scalloping had been from small boats in other areas, principally on inshore grounds in the Bay of Fundy. The Canadians began to exploit the offshore grounds on Georges Bank in the late 1950s. By the early 1960s, Canada had an offshore scallop fleet of 32 boats. Large Canadian and provincial government subsidies helped to build the Canadian fleet and to meet its operating costs. These subsidies continue in differing forms to the present day. Virtually all scallops harvested from Georges Bank by Canadians have been exported to the United States. While both the United States and Canada in recent years have harvested scallops from Georges Bank, the United States has consistently consumed over 80 per cent of the Canadian catch as well as all of its own<sup>3</sup>. Table A, p. 54.

83. As a result of the Canadian intrusion, the United States portion of the scallop catch on Georges Bank dropped steadily between 1955 and 1965. In 1955, United States vessels took 98.3 per cent of a total catch of 8,435 metric tons of meats<sup>4</sup>. In 1963, the United States took 7,910 metric tons, but that amounted to only 57 per cent of the total catch. In 1964, Canadian vessels landed almost half of the total catch of 12,142 metric tons. The total catch dropped in half in 1965, to 5,901 metric tons. Canada took 75 per cent. This pattern continued until the mid-1970s. Many United States scallop fishermen converted to other fisheries, while others turned to scallop grounds off the mid-Atlantic states. The United States' scallop fishery on Georges Bank began to rebound with the establishment of 200-nautical-mile fishery jurisdiction in the late 1970s. The fishery is recovering, and the United States once again is taking the majority of the scallop catch from Georges Bank.

<sup>1</sup> *ICNAF Stat. Bull.*, 1964, Total Landings, Annex 47, Vol. III.

<sup>2</sup> *ICNAF Stat. Bull.*, 1973, Total Landings, Annex 47, Vol. III.

<sup>3</sup> For discussion of the effect of these subsidies and the export of Canadian-caught scallops to the United States, see Annex 21, Vol. II. Canadian scallop exports to the United States take advantage of market expansion efforts by United States scallop fishermen. Since 1954, the United States fishermen have contributed a percentage of their income to a market development fund, which through consumer education and advertising seeks to expand the scallop market.

<sup>4</sup> Scallop landings are measured in two ways—"shell weight" and "meat weight." Shell weight refers to the gross weight of the entire scallop, while meat weight refers to the weight of the adductor muscle that is sold commercially in the United States. In the conversion formula used by the United States, one unit of shell weight equals 8.33 units of meat weight.

Table A:

## UNITED STATES SCALLOP IMPORTS FROM CANADA

Year	Total Canadian Scallop Landings <sup>1</sup>	Canadian Scallop Landings from Georges Bank <sup>2</sup>	United States Scallop Imports from Canada <sup>3</sup>	U.S. Scallop Imports from Canada as a Percentage of Total Canadian Landings <sup>4</sup>
1961	4,780	4,549	3,889	81%
1962	6,128	5,694	5,168	84%
1963	7,371	5,877	6,015	81%
1964	7,583	5,901	7,058	93%
1965	8,956	4,418	6,961	77%
1966	8,295	4,861	7,541	90%
1967	6,055	5,001	5,968	99%
1968	7,113	4,805	5,990	84%
1969	6,279	4,302	5,904	94%
1970	5,901	4,082	5,318	90%
1971	5,077	3,894	4,679	92%
1972	5,477	4,146	3,754	68%
1973	5,070	4,208	4,818	95%
1974	6,383	6,115	5,508	86%
1975	8,047	7,387	6,807	85%
1976	11,700	9,726	9,337	80%
1977	13,160	13,042	11,916	91%
1978	13,209	12,145	11,060	84%
1979	10,804	9,208	9,055	84%
1980	8,257	5,239	6,944	84%
1961-1980	155,645	124,600	133,690	86%

<sup>1</sup> Shellfish Market Review, United States Dept. of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service, Current Economic Analysis S-44, June 1982, Table A-11, p. 26. (quantities converted to metric tons from lbs. x 1,000).

<sup>2</sup> 1961-1978: *ICNAF Stat. Bulls.*  
 1979: NAFO SCS Doc. 80/IX/27.  
 1980: NAFO SCS Doc. 81/VI/15.  
 (Canadian Landings from subdivision 5Z (1961-1967) and 5Ze plus 5Zw (1968-1980), converted to meat weight from shell weight).

<sup>3</sup> 1961-1964: M.A. Altobello, D.A. Storey, and J. Conrad, "The Atlantic Sea Scallop Fishery: A Descriptive and Econometric Analysis." Research Bull. No. 643, Massachusetts Agricultural Research Station, January, 1977, Table 4.2.  
 1975: Shellfish Market Review, *op. cit.*, Current Economic Analysis S-38.  
 1976-1977: *Ibid.*, Current Economic Analysis S-41.  
 1978-1980: *Ibid.*, Current Economic Analysis S-42.  
 (quantities converted to metric tons from lbs. x 1,000)

<sup>4</sup> Rounded to nearest whole percentage point.



84. The Georges Bank haddock fishery is another example of how increased foreign fishing in a traditional United States fishery resulted in reduced catches for United States fishermen and a serious decline in the stocks. For many years, New England fishermen had taken about 50,000 metric tons per year from the Georges Bank haddock fishery. It was, along with cod, the most important groundfish fishery on the Bank. No foreign vessels engaged in this fishery until 1955, when Canada reported a small catch<sup>1</sup>. In the period 1961 to 1963, while the United States' catch remained at its traditional level, the Canadian catch increased and pressure on the resource intensified<sup>2</sup>.

85. In 1965, the Soviet Union concentrated its fleet on the Georges Bank haddock stock and took 81,882 metric tons in that year alone. This, combined with the normal United States catch of 52,823 metric tons and an increased Canadian catch of 14,889 metric tons (and 768 metric tons of other States), tripled the usual catch in this fishery to 150,362 metric tons<sup>3</sup>. Heavy fishing on the stock continued in 1966<sup>4</sup>. Thereafter, total landings dropped steadily. In 1976, prior to the extension of United States fishery jurisdiction to 200 nautical miles, only 6,280 metric tons of haddock were taken from Subarea 5 (off New England)<sup>5</sup>. Since that time, under a more effective conservation regime, the stocks have begun to recover and the United States catch is moving toward its traditional level<sup>6</sup>.

86. ICNAF attempted in the 1960s and 1970s to halt the severe overfishing in the Northwest Atlantic. The United States took the lead within ICNAF on issues concerning Subarea 5, as did Canada on issues concerning Subarea 4. ICNAF, however, could set quotas only by agreement of the member States. The flag States retained ultimate enforcement responsibility. This system proved to be ineffective because some foreign fishing interests were more devoted to short-term gains from resource exploitation than to the long-term conservation of the stocks. The quotas and surveillance programs adopted by ICNAF in 1969, 1972, and 1974 failed to prevent the decline of the stocks.

87. In response to the massive overfishing by foreign fleets, the collapse of fish stocks off their coasts, and the inability of ICNAF to reverse the trend, the United States joined Canada in 1977 in extending their fishery jurisdictions to 200 nautical miles from the coast<sup>7</sup>. The United States took this action under the

<sup>1</sup> Canada reported a haddock catch of 181 metric tons in 1955; the United States catch that year was 50,344 metric tons. *ICNAF Stat. Bull.*, 1955, Annex 47, Vol. III.

<sup>2</sup> 1961: Canada 189 metric tons; United States 51,681 metric tons.  
1962: Canada 3,568 metric tons; United States 54,412 metric tons.  
1963: Canada 8,382 metric tons; United States 48,892 metric tons.  
*ICNAF Stat. Bull.*, 1961-1963, Annex 47, Vol. III.

<sup>3</sup> *ICNAF Stat. Bull.*, 1965, Annex 47, Vol. III.

<sup>4</sup> Canada 19,417 metric tons; USSR 48,409 metric tons; United States 57,497 metric tons; others 1,759 metric tons. *ICNAF Stat. Bull.*, 1966, Annex 47, Vol. III.

<sup>5</sup> Canada 1,452 metric tons; United States 4,769 metric tons; others 59 metric tons. *ICNAF Stat. Bull.*, 1976, Annex 47, Vol. III.

<sup>6</sup> 1980: Canada 10,304 metric tons; United States 24,740 metric tons. *Provisional Nominal Catches in the Northwest Atlantic*, 1980, NAFO SCS Doc. 81/VI/15, Annex 47, Vol. III.

<sup>7</sup> For a detailed account, see Part I, Chap. IV, below. The United States withdrew from ICNAF effective 31 Dec. 1976.

Fishery Conservation and Management Act of 1976 (FCMA)<sup>1</sup>. The FCMA, in addition to extending fishery jurisdiction, established a comprehensive system of management, requiring the development of fishery management plans for each fishery. These plans must conform to strict standards, including the following:

- “(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.
  - (2) Conservation and management measures shall be based upon the best scientific information available.
  - (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
- 
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches<sup>2</sup>.”

Each plan under the FCMA contains elaborate scientific analyses of the fishery and of possible conservation and management measures. Each plan determines the portion of the allowable catch that United States fishermen will harvest and the surplus that, under the FCMA, will be allocated to foreign States. In addition, United States law requires the preparation of detailed analyses of the environmental impact of each plan on the particular fishery and on marine and coastal environments. These environmental impact statements also analyze the potential effects of alternative management approaches.

88. In the past five years, management plans have been implemented for a number of stocks in the Gulf of Maine area, including herring, cod, haddock, yellowtail flounder, squid, hake, mackerel, and sea scallops. The productivity of many of these stocks already has improved. In 1981, the Food and Agriculture Organization (FAO) of the United Nations reported that the fisheries of the Northwest Atlantic were recovering under extended coastal State jurisdiction. The FAO also noted that the recovery of many stocks had progressed sufficiently by the end of the 1970s to permit modest increases in catches while the stocks continued to rebuild<sup>3</sup>.

## SECTION 2. Continental Shelf

89. The United States extended its jurisdiction and control over the natural resources of its continental shelf by the well-known Truman Proclamation of 1945<sup>4</sup>. At that time, the United States asserted jurisdiction and control out to the

<sup>1</sup> FCMA, 16 U.S.C. secs. 1801-1884, Annex 8, Vol. I.

<sup>2</sup> *Ibid.*, sec. 1851(a).

<sup>3</sup> Marine Resources Service, Fishery Resources and Environment Division, Fisheries Dept., *Review of the State of World Fishery Resources*, FAO, 1981, pp. 4-5, Annex 22, Vol. II.

<sup>4</sup> Proclamation No. 2667, Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 Sep. 1945, Annex 3, Vol. I.

100-fathom-depth contour<sup>1</sup>, which encompassed Georges Bank<sup>2</sup>. On 12 April 1961, the United States ratified the 1958 Convention on the Continental Shelf, and became a party when the Convention came into force on 10 June 1964<sup>3</sup>. Canada became a party to the Convention in 1970<sup>4</sup>.

90. Exploration for hydrocarbon resources of the continental shelf in the Gulf of Maine area began in the 1960s<sup>5</sup>. Since that time, the United States has explored extensively the continental shelf in this area. It also has undertaken a lengthy, complex, and ongoing investigation of the environments of that area and of the New England coastal areas that border on the Gulf of Maine and the Atlantic Ocean. In this process there has been a thorough review of the potential effects of oil and gas development upon those environments. Comprehensive environmental safeguards regulate every stage of the exploration and development process. Although geophysical exploration by the United States has been extensive in areas of Georges Bank known to be claimed by Canada, no exploratory drilling has taken place in those areas by the United States.

91. Canada has explored areas of the Scotian Shelf and has begun to develop hydrocarbon resources in some of those areas, particularly in the vicinity of Sable Island. Canada has not, however, engaged in a process of investigating the potential effects of oil and gas development on the marine and coastal environments comparable to the comprehensive procedures followed by the United States. Although Canada has purported to authorize exploration on Georges Bank, no Canadian exploratory drilling has occurred pursuant to these authorizations.

#### A. UNITED STATES

92. The United States in 1953 enacted the Outer Continental Shelf Lands Act<sup>6</sup> (OCSLA). That Act, together with other statutes<sup>7</sup>, governs activities on the continental shelf of the United States. Two principal goals of the OCSLA are the

<sup>1</sup> Press Release of 28 Sep. 1945, Dept. of State *Bull.*, Annex 3, Vol. I.

<sup>2</sup> A. L. Shalowitz, *Shore and Sea Boundaries*, Vol. I, United States Dept. of Commerce, 1962, p. 184, Annex 3, Vol. I.

<sup>3</sup> 499 U.N.T.S. 311, Annex 5, Vol. I.

<sup>4</sup> For the notification received by the United States, from the United Nations, of Canada's ratification, see Annex 52, Vol. IV.

<sup>5</sup> Exploration involves both geophysical (inferential) and geological (direct) exploration to obtain information about the seabed and subsoil. Geophysical exploration includes seismic reflection profiles, as well as gravity and magnetic surveys, none of which involves drilling or other activities that significantly disturb the seabed and subsoil. Geological exploration includes both core sampling and exploratory drilling. Core sampling usually refers to shallow drilling to examine the surficial and other upper layers of sediment. Exploratory drilling refers both to stratigraphic drilling (or drilling "off-structure") into deeply buried layers of sediment (strata) in order to obtain information generally about an area, and to deep drilling into subsurface geological structures in order to determine whether those structures contain oil or gas deposits.

<sup>6</sup> 43 U.S.C. secs. 1331-1343 (1976), as amended in 1978, 43 U.S.C. secs. 1331-1356 (1976, Supp. III), Annex 9, Vol. I.

<sup>7</sup> These include, among others, the following statutes intended to protect the marine and coastal environment: the National Environmental Policy Act of 1969, 42 U.S.C. secs. 4321-4347, the Coastal Zone Management Act of 1972, 16 U.S.C. secs. 1451-1464, the Endangered Species Act of 1973, 16 U.S.C. secs. 1531-1543, the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. secs. 1401-1444, Annex 10, Vol. I, and the Fishery Conservation and Management Act, 16 U.S.C. secs. 1801-1882, Annex 8, Vol. I.

orderly development of shelf resources and the protection of the environment. The Act, as amended, provides that the United States shall select:

“the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone<sup>1</sup>.”

Because the prospects for discovering and successfully developing the oil and gas resources beneath Georges Bank were less favorable than those of other areas of the continental shelf of the United States, and because the status of Georges Bank as the principal fishing bank on the east coast of the United States raised important environmental concerns, exploration and development of the Georges Bank area proceeded slowly.

93. Interest in the potential development of the oil and gas resources of the continental shelf off the east coast of the United States gradually increased during the 1960s<sup>2</sup>. Beginning in 1964, the United States Geological Survey issued permits for geophysical exploration of areas covering the continental shelf off New England, including Georges Bank. These permits authorized activities that do not significantly disturb the seabed, including gravity and magnetic surveys, seismic reflection profiles, and shallow core sampling. Deep exploratory drilling to test suspected deposits of oil and gas and drilling to develop any oil or gas deposits discovered by such exploratory drilling could only be conducted under the terms of an oil and gas lease from the United States Government<sup>3</sup>. Since 1964, approximately 19,185 miles (30,869 kilometers) of geophysical data<sup>4</sup> have been collected, under some 24 United States' exploration permits, in the northeastern part of Georges Bank alone<sup>5</sup>.

94. The first step in the process leading to the sale of oil and gas leases is the publication of special maps called protraction diagrams, which divide an area of potential deposits into tracts not exceeding 5,760 acres<sup>6</sup>. A “Call for Nominations” is then published in the *Federal Register*<sup>7</sup>, requesting comments from industry, concerned state and local governments, and the general public, on the desirability of oil and gas development within the area. The protraction diagrams for the Gulf of Maine Basin and Georges Bank were published beginning in 1974. The Call for Nominations was postponed, however, by litigation between the Atlantic coastal states and the federal United States Government over their

<sup>1</sup> 43 U.S.C. sec. 1344(a)(3) (1976, Supp. III), Annex 9, Vol. I.

<sup>2</sup> 25 *Fed. Reg.* 8759, 10 Sep. 1960, Annex 9, Vol. I.

<sup>3</sup> See 25 *Fed. Reg.* 8759, Annex 9, Vol. I; exploration permit issued to Exploration Surveys, Inc., Annex 40, Vol. II; 41 *Fed. Reg.* 25893, 23 June 1976, Annex 9, Vol. I. Since 1980, exploratory drilling may be authorized, under certain conditions, pursuant to permits. 45 *Fed. Reg.* 6344, 25 January 1980, Annex 9, Vol. I.

<sup>4</sup> A geophysical research vessel collects data as it moves in a line, and measures the quantity of data collected by the number of miles travelled.

<sup>5</sup> For a list of these permits and a copy of one, see Annex 40, Vol. II.

<sup>6</sup> 43 U.S.C. sec. 1337(b) (1976), 43 U.S.C. sec. 1337(b)(1) (1976, Supp. III), Annex 9, Vol. I [5,760 acres equals 2,331 hectares].

<sup>7</sup> The *Federal Register*, a compilation of regulations, notices, and other documents and information, is published daily by the United States Government.

respective rights to the oil and gas resources of the continental shelf<sup>1</sup>. After the conclusion of the litigation in 1975, which upheld the federal position, the Department of the Interior, the agency within the United States Government primarily responsible for administering the OCSLA, issued a Call for Nominations<sup>2</sup>. Figure 11. Numerous comments were received in response to the Call, and 206 tracts on Georges Bank were selected for further study.

95. As required by law<sup>3</sup>, the United States Department of the Interior next prepared an "Environmental Impact Statement", which evaluated the potential dangers to the environment posed by exploration and development under the proposed leases. Preparation of this statement for the Georges Bank lease sale involved comprehensive studies of geology, climate, tides, marine plant and animal ecosystems, socio-economic factors, navigation, commercial fishing, sport fishing, and other matters. In addition, the United States Geological Survey authorized the drilling of two stratigraphic test holes on Georges Bank<sup>4</sup>. The Environmental Impact Statement considered in detail the possible effects of a major discharge of oil on the marine and coastal environment of New England, including the pollution of some of the rich fisheries of the area. It also considered the great social and economic problems that such pollution might cause. The Environmental Impact Statement evaluated alternatives to oil and gas development on Georges Bank, including the postponement, modification, or cancellation of the proposed lease sale. As required by law<sup>5</sup>, a draft of the Environmental Impact Statement was published<sup>6</sup>, and all interested parties were afforded the opportunity to comment on the draft at public hearings and to submit comments in writing. Local state governments that could be affected by the exploration and development of the Georges Bank continental shelf also were consulted<sup>7</sup>. After considering these comments, and the comments of other interested United States Government agencies, the Department of the Interior published the final Environmental Impact Statement and, later, draft and final supplements to that study<sup>8</sup>.

96. The Department of the Interior evaluated these studies and the comments received from concerned state and federal agencies and the public. It concluded that oil and gas development on Georges Bank could only proceed if special precautions were taken to protect the important fishing grounds of Georges Bank. Accordingly, the Department of the Interior, in consultation with the Department of Commerce, the agency within the United States Government primarily responsible for administering the Fishery Conservation and Management Act and other laws enacted for the protection of the living resources of the adjacent seas,

<sup>1</sup> *United States v. Maine, et. al.*, 415 U.S. 520 (1975). The litigation was precipitated by an attempt by the State of Maine in 1969 to grant a private company a "license to mine" the oil and gas resources of a portion of the continental shelf in the Gulf of Maine Basin.

<sup>2</sup> For the Call for Nominations and other documents relating to this sale, see Annex 42, Vol. II. Calls for Nominations are now known as "Calls for Information."

<sup>3</sup> 42 U.S.C. sec. 4332, Annex 10, Vol. I.

<sup>4</sup> Spills are highly unlikely in this type of drilling because it avoids drilling directly into structures that have the potential for oil and gas deposits. Nonetheless, an oil spill contingency plan was developed and submitted to the Geological Survey for approval prior to the commencement of drilling operations on Georges Bank.

<sup>5</sup> 42 U.S.C. sec. 4332, Annex 10, Vol. I.

<sup>6</sup> For a description of the contents of this study, see Annex 42, Vol. II.

<sup>7</sup> 43 U.S.C. sec. 1345 (1976, Supp. III), Annex 9, Vol. I.

<sup>8</sup> For a description of the contents of these studies, see Annex 42, Vol. II.

developed a comprehensive management plan specifically designed to protect the environment and fisheries of Georges Bank. The plan included detailed regulations and provided for requirements to be imposed upon drilling-rig operators on Georges Bank that are not always applicable in other areas<sup>1</sup>. The plan also directed the establishment of a biological task force composed of scientific experts from a number of government agencies. The task force is responsible for monitoring any environmental changes caused by hydrocarbon-related activities and for warning of any possible effects<sup>2</sup>. In addition, the plan provided for the withdrawal of 12 tracts from the proposed sale in order to protect concentrations of coral and lobster located at the head of Lydonia Canyon, on the seaward edge of Georges Bank.

97. The federal government then proposed to proceed with the sale of oil and gas leases on Georges Bank. The sale was postponed for over a year, however, by litigation brought by the state of Massachusetts and other parties fearful of the environmental effects of drilling on the Bank. On 18 December 1979, after the conclusion of that litigation, oil and gas leases for 116 tracts on Georges Bank were offered for sale by the Department of the Interior<sup>3</sup>. Fifty-five tracts had previously been withdrawn from consideration in order not to prejudice the then-pending negotiations with Canada on fishery and continental shelf boundaries. The Department of the Interior accepted bids on 63 tracts totaling 358,671 acres, but none were in the area known to be claimed by Canada.

98. Such leases did not in themselves authorize exploratory drilling. The leaseholders were required to submit exploratory drilling plans to the Geological Survey for review and approval to ensure that the proposed activities did not threaten the environment<sup>4</sup>, and to obtain drilling permits from other United States Government agencies, including the Army Corps of Engineers, the Coast Guard, and the Environmental Protection Agency. An environmental analysis for each of the proposed exploratory drilling operations was prepared, additional public hearings were held on the permits for these drilling operations, and concerned state governments were again consulted<sup>5</sup>. Drilling did eventually begin. Eight exploratory wells have been completed or are being drilled<sup>6</sup>. The leaseholders must comply with similar additional requirements before they may develop any oil and gas reserves that may be discovered on their tracts<sup>7</sup>.

99. A second sale of leases in the Georges Bank area is tentatively scheduled for October, 1982<sup>8</sup>. Most of the comprehensive environmental and related studies

<sup>1</sup> Included among these requirements are the following: reporting the composition and discharge volume of drilling muds; diluting and transporting wastes to places below the water surface or to a designated dumping site; and conducting environmental studies and surveys and other tasks to assist the monitoring program of the biological task force.

<sup>2</sup> The monitoring program includes the continual gathering of samples of benthic communities and bottom sediments from 41 specific points on Georges Bank, and the comparison of the samples with those taken prior to the commencement of drilling operations. Current velocity and direction are also monitored at several depths.

<sup>3</sup> For the final Notice of Sale, see Annex 42, Vol. II.

<sup>4</sup> 43 U.S.C. sec. 1340(c)(1) (1976, Supp. III), Annex 9, Vol. I.

<sup>5</sup> See, e.g., 43 U.S.C. sec. 1340(c)(2) (1976, Supp. III), Annex 9, Vol. 1.

<sup>6</sup> North Atlantic Summary Report; 1 Apr. 1982 Update, United States Geological Survey Open-File Report 82-16, p. 10, Annex 41, Vol. II.

<sup>7</sup> 43 U.S.C. sec. 1351 (1976, Supp. III), Annex 9, Vol. 1.

<sup>8</sup> Outer Continental Shelf Lease Sale No. 52. For documents relating to this sale, see Annex 43, Vol. II.

have been completed. Draft and final Environmental Impact Statements have been published. The tracts selected for sale are not in the area known to be claimed by Canada.

#### B. CANADA

100. The Government of Canada's regulatory program for continental shelf development stands in contrast to the careful practices of the United States. In the 1960s, the Government of Canada divided virtually its entire east coast continental shelf into administrative blocks. The Canadian Government then began to issue exploratory permits for individual blocks. Canada included part of Georges Bank and the adjacent areas in this program<sup>1</sup>. Canada neither consulted nor notified the United States about these activities.

101. The statute pursuant to which the Canadian exploratory permits were issued applied on its face only to onshore development<sup>2</sup>. According to pertinent Canadian regulations at the time<sup>3</sup>, permit holders could obtain, upon payment of a fee, an "exploratory license." These licenses authorized the holder to conduct geophysical or geological examinations and aerial mapping, and to "investigate the subsurface." Unlike the exploration permits issued by the United States Geological Survey, the Canadian licenses apparently entitled the holders to conduct deep exploratory drilling<sup>4</sup>. Apparently no comprehensive provisions existed in the pertinent laws or regulations ensuring the extensive protection of the marine and coastal environment, or specifically requiring scientific and technical studies, analyses, or public hearings on environmental matters, as under United States law. No exploratory drilling in the Gulf of Maine or Georges Bank areas has occurred under the Canadian exploration permits.

### SECTION 3. Other Relevant Activities

102. The sea has played an important role in the history of the United States, especially in the history of New England. A major impetus for the exploration and settlement of New England was the promise of abundant fisheries and safe, sheltered harbors. As the fishing and, later, other industries developed, New England ports became important centers of maritime commerce. This reliance on the sea prompted the early and continuing exercise of responsibility by the people of New England and by the United States Government for improving and safeguarding navigation, for conducting scientific research, and for defending the area off the coast of the United States, in particular the Gulf of Maine and Georges Bank.

#### A. AIDS TO NAVIGATION

103. Interest in navigational safety inspired both United States citizens and the United States Government to invest considerable resources in navigational aids to

<sup>1</sup> Chap. IV of this Part discusses the reaction of the United States to these Canadian actions.

<sup>2</sup> The Public Lands Grants Act, Canada Statutes (1950), chap. 19. Subsequently, the Oil and Gas Production and Conservation Act of 1968-1969, governing such matters as the pooling of working interests in oil and gas production, was amended to apply to submarine areas, defined generally in the terms of the 1958 Continental Shelf Convention. Canada Revised Statutes, 1970, ch. 30 (1st Supp.), sec. 3, Annex 11, Vol. 1.

<sup>3</sup> Canada Oil and Gas Land Regulations and Canada Oil and Gas Drilling and Production Regulations, P.C. 1961-797, 6 June 1961, (SOR/61-253), paras. 24-40, Annex 11, Vol. I.

<sup>4</sup> *Ibid.*, para. 27.

mariners transiting or operating in the Gulf of Maine area. In the 18th and 19th centuries, the principal aids to navigation—navigational charts and sailing directions—were often produced by private citizens. By the mid-19th century, the United States Government had assumed primary responsibility for surveying and charting. During the 20th century, the United States has updated its charts continually and has used the best technology available to reduce the risks to mariners in the Gulf of Maine area. Canada has provided aids to navigation off Newfoundland and along the coast of Nova Scotia. The United States, since the early colonial period, has provided virtually all the aids to navigation on Georges Bank, Browns Bank, and in the Gulf of Maine.

### 1. *The Measurement of the Sea: Charting and Surveying*

104. The people of New England assumed responsibility for surveying and charting the Gulf of Maine area during the colonial era. Navigational charts and sailing directions were produced warning mariners of treacherous offshore shoal waters in areas such as *Georges Bank*, and guiding merchant and fishing vessels to a safe approach to the New England ports. As the fisheries in the Gulf of Maine area developed, New Englanders also surveyed and charted the fishing grounds.

105. The first notable efforts of New Englanders to chart the Gulf of Maine area date from the early 18th century. Cyprian Southack's *New England Coasting Pilot*<sup>1</sup>, published in 1718, contained charts, sailing directions, and notes on navigational hazards encountered between Long Island and Cape Breton Island. Southack's depiction of "St. Georges Bank" indicates that, even in the early 18th century, the dangers of Georges Bank—and its lucrative fisheries—were well-known. Southack's *New England Coasting Pilot* was used widely by New Englanders and by other British mariners in the area, including officers of the Royal Navy.

106. Southack was succeeded by Paul Pinkham, a shipmaster and local pilot from Nantucket. Pinkham was personally familiar with the Gulf of Maine area and devoted himself to compiling an accurate depiction of Georges Bank. In 1797, he published the first chart concerned specifically with Georges Bank, entitled *A Chart of Georges Bank Including Cape Cod and Nantucket*. The chart, shown here at Figure 12 and in a larger version in Annex 24, Volume I, is remarkable for its careful depiction of the natural hazards of Georges Bank. It was the first to locate specifically the treacherous Georges Shoal. Pinkham also noted the continuity of Georges Bank from Nantucket Shoals to the northeastern edge of the Bank.

107. Fishermen and merchant mariners during the 18th and early 19th centuries relied principally on the Southack and Pinkham charts. Although these charts gave sailing directions between New England and Georges Bank, neither contained any sailing directions between ports in Nova Scotia and the Georges Bank fishing grounds.

108. In the 19th century, Edmund Blunt and his sons, of Newburyport, Massachusetts, published two works that became the standard references for navigators during that period: *The American Coast Pilot* and Nathaniel Bow-

---

<sup>1</sup> Annex 23, Vol. II.



ditch's<sup>1</sup> *The New Practical Navigator. The American Coast Pilot* contained extensive sailing directions and notations on navigational hazards, including those on Georges Bank. Blunt personally sponsored surveys of such dangerous areas as Nantucket Shoals and Georges Shoal. He incorporated the results of his work, together with later United States Government surveys, into a series of charts published beginning in 1821. Blunt's 1821, 1826, and 1844 editions are reproduced at Annex 25, Volume I. Of particular note is the 1844 edition, published during the peak of the United States halibut fishery on Georges Bank. This chart was the first to show bathymetric lines on Georges Shoal. Other New Englanders made efforts to depict the fishing grounds accurately as the fishing on the Bank intensified. Captain George Eldridge of Chatham, Massachusetts, master of a fishing vessel, prepared a chart in 1856 that set a new standard of simplicity and legibility. Because of its small size, large scale, and detailed depiction of the fishing banks, it was particularly useful on the open decks of New England fishing vessels<sup>2</sup>.

109. In the 19th century, the United States Government assumed responsibility for surveying and charting the Gulf of Maine, Georges Bank, and Browns Bank. In 1837, the United States Navy commissioned Lt. Commandant Charles Wilkes to conduct a detailed survey of Georges Shoal. This was the first in a long line of government surveys of the area. Wilkes employed the most modern techniques and set a new standard for accuracy<sup>3</sup>. Nautical charts of the era widely relied on Wilkes' survey. For instance, British Admiralty charts of North America, which had been based on surveys conducted during the American Revolution, incorporated Wilkes' results.

110. The record of subsequent surveys by the United States Government in the Gulf of Maine area is voluminous. These surveys are depicted on three charts at Annex 28, Volume II. The lines and numbers on the charts indicate the numerous surveys that have been conducted between Cape Hatteras and Cape Sable by the United States from the mid-19th century to the present. These charts show that the United States has over the years conducted a long-term systematic hydrographic survey program in the Gulf of Maine, on Georges Bank, and on Browns Bank.

111. These surveys resulted in the publication of general navigational charts and numerous specialized charts providing supplemental information for persons with particular interests. Examples of the specialized government publications are United States Coast and Geodetic Survey Charts No. 3075 *Georges Bank Eastern Part, Special Chart for the Fishing Industry* and No. 3076 *Georges Bank Western Part, Special Chart for the Fishing Industry*<sup>4</sup>. The United States Government has

---

<sup>1</sup> Nathaniel Bowditch (1773-1830), of Salem, Massachusetts, was a shipmaster and mathematician. In 1799, at the request of Blunt, Bowditch updated an old navigational text. This was published in 1799 as *The New Practical Navigator*. However, Bowditch found so many errors in the updated text that he ultimately undertook to write an entirely new volume. In 1802, Bowditch's *The New American Practical Navigator* was published. This treatise has been revised and updated many times since. It remains the standard text for United States mariners and naval officers.

<sup>2</sup> Annex 26, Vol. II.

<sup>3</sup> Annex 27, Vol. II.

<sup>4</sup> Annex 29, Vol. II.

published these special charts for the fishing industry since the 1930s. Their detailed descriptions of the hydrographic features in the area, including currents, tides, and bottom characteristics, are of particular value to fishermen on Georges Bank.

112. By contrast, Canada has not undertaken hydrographic surveys on Georges Bank, on Browns Bank, or in the Gulf of Maine Basin. Upon the request of the British Admiralty, Canada assumed responsibility for surveying its coastal waters in 1904. The first Canadian hydrographic survey on the east coast was not carried out until 1915. That survey did not reach south of Halifax. As demonstrated by the chart at Annex 30, Volume II, Canada has historically focused its hydrographic survey efforts north of Cape Sable. The chart, which is from the Canadian Hydrographic Service 1980 Annual Activities Report, depicts the areas in which Canada has carried out hydrographic surveys. The chart shows that Canada has made a survey of German Bank, but has not carried out surveys of Browns Bank, Georges Bank, or the Gulf of Maine Basin.

113. Until recently, Canada also has disregarded Georges Bank and the Gulf of Maine Basin in the compilation and publication of nautical charts. As late as 1928, the *Canadian Hydrographic Survey*<sup>1</sup> had listed no Canadian charts covering Georges Bank and Browns Bank, and only one covering any portion of the Gulf of Maine. That chart, which is entitled *Approaches to Bay of Fundy*, included only those waters immediately off the southwest coast of Nova Scotia, south to approximately 43° North latitude. Annex 30, Volume II, Canadian charts depicting Georges Bank and the Gulf of Maine Basin did not appear until the late 1960s. Since Canada has never reported a hydrographic survey of Georges Bank or the Gulf of Maine Basin, it must be assumed that the information shown on Canadian charts of these areas has been taken from the information gathered by the United States hydrographic surveying program.

## 2. Electronic Aids to Navigation

114. In the 20th century, radio communication and other electronic innovations improved the quality of the navigational aids available to mariners. In the Gulf of Maine area, these have included RDF (radio direction finder), DECCA, and LORAN (Long Range Aid to Navigation).

115. RDF was the earliest electronic navigation system in use in the Gulf of Maine area. To use RDF, a vessel (or aircraft) must be within range of a transmitting beacon. There are 14 beacons on the United States coast between Nantucket Island and the international boundary terminus, and four on the Canadian coast between the international boundary terminus and Cape Sable. A vessel (or aircraft) tunes in a beacon's frequency to determine a line of position to the transmitting station. The vessel (or aircraft) may determine its actual position by obtaining two or three lines of position to one or more beacons.

116. DECCA is an electronic position-fixing system developed by the United Kingdom in World War II. Canada has maintained a DECCA system that is now being phased out and replaced by LORAN. The Canadian DECCA system provided navigational assistance for vessels on the Scotian Shelf (except in the

---

<sup>1</sup> The Canadian Hydrographic Service was known as the Canadian Hydrographic Survey in 1928 and earlier years.

vicinity of Browns Bank) and in the northern part of the Gulf of Maine. It did not cover Georges Bank.

117. By far the most important electronic aid to navigation today is LORAN, an electronic position-fixing system that allows aircraft and vessels to plot their position within at least 1 nautical mile of accuracy. The United States developed LORAN during World War II to assist military air navigation between North America and Great Britain. Although the system was originally designed for air navigation, it was put to use by surface vessels when the system was opened to civilian air traffic after the War. It is used extensively by almost all vessels operating in the Gulf of Maine area, including fishing vessels, warships, recreational vessels, and merchant vessels.

118. The World War II LORAN-A system has been replaced by the new and better LORAN-C system. A LORAN-C network (or chain) consists of at least three land-based transmitting stations located several hundred miles apart. One station is designated the "master station", and the others are designated "secondary stations." Signals transmitted by each secondary station are synchronized with the signal from the master station. The LORAN-C receivers on vessels and aircraft measure the time difference between signals from the master and each secondary station, and provide a readout of the two numbers. Mariners determine their positions by plotting these numbers on a navigation chart that has LORAN lines printed on it.

119. Two LORAN-C chains provide LORAN coverage in the Gulf of Maine area today. The first chain includes five stations, all in the United States and operated by United States personnel. The master station is in central New York state. The second chain, which began operations in 1980, is made up of two of the United States stations, at Nantucket Island, Massachusetts, and Caribou, Maine, and of one station at Cape Race, Newfoundland. The station at Cape Race is operated by Canadian personnel, but has been financed by the United States Coast Guard<sup>1</sup>. The United States station at Caribou, Maine, is the master station in the second chain.

### 3. Other Aids to Navigation

120. The United States maintains a variety of other aids to navigation in the Gulf of Maine area, including stationary aids<sup>2</sup>, marine weather broadcasts, and *Notices to Mariners* warning of hazards to navigation. Canada also publishes a

---

<sup>1</sup> The Agreement on Establishment of Long Range Aid to Navigation (LORAN-C) station in Newfoundland, 16 Sep. 1964, between the United States and Canada, originally provided for the establishment of the LORAN station at Cape Race, Newfoundland. Annex 31, Vol. II. An agreement is now pending between the two governments to turn over full responsibility for the station to Canada.

<sup>2</sup> Each Party maintains numerous navigation buoys in the waters directly off its coast. Navigation buoys are not normally found in offshore waters like Georges Bank. In the 1950s and early 1960s, the United States maintained navigation buoys and a large "Texas Tower" that marked Georges Shoal with a 250,000 candlepower flashing light and fog whistle. It served as part of the United States air defense early warning system. The buoys were removed in 1955 and the Texas Tower was demolished in 1964. Stationary aids are difficult and expensive to maintain on Georges Bank, because of the strong currents and shifting bottoms, and are now largely unnecessary because of modern navigation equipment.

*Notice to Mariners*. It did not cover Georges Bank until 1969. The United States also compiles and publishes a monthly *Notice to Fishermen* to supplement the regularly published *Notice to Mariners*. Both United States publications are widely disseminated throughout the New England and mid-Atlantic states. The *Notice to Fishermen* addresses topics of particular interest to fishermen who operate in the Northwest Atlantic fishery, including recent scientific research, changes in offshore oil and gas regulations that might affect fishing, areas of fixed fishing-gear concentrations, and reports on enforcement of United States fishery laws.

## B. SCIENTIFIC RESEARCH

121. Scientific research in the Gulf of Maine area began in 1807 when Thomas Jefferson established the "Survey of the Coast".<sup>1</sup> The survey was responsible for measuring coastal elevations, recording depths and currents, and charting the coast. In the 19th century, the Survey of the Coast and its successor United States agencies did much to develop accurate bottom profiles of the Gulf of Maine and Georges Bank.<sup>2</sup>

122. In 1871, the establishment of the United States Fish Commission began a new era in scientific research. Congress charged the first Commissioner, Spencer F. Baird:

"to prosecute investigations and inquiries on the subject, with the view of ascertaining whether any and what diminution in the number of the food fishes of the coast . . . has taken place; and, if so, to what causes the same is due; and also whether any and what protective, prohibitory, or precautionary measures should be adopted . . .".

Baird began his investigation in New England because of the importance of its fisheries. He established in 1885 at Woods Hole, Massachusetts, the world's first major fisheries research laboratory. He directed an extensive sampling program of the fauna of New England waters, including Georges Bank and the Gulf of Maine. In the 1880s, several specialized fishery research vessels were commissioned through Baird's efforts. Thus was begun a succession of United States

<sup>1</sup> This agency later became the "Coast Survey" (1835), "Coast and Geodetic Survey" (1878), and is currently the "National Ocean Survey" (1970). For a general review of United States scientific research in the Gulf of Maine area in the 19th and early 20th centuries, see Bigelow, *op. cit.*, Annex 33, Vol. II.

<sup>2</sup> The inability to take accurate soundings in deep water, however, meant that the submarine canyons on the southern edge of Georges Bank went undiscovered until later. The six major canyons that mark the southern edge of Georges Bank were not discovered until the United States Coast and Geodetic Survey expeditions of the early 1930s. Oceanographer Canyon, Lydonia Canyon, Hydrographer Canyon, Gilbert Canyon, and Welker Canyon are named for United States Coast and Geodetic Survey vessels responsible for their discovery and survey. Corsair Canyon is named for a yacht, *Corsair III*, donated to the Coast and Geodetic Survey by the United States financier J. P. Morgan. The yacht was later refitted and renamed the *Oceanographer*.

<sup>3</sup> For this Joint Resolution of the United States Congress, see Annex 32, Vol. II.

research vessels maintained by public and private funds devoted to fisheries research in the Gulf of Maine area <sup>1</sup>.

123. United States fishermen facilitated the work of the United States Fish Commissioner by forming in 1885 the American Fish Bureau, with offices in Gloucester, Massachusetts. The purpose of the Bureau was to provide reliable statistical and other information on fisheries. Henry Bigelow of Harvard University conducted pioneering research for the Bureau. His works on "Fishes of the Gulf of Maine" (1925), "Plankton of the Offshore Waters of the Gulf of Maine" (1926), and "Physical Oceanography of the Gulf of Maine" (1927) became the leading scholarly publications in the field <sup>2</sup>.

124. The first general oceanographic survey of eastern Canadian waters was carried out by the Canadian Fisheries Expedition in 1919. This expedition did not concern itself with Georges Bank. It concentrated on northern areas and ran only one profile over the western Scotian Shelf, in the vicinity of Halifax, Nova Scotia <sup>3</sup>.

125. The predominance of the United States in scientific research in the Gulf of Maine and on Georges Bank continued under NACFI, which sought to compile more complete statistics on the fisheries as well as data on oceanographic conditions and their relation to the fisheries. In its early years, NACFI was particularly interested in determining the water circulation patterns in the North Atlantic and in identifying individual fish stocks. In general, under NACFI each party conducted its research in waters off its coast. The United States undertook the primary research responsibility in the Gulf of Maine and on Georges Bank, while Canada undertook the primary research responsibility on the Scotian Shelf. For instance, the record states that:

"the Biological Board of Canada, with the assistance of Newfoundland, France, and the International Ice Patrol, took charge of the drift bottle experiments from the bay of Fundy northward, and the United States Bureau of Fisheries took charge of the experiments at the south <sup>4</sup>."

This investigation of the water circulation patterns in the region helped determine those described in Chapter II of this Part.

126. Under NACFI, the principal fisheries investigated in the Gulf of Maine area were cod, haddock, and mackerel. United States and Canadian scientists noted the relationship between the fishing banks and fish stocks and recognized

---

<sup>1</sup> The National Oceanic and Atmospheric Administration devotes two public scientific research vessels full time to fisheries research in the Gulf of Maine area. Other public vessels are used for scientific research in the Gulf of Maine area on a project basis. Woods Hole Oceanographic Institute maintains four ocean-going research vessels. In addition, many of the colleges and universities along the New England coast maintain scientific research vessels.

<sup>2</sup> "Fishes of the Gulf of Maine", as revised and updated, is still a widely used reference. H.B. Bigelow and W.C. Schroeder, "Fishes of the Gulf of Maine", United States Fish and Wildlife Service, Fishery Bull. 74, Vol. 53, pp. 1-557 (First version).

<sup>3</sup> H.B. Bigelow, *op. cit.*, p. 516, Annex 33, Vol. II.

<sup>4</sup> North American Council on Fishery Investigations, *Proceedings 1921-1930*, No. 1, p. 27, Annex 34, Vol. II.

that there was little or no exchange of larvae between Georges Bank and the banks of the Scotian Shelf. Tagging studies confirmed that the cod and haddock stocks of the Georges Bank are different from those on the Scotian Shelf. These studies provided a biological basis for the continued division of Statistical Areas XXI (Nova Scotia) and XXII (New England) at the Northeast Channel. That division, as noted above, was retained by ICNAF.

127. Under ICNAF, United States scientists concentrated on assessment of the fishery resources in Subarea 5, and cod, haddock, and redfish in Subareas 3 and 4. In 1953, based largely on United States research, ICNAF imposed minimum mesh sizes on trawls for haddock in Subarea 5<sup>1</sup>. In later years, minimum mesh sizes were required in other Subareas and to protect other species. In 1969, based on the work of its scientists, the United States proposed limitations on haddock fishing on Georges Bank, including closure of haddock spawning grounds to fishing. Canada proposed similar measures for Subarea 4. The adoption of these proposals was ICNAF's first action to limit catch<sup>2</sup>. In the 1970s, the United States proposed a total limit on the catch of all fish in Subarea 5. This proposal was based on the United States' research into multispecies fisheries and ecosystem productivity. ICNAF put the proposal into effect in 1973<sup>3</sup>.

128. ICNAF annually recorded the scientific research conducted by the parties in the various subareas. The research reflects the pattern of fishing activity described in Section 1 of Chapter III of this Part. Until 1959, only the United States reported conducting scientific research in Subarea 5. During this time, the United States also conducted research throughout the entire area covered by the Convention. After 1959, Canada began to conduct scientific investigations in Subarea 5. By 1961, other foreign fishing States began conducting scientific research on Georges Bank as well. Nevertheless, the United States continued to conduct most of the research on the Subarea 5 fisheries. The scientific research conducted by other foreign fishing States in Subarea 5 was comparable in scope and extent with that of Canada. For example, between 1960 and 1976, 415

---

<sup>1</sup> For the United States scientific report prepared by H.W. Graham, Director of the Laboratory, Fish and Wildlife Service, Woods Hole, Massachusetts; the Report of the Panel for Subarea 5; and the mesh regulations as adopted by ICNAF, see Annex 48, Vol. III.

<sup>2</sup> For the report of the panels for Subareas 4 and 5, see Annex 49, Vol. III.

<sup>3</sup> United States proposals for overall catch quotas for the total biomass were based primarily on two papers prepared by United States scientists:

M.D. Grosslein, B.E. Brown, J.A. Brennan, *A preliminary evaluation of the effects of fishing on total fish biomass, and first approximations of maximum sustainable yield for finfishes, in ICNAF Division 5Z and Subarea 6. I. Changes in relative biomass of groundfish in Division 5Z as indicated by research vessel surveys, and probable maximum yield of the total groundfish resource. II. Estimates of total fishing effort and its relation to sustainable yield of finfish.* ICNAF Research Document, 1972, 72/119 2835.

B.E. Brown; J.A. Brennan; E.G. Heyerdahl; M.D. Grosslein; R.C. Hennemuth; *An evaluation of the effect of fishing on the total finfish biomass in ICNAF Subarea 5, and Statistical Area 6.* ICNAF Research Document, 1973, 73/8 2910.

United States proposals were put forward in June, 1973 and again at the Third Special Meeting in October, 1973, where they were in part adopted. For the Panel 5 reports and press notice of the October, 1973 meeting, see Annex 50, Vol. III.

research documents relating to Subarea 5 were submitted to ICNAF<sup>1</sup>. United States scientists submitted 68 per cent of these documents, the USSR accounted for 10 per cent, Canada 8 per cent, and other parties the remaining 14 per cent. As another example, of the 5,000 vessel-days of research time devoted to fisheries research in Subarea 5 between 1960 and 1979, the United States accounted for 63 per cent, the USSR for 18 per cent, Canada for 6 per cent, and others for 13 per cent<sup>2</sup>. Throughout the entire period, Canada directed its primary research effort at its major fishery in Subarea 5—scallops. The United States, on the other hand, investigated all fish in the Gulf of Maine Basin and Georges Bank ecosystems, without specific reference to their commercial character.

### C. SEARCH AND RESCUE

129. The maritime activity in the Gulf of Maine area has prompted the United States and Canada to agree to coordinate search and rescue operations<sup>3</sup>. The United States and Canada presently divide their search and rescue regions along the line used by the International Civil Aviation Organization (ICAO)<sup>4</sup> to divide responsibility for routing and control of aircraft, and for air search and rescue. The United States is responsible for a region that includes a large area seaward of Nova Scotia and all but a corner of Georges Bank. Figure 13.

130. These agreements between the United States and Canada do not restrict operational mobility. The United States Coast Guard therefore regularly conducts search and rescue operations in the Canadian search and rescue region<sup>5</sup>. These agreements only serve to identify the means by which the two countries maintain and coordinate search and rescue services.

### D. DEFENSE

131. During World War II, the United States, with the concurrence of Canada, assumed primary responsibility for the defense of most of the Gulf of Maine area, including all of the Gulf of Maine Basin and Georges Bank. Canada agreed to provide naval and air defense for the sea area only within 30 nautical miles of major Canadian ports. The United States took responsibility for surface and air patrols seaward of the Canadian area of responsibility. In addition, a Change of Operation Control Line (CHOP line) divided responsibility for the control and

<sup>1</sup> These figures and percentages are derived from Volumes 1-3 of the Index and List of Titles of Meeting Documents, ICNAF, 1979. This index contains a complete list of the documents prepared and submitted to ICNAF, including the documents prepared and submitted by the scientists of member states. By cross-referencing the list of titles with the author index in each volume, the nationality of the scientists preparing and submitting each document may be determined.

<sup>2</sup> These estimates of research vessel-days are based upon a compilation of various sources of information, including reports of the United States Government, the Canadian Government, ICNAF, and the reports of public and private institutions.

<sup>3</sup> For these agreements, see Annex 35, Vol. II.

<sup>4</sup> International Convention on Civil Aviation, 7 Dec. 1944, entered into force for the United States 4 Apr. 1947, 15 U.N.T.S. 295. For a map of ICAO's regions, see Annex 36, Vol. II.

<sup>5</sup> Of the approximately 226 sorties conducted by the United States Coast Guard between 66° and 67° West longitude on Georges Bank from 1976 to 1981, 54 were conducted in the Canadian search and rescue region.

②<sup>8</sup> routing of ships crossing the Atlantic with war supplies for Great Britain. Figure 14. That line extended southeastward through the Northeast Channel until it was seaward of Georges Bank and the Scotian Shelf, where it turned northeast, running roughly parallel to the general direction of the east coast of North America. Today, the United States patrols this same area.

132. The United States and Canada maintain air defense identification zones, or areas over land and water in which the identification and control of aircraft are required for purposes of national security. The United States and Canada each have issued regulations defining the extent of their respective zones and prescribing rules governing the operation of aircraft in these zones<sup>1</sup>. The rules relate to such matters as the filing of special flight plans, the making of position reports and other notification requirements, and the necessity of complying with special security and emergency instructions. The regulations designate a common line between the coastal air identification zone of the United States (coastal ADIZ) and the coastal air identification zone of Canada (coastal CADIZ), which adjoin one another in the Gulf of Maine area. This line runs southeast through Browns Bank, roughly perpendicular to the general direction of the coast. Figure 15.

---

<sup>1</sup> For the respective regulations and a map of the zones, see Annex 37, Vol. II.



## CHAPTER IV

### HISTORY OF THE DISPUTE

133. The present dispute as it relates to the continental shelf stems from the issuance in 1945 by President Truman of the Proclamation relating to the Continental Shelf<sup>1</sup>. Although the dispute relating to fishery rights may be said to have originated with the first intrusion of Canadian fishing vessels onto Georges Bank in the 1950s, it arises more immediately from the extensions of exclusive fishing zones to 200 nautical miles by both Canada and the United States in 1977.

134. The Truman Proclamation on the Continental Shelf is well known to the International Court of Justice. It established for the United States exclusive jurisdiction and control over the natural resources of the seabed and subsoil of the shelf off its coasts extending to a depth of 100 fathoms. It specifically provided:

“In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles<sup>1</sup>.”

The United States consulted with its neighbors before the Proclamation was made public in 1945. During these consultations, the United States transmitted to Canada drafts of the Continental Shelf and Fisheries Proclamations, along with a detailed explanation of the proposed policies<sup>2</sup>. Neither Canada nor any of the other governments consulted objected to the proposed policies. On 28 September 1945, President Truman issued the Proclamations. The United States formally transmitted both Proclamations and an accompanying press release to Canada on 22 October 1945<sup>3</sup>. The press release described the United States continental shelf as an area of 750,000 square miles “covered by no more than 100 fathoms (600 feet) of water<sup>4</sup>.” Receipt of the Proclamations was acknowledged without comment by Canada on 23 October 1945<sup>5</sup>. The Proclamation was widely known throughout the international community<sup>6</sup>, as was the fact that the claim specifically included the continental shelf within the 100-fathom-depth contour<sup>7</sup>. All of Georges Bank fell within that claim.

135. No State questioned United States jurisdiction and control over the continental shelf of the Gulf of Maine Basin and Georges Bank until the 1960s.

<sup>1</sup> Annex 3, Vol. 1.

<sup>2</sup> For a summary of the consultations, see *Foreign Relations of the United States*, “Continental Shelf and Coastal Fisheries”, pp. 1496-1503 (Vol. 2., 1945), Annex 3, Vol. I.

<sup>3</sup> Note of the Department of State, dated 22 Oct. 1945, Annex 3, Vol. I.

<sup>4</sup> Press Release of 28 Sep. 1945, Dept. of State *Bull.*, Annex 3, Vol. I.

<sup>5</sup> Canadian Note No. 383 of 23 Oct. 1945, Annex 3, Vol. I.

<sup>6</sup> I. Brownlie, *Principles of Public International Law*, 1966, pp. 202-203, Annex 3, Vol. I.

<sup>7</sup> Shalowitz, *op. cit.*, at 184, Annex 3, Vol. I.

Through that long period, all activities in this area—fishing, charting and surveying, scientific research, and defense—evidenced the complete dominance of the United States over it. The United States ratified the 1958 Convention on the Continental Shelf in 1961 and became a party when the Convention entered into force in 1964<sup>1</sup>. During the same period, the United States began the exploration of its continental shelf off the New England states. Over the next few years, seismic exploration permits covering all of the continental shelf off New England, including the entirety of Georges Bank, were granted by the United States, and activities began.

136. In 1964, Canada, without explanation to the United States, granted exploration permits for a portion of Georges Bank. These permits apparently were granted in connection with a program aimed at immediate development of all of what Canada purported to claim as its continental shelf. The United States was neither consulted nor given any notice of Canada's intentions or of its actions in this respect. In April, 1965, after the Canadian exploration permits were issued, the Assistant Director for Lands and Minerals of the United States Bureau of Land Management of the Department of the Interior, Mr. Hoffman, became aware of the Canadian program through trade publications. He wrote the Canadian Department of Northern Affairs and Natural Resources, seeking further information about the location of the Canadian permits and the regulations governing them and mineral leasing. In his letter, Mr. Hoffman referred to his understanding that the Convention on the Continental Shelf had recently come into force, and indicated his interest in identifying the location of the permits with reference to Article 6 of that Convention. Mr. Hoffman apparently was unaware that the 1958 Convention on the Continental Shelf was not applicable because Canada had not yet become a party to it at that time. Mr. Hunt, Chief of the Resources Division of the Department of Northern Affairs and Natural Resources of Canada, responded to Mr. Hoffman on 8 April 1965, sending him copies of maps and regulations and requesting information on the United States continental shelf program. In a response dated 14 May 1965, Mr. Hoffman noted that Canada seemed to have issued offshore permits on the continental shelf appertaining to the United States, and he questioned whether Canada had properly applied Article 6 of the Convention. In this connection, Mr. Hoffman specifically stated that he and his agency had no authority to enter into formal discussions in case of a disagreement as to the continental shelf boundary. Mr. Hoffman also indicated that, while no oil and gas leases had been granted off the east coast by the United States, seismic permits for that area had been issued to United States applicants<sup>2</sup>.

137. When the United States agency responsible for foreign affairs, the Department of State, became aware of the Canadian permits, the United States Embassy in Ottawa requested that the Canadian Department of Mines and Technical Surveys supply pertinent information. In a response dated 30 August 1966, the Canadian Department of External Affairs provided technical descriptions and charts and referred the Embassy to oil and gas trade publications for further information regarding the Canadian offshore program<sup>3</sup>. The United States Government received no information indicating that any activity by Canadian permittees was imminent.

<sup>1</sup> Annex 5, Vol. I.

<sup>2</sup> For this correspondence, see Annex 53, Vol. IV.

<sup>3</sup> For this correspondence, see Annex 54, Vol. IV.

138. In 1966 and 1967, diplomatic consultations between the United States and Canada occurred during which both governments noted the need for a continental shelf boundary delimitation. On 10 May 1968, the Department of State presented the Embassy of Canada in Washington with an aide-memoire that stressed the lack of agreement on the continental shelf boundary in the Gulf of Maine area. The United States suggested a temporary suspension of exploration and exploitation activities on the northern half of Georges Bank, to allow consultations and the opportunity to seek agreement on the location of the boundary. In that aide-memoire, the United States referred to the interrelationship between the fisheries of the area and hydrocarbon development. The United States expressed its strong concern that steps be taken to ensure the protection of the living resources of the area against pollution and other disturbances that might result from mineral activities<sup>1</sup>.

139. In view of the lack of progress following this communication, the Department of State on 5 November 1969 presented a formal diplomatic note requesting a moratorium on mineral exploration and exploitation on Georges Bank. The United States protested Canada's assertion of jurisdiction there in the following terms:

"Until the exact location of the United States-Canada continental shelf boundary in the Gulf of Maine is agreed upon, the United States cannot acquiesce in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank continental shelf. The United States Government, therefore, cannot recognize the validity of Canadian permits for any part of the Georges Bank, reserves its rights and the rights of its nationals to this continental shelf area, and intends to make its position a matter of public record in the Federal Register so that individuals and companies concerned with exploration and exploitation in the area may be aware of this position.

-----

In the near future, the United States Government will suggest to the Canadian Government dates for the initiation of formal negotiation of all of the United States-Canada continental shelf boundaries<sup>2</sup>."

140. The Canadian Government on 1 December 1969 rejected the United States' suggestion of a moratorium<sup>3</sup>. Nonetheless, it was and remains the understanding of the United States that Canada took action to suspend or modify any work requirements in the permits held by companies for tracts on Georges Bank, thereby avoiding the prospect that the Canadian permittees might engage in activities on the United States' continental shelf, such as exploratory drilling, that might prejudice the resolution of the dispute. As far as the United States is aware, Canadian licensees have undertaken no such activities on these tracts.

141. On 21 February 1970, to ensure that the public would not misunderstand its position, the United States Government took the unusual step of announcing in

<sup>1</sup> For the Aide-memoire from the Department of State to the Canadian Embassy, 10 May 1968, see Annex 55, Vol. IV.

<sup>2</sup> Annex 56, Vol. IV.

<sup>3</sup> Note No. 366 of the Canadian Embassy, 1 Dec. 1969, Annex 56, Vol. IV.

the *Federal Register* that the United States had protested purported Canadian authorizations relating to Georges Bank<sup>1</sup>.

142. In the meantime, on 6 February 1970, after the dispute had been ongoing for several years, Canada ratified the Convention on the Continental Shelf. In so doing, Canada chose to make what it termed a "declaration" with respect to Article I of the Convention, despite the prohibition on reservations in Article 12 of the Convention:

"In the view of the Canadian Government the presence of an accidental feature such as a depression or a channel in a submerged area should not be regarded as constituting an interruption in the natural prolongation of the land territory of the coastal state into and under the sea<sup>2</sup>."

The United States objected to the Canadian so-called "declaration" in the following terms:

"The Government of the United States does not find acceptable the declaration made by the Government of Canada with respect to article 1 of the Convention on the Continental Shelf. The United States considers that Convention to be in force and applicable between it and Canada, but that such application does not in any manner constitute any concurrence by the United States in the substance of the declaration made by Canada with respect to article 1 of that Convention<sup>3</sup>."

143. Formal negotiations between the United States and Canada on the continental shelf boundary began in Ottawa on 9 July 1970. Canada took the position that no special circumstances existed in the area and that the continental shelf boundary should be the equidistant line. The United States asserted that special circumstances *did exist in the area*, that the equidistant line was inequitable, and that the continental shelf boundary should follow the Northeast Channel. During the next several years, neither State authorized drilling activities in the Gulf of Maine or on the northeastern part of Georges Bank. The United States maintained its position, taken at the time of the Truman Proclamation, that continental shelf boundaries would be established by agreement as the need arose, in accordance with equitable principles.

144. The United States on 18 January 1974 enacted a law which declared the American lobster (*Homarus Americanus*) to be a creature of the continental shelf for the purposes of the Bartlett Act<sup>3</sup>. That Act, passed in 1966 by the United States Congress, implemented Article 2, paragraph 4 of the Convention on the Continental Shelf, which provided that living resources of the continental shelf are subject to the sovereign rights of the coastal State. On 18 January 1974, the United States notified the governments of all States fishing in the Northwest Atlantic, including Canada, that fishing for American lobster by foreign nationals on the United States continental shelf was prohibited. The United States further

---

<sup>1</sup> 35 *Federal Register* 3301, 21 Feb. 1970, Annex 57, Vol. IV.

<sup>2</sup> Annex 52, Vol. IV.

<sup>3</sup> 16 U.S.C. sec. 1805 (1974), The Bartlett Act, 16 U.S.C. secs. 1801-1806 (1966), Annex 58, Vol. IV. The Bartlett Act also established a 12-nautical-mile fishing zone.

informed them that it would exercise restraint in enforcement for a limited period<sup>1</sup>.

145. On 5 September 1974, plans for the strict enforcement of the United States lobster law were communicated to all governments whose nationals fished off the United States coast<sup>2</sup>. In order to improve the prospects for negotiation, the United States informed Canada that it would not enforce the requirements of the law against Canadian fishermen<sup>3</sup>. Vigorous enforcement of the United States law began on 5 December 1974 against all other fishermen catching lobster on the United States continental shelf out to the 100-fathom curve of Georges Bank. (29) Figure 16. For the next 2 years, repeated boardings of third-party fishing vessels by United States enforcement officers were made throughout Georges Bank to ensure the conservation of the lobster fisheries<sup>4</sup>.

146. The question of the continental shelf boundary in the Gulf of Maine area also arose in 1974 in connection with the authorization by the United States of permits to conduct exploration activities on the northeastern part of Georges Bank. Canada had not protested the issuance of such permits by the United States between 1964 and 1973, nor the gathering of seismic or other geophysical data through exploration in that area pursuant to those permits. Canada formally entered its first reservation concerning such activities in 1974 with reference to United States authorizations under permit No. OCS E-1-74, issued to the United States firm of Digicon, Inc. The United States' formal response to Canada's reservation rejected the Canadian claim to any part of Georges Bank, and reiterated the longstanding position that Georges Bank was within the jurisdiction of the United States<sup>5</sup>.

147. The United States recognized that the absence of an agreed continental shelf boundary with Canada would discourage commercial exploitation under any oil and gas leases the United States might grant on the northeastern part of Georges Bank. The United States decided, however, to begin its procedures for the sale of such leases. The United States expected that the complex requirements of United States law leading to the offer of leases on the continental shelf, which take several years to complete, could be fulfilled pending resolution of the maritime boundary. Thus, following the conclusion of domestic litigation that had previously prevented the United States from formally proceeding with prepara-

<sup>1</sup> For the United States Circular Note of 18 Jan. 1974, and the separate note of the same date to Canada, see Annex 59, Vol. IV.

<sup>2</sup> For the United States Circular Note of 5 Sep. 1974, see Annex 59, Vol. IV.

<sup>3</sup> For the separate note of 11 Sep. 1974, see Annex 59, Vol. IV.

<sup>4</sup> Coast Guard actions enforcing the lobster law resulted in 2 seizures of foreign fishing vessels on the northeastern part of Georges Bank. On 11 June 1975, the Bulgarian vessel *Argonaut* was boarded at 40°58'N, 66°32.9'W, and was found to have 600 pounds of lobster aboard. The vessel was seized and later released upon payment of U.S. \$425,000 in fines. On 7 Jan. 1976, the Cuban vessel *Golfo de Tonkin* was boarded at 40°32.2'N, 67°47.7'W. It was seized when 65 pounds of lobster were found on board. It was released on the payment of U.S. \$40,000 in fines.

<sup>5</sup> For Canada's note of 19 Sep. 1974, the correspondence of 1 Feb. and 13 Feb. 1974, relating to the United States authorization to Digicon, and the Note from Dept. of State to Dept. of External Affairs, 11 Oct. 1974, see Annex 60, Vol. IV.

tions to grant leases off the Atlantic coast, the United States on 15 May 1975 notified Canada of its plans to issue a Call for Nominations on Georges Bank<sup>1</sup>.

148. The area covered by the Call for Nominations included all of Georges Bank. Canada responded to this notification by reserving its position<sup>2</sup>. The United States did not regard the reiteration of the Canadian position as a reason to delay the many technical and environmental studies required before decisions could be taken to proceed with a lease sale that might affect the dispute (see Chapter III, Section 2 of this Part). Accordingly, on 17 June 1975, the Department of the Interior announced a Call for Nominations for a lease sale to cover all of Georges Bank<sup>3</sup>. The area covered by the Call is shown in Figure 11, paragraph 94. On 2 January 1976, the Department of the Interior announced the selection of 206 tracts on Georges Bank for intensive study<sup>4</sup>. Twenty-eight of these tracts were located on the northeastern part of Georges Bank. The Department of the Interior also announced its intention to fulfill the next requirement leading to the eventual sale of leases on Georges Bank—the preparation of a draft environmental analysis to be released for public comment. Canada objected to the United States' decision to prepare such an analysis<sup>5</sup>. The United States' reply of 10 February 1976 made clear that the environmental analysis was a means to assist government decision-makers in determining whether a sale should take place, and, if so, what tracts would be involved and under what conditions. The reply of the United States also restated its position that all the tracts being studied were on the United States continental shelf<sup>6</sup>. On 12 October 1976, the initial environmental analysis was completed and a draft made available for public review<sup>7</sup>.

149. In the meantime, officials in both countries realized that an extension of fisheries jurisdiction to 200 nautical miles would add a new dimension to the existing continental shelf boundary dispute between the United States and Canada in the Gulf of Maine area. In the latter part of 1975, the Parties began a series of consultations and negotiations. Although many meetings were held throughout 1976, including several at the Secretarial and Ministerial level, little headway was made in resolving the boundary matter.

150. In 1976, both countries announced their intention to establish 200-nautical-mile fishing zones. Figure 17. On 13 April 1976, the United States enacted the Fishery Conservation and Management Act of 1976<sup>8</sup>. This Act established a 200-nautical-mile fishery conservation zone off the coast of the United States, effective 1 March 1977. The Government of Canada soon took similar action. On 1 November 1976, Canada published in *The Canada Gazette* an Order in Council setting forth the limits of its 200-nautical-mile fishing zone, effective 1 January 1977<sup>9</sup>. On 4 November 1976, the United States Government

<sup>1</sup> Note from Dept. of State to Embassy of Canada, 15 May 1975, Annex 61, Vol. IV.

<sup>2</sup> Note No. 180 from Embassy of Canada to Department of State, 3 June 1975, Annex 61, Vol. IV.

<sup>3</sup> 40 *Federal Register* 25608, 17 June 1975, Annex 42, Vol. II.

<sup>4</sup> Dept. of the Interior News Release, 2 Jan. 1976, Annex 42, Vol. II.

<sup>5</sup> Note No. 52 Embassy of Canada to Dept. of State, 2 Feb. 1976, Annex 62, Vol. IV.

<sup>6</sup> Note from Dept. of State to Embassy of Canada, 10 Feb. 1976, Annex 62, Vol. IV.

<sup>7</sup> Dept. of the Interior News Release, 12 Oct. 1976, Annex 42, Vol. II.

<sup>8</sup> 16 U.S.C. secs. 1801 *et seq.*, Annex 8, Vol. I.

<sup>9</sup> 101 *The Canada Gazette* (EXTRA), Vol. 110, 1 Nov. 1976; 111 *The Canada Gazette* (EXTRA) 1, 1 Jan. 1977, Annex 63, Vol. IV.

responded with a *Federal Register* notice setting the limits of its 200-nautical-mile fishery conservation zone and its continental shelf in areas bordering Canada<sup>1</sup>. Figure 17. The *Federal Register* notice referred to the newly published Canadian fisheries limits and the continuing controversy with Canada over those limits and the continental shelf boundary as well. The notices of both the United States and Canada provided that the limits of the maritime jurisdictions, as set forth in each notice, were intended to be without prejudice to any negotiations or positions that might be taken.

151. The line published by Canada defined its fishing zone in the Gulf of Maine area by an equidistant line, every point of which was equidistant from the two countries. Canada purported to claim on this basis a part of Georges Bank as well as all the banks on the Scotian Shelf. The published line defining the United States fishery conservation zone and continental shelf in the Gulf of Maine area followed the line of deepest water through the Northeast Channel. The United States zone included all of Georges Bank, leaving to Canada all of the banks on the Scotian Shelf. The lines published in the two notices resulted in an area of overlap internal to the Gulf of Maine covering approximately 210 square nautical miles (720 square kilometers) (Area A in Figure 17)<sup>2</sup>, and an unclaimed area covering approximately 1,120 square nautical miles (3,842 square kilometers) (Area B in Figure 17)<sup>3</sup>. The large area of overlap between the two claims in the vicinity of Georges Bank covered approximately 9,000 square nautical miles (30,870 square kilometers). Upon the effective dates of the 200-nautical-mile fishing zones, 1 January 1977 for Canada and 1 March 1977 for the United States, domestic law in each country provided for the arrest and seizure of unauthorized foreign vessels in those zones. Prior to the effective dates, the efforts of the Governments of the United States and Canada focused on interim fishery arrangements to provide time for further negotiations on the boundary in the Gulf of Maine area and elsewhere. In an effort to avoid actions that would make those negotiations more difficult, the United States Department of the Interior withdrew for a short period from the proposed oil and gas lease sale the 28 tracts located on the northeastern part of Georges Bank<sup>4</sup>. Before the end of 1976, the Parties agreed to refrain from enforcing their respective laws against the vessels of each other in the area between the two published boundary positions in order to facilitate ongoing negotiations<sup>5</sup>.

---

<sup>1</sup> 41 *Federal Register* 48619, 4 Nov. 1976, Annex 64, Vol. IV.

<sup>2</sup> This area is landward of the starting point of Article II of the Special Agreement and is not in controversy before this Court. See para. 4, note 2.

<sup>3</sup> A footnote to the United States *Federal Register* Notice of 4 Nov. 1976 stated that:

"In view of the fact that claimed boundaries published by the United States and Canada would leave an unclaimed area within the Gulf of Maine, the United States will exercise its fisheries management jurisdiction to the Canadian-claimed line where that line is situated eastward of the United States-claimed line, until such time as a permanent maritime boundary with Canada is established in the Gulf of Maine."

<sup>4</sup> Dept. of the Interior Press Release, 7 Dec. 1976, Annex 42, Vol. IV.

<sup>5</sup> For the Aide-memoire from the Embassy of Canada, 22 Dec. 1976 and the Aide-memoire from Dept. of State to Dept. of External Affairs, 30 Dec. 1976, see Annex 65, Vol. IV.

152. On 24 February 1977, the United States and Canada signed the 1977 Interim Reciprocal Fisheries Agreement<sup>1</sup>. This short-term agreement provided for the continuation of existing fisheries off the east and west coasts of each State, both within and beyond the boundary regions, at existing levels and under terms and conditions applicable to the fishermen of the coastal State. The boundary regions were defined for this purpose by reference in the preamble to *The Canada Gazette* of 1 November 1976 and 1 January 1977 and to the United States *Federal Register* Notice of 4 November 1976. Article IX of the interim agreement provided that enforcement would be conducted, as between the Parties, by the flag State; that neither Party was to authorize fishing by vessels of third parties; and that either Party could enforce against third parties. Fishing by nationals of both Parties continued in 1977 on both the east and west coasts under the terms of the agreement.

153. During the negotiations on the interim fisheries agreement, the diplomatic debate concerning the relative merits of the respective boundary positions continued. A Canadian note of 22 December 1976 objected that the United States fishery conservation zone, as published on 4 November 1976, fell on the Canadian side of the equidistant line publicly claimed by Canada<sup>2</sup>. At the same time, the Canadian note made reference to further so-called "Canadian claims", foreshadowing Canadian interest in expanding rather than narrowing the differences between the Parties. The United States in its note of 16 February 1977 rejected Canada's contentions<sup>3</sup>. The United States asserted in that note that, under the 1958 Convention on the Continental Shelf and applicable principles of international law, maritime boundaries were to be determined by agreement and in accordance with equitable principles. The United States noted that the application of equidistance as a means for determining the maritime boundary in the Gulf of Maine area did not accord with equitable principles because special circumstances existed in the area. The United States contended that an examination of the relevant factors, including coastal configuration, the geology and geomorphology of the area, and coastal proportionality, confirmed that a maritime boundary in accordance with equitable principles was one that extended through the Northeast Channel.

154. Canada responded on 26 May 1977 with a further restatement of its view regarding equidistance<sup>4</sup>. On the same date, in another communication, Canada for the first time began to question the United States continental shelf activities southwest of Canada's claimed equidistant line, characterizing the earlier Canadian note of 22 December 1976 as a reservation of Canada's position concerning all activities on the entirety of Georges Bank<sup>5</sup>. The United States responded that further debate of legal positions would not contribute to a solution of the problem,

---

<sup>1</sup> T.I.A.S. 8648, Annex 7, Vol. I. The Agreement was not formally in force when the United States 200-nautical-mile fishery conservation zone became effective on 1 March 1977, but the Parties exercised enforcement restraint and allowed fishing activities to be conducted as if the Agreement were in force. On 26 July 1977, the United States enacted Public Law PL-96-6, authorizing the 1977 Interim Reciprocal Fisheries Agreement. On 26 July 1977, the United States notified Canada of this event, bringing the Agreement formally into force.

<sup>2</sup> Note No. 626 Embassy of Canada to the Dept. of State, 22 Dec. 1976, Annex 66, Vol. IV.

<sup>3</sup> Note of Dept. of State, 16 Feb. 1977, Annex 66, Vol. IV.

<sup>4</sup> Note No. 221 Embassy of Canada to Dept. of State, 26 May 1977, Annex 67, Vol. IV.

<sup>5</sup> Aide-memoire from the Embassy of Canada, 26 May 1977, Annex 67, Vol. IV.



and reserved the right to respond further to Canada's legal contentions<sup>1</sup>. The United States also informed Canada that Canada could not, simply by making a reference to an area off the United States coast, effectively halt United States actions<sup>2</sup>. The United States advised the Canadian Government, however, that the United States would not take steps relating to development of the resources of the disputed area that could prejudice negotiation of a boundary settlement:

"The United States Government agreed on November 4, 1976, that both countries would avoid steps for the time being relating to the development of non-living resources in the boundary areas between the United States and Canada which could prejudice negotiation of a boundary settlement. To implement this decision, the Department of the Interior on December 7, 1976, withdrew 28 tracts in the disputed area of the Gulf of Maine from its proposed 1977 North Atlantic Outer Continental Shelf oil and gas lease sale. All of the remaining sites scheduled for test drilling and the tracts programmed for lease sale in the Gulf of Maine area in the latter part of 1977 are located not in a boundary area, but outside of the area claimed by the Government of Canada which has been the subject of discussions and negotiations between the two governments over the past several years. In the view of the United States Government, its Outer Continental Shelf program is entirely consistent with its stated position on the delimitation of maritime boundaries.

-----

The Government of the United States remains committed to a mutually acceptable settlement of United States-Canada maritime boundaries and believes that both governments should refrain from actions which make settlement more difficult. However, the actions to be taken in connection with the planned lease sale in this area later this year will take place only in areas subject to United States jurisdiction and not affected by a maritime boundary settlement. Accordingly, the Government of the United States believes that these actions will not add to the complexity of continuing negotiations on maritime boundaries<sup>3</sup>."

155. Senior leaders in both countries were aware of the need to break the impasse that was developing. Special negotiators were appointed by both governments on 27 July 1977<sup>3</sup>. Their mandate was to report to their governments by 15 October 1977 on the principles of a comprehensive settlement on maritime boundaries, and related matters as appropriate. On 14 October 1977, however, while United States diplomats were in Ottawa to negotiate the principles of a comprehensive settlement required by the mandate, Canadian officials summoned State Department lawyers to Ottawa to inform them that Canada intended to expand its claim in the Gulf of Maine area based on its interpretation of the then-recent award of the Court of Arbitration in the *Anglo-French Arbitration*. The

<sup>1</sup> Note from Dept. of State to Embassy of Canada, 27 June 1977, Annex 67, Vol. IV.

<sup>2</sup> Note from Dept. of State to Embassy of Canada, 7 July 1977, Annex 67, Vol. IV.

<sup>3</sup> 77 Dept. of State Bull. No. 1992, p. 282, 29 Aug. 1977, Annex 68, Vol. IV.

events of this session were followed on 3 November 1977 by a formal note setting forth the new Canadian position<sup>1</sup>.

156. In this manner, the United States was informed of the new Canadian position regarding the law applicable to the delimitation of the boundary in this case. *Canada did express its opinion that the decision in the Anglo-French Arbitration* made clear that the equidistance method is subordinate to equitable principles and to the prevailing geographical circumstances. Canada also recognized that there is no presumption that operates in favor of equidistance. These views corresponded to those of the United States. Canada, however, went on to assert that there were no special circumstances within the Gulf of Maine that would cause application of the equidistance method to produce an inequitable result. Moreover, in the delimitation of the area seaward of the Gulf—in the vicinity of Georges Bank—Canada was of the view that the only geographical factors that needed to be abated in the application of equidistance were Cape Cod and Nantucket Island. Canada stated that the relationship of the Parties in this seaward area is analogous to the Atlantic region in the *Anglo-French Arbitration*; that is, that the coasts of the United States and Canada are laterally related. On the basis of a purported analogy to the decision in the *Anglo-French Arbitration*, Canada declared that Cape Cod and Nantucket Island were entitled to no effect in the application of the equidistance method. As a result, Canada purported to expand its claim and to assert entitlement to an additional 2,900 square nautical miles (9,947 square kilometers) of Georges Bank.

157. The United States Government vigorously protested the new Canadian claim, stating that it could not agree that the decision in the *Anglo-French Arbitration* justified such an expansion of Canada's position<sup>2</sup>. The United States added that it was disappointed that Canada would take such a step, which was inconsistent with the ongoing process of narrowing differences through good-faith negotiations to reach a comprehensive solution. The United States reiterated its position that the equidistant line previously claimed by Canada was not in conformity with equitable principles because of the special circumstances of the area:

“Therefore, the Government of the United States can look with no sympathy on any Canadian claim or position that further aggravates that inequity. In the view of the United States Government, a maritime boundary in the Gulf of Maine area that accords with equitable principles is a line which takes into account the coastal configuration of the area, particularly the distorting effect on an equidistant line of the concavity of the U.S. coastline and the protrusion of the peninsula of Nova Scotia. Such a line should produce a delimitation consistent with the principle of natural prolongation and with a reasonable degree of proportionality with the length of relevant coastlines of the two countries<sup>2</sup>.”

158. On 25 January 1978, Canada presented another note requesting that certain tracts on Georges Bank scheduled for sale by the United States Govern-

<sup>1</sup> Note No. GNT-067, Department of External Affairs to the Dept. of State, 3 Nov. 1977, Annex 69, Vol. IV.

<sup>2</sup> United States Note of 2 Dec. 1977, Annex 69, Vol. IV.

ment on 31 January 1978 in Outer Continental Shelf Lease Sale No. 42 be withdrawn<sup>1</sup>. In yet another effort by the United States to promote negotiations, but without prejudice to its rights, the United States removed from the sale the tracts in the area between the original claim of Canada and its as yet confidential expanded claim of 3 November 1977<sup>2</sup>. The United States indicated that it would continue to exercise enforcement restraint in those areas under the jurisdiction of the United States but covered by Canada's original claim as published in *The Canada Gazette* on 1 January 1977. The United States stated that it would not, however, "give any credence or recognition to the new Canadian position" made in the midst of what the United States had assumed were good-faith negotiations<sup>3</sup>.

159. Subsequently, the diplomatic focus again shifted to fisheries. On 31 December 1977, the 1977 Interim Reciprocal Fisheries Agreement expired. Each government nonetheless refrained from enforcing national laws against fishermen of the other while fisheries negotiations continued. In April 1978, the two governments exchanged notes constituting a proposed 1978 Interim Reciprocal Fisheries Agreement<sup>4</sup>. This agreement was essentially the same as the 1977 agreement insofar as enforcement restraint in the boundary regions was concerned; the boundary regions were defined as in the 1977 agreement. The 1978 Agreement, however, never entered into force. Before the Congress could act, the Canadian Government decided to terminate all United States fishing off the coast of Canada, thereby ending 300 years of fishing by New Englanders off Nova Scotia and Newfoundland. In a diplomatic note of 2 June 1978, Canada notified the United States that United States-flag fishing vessels would be required to leave the Canadian fishing zone by 4 June 1978<sup>5</sup>. The note stated that the Government of Canada was prepared to undertake efforts, on a reciprocal basis, to avoid confrontation in the boundary region by adopting flag-State enforcement procedures along the lines of the 1977 agreement. In response, the United States had no alternative but to terminate Canadian fishing off the United States coast; however, in this regard, the responding note of 2 June 1978 indicated the United States' intention "to adopt flag-State enforcement procedures in the boundary regions along the lines of the 1977 Reciprocal Fisheries Agreement"<sup>6</sup>.

160. Negotiations continued. Canada, however, on 15 September 1978, made public its new expanded claim<sup>7</sup>. The United States formally rejected the Canadian claim on the same day, and informed the public and the Canadian Government that it would not exercise enforcement restraint in the area of the

---

<sup>1</sup> Canadian Note, 25 Jan. 1978, Annex 70, Vol. IV.

<sup>2</sup> Dept. of State Press Release No. 53, 27 Jan. 1978, Annex 70, Vol. IV.

<sup>3</sup> Note from Dept. of State to Embassy of Canada, 3 Feb. 1978, Annex 70, Vol. IV.

<sup>4</sup> Note No. FLP-130, Marcel Cadieux to Lloyd Cutler, 10 Apr. 1978; Letter from Lloyd Cutler to Marcel Cadieux, 11 Apr. 1978, Annex 71, Vol. IV.

<sup>5</sup> Diplomatic note from Canada, 2 June 1978, Annex 72, Vol. IV.

<sup>6</sup> Annex 72, Vol. IV. Notwithstanding this breakdown, the United States proceeded to complete the steps required to allow the 1978 Interim Reciprocal Fisheries Agreement to enter into force. On 1 July 1978, the President signed into law PL 95-314, authorizing the agreement. The United States formally notified Canada to this effect on 7 Sep. 1978. Canada, however, refused to proceed with the interim agreement.

<sup>7</sup> 112 *The Canada Gazette* No. 79 (EXTRA), 15 Sep. 1978, Annex 73, Vol. IV.

expanded Canadian claim<sup>1</sup>. After reiterating its view that the new Canadian claim was without foundation, the United States formally delineated its objection to both the original and the expanded Canadian claims:

"The United States believes that Georges Bank is a natural prolongation of United States territory and that, in view of the special circumstances existing in the Gulf of Maine area, the maritime boundary published by Canada on November 1, 1976, based on the principle of equidistance, is not in accord with equitable principles. *A fortiori*, a delimitation allocating an even larger area of the United States Continental Shelf to Canada is not in accord with equitable principles.

In the view of the United States, there is no justification in international law for discounting the effect to be given Cape Cod and Nantucket Island in determining the maritime boundary in the Gulf of Maine area. Cape Cod and Nantucket Island, areas closely linked to Georges Bank and of great historical, political and economic importance to the United States, do not constitute distorting projections.

Neither the claim published by Canada on November 1, 1976, nor the expanded Canadian claim can be justified by reference to the judgment of the Court of Arbitration concerning the delimitation of the Continental Shelf between the United Kingdom and the French Republic. In that case the Court rejected the equidistance theory Canada espoused in asserting its original claim and adopted the position which the United States maintains with respect to the relation of the concepts of 'equidistance', 'special circumstances' and 'equitable principles'. Nothing in that judgment lends credence to the expanded Canadian claim, which gives no effect to Cape Cod and Nantucket Island<sup>2</sup>."

The United States again objected to an expansion of the Canadian claim in the midst of negotiations:

"Further, the United States considers that expansion of the Canadian claim in the midst of negotiations is not in keeping with the obligation of states under the Convention on the Continental Shelf, done at Geneva April 27, 1958, and applicable principles of international law, to negotiate with a view to arriving at an agreement on the delimitation of maritime boundaries. The United States, although convinced that its boundary position would be upheld in any third party adjudication, has consistently indicated its readiness to arrive at a negotiated resolution of the boundary in the Gulf of Maine area. Unfortunately, Canada's action expands rather than narrows the differences between the two governments.

For these reasons, the United States rejects the expanded claim of Canadian jurisdiction. The United States will continue to exercise fisheries jurisdiction in the area of the expanded claim in accordance with United States law.

---

<sup>1</sup> The United States maintained this position until 20 Nov. 1981. See below at para. 162. Since no Canadian vessels fished in the area, however, no enforcement was required.

<sup>2</sup> Note from Dept. of State to Embassy of Canada, 20 Sep. 1978, Annex 74, Vol. IV.

The United States is nonetheless prepared to continue negotiations toward a settlement of maritime boundary issues, or an agreement to submit unresolved maritime boundary issues to international adjudication<sup>1</sup>."

161. Despite domestic political difficulties created for the United States negotiators by the expanded Canadian claim, the two delegations, in March, 1979, reached agreement to submit a package of two treaties for the approval of their respective governments. One proposed treaty would have established a regime to govern east coast fishery resources extending from Cape Hatteras to Newfoundland. The other submitted the boundary dispute to binding adjudication<sup>2</sup>.

162. The proposed resolution of the dispute by a package of two treaties failed to obtain the necessary approval of the United States Senate. Opposition to the proposed fishery agreement in the Congress was strong, and was exacerbated by the late attempt by Canada to expand its claim in the area. It was argued that the complicated joint management system envisioned was cumbersome, if not unworkable; that the different fishery management objectives and policies of Canada and the United States were likely to lead to numerous disputes under such a system; and that, as a result, conservation of the stocks would not be effective. In addition, it was firmly believed that the amount of Canadian fishing permitted on Georges Bank and in the Gulf of Maine under the agreement was not justified by past Canadian activities in those areas where United States fishermen had been predominant for centuries. The conclusion in the Senate that the fisheries agreement was unbalanced and inequitable to the United States led to a proposal that the fisheries agreement be withdrawn but that both countries proceed with the boundary treaty. Canada initially resisted this proposal. In an effort to resolve the matter, the United States indicated that it would refrain from enforcement against Canadian fishing vessels in all areas claimed by Canada until the boundary was established by adjudication, if Canada would agree to the boundary settlement treaty. The President of the United States wrote to the Chairman of the Senate Committee on Foreign Relations in the spring of 1981:

"In connection with the exchange of instruments of ratification of the boundary settlement treaty it is my intention to . . . order the Coast Guard to forbear from the enforcement of US laws against Canadian fishing vessels in all maritime areas now claimed by Canada. While I firmly believe that there is no basis in international law for the claims that Canada has made, I also believe that if there is to be a peaceful resolution of the maritime boundary dispute, I must exercise this discretion in law enforcement<sup>3</sup>."

---

<sup>1</sup> *Ibid.* Canada took the final step under Canadian procedures formally to expand its claim on 26 Jan. 1979. Annex 73, Vol. IV. In a Note of 15 Feb. 1979, the United States rejected the expanded claim, in large measure restating its Note of 20 Sep. 1978. Annex 74, Vol. IV.

<sup>2</sup> On 29 Mar. 1979 and 2 Apr. 1979, the United States and Canada exchanged diplomatic correspondence agreeing that further exchanges of diplomatic correspondence concerning the legal merits of the respective positions were not necessary in the light of the comprehensive package the delegations were proposing to resolve the dispute. See Annex 75, Vol. IV.

<sup>3</sup> Letter from the President to Senator Charles Percy, Chairman, Senate Foreign Relations Committee, 6 Mar. 1981, Annex 76, Vol. IV.

163. On 19 April 1981, the United States Senate consented to ratification of the boundary settlement treaty in its final form. On 3 June 1981, the President signed the United States instrument of ratification, having withdrawn the fisheries agreement from Senate consideration. Canada thereafter accepted this approach in the fall of 1981. Instruments of ratification of the boundary settlement treaty, as technically altered, were exchanged on 20 November 1981. The Parties notified the International Court of Justice of the Special Agreement on 25 November 1981, as required by Article I of the Treaty between the Parties.

## PART II THE LAW

### INTRODUCTION

164. By Special Agreement, the United States and Canada have requested this Court to decide the course of the single maritime boundary that divides their continental shelves and fishing zones in the Gulf of Maine area. This boundary will serve for all purposes in international law. This is not a case of applying solely the law governing the delimitation of the continental shelf or solely the law governing the delimitation of exclusive fisheries rights. It is a case of first impression requiring the application of law that serves both functions, as well as any other purposes for which the Parties may under international law exercise their jurisdiction in this area.

165. The Parties seek a judgment based upon *principles and rules of law* in accordance with Article 38, paragraph 1 of the Statute of the International Court of Justice. The United States and Canada are not parties to any Convention establishing the law applicable, as such, to the question before this Court. The United States and Canada are parties to the 1958 Convention on the Continental Shelf, and Article 6 of that Convention is relevant to this proceeding as a source of principles and rules for delimitation of the continental shelf; however, the Continental Shelf Convention is not determinative in the delimitation of a single maritime boundary. State practice concerning single maritime boundaries seaward of the territorial sea as yet is sparse. International judicial proceedings have not dealt with the delimitation of the single maritime boundary beyond the territorial sea. There is, however, international law relating separately to the delimitation of coastal fisheries and of the continental shelf, as well as to other boundaries, from which the principles and rules that apply to the delimitation of the single maritime boundary may be derived.

166. This Court may not enter a judgment *ex aequo et bono* based upon "an exercise of discretion or conciliation<sup>1</sup>." This Court's authority is limited by the conditions set forth in paragraph 2 of Article 38 of the Statute of the Court<sup>1</sup>. The Parties have not consented to a decision *ex aequo et bono* and the United States does not do so now. This Court must arrive at its decision through "the strict application of legal rules<sup>2</sup>." Thus, it is not open to this Court to enter a compromise judgment that merely splits the difference between the Parties.

167. In this Part, the United States will identify the legal rules as they relate to the delimitation between neighboring States of fishery rights (Chapter I) and of the continental shelf (Chapter II). Based upon this exposition, and a consideration of relevant principles in land boundary cases, the United States will identify the

---

<sup>1</sup> *I.C.J. Reports 1982*, p. 60, para. 71.

<sup>2</sup> *Ibid.* See also *I.C.J. Reports 1969*, p. 48, para. 88.

principles and rules of international law that apply to the delimitation of a single maritime boundary (Chapter III). It will be shown that a single maritime boundary must be delimited in accordance with equitable principles, taking account of the relevant circumstances in the area, to produce an equitable solution. Among those equitable principles are: the principles regarding the relationship between relevant coasts and the maritime areas lying in front of those coasts (i.e., nonencroachment, proportionality, and natural prolongation); the principle that delimitation should facilitate conservation and management of the natural resources of the area; the principle that delimitation should minimize the potential for disputes between the parties; and the principle that delimitation should take account of and balance the relevant circumstances in the area. Any method or combination of methods that will produce an equitable solution in the application of these principles may be used.



## CHAPTER I

### DELIMITATION OF FISHERY JURISDICTION

168. Following a brief historical discussion, the United States will demonstrate that the principles employed by the Arbitral Tribunal in 1909 in the *Grisbadarna* case are applicable in this adjudication of a single maritime boundary. The *Grisbadarna* case shows that a delimitation where fishing zones are involved should take into account the relevant circumstances of the particular case so as to produce an equitable solution. *Grisbadarna* stresses the relationship between the relevant coasts and the marine areas lying in front of those coasts, the objective of minimizing the potential for disputes between States and their nationals, and the relevance of the historic activities of States and their nationals in the area. Developments in the international law of fisheries subsequent to *Grisbadarna* stress an additional principle: that the boundary should facilitate the conservation and management of the living resources of the area.

#### SECTION I. Early Developments

169. The early development of the law of coastal State fisheries jurisdiction was characterized by conflicts between those States whose nationals fished primarily the waters adjacent to their shores (the coastal States) and those States whose nationals fished the waters adjacent to the shores of other States. States whose nationals primarily fished off other States' coasts asserted the doctrine of freedom of fishing on the high seas. Coastal States asserted exclusive rights to the fisheries adjacent to their shores to varying distances, including at times claims to vast areas of the sea, premised on a wide variety of legal theories. Throughout history, this controversy led to international disputes and, at times, to hostilities. For instance, the attempt of Great Britain to exclude the Dutch from the herring fishery off the British coast was a major cause of three wars between them during the 17th century, and formed the background for the famous debate between Hugo Grotius and John Selden over the freedom of the seas. By the end of the 17th century, a consensus was emerging that the coastal State had a special interest in regulating and controlling fishing in a narrow belt of waters off its coasts.

170. In response to the frequent naval wars of the 17th and 18th centuries, coastal States also began to assert jurisdiction over their coastal waters to protect against involvement in hostilities between belligerents. These "neutrality" claims were sometimes based on the control that the coastal State could exercise over those waters from the shore. In this regard, the 3-nautical-mile rule gained widespread acceptance. By the start of the 19th century, neutrality claims and fishery claims began to merge into the modern concept of the territorial sea. A number of treaties during the 19th century used the 3-nautical-mile limit to define the limits of exclusive fishery jurisdiction<sup>1</sup>. The 3-nautical-mile limit also was incorporated into the first major multilateral fishery convention, the North Sea Fishery Convention of 1882 (concluded among Great Britain, France, Germany, the Netherlands, Belgium, and Denmark)<sup>2</sup>.

<sup>1</sup> T. W. Fulton, *The Sovereignty of the Sea*, 1911, pp. 581, 612, 616-617, Annex 94, Vol. V.

<sup>2</sup> International Convention for the Purpose of Regulating the Police of the Fisheries in the North Sea outside Territorial Waters, signed at The Hague, 6 May 1882, p. 219.

171. By the beginning of the 20th century, the concept of the territorial sea, a narrow zone of exclusive coastal State jurisdiction for fishery and other purposes, was established<sup>1</sup>. Sovereignty over the territorial sea was considered an incident of the sovereignty over the land territory of the abutting coast. The establishment of zones with narrow fixed limits struck a balance between the special needs and interests of the coastal State for fishery and security purposes and the interests of other States in use of the high seas for fishing, navigation, and defense. The *Grisbadarna* case was decided at this time.

## SECTION 2. Delimitation Between Neighboring States

### THE GRISBADARNA CASE<sup>2</sup>

172. The *Grisbadarna* case, also known as the Maritime Frontier case, was decided by a Special Arbitral Tribunal established in 1908. The decision resolved a dispute between Norway and Sweden concerning rights over certain marine areas adjacent to their coasts. Both parties claimed the areas in dispute on the basis of treaties of 1658 (Treaty of Roskilde) and of 1660 (Treaty of Copenhagen), whereby the King of Denmark and Norway ceded to the King of Sweden an area called Bohuslan, adjacent to the Skagerrak. This cession necessitated a new national boundary between Norway and Sweden, which was delimited by a specially appointed commission in 1661 and incorporated into an agreed boundary protocol and an attached map. The boundary delimited both the lands and the waters located in the ceded area. The maritime portion of the 1661 boundary commenced in the sea, proceeded through part of a chain of fringing islands, through a narrow passage (Svinesund) and a narrow inlet of the sea (Idefjord), to the adjacent land. The 1661 boundary was marked by the commissioners on a map attached to their delimitation, but the maritime portion of that map was neither specific nor accurate.

173. Disputes over the fisheries in the area occurred in the 19th century after the lobster fishery on the fishing banks, especially the *Grisbadarna Bank*, became a valuable resource. To forestall further conflicts, Sweden and Norway in 1897 established a new joint commission to clarify the course of the maritime boundary from the Idefjord to the open sea. The Commissioners agreed on the course of the boundary from the fjord to a point midway between a group of Swedish islands (called *Hellsö*) and a group of Norwegian islands (called *Herfö*), designated by the Commissioners as Point XVIII. Figure 18. They could not, however, agree on the

<sup>1</sup> Coastal State sovereignty in the territorial sea was subject to the right of innocent passage.

<sup>2</sup> This account of the case is based on the German text of the Memorial, Countermemorial, and Replique, with Appendices and maps, submitted by Norway, printed by Kirste & Sieberth, Buch- and Kunstdruckerei, Kristiania 1909; the German text of the Memorial, Countermemorial, and Replique, with Appendices and maps, submitted by Sweden, printed by Kungl. Boktryckeriet, P.A. Norstedt & Soner, Stockholm 1909; and *Bureau International de la Cour Permanente d'Arbitrage, Recueil des Comptes rendus de la visite des lieux et des Protocoles des séances du Tribunal arbitral, constitué en vertu de la Convention du 14 Mars 1908, pour juger la question de la délimitation d'une certaine partie de la frontière maritime entre la Norvège et la Suède*, Van Langenhuysen Freres, The Hague, 1909, containing the accounts of the viewing of the area by the Tribunal, the oral pleadings of the parties, and the text of the decision. Copies of these materials are available in the library at the Peace Palace in The Hague. The decision is reproduced in Annex 4, Vol. I.

course of the boundary seaward from that point. The Norwegian Commissioners proposed that the boundary should run in a straight line from Point XVIII, through a point in the middle of a straight line connecting the northernmost point of a Swedish island (Nord Koster) with the southernmost point of Klöveren in the Norwegian Tisler Islands group (designated as Point XIX on the Norwegian line) to the seaward boundary of the territorial sea. The Swedish Commissioners proposed a straight line connecting Point XVIII with a Point XIX, located to the north of the Norwegian Point XIX, and running south of the Norwegian island of Heja and the Heiefluer Reefs but north of the Grisbadarna Bank. The Grisbadarna Bank was located between the lines asserted by the parties.

174. The failure of the Commissioners to agree upon the boundary from Point XVIII seaward led to an agreement in 1908 to submit the controversy to arbitration. The Arbitral Tribunal was to decide whether, and how far, the boundary had been established by the terms of the 1661 boundary protocol and the attached map. To the extent that the boundary had been established by these documents, the Arbitral Tribunal was to decide the particular location of that boundary. To the extent that the boundary was not established by the 1661 documents, the Arbitral Tribunal was to fix the boundary, "taking into account the circumstances of fact and the principles of international law".

175. In its Memorial, each party claimed a boundary including areas outside of the line proposed by its members of the Commission of 1897. Figure 19. Norway contended that the boundary should be drawn as a median line between the closest points of the coasts of the two countries. Norway argued that such a line should run to a point of intersection of two arcs drawn with a radius of 1 mile around the most seaward points of the coasts of the two countries. Norway argued that such a line should run to a point of intersection of two arcs drawn with a radius of 1 mile around the most seaward points of the Swedish island of Kjöfningen (point "t" on Figure 19) and the Norwegian island of Midtre Heieflu (point "q" on Figure 19). Because the relevant coasts consisted of islands, islets, and reefs, the choice of the proper base points resulted in a number of changes of direction in the line. Norway suggested a simplified boundary by identifying two particular midpoints (designated as Point XIX and Point XX) and connecting those points and Point XVIII with straight lines. Point XIX was the midpoint between the most northern reef of Roskaren and the most southern reef of Svartskjar (points "m" and "l" on Figure 19). Point XX was identified as the midpoint of a line connecting the most southern reef of Heiefluer with a reef named Stora Drammen (points "p" and "o" on Figure 19). Seaward, Norway claimed a true equidistant line and identified midpoints designated as Points XXa, XXb, XXc, XXd, and XXI, whose connection would allocate all of the Skjottegrunde Banks and the Grisbadarna Bank to Norway.

176. Sweden adopted the same position as Norway for Point XIX, but argued a different position for Point XX and the course of the boundary seaward of that point, without indicating an endpoint. In Sweden's view, Point XX was to be located at the middle of a straight line connecting Stora Drammen, on the Swedish side, and a rock called Hejeknub, southeast of the Norwegian island of Heja on the Norwegian side. Sweden proposed that the line should be drawn from

---

<sup>1</sup> Agreement for Arbitration, Art. 3, Hague Ct. Rep. (Scott), 1916, 121, p. 134, Annex 4, Vol. I; for text in French, see 11 R. Int'l Arb. Awards 147, p. 153.

there due west, leaving to Sweden all of the Grisbadarna Bank and the middle and southern section of the Skjottegrunde Banks.

③ 177. The Award of the Arbitral Tribunal left the whole of Grisbadarna Bank to Sweden and all of the Skjottegrunde Banks to Norway. Figure 20. The Arbitral Tribunal concluded that the starting point of the boundary fixed by the 1661 boundary documents was at some place between Points XIX and XX. The Arbitral Tribunal accepted the location of Point XIX as agreed upon by the parties. The Arbitral Tribunal concluded that the location of the line seaward of Point XIX was not determined by the boundary map of 1661. The Arbitral Tribunal found that the parties were in agreement as to the method to be applied in determining Point XX. The only disagreement was the location of the starting point on the Norwegian side for the connecting line, Norway urging Heiefluer and Sweden urging Hejeknub. The Arbitral Tribunal adopted the agreed method as to Point XX and concluded that the Swedish position as to the starting point was preferable, because Heiefluer in 1661 had not yet emerged from the water.

178. Seaward of Point XX, in "taking into account the circumstances of fact and the principles of international law", the Arbitral Tribunal rejected the methods advocated by Norway and Sweden. The Arbitral Tribunal agreed with the parties that the marine territory was divided automatically between Norway and Sweden along with the land in the Peace of Roskilde of 1658. It stated:

"Whereas, this opinion is in conformity with the fundamental principles of the law of nations, both ancient and modern, in accordance with which the maritime territory is an essential appurtenance of land territory, whence it follows that at the time when, in 1658, the land territory called the Bohuslan was ceded to Sweden, the [zone] of maritime territory constituting an inseparable appurtenance of this land territory must have automatically formed a part of this cession<sup>2</sup>."

To be consistent with this "essential" relationship between the land and the sea, the Arbitral Tribunal chose to base the boundary seaward of Point XX on a line drawn perpendicular to the general direction of the coast, following detailed commentary by the parties during oral argument<sup>3</sup>. In the words of the Tribunal:

"Whereas, consequently, the automatic dividing line of 1658 should be determined (or, what is exactly the same thing expressed in other words), the delimitation should be made to-day by tracing a line perpendicularly to the general direction of the coast. . . ."

The Arbitral Tribunal stated in that connection that the direction of the coast situated on both sides of the boundary was to be considered in order to ascertain the direction of the coast, which was determined to be 20 degrees west of north for this purpose.

<sup>1</sup> *Agreement for Arbitration*, Art. 3, *Hague Ct. Rep. (Scott)*, 1916, 121, p. 134, Annex 4, Vol. I; for text in French, see 11 R. Int'l Arb. Awards 147, p. 153.

<sup>2</sup> *Grisbadarna*, *Hague Ct. Rep. (Scott)*, 1916, p. 127 (24th Whereas [replacing "radius" in Prof. Scott's translation of "rayon" with "zone"]); for text in French, see 11 R. Int'l Arb. Awards 147, p. 159.

<sup>3</sup> *Recueil des Comptes Rendus*, *op. cit.*, pp. 97-101.

<sup>4</sup> *Grisbadarna*, *Hague Ct. Rep. (Scott)*, 1916, p. 129 (39th Whereas [replacing "bars" in Prof. Scott's translation of "bancs" with "banks"]); Annex 4, Vol I; for text in French, see 11 R. Int'l Arb. Awards 147, p. 160.

179. Because the perpendicular to that line would have crossed the edge of the Grisbadarna Bank, however, the Arbitral Tribunal adjusted the direction of the boundary by 1 degree so as not to cross the bank. Consequently, the Grisbadarna Bank was left entirely to Sweden and the Skjottegrunde Banks entirely to Norway. The Arbitral Tribunal indicated that it was adopting a line that was easily identifiable by fishermen of the two countries<sup>1</sup> and that would avoid "the great unsuitability of tracing the boundary-line across important [banks]."<sup>2</sup> The line adopted by the Arbitral Tribunal followed the deeper water between the banks. The apparent effect was the creation of a buffer zone that would assist in keeping the fishermen of the two countries apart and reduce the likelihood of disputes between them. The Arbitral Tribunal also took account of certain relevant factual circumstances, in particular the historic activities of fishermen and of their governments in the area. The Arbitral Tribunal attached importance to the fact that Swedish fishermen had fished Grisbadarna "a much longer time, to a much larger extent, and by a much larger number" than had the Norwegians<sup>3</sup>. With respect to the historic activities of governments, the Arbitral Tribunal attached importance to the fact that Sweden had performed various acts in the Grisbadarna region, at considerable expense, such as "the placing of beacons, the measurement of the sea, and the installation of a light-boat", while Norway had undertaken few such activities<sup>4</sup>.

180. The *Grisbadarna* case illustrates three basic considerations relevant to the delimitation of fisheries jurisdiction between adjacent States. First, the Arbitral Tribunal relied upon the "fundamental principle of the law of nations" that a legally significant relationship exists between a State's coastline and the adjacent seas<sup>4</sup>. The use of a perpendicular to the general direction of the coast ensured that each neighboring State received the maritime areas and associated fisheries lying in front of its coast<sup>5</sup>. Second, the Arbitral Tribunal modified the course of the boundary to avoid dividing a fishing bank. This ensured that an area of intense fishing activity would not be divided between two governments (and two groups of fishermen), minimizing the potential for disputes between the two States and among their fishermen. Finally, the Arbitral Tribunal specifically stressed the historical predominance of Swedish activities in the area.

<sup>1</sup> "[W]hile taking into account the necessity of indicating the boundary in a clear and unmistakable manner, thus facilitating its observation by the interested parties as far as possible." *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, p. 129 (39th Whereas).

<sup>2</sup> *Ibid.* p. 129; for text in French, see 11 R. Int'l Arb. Awards 147, p. 160.

<sup>3</sup> *Ibid.*, p. 130; for text in French, see 11 R. Int'l Arb. Award 147, p. 161.

<sup>4</sup> *Ibid.*, p. 127.

<sup>5</sup> Although the Tribunal, because of its task of determining the lateral maritime boundary resulting from a 17th-century cession, stressed the conformity of the method chosen with notions of that time, it did not rest its delimitation of the respective maritime territories seawards from Point XX solely on principles of intertemporal law. The Tribunal in "Whereas" Nos. 34, 38, and 39 made it clear that a delimitation of a maritime boundary between adjacent nations by means of a perpendicular to the general direction of the coast on both sides of that line was also considered to be warranted by then-contemporary international law. The arbitral decision was interpreted in that manner by Professor Karl Strupp in his detailed study of the *Grisbadarna* case, *Der Streitfall zwischen Schweden und Norwegen in Das Werk vom Haag* (ed. by Walther Schücking), Series II, Vol. II, 1914. Professor Strupp, while deploring the scarcity of treatment of maritime boundaries between neighboring States (fn. 97), states repeatedly that the method used by the Tribunal was

181. The *Anglo-Norwegian Fisheries* case of 1951 illustrates the continuing vitality of the three principles of the *Grisbadarna* case<sup>1</sup>. In the *Anglo-Norwegian Fisheries* case, the United Kingdom challenged the straight baseline method used by Norway to delimit its exclusive fishery zone. The United Kingdom argued that the baselines for the zone, which was to be treated as the territorial sea of Norway, must follow the sinuosities of the coast. At issue were large areas of water, rich in fish, where Norwegians had been fishing for centuries and where United Kingdom vessels had resumed fishing in 1906 after a long hiatus. The Court upheld Norway's straight baseline system, guided by the "basic consideration" that "[i]t is the land which confers upon the coastal State a right to the waters off its coasts"<sup>2</sup>. The Court found that straight baselines that do not depart to any appreciable extent from the general direction of the coast in certain geographical circumstances are lawful<sup>3</sup>.

182. The Court in the *Anglo-Norwegian Fisheries* case also relied upon the historic pattern of fishing on the rich banks along the coasts to support the legitimacy of the Norwegian baselines<sup>4</sup>. "[T]hese grounds were known to Norwegian fishermen and exploited by them from time immemorial"<sup>5</sup>. In contrast, "British fishermen refrained from fishing in Norwegian coastal waters for a long period, from 1616-1618 until 1906"<sup>6</sup>. The result in the *Anglo-Norwegian Fisheries* case also is consistent with the need for boundaries that minimize future conflict. Norway's straight baselines, upheld by the Court, resulted in limits that were easy to observe and to police<sup>7</sup>. Thus, although the *Anglo-Norwegian*

*(footnote continued from the previous page)*

consistent not only with 17th-century notions, but also with modern principles, *op. cit.*, pp. 97, 109, 123-125:

"Although the Tribunal rejected all principles invoked by the parties it nevertheless designated that principle as conforming with the modern law of nations as well as with that in the 17th Century whereby the boundary between two sea territories must be determined in the fashion that a perpendicular is drawn to the general direction of the coast (*id.* at 123)." [Translation from the German.]

Professor Gidel also expressed the view that the Arbitral Tribunal considered its method as consistent with and favored by modern international law. 3 Gidel, *Le Droit International Public de la Mer*, 1934, pp. 769, 770. *Accord*, Prof. Munch, in F. Munch, *Die technischen Fragen des Küstenmeers* (Abhandlungen zur fortschreitenden Kodifikation des internationalen Rechts, H. 4, Institut für Internationales Recht an der Universität Kiel, 1934), p. 157. Certainly the parties to the arbitration considered the Tribunal's method relevant under modern law since both governments drew attention to the decision in their communications to the International Law Commission in 1953. Sweden in particular added: "Le Gouvernement suédois estime cependant que la méthode pour le tracé de frontière, adoptée en principe par le tribunal, à savoir employer une ligne tracée perpendiculairement à la direction générale de la côte, est préférable à celle qui a été proposée par le rapporteur spécial de la Commission . . ." 1953 Y.B. Int'l. L. Comm., Vol. 11, p. 88.

<sup>1</sup> *I.C.J. Reports 1951*, p. 116.

<sup>2</sup> *Ibid.*, p. 133

<sup>3</sup> *Ibid.*, pp. 133, 142.

<sup>4</sup> *Ibid.*, p. 142.

<sup>5</sup> *Ibid.*, p. 127

<sup>6</sup> *Ibid.*, p. 124.

<sup>7</sup> *Ibid.*, p. 135.

*Fisheries* case concerned the delimitation of the seaward limit of the territorial sea rather than the delimitation of a maritime boundary between adjacent States, the case confirms the importance of the principles of *Grisbadarna*.

### SECTION 3. The Principle of Conservation

#### A. EMERGENCE OF THE PRINCIPLE OF CONSERVATION

183. Since the *Grisbadarna* and *Anglo-Norwegian Fisheries* cases, significant developments have occurred, both in the world's fisheries and in the international law relating to coastal State jurisdiction over fisheries. Market demand and technological developments increased competition for fishery resources beyond the territorial seas, especially after World War II. International law, prompted by increased fishing, came to recognize coastal State jurisdiction over fishing seaward of the territorial sea, first to 12 nautical miles from the coast and then to 200 nautical miles. Also, in response to the increased fishing, there developed in international law the principle of conservation, i.e., that all States have the obligation to conserve the high seas living resources that they exploit.

184. With the establishment of the territorial sea, it was believed that jurisdiction exercised in those narrow waters would serve to protect the interests of the coastal State in the fishery resources adjacent to its shores, and that freedom of fishing on the adjacent high seas was in the best interests of the international community. However, this belief was not borne out in the history of fishing as it developed in fact. During the late 19th century, for example, the development of steam trawlers led to intensified fishing and gear conflicts in the North Sea. Stocks began to decline. Concerned governments met in The Hague in 1881 to negotiate a convention to deal with these issues. In part because it was thought that stocks found further out to sea bred in the near-shore waters, a 3-nautical-mile exclusive fishery zone was adopted in the resulting North Sea Convention of 1882 to protect these "nurseries" from overfishing<sup>1</sup>. It soon became clear, however, that the exercise of freedom of fishing beyond the 3-nautical-mile limit was continuing to deplete the important coastal fisheries. As a result, fishermen and their governments along the North Sea and elsewhere sought in a number of ways to conserve and to manage fishery resources beyond the territorial sea<sup>2</sup>.

185. Following World War II, coastal States began to assert their interests in the conservation and management of fisheries off their coasts, seaward of the territorial seas. For example, the Truman Proclamation on Fisheries declared in 1945 that coastal States had the right to establish conservation zones off their coasts beyond the territorial sea<sup>3</sup>. The Proclamation focused attention on the coastal State interest and the need for conservation during a time of rapid

---

<sup>1</sup> Fulton, *op. cit.*, pp. 609-610, 630-640, Annex 94, Vol. V. For a survey of the various measures taken to develop an effective regime for fisheries and the protection of the living resources of the sea in the period between the North Sea Convention and the First United Nations Conference on the Law of the Seas, see Gros, "La Convention sur la Pêche et la Conservation des Ressources biologiques de la Haute Mer", 97 *Rec. des Cours*, Hague Acad., 1959, p. 1, Annex 93, Vol. V.

<sup>2</sup> See Fulton, *op. cit.*, pp. 701-711, Annex 94, Vol. V.

<sup>3</sup> Proclamation No. 2668, Policy of the United States with Respect to Coastal Fisheries in Certain Areas of the High Seas, 28 Sep. 1945, Annex 3, Vol. I.

change<sup>1</sup>. The Proclamation, however, did not assert coastal State jurisdiction over foreign fishing vessels in those zones, except by agreement with the flag States.

186. In 1949, the International Law Commission proposed to review the principles and rules of international law relating to the high seas and the territorial sea<sup>2</sup>. This review, in turn, led to the 1958 United Nations Conference on the Law of the Sea and the four conventions it produced<sup>3</sup>. With respect to fisheries law, the most important developments were codification of the principle of conservation, applicable to all States, and recognition of the *special interest of the coastal State in the living resources off its coasts*. This principle was expressed in Article 1 (2) of the Convention on the Conservation of the Living Resources of the High Seas:

“All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.”

Article 2 went on to define “conservation”:

“As employed in this Convention, the expression ‘conservation of the living resources of the high seas’ means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply to food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.”

Article 6 (1) recognized that the coastal State “has a special interest in the maintenance of the productivity of the living resources” in the high seas adjacent to its territorial sea. Article 7 gave the coastal State *certain special rights in case of imminent threats to the stocks*<sup>4</sup>.

187. Fishery stocks that are exploited in common by more than one State present special conservation problems. If one State were to limit its fishing to protect the stocks, the fish it did not catch might be caught by another State, so that the first State’s *conservation measures would limit its share of the harvest* without protecting the stocks. As a result, practice has shown that no one State will impose conservation measures upon itself unless it is assured that the other States will do the same. The *Convention on Fishing and Conservation of the Living Resources of the High Seas* sought to deal with this “common pool”

<sup>1</sup> Regarding the Truman Proclamation’s influence on subsequent developments, see Gros, *op. cit.*, p. 29, Annex 93, Vol. V.

<sup>2</sup> 1949 Y.B. Int’l Law Comm., pp. 280-281.

<sup>3</sup> Convention on the High Seas, U.N.Doc. A/CONF.13/L.53, 29 April 1958, 450 U.N.T.S. 82; Convention on the Territorial Sea and the Contiguous Zone, U.N.Doc. A/CONF.13/L.52, 29 April 1958, 516 U.N.T.S. 205; Convention on the Continental Shelf, U.N.Doc. A/CONF.13/L.55, 29 April 1958, 499 U.N.T.S. 311; Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N.Doc. A/CONF.13/L.54, 29 April 1958, 559 U.N.T.S. 285. At Annex 5, Vol. I.

<sup>4</sup> For an assessment of the role of the coastal State, see Gros, *op. cit.*, pp. 42-54, Annex 93, Vol. V.



problem by requiring States that fished stocks in common to enter into negotiations to prescribe conservation measures by agreement<sup>1</sup>.

188. The Convention on Fishing and Conservation of the Living Resources of the High Seas sought to isolate conservation efforts from political considerations by giving an important role to science<sup>2</sup>. The Convention required States to identify as a matter of scientific fact the points at which increased exploitation would adversely affect the sustainable yield of the living resources of an area. Scientists were to determine the relationship between stocks and their environment, the effects on stocks of various fishing practices, the range of stocks, their abundance, and other biological data needed to understand and to conserve the resource. It was hoped that the principle of conservation as elaborated by the Convention would ensure protection for the stocks and thereby further the international community's interest in a supply of food for human consumption. The Convention was adopted by 37 nations, including the United States but not including Canada<sup>3</sup>.

#### B. THE FAILURE OF CONSERVATION BY AGREEMENT AND THE DEVELOPMENT OF 200-NAUTICAL-MILE FISHING ZONES

189. Developments subsequent to the 1958 United Nations Conference on the Law of the Sea showed that the Convention on Fishing and Conservation of the Living Resources of the High Seas was incapable of achieving its goals. Experience demonstrated that States often were unable to agree upon, and to enforce, effective conservation measures. It was not enough to conduct fisheries research, even in cooperation. Fishery conservation and management inevitably concern social and political issues that transcend scientific findings. Most importantly, conservation measures involve the distribution of resources among fishermen—an issue that is notoriously difficult to resolve by negotiation<sup>4</sup>. Disagreements over management objectives, management techniques, and scien-

---

<sup>1</sup> See Articles 4, 5, 6, 7, and 8, Convention on Fishing and Conservation of the Living Resources of the High Seas, Annex 5, Vol. I.

<sup>2</sup> *Ibid.*, Articles 7(2)(b), 8(1), 10(1).

<sup>3</sup> 559 U.N.T.S. 285, Annex 5, Vol. I. The United States ratified the Convention in 1961. Senegal withdrew from the Convention in 1971. Bardonnnet, "La Dénonciation par le Gouvernement sénégalais de la Convention sur la mer territoriale et la zone contiguë et de la Convention sur la pêche et la conservation des ressources biologiques de la haute mer, en date à Genève du 29 avril 1958", 1972 *Ann. Français de Droit International* 123.

<sup>4</sup> For example, the European Economic Community has been trying since 1976 to institute a Common Fisheries Policy. Agreement has been delayed primarily by distributional issues concerning the rights of access of other member States to United Kingdom coastal waters and the relative national shares of the total allowable catches. This distributional problem is discussed in theoretical terms and examined in the case of the North East Atlantic Fisheries Commission in D.J. Driscoll and N. McKellar, "The Changing Regime of North Sea Fisheries", in *The Most Effective Management of Resources: The International Politics of the North Sea*, 1979, pp. 128-139; and in A. Underdal, *The Politics of International Fisheries Management*, 1980, pp. 61-99, Annex 95, Vol. V.

*tific conclusions increase the difficulty of reaching agreement*<sup>1</sup>. As a result, as long as responsibility for the conservation and management of fishery resources remained divided among different States, necessary conservation measures frequently were not imposed because mutual agreement could not be reached.

190. Multilateral and bilateral conservation and management agreements that were reached may in some cases have saved certain stocks from destruction<sup>2</sup>. Disagreements among interested States, however, often led to overfishing, to the detriment of the resources and the interest of the international community in securing a reliable supply of food for human consumption. The intrinsic difficulties of conservation by agreement were considerable. Often the States that fished a resource were unable to agree to impose meaningful conservation measures. In most cases, States continued to exercise exclusive enforcement jurisdiction over their fishing vessels, and the conservation measures that were negotiated often were inadequately enforced. Even ICNAF<sup>3</sup> and NEAFC<sup>4</sup> proved unable to cope with the increased and more efficient fishing that occurred in the 1960s and early 1970s, though virtually all States fishing in the North Atlantic became parties to one or both of these conventions. Conservation in these organizations fell victim to the bargaining behavior of States and to enforcement practices that encouraged fishermen to flout conservation rules because they believed others were doing so<sup>5</sup>. For example, one comprehensive study of NEAFC revealed that the total allowable catches (TAC) set by NEAFC clearly exceeded the average estimate of allowable catch, and usually were closest to the least restrictive proposal made by any of the participating States. The author of that study suggested:

“In negotiations on international fishery regulations the outcome will most often be close to the position advocated by the party(-ies) most reluctant to accept the measures in question. Thus, in determining TACs the outcome will usually be significantly closer to the highest TAC advocated than to the lowest<sup>6</sup>.”

---

<sup>1</sup> The management objectives of States that share stocks are often contrary and difficult to reconcile. One State, for example, may prefer to accept large reductions in current catches in hopes of larger future harvests; the other may not be willing to accept the short-term dislocations inherent in such a policy. One State may prefer as a matter of nutritional or employment policy to harvest the maximum sustainable yield of a given stock; the other may prefer to maximize profit by capturing fewer fish but at greater catch per unit of effort. One State may wish to maximize the yield of a single valuable species in a mixed-species fishery, while the other State may prefer to accept lower yields of that species in order to maximize the yield of the entire fishery. There may also be disagreements over management techniques, such as basic choices between gear types, setting annual quotas or fixing minimum fish sizes, year-round or seasonal fishing, and limited entry or free competition, as well as scientific disputes concerning such matters as the status of the stock, the amount of allowable catch, and the effect of proposed management measures. These disagreements are more than technical. They affect how much is caught, when, and by whom.

<sup>2</sup> Gros, *op. cit.*, p. 8, Annex 93, Vol. V.

<sup>3</sup> International Convention on the Northwest Atlantic Fisheries, 8 Feb. 1949, 157 U.N.T.S. 157, Annex 45, Vol. III.

<sup>4</sup> Northeast Atlantic Fisheries Convention, 24 Jan. 1957, 486 U.N.T.S. 157.

<sup>5</sup> On NEAFC, see D. J. Driscoll and N. McKellar, *op. cit.*, Annex 95, Vol. V. For one Canadian assessment of ICNAF, see Finkle, *op. cit.*, Annex 51, Vol. III.

<sup>6</sup> A. Underdal, *op. cit.*, p. 85, Annex 95, Vol. V.

191. In the 1960s and 1970s, a growing demand for fish and improvements in distant-water fishing technology enabled distant-water fishing fleets to harvest unprecedented amounts of coastal fishery resources. In response, coastal States extended their exclusive fishery jurisdiction, first to 12 nautical miles, then to 200 nautical miles from the coast. One goal of extended jurisdiction was to centralize responsibility for conservation and management in the coastal State. The coastal State is most likely to have the long-term interest in conserving the resource. Moreover, giving exclusive jurisdiction to a single State protects the resources from the uncertain fate of conservation by agreement. Canada, for example, submitted a paper at the Third United Nations Conference on the Law of the Sea that relied upon the difficulty of different States reaching agreement on conservation measures as the justification for single-State management of fishery resources:

"In the view of the Delegation of Canada, the coastal State should have the authority to determine the allowable yield for the various stocks of coastal species falling under its management, in accordance with the principles herein outlined and in consultation with regional advisory commissions. It is because international experience has demonstrated the difficulty of reaching consensus on particular measures needed on the basis of scientific data that it is proposed that the coastal State should have the authority to impose a decision where consensus is not possible<sup>1</sup>."

The United States Congress also considered the failure of conservation by international agreement an important reason for its decision to enact the law that extended United States fishery jurisdiction to 200 nautical miles. In the Fishery Conservation and Management Act of 1976, Congress declared that:

"(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point *where their survival is threatened*, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

-----

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented<sup>2</sup>."

192. Extension of coastal State fisheries jurisdiction to 200 nautical miles from the coast, designed to protect the coastal fishery stocks from imminent depletion and to recognize the special needs and interests of the coastal State, gained prompt acceptance in international law. This development is reflected in the decision of the Third United Nations Conference on the Law of the Sea to give the coastal State management jurisdiction and primary responsibility for the conser-

<sup>1</sup> Government of Canada Working Paper, A/AC.138.SC./II/L.8, Annex 91, Vol. IV.

<sup>2</sup> Annex 8, Vol. I, Section 1801(a).

vation of the living resources within 200 nautical miles of its coast<sup>1</sup>. Article 61, paragraph 2 of the Convention adopted by the Conference on 30 April 1982 provides:

"The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation<sup>2</sup>."

Where single-State management is not possible, i.e., for a stock that migrates *beyond the limits of the exclusive economic zone of a single State*, the Convention directs that the States that fish the stock shall cooperate in its management and conservation<sup>3</sup>. The thrust of the Convention, however, is to give conservation and management authority to a single State whenever possible. The preference for single-State management is reflected in the provisions of the Convention that relate to anadromous and catadromous species<sup>4</sup>. In each case an attempt is made to centralize management decisions in a single State as far as possible. It should be noted that both Canada and the United States urged that the coastal State should have exclusive authority over the management of anadromous species. Canada, moreover, contended that the coastal State should also be given greater authority over the management of stocks that straddle the exclusive economic zone and the high seas beyond<sup>5</sup>. The provisions of the Convention and these proposals reflect the emergence of a consensus within the international community that management of stocks should be vested in a single State, where practical, in order to facilitate conservation of the stocks.

### C. DELIMITATION OF 200-NAUTICAL-MILE FISHING ZONES

193. The establishment of 200-nautical-mile fishing zones was in great part a reaction to the failure of conservation by international agreement to protect the world's fishery resources. As the history of fishery management revealed, the risk exists that, whenever more than one State fishes the same stocks, the basic conflict of interest between such States over the distribution of fishing rights, as well as differences over scientific and technical issues, management objectives and techniques, and enforcement efforts, will prevent the States from agreeing to and enforcing effective conservation measures. The extension of coastal State fishery jurisdiction to 200 nautical miles sought to deal with this problem by lodging management authority for most stocks in the coastal State. Similarly, the delimitation of lateral boundaries should facilitate conservation, where practical, by locating separate stocks entirely within the management jurisdiction of one State or another, rather than within several jurisdictions, in order to minimize the need to rely on international agreements for fishery conservation. Therefore, the

---

<sup>1</sup> *Convention on the Law of the Sea, Working Paper 1, 4 June 1982, Part V.*

<sup>2</sup> *Ibid.*, Article 61.

<sup>3</sup> *Ibid.*, Articles 63, 64, 66, 67.

<sup>4</sup> *Ibid.*, Articles 66, 67.

<sup>5</sup> "The Special Case of Fish Stocks Which Occur Both Within the Exclusive Economic Zone and in an Area Beyond and Immediately Adjacent to It", Working Paper submitted by the Delegations of Argentina and Canada at the Second Part of the Ninth Session of UNCLOS III, Geneva, 1980, Annex 91, Vol. IV.

distribution and range of fishery stocks must be considered in a maritime boundary delimitation involving fishing rights.

194. In addition to being consistent with the principle of conservation, a fishing zone delimitation should also be consistent with the principles identified in the *Grisbadarna* case. First, a fishing zone boundary should ensure that each coastal State has jurisdiction over the waters in front of its coasts. The close relationship between the land and the maritime area concerned suggests the importance of the general direction of the coastline, as recognized by the Arbitral Tribunal in the *Grisbadarna* case. The length and configuration of the coast also are important elements to be considered in any delimitation. Because of the long distances involved, any irregularities in the coastline or its configuration are likely to produce inequitable results if the equidistance method is used to delimit the boundary between 200-nautical-mile fishing zones.

195. Second, lateral delimitation of the 200-nautical-mile fishing zone should reflect recognition of the relative interests of the coastal States in the living resources off their coasts, as evidenced by the historic activities of the States and their nationals in the area. In this regard, the exercise of responsibilities as well as use of the resources should be relevant. As in the *Grisbadarna* case, it is important to determine whose nationals have fished an area the longest and in the largest numbers. In addition, it is important to determine which State has exercised the greater responsibilities with regard to surveying, charting, and maintaining other aids to navigation, conducting fisheries and other scientific research, and proposing and engaging in international conservation efforts.

196. Finally, delimitation of the 200-nautical-mile fishing zone must have regard to the need to avoid disputes between neighboring States and their nationals, when possible. This principle was at the heart of the decision of the parties and of the Arbitral Tribunal in the *Grisbadarna* case to avoid splitting fishing banks between jurisdictions. This principle is also consistent with the modern thrust of the international law of fisheries. Any delimitation should facilitate enforcement of whatever conservation and management regime is applicable in the area. In this regard, the delimitation should establish a boundary that can be readily observed by the fishermen of the neighboring States without dividing responsibility for the conservation and management of the fish stocks. Where there are natural buffer zones that can help to achieve a reasonable division, like the channel between the fishing banks in the *Grisbadarna* case, such features should be given weight in establishing the boundary.

197. In summary, the law governing delimitation of the 200-nautical-mile fishing zone represents a marriage of traditional concepts of appurtenance, historic interest, and dispute minimization, as reflected in the *Grisbadarna* case, with the more recent addition of the principle of conservation.

## CHAPTER II

### DELIMITATION OF THE CONTINENTAL SHELF

198. A continental shelf boundary must be delimited in accordance with equitable principles, taking into account the relevant circumstances in the area, so as to produce an equitable solution. These equitable principles include the principle that delimitation should reflect the relationship between the relevant coasts and adjacent seabed, including nonencroachment, proportionality, and natural prolongation, and that delimitation should take account of the relevant circumstances in the area. Geographical, geological and geomorphological circumstances, the existence and location of resource deposits, and the activities of the parties in the area have been identified as relevant circumstances in various delimitation adjudications. *Any method or combination of methods that will produce an equitable solution may be used.*

#### SECTION I. Early Developments

199. The starting point for development of continental shelf doctrine was the Truman Proclamation of 1945<sup>1</sup>. *Although claims to certain natural resources of the seabed and subsoil beyond the limits of the territorial sea had been advanced previously, such claims had been recognized only on the basis of historic usage. The impetus for the Truman Proclamation lay in the increasing awareness in the United States of the importance of the natural resources of the continental shelf, and of the technological advances in exploiting such resources. These considerations called the attention of the United States to problems that could arise from uncontrolled access to the shelf resources off its shores by foreign governments, as well as to the national security implications of allowing other States to undertake such activities on the continental shelf off the United States coast. By the terms of the Truman Proclamation, the United States sought to protect the resources of the adjacent shelf from foreign exploitation and from any exploitation inconsistent with conservation of the resources.*

200. From its earliest formulation in the Truman Proclamation, the continental shelf doctrine has been predicated on the close relationship between the land territory of a coastal State and the area of the continental shelf that comprises the seaward extension of that territory. The Truman Proclamation described the continental shelf as "an extension of the landmass of the coastal nation and thus naturally appurtenant to it . . .". The Proclamation noted that the resources of the shelf "frequently form a seaward extension of a pool or deposit lying within the territory . . ." of the coastal State<sup>2</sup>. This relationship was described by one writer soon after issuance of the Truman Proclamation as the "geographical continuity of territory"<sup>3</sup>.

<sup>1</sup> Annex 3, Vol. I; *North Sea Continental Shelf, I.C.J. Reports 1969*, pp. 32-33, para. 47.

<sup>2</sup> Annex 3, Vol. I.

<sup>3</sup> H. Waldock, "The Legal Basis of Claims to the Continental Shelf", in *Grotius Society Transactions*, Vol. 36, 1951, pp. 124, 127, Annex 92, Vol. V.

201. The Truman Proclamation recognized that questions could arise concerning areas of shelf that could be said to represent overlapping extensions of the coasts of two neighboring States, and thus "appurtenant" to both. In what was to become an important norm of international law, the Truman Proclamation provided that delimitations of continental shelf boundaries between the United States and its neighbors were to be determined by agreement with the States concerned and "in accordance with equitable principles".<sup>1</sup> The International Court of Justice has noted that this norm underlies all the subsequent history of continental shelf delimitation.<sup>2</sup>

202. The continental shelf doctrine was among the many topics taken under study by the International Law Commission in 1950. The principal concern of the Commission in regard to the continental shelf lay in establishing the nature of the coastal State's rights to the continental shelf and in defining the seaward limits of the shelf. The Commission at first decided that it should not enunciate a general method of drawing a boundary line between neighboring States, but should leave the fixing of such lines to agreement by the States concerned or to arbitration *ex aequo et bono*.<sup>3</sup> Subsequently, the Commission considered possible methods for delimitation of the continental shelf incidental to its consideration of the delimitation of the territorial sea. When the Commission requested the views of its Committee of Experts on delimitation, it did so in regard to the territorial sea. The Committee responded without further comment, however, that the equidistance method of delimitation that it proposed for the territorial sea also could be applied to the continental shelf. In the words of the Court in the *North Sea Continental Shelf* cases:

"In this almost impromptu, and certainly contingent manner was the principle of equidistance for the delimitation of continental shelf boundaries propounded".<sup>4</sup>

The Special Reporter of the International Law Commission then proposed a new draft article adopting that method for the delimitation of the continental shelf. The Commission's proposal expressly provided an exception to the equidistance method in the case of special circumstances.<sup>5</sup> This reflected the growing concern in the Commission with the likelihood that the equidistance method often would produce inequitable results. The pertinent Commission commentary indicates that the resulting rule "partakes of some elasticity".<sup>6</sup> The Commission also specifically acknowledged that "provision must be made for departures necessitated by any exceptional configuration of the coast, as well as the presence of islands or of navigable channels".<sup>7</sup>

203. The Report of the International Law Commission served as the basis for the 1958 United Nations Conference on the Law of the Sea. As had been the case in the International Law Commission, the nature and extent of the coastal State's rights over the continental shelf were the subject of considerable debate. Articles 1 and 2 of the resulting Convention on the Continental Shelf<sup>8</sup> recognize that the

<sup>1</sup> Annex 3, Vol. I.

<sup>2</sup> *I.C.J. Reports 1969*, pp. 32-33, para. 47.

<sup>3</sup> 1951 Y.B. Int'l L. Comm., Vol. I, p. 292.

<sup>4</sup> *I.C.J. Reports 1969*, p. 35, para. 53.

<sup>5</sup> 1953 Y.B. Int'l L. Comm., Vol. I, p. 133.

<sup>6</sup> 1953 Y.B. Int'l L. Comm., Vol. II, p. 216.

<sup>7</sup> *Ibid.*, p. 216.

<sup>8</sup> Annex 5, Vol. I.

concept of the continental shelf evolved from underlying physical facts, though it developed independently of those facts. The simultaneous reference in Article 1 to bathymetric limits of the shelf and to the open-ended limitation of exploitability reflects the relationship of physical and legal factors, respectively<sup>1</sup>. This physical-legal relationship also is manifested in the role that geographical, geomorphological, and geological facts have played in the delimitation of continental shelf boundaries.

204. The exception for special circumstances included in the International Law Commission's draft Article 12 was debated extensively in the Conference's Fourth Committee. It was subsequently incorporated in the Convention text as Article 6. The purpose of the "special circumstances" formulation in Article 6 of the 1958 Continental Shelf Convention was to provide for an equitable solution in all cases. During the course of the debate, Commander R. H. Kennedy of the United Kingdom delegation, who earlier had served on the Commission's Committee of Experts, described the concept of "special circumstances" in comprehensive and flexible terms. Among the factors described as circumstances that would justify the inapplicability of the equidistance method, without objection from other delegates, were geographic factors, mineral or fishing rights, and navigable channels<sup>2</sup>.

## SECTION 2. International Adjudications

205. There have been two decisions by the International Court of Justice, the *North Sea Continental Shelf* cases<sup>3</sup> in 1969 and the *Tunisia/Libya* case<sup>4</sup> in 1982, as well as one published decision by an international arbitral tribunal, the *Anglo-French Arbitration*<sup>5</sup> in 1977, relating to delimitation of the continental shelf. These decisions analyze the law relating to delimitation of the continental shelf, including State practice and new trends in the law.

### A. THE NORTH SEA CONTINENTAL SHELF CASES

206. The *North Sea Continental Shelf* cases were brought to the Court by separate special agreements between the Federal Republic of Germany, and Denmark and the Netherlands, respectively. The parties asked the Court to decide:

"what principles and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them . . .".

---

<sup>1</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, I.C.J. Reports 1982, pp. 45-46, para. 42.

<sup>2</sup> United Nations, First Conference on the Law of the Sea, Official Records, Vol. 4, Doc. A/CONF. B/C. 4/L. 28, p. 134.

<sup>3</sup> I.C.J. Reports 1969, p. 3.

<sup>4</sup> I.C.J. Reports 1982, p. 18.

<sup>5</sup> *Decisions of the Court of Arbitration*, 30 June 1977 and 14 March 1978 [hereinafter *Decisions*]. For an analysis of the import of the judgments in the *North Sea Continental Shelf* cases and the *Anglo-French Arbitration*, see H. Waldock, *The International Court and the Law of the Sea*, The First Cornelis Van Vollenhoven Memorial Lecture, 1979, Annex 92, Vol. V.

<sup>6</sup> I.C.J. Reports 1969, p. 6.



The delimitation was to take place in the North Sea, where the coastlines of the three States form a deep concavity. Denmark and the Netherlands both were parties to the Convention on the Continental Shelf. The Federal Republic had signed but not ratified the Convention, and, accordingly, was not a party to it. Denmark and the Netherlands contended that the delimitation should be governed by Article 6 of the Convention, either by reason of estoppel or as customary law<sup>1</sup>. They claimed that, as no special circumstances existed in the North Sea, their boundaries with the Federal Republic were to be determined by application of the equidistance method<sup>2</sup>. Application of that method would have caused the boundaries between the Netherlands and Denmark to join seaward of the Federal Republic coast, cutting the Federal Republic off from the extension of its coastal front into the North Sea. The Federal Republic contended that the delimitation should be in accordance with the principle "that each coastal State is entitled to a just and equitable share", that the equidistance-special circumstances rule of Article 6 had not become customary international law, and that, in any event, the rule could not be used where it did not result in a just and equitable apportionment of the shelf<sup>3</sup>. The Federal Republic further contended that, in the event Article 6 had become customary law, special circumstances existed in the North Sea that would exclude its application there<sup>4</sup>.

207. The Court held that the 1958 Convention was not applicable among the three parties to the dispute and that customary international law required the delimitation:

"to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other . . .".

The Court thus recognized the general principle that the delimitation should be effected in accordance with equitable principles, taking into account the relevant circumstances, and expressly recognized the specific principles of natural prolongation and nonencroachment.

208. The Court rejected the claim of the Federal Republic to a "just and equitable share" as fundamentally inconsistent with the continental shelf doctrine:

"More important is the fact that the doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it,—namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto*

---

<sup>1</sup> *I.C.J. Reports 1969*, p. 28, paras. 37 *et seq.*

<sup>2</sup> See Submission No. 3 in the Counter-Memorials of Denmark and the Netherlands; *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, pp. 221, 375.

<sup>3</sup> *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, p. 91.

<sup>4</sup> *Ibid.*, p. 422 *et seq.*

<sup>5</sup> *I.C.J. Reports 1969*, p. 53, para. 101(C)(1) [*dispositif*].

and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources<sup>1</sup>.”

209. The Court rejected also the contention that the principle of natural prolongation could be equated with the equidistance method or “proximity”:

“More fundamental than the notion of proximity appears to be the principle—constantly relied upon by all the Parties—of the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal State, into and under the high seas, via the bed of its territorial sea which is under the full sovereignty of that State. There are various ways of formulating this principle, but the underlying idea, namely of an extension of something already possessed, is the same, and it is this idea of extension which is, in the Court’s opinion, determinant. Submarine areas do not really appertain to the coastal State because—or not only because—they are near it. They are near it of course; but this would not suffice to confer title, any more than, according to a well-established principle of law recognized by both sides in the present case, mere proximity confers *per se* title to land territory. What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, —in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural—or the most natural—extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State;—or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it<sup>2</sup>.”

210. The Court found that equidistance often may be incompatible with the principle of nonencroachment:

“... the use of the equidistance method would frequently cause areas which are the natural prolongation or extension of the territory of one State to be attributed to another, when the configuration of the latter’s coast makes the equidistance line swing out laterally across the former’s coastal front, cutting it off from areas situated directly before that front<sup>3</sup>.”

The Court recognized that application of the equidistance method in delimiting lateral boundaries results in a line that emphasizes the relative location of selected

<sup>1</sup> *I.C.J. Reports 1969*, p. 22, para. 19.

<sup>2</sup> *Ibid.*, p. 31, para. 43; see also Waldock, *supra* para. 205, note 5, at 12.

<sup>3</sup> *Ibid.*, pp. 31-32, para. 44.

basepoints and takes no account of the broad geographical relationship of the neighboring States:

"The slightest irregularity in a coastline is automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf. Thus it has been seen in the case of concave or convex coastlines that if the equidistance method is employed, then the greater the irregularity and the further from the coastline the area to be delimited, the more unreasonable are the results produced <sup>1</sup>."

211. The Court stressed the importance of geographical factors in determining what area constitutes the natural prolongation of the continental shelf of the State in front of whose coastline it lies:

"... the principle is applied that the land dominates the sea; it is consequently necessary to examine closely the geographical configuration of the coastlines of the countries whose continental shelves are to be delimited <sup>2</sup>."

Related to the Court's stress on the importance of the geographical circumstances was its holding that another factor to be taken into account is a reasonable degree of proportionality between the extent of continental shelf area appertaining to each State and the length of its coastline. The Court noted that "[t]he choice and application of the appropriate technical methods would be a matter for the parties <sup>3</sup>." As the Court indicated, the goal of selecting a method for measuring proportionality is to eliminate or to diminish the distortions that might result from the application of the equidistant method to irregular coastlines <sup>3</sup>.

212. In the *North Sea Continental Shelf* cases, the Court also held that nongeographical factors also are to be taken into account, such as known or readily ascertainable deposits of natural resources. The Court reasoned that the natural resources of the shelf are the very object of the legal regime. The possibility of exploiting a deposit from either side of a boundary gives rise to a problem because of the "risk of prejudicial or wasteful exploitation by one or other of the States concerned <sup>4</sup>." The Court therefore identified the unity of deposits of natural resources as a factor that must be considered, not merely as a physical factor reflecting an equitable boundary, but as a factor relevant to the conservation of the resources of the continental shelf.

213. In summary, the Court in the *North Sea Continental Shelf* cases held that no single method of delimitation is obligatory in all circumstances, and that delimitation is to be in accordance with equitable principles, taking account of the relevant circumstances <sup>5</sup>. Applicable principles and rules of international law identified by the Court were the principles of natural prolongation and non-encroachment. Among the factors the Court identified as relevant to delimitation were: the general configuration of the coasts of the parties, including the presence of any special or unusual features; the physical and geological structure and

<sup>1</sup> *I.C.J. Reports*, 1969, p. 49, para. 89(a).

<sup>2</sup> *Ibid.*, p. 51, para. 96.

<sup>3</sup> *Ibid.*, p. 52, para. 98.

<sup>4</sup> *Ibid.*, p. 51, para. 97.

<sup>5</sup> *Ibid.*, p. 53, para. 101(C)(1) [*dispositif*].

natural resources of the continental shelf areas involved; and proportionality. The Court emphasized, however, that its identification of relevant factors was not intended to be exclusive, and that the overriding requirement was to consider and balance all relevant factors:

“In fact, there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than reliance on one to the exclusion of all others. The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case<sup>1</sup>.”

#### B. THE ANGLO-FRENCH ARBITRATION,

214. In 1975 the United Kingdom and France agreed to submit to an arbitral tribunal their dispute concerning the delimitation of their respective continental shelves in the English Channel and an area of the Atlantic Ocean immediately westward of the Channel out to the 1,000-meter isobath. The parties disagreed in particular with respect to two principal areas. The first of these, the so-called Channel Islands region, encompassed the Golfe breton-normand, including the Channel Islands archipelago adjacent to the coast of France. The second area, the Atlantic region, encompassed the approaches to the Channel in the Atlantic Ocean. The Court of Arbitration was asked to decide the controversy “in accordance with the rules of international law applicable in the matter as between the Parties<sup>2</sup>.”

215. The United Kingdom and France were parties to the Convention on the Continental Shelf. They disagreed, however, on the rules governing the delimitation. The United Kingdom maintained that the Convention, and in particular the equidistance method provided in Article 6, governed the delimitation, while France maintained that the rules of customary law applied<sup>3</sup>. France had acceded to the Convention subject to a declaration containing certain interpretations and reservations, one of which excepted the Bay of Granville in the Channel Islands region from the application of equidistance<sup>4</sup>. The United Kingdom objected to that declaration<sup>5</sup>. The Court of Arbitration held that, while Article 6 of the Convention applied to the arbitration area, except for the Channel Islands region, both conventional and customary law required the same result—a boundary in accordance with equitable principles, taking into consideration the relevant circumstances<sup>6</sup>.

216. The Court of Arbitration elaborated upon the significance of the principle of natural prolongation. This principle, enunciated in the *North Sea Continental Shelf* cases, was found by the Court of Arbitration not to be of purely physical character, but to be dependent upon legal factors as well. Thus, while natural

<sup>1</sup> *I.C.J. Reports, 1969*, p. 50, para. 93.

<sup>2</sup> Article 2, para. 1 of the Arbitration Agreement, *Decisions*, p. 6.

<sup>3</sup> *Ibid.*, pp. 31-35, paras. 30-37.

<sup>4</sup> *Ibid.*, pp. 32-33, paras. 32-33.

<sup>5</sup> *Ibid.*, p. 34, para. 34.

<sup>6</sup> *Ibid.*, pp. 59-60, para. 97.

prolongation is important in continental shelf doctrine, it is not by itself determinative of the appropriate attribution of shelf areas:

“... it is clear both from the insertion of the ‘special circumstances’ provision in Article 6 and from the emphasis on ‘equitable principles’ in customary law that the force of the *cardinal principle* of ‘natural prolongation of territory’ is not absolute, but may be subject to qualification in particular situations <sup>1</sup>.”

217. Although the Court of Arbitration found that equidistance was an appropriate method to delimit part of the boundary under the circumstances of that case, it did not hesitate to depart from equidistance to produce an equitable result. In the Channel Islands region, between the islands and the equidistant line in the middle of the English Channel, the Court used the 12-nautical-mile fisheries limit claimed by the United Kingdom to delimit the extent of continental shelf appertaining to the United Kingdom. In the Atlantic approaches to the Channel, the Court modified the equidistance method to take account of the special circumstances created by the extension seaward of the Cornish peninsula and the Scilly Islands.

218. The Court of Arbitration clarified the meaning of the equidistance-special circumstances rule in Article 6, finding that Article 6 regards equidistance and special circumstances as a single, combined rule:

“[T]he question whether ‘another boundary is justified by special circumstances’ is an integral part of the rule providing for application of the equidistance principle <sup>2</sup>.”

Consequently, the Court of Arbitration stated that application of the rules of Article 6, rather than of customary law, “will make not much practical difference, if any, to the actual course of the boundary in the arbitration area <sup>3</sup>.” As the Court stressed:

“The Court does not overlook that under Article 6 the equidistance principle ultimately possesses an obligatory force which it does not have in the same measure under the rules of customary law; for Article 6 makes the application of the equidistance principle a matter of treaty obligation for Parties to the Convention. But the combined character of the equidistance-special circumstances rule means that the obligation to apply the equidistance principle is always one qualified by the condition ‘unless another boundary line is justified by special circumstances’. Moreover, the *travaux préparatoires* of Article 6, in the International Law Commission and at the Geneva Conference of 1958, show that this condition was introduced into paragraphs 1 and 2 of the Article because it was recognised that, owing to particular geographical features or configurations, application of the equidistance principle might not infrequently result in an unreasonable or inequitable delimitation of the continental shelf. *In short, the rôle of the ‘special circumstances’ condition in Article 6 is to ensure an equitable delimitation; and the*

<sup>1</sup> *Decisions*, p. 92, para. 191 [Emphasis added].

<sup>2</sup> *Ibid.*, p. 48, para. 68.

<sup>3</sup> *Ibid.*, p. 47, para. 65.

combined 'equidistance-special circumstances rule', in effect, gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles. In addition, Article 6 neither defines 'special circumstances' nor lays down the criterion by which it is to be assessed whether any given circumstances justify a boundary line other than the equidistance line. Consequently, even under Article 6 the question whether the use of the equidistance principle or some other method is appropriate for achieving an equitable delimitation is very much a matter of appreciation in the light of the geographical and other circumstances. In other words, even under Article 6 it is the geographical and other circumstances of any given case which indicate and justify the use of the equidistance method as the means of achieving an equitable solution rather than the inherent quality of the method as a legal norm of delimitation<sup>1</sup>."

The Court of Arbitration's evident concern for the inequity of the equidistance method in certain circumstances was reflected in its close scrutiny of geographical factors and consideration of past arrangements of the parties relating to navigation, defense, and security.

219. The Court of Arbitration emphasized that the very application of the equidistance method may be inappropriate in many cases because of geographical circumstances. The Court of Arbitration recognized, moreover, that an equidistant line is particularly susceptible to inequity as a boundary between adjacent States because of the tendency of geographical features, such as a concave coast, to magnify the distorting effects of an equidistant line as it extends seaward:

"... it is the combined effect of the side-by-side relationship of the two States and the prolongation of the lateral boundary for great distances to seawards which may be productive of inequity and is the essence of the distinction between 'adjacent' and 'opposite' coasts situations<sup>2</sup>."

220. In the *Anglo-French Arbitration* case, France argued that the coasts of the parties that adjoined the Atlantic region were neither opposite nor adjacent, and that Article 6 of the *Continental Shelf Convention* thus was not applicable in that region<sup>3</sup>. The United Kingdom argued, however, that the coasts were "indubitably opposite one another"<sup>4</sup>. The Court of Arbitration concluded that, in regard to that area, the States were adjacent<sup>5</sup>. It viewed the area to be delimited as extending off the coasts of the two States into the open Atlantic, and not as lying between the two States, as was the case *inside the Channel*. The Court of Arbitration emphasized that, despite the absence of a common land frontier, the method of delimitation to be adopted for the Atlantic region "must be one that has relation to the coasts of the Parties actually abutting on the continental shelf of that region<sup>6</sup>." The only effect of the Channel on the course of the Atlantic

<sup>1</sup> *Decisions*, pp. 48-49, para. 70 [Emphasis added].

<sup>2</sup> *Ibid.*, pp. 58-59, para. 95.

<sup>3</sup> *Ibid.*, pp. 56-58, paras. 89-94.

<sup>4</sup> *Ibid.*, pp. 99-100, para. 210.

<sup>5</sup> *Ibid.*, p. 113, para. 241.

<sup>6</sup> *Ibid.*, p. 116, para. 248.

boundary was that the starting point of the Atlantic boundary was "the most westerly point of the mid-Channel median line".<sup>1</sup>

221. The Court of Arbitration noted the greater risk that the equidistance method may produce an inequitable delimitation in such a situation. As the Court stated:

"Similarly, in the case of 'adjacent' States it is the lateral geographical relation of the two coasts, when combined with a large extension of the continental shelf seawards from those coasts, which makes individual geographical features on either coast more prone to render the geometrical effects of applying the equidistance principle inequitable than in the case of 'opposite' States".<sup>2</sup>

The Court went on to stress:

"The appreciation of the effect of individual geographical features on the course of an equidistance line has necessarily to be made in reference to the actual geographical conditions of the particular area of continental shelf to be delimited and to the actual relation of the two coasts to that particular area".<sup>3</sup>

222. In both the Channel Islands and the Atlantic regions, the location of particular geographical features was a factor considered by the Court of Arbitration to be relevant to the determination of an equitable boundary. In the Channel Islands region, the Court of Arbitration found the presence of the Channel Islands archipelago, a dependency of the Crown of the United Kingdom but close to the shores of France, to be a relevant circumstance. The Court assessed in some detail the political relationship of the Channel Islands to the United Kingdom, and also took account of an existing fishery zone of 12 nautical miles that had been expressly recognized by France.<sup>4</sup> In the Atlantic region, the Court found that the extension of the Cornish peninsula and the Scilly Islands of Britain further into the Atlantic than the French peninsula of Brittany and the island of Ushant had a disproportionate effect on the course of an equidistant line:

"[T]he further projection westwards of the Scilly Isles, when superadded to the greater projection of the Cornish mainland westwards beyond Finistère, is much of the same nature... and has much the same tendency to distortion of the equidistance line, as the projection of an exceptionally long promontory, which is generally recognized to be one of the potential forms of 'special circumstance'.<sup>5</sup>"

223. The Court of Arbitration clarified the link between proportionality and the principle that delimitation is to be effected in accordance with equitable principles, taking account of the relevant circumstances, to produce an equitable result. The Court emphasized that proportionality was not an independent source

---

<sup>1</sup> *Decisions*, p. 97, para. 204.

<sup>2</sup> *Ibid.*, p. 112, para. 239.

<sup>3</sup> *Ibid.*, p. 113, para. 240.

<sup>4</sup> *Ibid.*, pp. 90-91, para. 187.

<sup>5</sup> *Ibid.*, p. 114, para. 244.

of rights to the shelf, but a factor to be used in evaluating the equities of certain geographical situations:

“The equitable delimitation of the continental shelf is not . . . a question of apportioning—sharing out—the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning to them areas of the shelf in proportion to the length of their coastlines; for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares. . . . [T]here can never be a question of completely *refashioning nature*, such as by rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline; it is rather a question of remedying the disproportionality and inequitable effects produced by *particular geographical configurations* or features in situations where otherwise the appurtenance of roughly comparable attributions of continental shelf to each State would be indicated by the geographical facts<sup>1</sup>.”

The role of proportionality was not linked to any specific geographical feature; rather, it was seen as a test for determining whether a given method of delimitation produced an inequitable result<sup>2</sup>. As the Court of Arbitration concluded, seen in that fashion “it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor<sup>3</sup>.”

224. Finally, the Court of Arbitration found that nongeographical factors, such as security, defense, and navigational considerations, can be relevant circumstances in a continental shelf delimitation. France argued that delimitation should *reflect security, defense, and navigational considerations*, and that various arrangements relating to defense, sea rescue, control of navigation, responsibility for lights and buoys, civil air navigation zones, and measures against pollution supported the French claim in the Channel Islands area. The United Kingdom objected that these considerations equally supported its claim in the area. The Court found that these considerations may be evidence of a predominant interest in the area, though they were not decisive in that case<sup>4</sup>.

### C. TUNISIA/LIBYA CONTINENTAL SHELF CASE

225. The *Tunisia/Libya* case was brought before the International Court of Justice by a Special Agreement between Tunisia and Libya. The case concerned the delimitation of an area of the shelf beneath the Mediterranean Sea off the coasts of these States. The Court was asked to state “[w]hat principles and rules of international law may be applied for the delimitation of the area of the continental shelf . . .” at issue and further to “clarify the practical method for the application of these principles and rules . . .”. The agreement specifically called upon the Court to take account of *equitable principles, relevant circumstances* characterizing the area, and the “new accepted trends” in the Third United Nations Conference on the Law of the Sea<sup>5</sup>.

<sup>1</sup> *Decisions*, pp. 60-61, para. 101.

<sup>2</sup> *Ibid.*, p. 60, paras. 99-100.

<sup>3</sup> *Ibid.*, p. 60, para. 101.

<sup>4</sup> *Ibid.*, p. 91, para. 188.

<sup>5</sup> *I.C.J. Reports 1982*, p. 23, para. 4.

<sup>6</sup> *Ibid.*



226. Both parties assigned a determinative role to the natural prolongation principle in the delimitation of the continental shelf. Thus, Libya presented detailed arguments regarding the geological history of the area, which was said to indicate a "northward thrust" to the shelf and thus to constitute the natural prolongation of Libya<sup>1</sup>. Tunisia claimed that the configuration of the seabed of the area in dispute indicated that it was in effect submerged Tunisia, and reflected a natural prolongation eastward from the Tunisian coast<sup>2</sup>.

227. The Court rejected the contentions of both parties that natural prolongation in a geological or geomorphological sense was determinative in boundary delimitation:

"The satisfaction of equitable principles is, in the delimitation process, of cardinal importance . . . and identification of natural prolongation may, where the geographical circumstances are appropriate, have an important role to play in defining an equitable delimitation, in view of its significance as the justification of continental shelf rights in some cases; but the two considerations—the satisfying of equitable principles and the identification of the natural prolongation—are not to be placed on a plane of equality<sup>3</sup>."

The Court found that the principle of natural prolongation would play an important role in determining what is an equitable delimitation only where there is a feature involving such a marked disruption of the seabed as to constitute an indisputable indication of two separate continental shelves or two natural prolongations<sup>4</sup>. The Court added, however, that a geomorphological feature *not rising to* this level might still be among the relevant circumstances considered in determining what is an equitable solution<sup>5</sup>.

228. In the *Tunisia/Libya* case, the Court held that "the delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances<sup>6</sup>." The Court noted that:

"It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area<sup>7</sup>."

<sup>1</sup> *I.C.J. Reports 1982*, p. 52, para. 57.

<sup>2</sup> *Ibid.*, p. 55, para. 63.

<sup>3</sup> *Ibid.*, pp. 46-47, para. 44.

<sup>4</sup> *Ibid.*, p. 57, para. 66. The Court also rejected the relevance of evidence of the historical geological processes that formed the area:

"... what must be taken into account in the delimitation of shelf areas are the physical circumstances as they are today; that just as it is the geographical configuration of the present-day coasts, so also it is the present-day sea-bed, which must be considered. It is the outcome, not the evolution in the long-distant past, which is of importance."

*Ibid.*, p. 53, para. 61.

<sup>5</sup> *Ibid.*, p. 58, para. 68.

<sup>6</sup> *Ibid.*, p. 92, para. 133.

<sup>7</sup> *Ibid.*, p. 60, para. 72.

The Court found that the course of the boundary consequently should be drawn in two segments. From a starting point at the outer limit of the territorial sea, the course of the boundary was to be drawn 26° east of north, which corresponds to a line perpendicular to the general direction of the coast. At the point where that line intersects the parallel of the most westerly point of the Gulf of Gabes, the Court deflected the boundary to run parallel to the general direction of the Tunisian coast, as adjusted to take into account the position of the Kerkennah Islands.

229. The Court in the *Tunisia/Libya* case, like the Court in the *North Sea Continental Shelf* cases and the Court of Arbitration in the *Anglo-French Arbitration*, denied that equidistance was either mandatory or possessed "some privileged status in relation to other methods <sup>1</sup>." Rather, the Court held, consistent with the view of the Parties, that "in international law there is no single obligatory method of delimitation and that several methods may be applied to one and the same delimitation <sup>2</sup>." The Court stressed the importance of the particular geographical situation in selecting a method of delimitation. Moreover, it made clear that methods used closer to shore may not be appropriate for use in areas farther from shore:

"Any examination of methods, like the examination of applicable rules and principles, must take as [a] starting-point the particular geographical situation, and especially the extent and features of the area found to be relevant to the delimitation . . . In the view of the Court, the proper appreciation and taking into account of the 'relevant circumstances which characterize the area' call for the area close to the coasts of the Parties to be treated differently from the areas further offshore <sup>3</sup>."

230. The Court in the *Tunisia/Libya* case stressed the importance of considering the geographical features of the area in a continental shelf delimitation. After noting that continental shelf rights are premised on the principle that the land dominates the sea <sup>4</sup>, the Court found that the coasts of the parties constitute the starting point for ascertaining the maritime areas that appertain to neighboring States <sup>5</sup>. The Court identified the position of the intersection of the land frontier with the coastline as an important circumstance to be taken into account <sup>6</sup>. The Court also found that the change in the direction of the Tunisian coastline was an important geographical feature:

"The most evident geographical feature of the coastlines fronting on that area of shelf relevant for the delimitation is the radical change in the general direction of the Tunisian coastline marked by the Gulf of Gabes; and clearly no delimitation of the continental shelf in front of the coasts of the Parties could be regarded as equitable which failed to take account of that feature <sup>7</sup>."

---

<sup>1</sup> *I.C.J. Reports 1982*, p. 79, para. 110.

<sup>2</sup> *Ibid.*, p. 79, para. 111.

<sup>3</sup> *Ibid.*, p. 82, para. 114.

<sup>4</sup> *Ibid.*, p. 61, para. 73.

<sup>5</sup> *Ibid.*, p. 61, para. 74.

<sup>6</sup> *Ibid.*, p. 64, para. 81.

<sup>7</sup> *Ibid.*, p. 86, para. 122.

The radical change in direction of the Tunisian coast at the Gulf of Gabes causes the geographical relationship between the Tunisian and Libyan coasts to change from one of adjacency to one more nearly opposite. Thus, the Court concluded that the continuation of the boundary along a line  $26^{\circ}$  east of north, approximately perpendicular to the general direction of the coast at the land boundary terminus, would not attribute sufficient weight to the change in geographical relationship. To achieve an equitable result, the Court proposed to adjust the perpendicular by deflecting it to parallel the general direction of the Tunisian coast northwest of the Gulf of Gabes<sup>1</sup>.

231. The position of the Kerkennah Islands was another relevant geographical factor. The Court considered that giving full effect to the Kerkennahs in drawing the delimitation line would accord the Islands excessive weight and inequitably deflect the resulting boundary<sup>2</sup>. In other words, a boundary line determined by giving full effect to the Kerkennahs would have the effect of cutting off Libya from a portion of the shelf lying in front of its coast, similar to the "cut-off" effect discussed in the *North Sea Continental Shelf* cases<sup>3</sup>. In determining the delimitation line northeast of the Gulf of Gabes, the Court in essence gave "half-effect" to the Kerkennah Islands, by drawing a line bisecting the angle formed by a line along the general direction of the Tunisian mainland coast and a line along the seaward coast of the Kerkennah Islands<sup>4</sup>.

232. The Court identified the Tripolitanian Furrow as the one geomorphological feature in the area that, although not amounting to an indisputable indication of two continental shelves or two natural prolongations, might be taken into account as a relevant circumstance. The Court found, however, that the greater part of the Tripolitanian Furrow was located beyond the bounds of the area relevant for delimitation. For that reason, and because it was located comparatively near and ran parallel to the Libyan coast, the Court held that it was unnecessary to consider the Tripolitanian Furrow to produce an equitable delimitation<sup>5</sup>.

233. The Court concluded that the historic activities of the parties were relevant to delimitation, though it was unnecessary to consider Tunisia's claim of historic fishing rights because the delimitation it was asked to make would not encroach upon such rights<sup>6</sup>. The Court noted that the line used by Tunisia in 1966 to delimit the eastward boundary of its petroleum concessions was also used by Libya in 1968 and afterwards to delimit the westward boundary of its petroleum concessions:

"The result was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorized by one Party, without interference, or (until 1976) protests, by the other<sup>7</sup>."

---

<sup>1</sup> *I.C.J. Reports 1982*, pp. 88-89, paras. 127-128.

<sup>2</sup> *Ibid.*, p. 89, para. 128.

<sup>3</sup> *I.C.J. Reports 1969*, pp. 31-32, para. 44.

<sup>4</sup> *I.C.J. Reports 1982*, p. 89, para. 129.

<sup>5</sup> *Ibid.*, p. 64, para. 80.

<sup>6</sup> *Ibid.*, pp. 76-77, para. 105.

<sup>7</sup> *Ibid.*, pp. 83-84, para. 117.

The Court found "that the 26° line thus adopted was neither arbitrary nor without precedent in the relations between the two States"<sup>1</sup>, both because the line had been utilized by France and Italy, when they had administered Tunisia and Libya, as a "*modus vivendi* concerning the lateral delimitation of fisheries jurisdiction"<sup>2</sup> and because the line corresponded to the perpendicular to the general direction of the coast and to the prolongation of the general direction of the land boundary<sup>3</sup>. The Court did not find a "tacit agreement between the Parties" or an estoppel, but rather "indicia . . . of the line or lines which the Parties themselves may have considered equitable or acted upon as such . . ."<sup>4</sup>.

234. The Court also affirmed that equity requires a "reasonable degree of proportionality"<sup>5</sup> between the respective continental shelf areas and the length of the respective coasts measured by the general direction of the coastlines<sup>6</sup>. After determining the seaward limits of the area to be taken into account, the Court took note of the approximate lengths of the respective coasts of Libya and Tunisia, measured "along the coastline without taking account of small inlets, creeks and lagoons . . ."<sup>7</sup>. On this basis, the Court determined that the relative proportion of the Libyan and Tunisian coastlines, following their sinuosities, was approximately 31:69, and that the relative proportion of the respective coastal fronts was approximately 34:66, using a straight-line segment to mark the relevant coast of Libya and two such segments to mark the relevant coasts of Tunisia. Finally, the Court noted that the relative proportion of the shelf areas below the low-water mark within the area of delimitation that appertained to Libya and to Tunisia as a result of the method indicated by the Court was approximately 40:60. The Court found that the result of this comparison, taking into account the relevant circumstances, met "the requirements of the test of proportionality as an aspect of equity"<sup>8</sup>.

235. One final feature of the *Tunisia/Libya* case should be noted. The Court stressed that the "cardinal" principle of continental shelf boundary delimitation is that the result must be equitable. This concept of equity does not, however, invest the Court with discretion to render a decision *ex aequo et bono*, or otherwise to give a compromise judgment. As the Court concluded:

"The Court can take such a decision only on condition that the Parties agree (Art. 38, para. 2, of the Statute), and the Court is then freed from the strict application of legal rules in order to bring about an appropriate settlement. The task of the Court in the present case is quite different: it is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result. While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice<sup>6</sup>."

---

<sup>1</sup> *I.C.J. Reports 1982*, p. 84, para. 119.

<sup>2</sup> *Ibid.*, p. 85, para. 120.

<sup>3</sup> *Ibid.*, p. 84, para. 118.

<sup>4</sup> *Ibid.*, p. 75, para. 103.

<sup>5</sup> *Ibid.*, p. 91, para. 131.

<sup>6</sup> *Ibid.*, p. 60, para. 71.

**CHAPTER III**

**PRINCIPLES OF INTERNATIONAL LAW APPLICABLE TO  
DELIMITATION OF A SINGLE MARITIME BOUNDARY BEYOND THE  
TERRITORIAL SEA**

236. The principles and rules of international law that apply to the delimitation of a single maritime boundary beyond the territorial sea are derived from the law of fisheries, together with the law of the continental shelf and, where appropriate, the law relating to other boundaries.

**SECTION 1. The Single Maritime Boundary Must be Delimited in Accordance  
with Equitable Principles, Taking Account of the Relevant Circumstances in the  
Area, to Produce an Equitable Solution**

237. The cardinal principle that emerges from analysis of the law is that delimitation of a single maritime boundary must be in accordance with equitable principles, taking account of the relevant circumstances in the area, to produce an equitable solution. This principle has been central to continental shelf doctrine since its inception<sup>1</sup>. Nothing in the law applicable to the delimitation of fishing zones suggests anything to the contrary. Any method, strictly applied or as adjusted, or any combination of methods, may be employed to achieve an equitable solution. The Convention adopted by the Third United Nations Conference on the Law of the Sea affirms the cardinal principle. The Convention provides, in separate articles, identical rules for the delimitation of the exclusive economic zone and continental shelf, both of which stress the requirement of an equitable solution<sup>2</sup>.

238. Among the equitable principles to be applied to produce an equitable solution in a single maritime boundary case are: (1) principles regarding the relationship between the relevant coasts of the parties and the maritime area lying in front of those coasts, including nonencroachment, proportionality, and (where applicable) natural prolongation; (2) the principle of conservation and management of the resources of the area; (3) the principle of minimization of the potential for international disputes; and (4) the general principle that delimitation should take account of the relevant circumstances in the area.

---

<sup>1</sup> Truman Proclamation, Annex 3, Vol. I; *I.C.J. Reports 1969*, p. 50, para. 92; *I.C.J. Reports 1982*, pp. 59-60, paras. 70-71.

<sup>2</sup> Convention on the Law of the Sea, Working Paper 1, 4 June 1982. Articles 74(1) and 83(1) provide in combination:

"The delimitation of the [exclusive economic zone/continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

## SECTION 2. Equitable Principles

## A. THE BOUNDARY MUST RESPECT THE RELATIONSHIP BETWEEN THE COASTS OF THE PARTIES AND THE MARITIME AREAS IN FRONT OF THOSE COASTS

239. It is well-established that a State's jurisdiction over coastal waters is an incident of its sovereignty over the adjacent coast<sup>1</sup>. It also is well-established that the sovereign rights exercised by the coastal State to explore and to exploit the resources of the continental shelf are an extension of its sovereignty over the adjacent land<sup>2</sup>. Arising out of this basic relationship of appurtenance are the subsidiary principles of nonencroachment, proportionality, and natural prolongation.

1. *Nonencroachment*

240. The principle of nonencroachment ensures that the seaward extension of a coastal State's jurisdiction is confined to those maritime areas that lie in front of its coasts. Encroachment occurs when the method of delimitation leaves to one State an area that is off, or in front of, the coast of another. It is this "cutting off" of areas situated directly in front of the coastal front of another State that must be avoided. As the Court in the *North Sea Continental Shelf* cases stated, encroachment often results from the use of the equidistance method for the delimitation of lateral boundaries "when the configuration of [one State's] coast makes the equidistance line swing out laterally across the [other State's] coastal front, cutting it off from areas situated directly before that front<sup>3</sup>."

241. The principle of nonencroachment has been extensively articulated in connection with the delimitation of continental shelf areas appurtenant to the coastal State. It also is reflected in the law governing the delimitation of fisheries jurisdiction. Thus, the Arbitral Tribunal in the *Grisbadarna* case respected the principle of nonencroachment in its use of the perpendicular to the general direction of the coast to delimit the maritime boundary between Sweden and Norway in the inshore area where their coasts were adjacent. Use of the perpendicular left to each of the parties those maritime areas lying before its respective coast<sup>4</sup>. The principle of nonencroachment is of special importance in delimiting a single maritime boundary that extends to 200 nautical miles from the coast, because any disproportionate effect caused by incidental features or irregularities in the coastline, as often results from the application of the equidistance method, is magnified as the line is extended seaward. That disproportionate effect can be greater in the case of 200-nautical-mile zones, which require

---

<sup>1</sup> *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, p. 127, Annex 4, Vol. I; *I.C.J. Reports 1951*, p. 133.

<sup>2</sup> *I.C.J. Reports 1969*, p. 51, para. 96; *I.C.J. Reports 1982*, p. 61, para. 73.

<sup>3</sup> *I.C.J. Reports 1969*, pp. 32-33, para. 44.

<sup>4</sup> Farther seaward, where the coasts become opposite, Norway and Sweden delimited their continental shelf using the equidistance method. See *Limits in the Seas*, No. 2, Annex 77, Vol. IV. For a discussion of the geographical circumstances of this delimitation, see the argument of Professor Oda, *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. 11, p. 60.

lines extending further seaward than the lines determined in previous continental shelf adjudications and arbitrations<sup>1</sup>.

## 2. Proportionality

242. The proportionality principle requires that a delimitation take account of the relationship between the extent of maritime area appertaining to the States concerned and the lengths of their respective coastlines. The principle establishes a test by which certain vagaries of geography may be identified and addressed so as to ensure an equitable result. The test of proportionality has been articulated most recently in regard to delimitation of the continental shelf<sup>2</sup>.

243. The underlying fairness of the principle of proportionality was recognized long before the evolution of the doctrine of the continental shelf. As one commentator has noted<sup>3</sup>, proportionality is deeply rooted in European domestic law governing the delimitation of lakes, streams, and other bodies of water<sup>4</sup>. It has been applied, for instance, to the delimitation of lake boundaries between States as a means of ensuring equitable access to adjoining bodies of water<sup>5</sup>. The domestic courts of the United States similarly have used the proportionality approach in determining riparian rights to maritime areas in cases involving rights to land formed by alluvion<sup>6</sup>, to the bed of a nonnavigable river<sup>7</sup>, and to flats lying between the low- and high-water marks in a cove<sup>8</sup>. Proportionality has been regarded as an equitable means of delimiting rights to tidelands and to navigable lakes where a concave shoreline rendered strict geometric methods of delimitation inequitable<sup>9</sup>.

244. The proportionality test applies to delimitation of a single maritime boundary because the rights to be delimited derive from the relationship of the areas in question to the abutting coasts. As the Court of Arbitration in the *Anglo-French Arbitration* made clear, proportionality is the criterion by which it may be determined whether individual geographic features so distort the course of a

---

<sup>1</sup> The boundary between Tunisia and Libya, as indicated by the Court, extends approximately 76 nautical miles from Tunisia and 104 nautical miles from Libya. The negotiated boundary between the Federal Republic of Germany and Denmark following the Court's Judgment extends into the North Sea 161 nautical miles from Denmark and 177 nautical miles from the Federal Republic; and, the boundary between the Federal Republic of Germany and the Netherlands extends 156 nautical miles from the Netherlands and 174 nautical miles from the Federal Republic. The boundary between the United Kingdom and France in the Atlantic region extends 168 nautical miles from the United Kingdom and 183 nautical miles from France.

<sup>2</sup> *I.C.J. Reports 1982*, p. 91, paras. 130-131.

<sup>3</sup> S. Rhee, "Sea Boundary Delimitation Between States Before World War II", *American Journal of International Law*, Vol. 76, No. 3, 1982, pp. 556-558, Annex 96, Vol. V.

<sup>4</sup> *Ibid.*, pp. 557-558.

<sup>5</sup> *Ibid.*, pp. 556-557.

<sup>6</sup> *Knight v. Wilder*, 56 Mass. (2 Cush.) 199 (1848), Annex 98, Vol. V.

<sup>7</sup> *Wonson v. Wonson*, 96 Mass. (7 Allen) 71 (1867), Annex 98, Vol. V.

<sup>8</sup> *Spath v. Larsen*, 20 Wash. 2d 500, 148 P.2d 834 (1944), Annex 98, Vol. V.

<sup>9</sup> *Driesbach v. Lynch*, 71 Idaho 501, 234 P.2d 446 (1951), Annex 98, Vol. V.

boundary as to result in a delimitation that is not in consonance with the cardinal principle that a boundary be delimited in accordance with equitable principles<sup>1</sup>.

### 3. Natural Prolongation

245. The natural prolongation of the land territory of a State into and under the adjacent sea traditionally is associated with the continental shelf. Because the single maritime boundary encompasses continental shelf rights, as well as fishery and other rights, the principle of natural prolongation may be relevant to the delimitation of that boundary. Natural prolongation, as the principle developed in regard to the continental shelf, refers to the physical extension of the land territory of a State into and under the sea. The degree of the extension is determined primarily by the physical character of the seabed.

246. The Court in the *Tunisia/Libya* case found, however, that the principle of natural prolongation would play the decisive role in determining what is an equitable delimitation only where a physical or geomorphological feature so markedly interrupts or disrupts the continuity of the seabed as to constitute two continental shelves or two natural prolongations. In these circumstances, the respective shelves or prolongations represent the areas to be attributed to each of the parties<sup>2</sup>. A physical or geomorphological feature that does not divide the maritime area into two natural prolongations may nonetheless be among the relevant circumstances to be considered in determining an equitable solution<sup>3</sup>.

## B. THE BOUNDARY SHOULD FACILITATE RESOURCE CONSERVATION AND MANAGEMENT

247. A single maritime boundary beyond the territorial sea should facilitate the conservation and management of the resources of the area. In the case of both fisheries and hydrocarbon resources, effective conservation requires restraint by all concerned so that overexploitation does not eventually result in the waste or destruction of the resources. Uncoordinated exploitation of a resource by those subject to different legal regimes can cause special problems. For example, fishermen have an incentive to overfish on one side of a boundary if they know that any fish they do not catch are likely to be caught by fishermen on the other side of the boundary. Consequently, the delimitation of a single maritime boundary should avoid, whenever possible, dividing between two governments the responsibility for conserving and managing a resource.

248. The principle of conservation, as it applies to the continental shelf, was first articulated in the Truman Proclamation on the Continental Shelf. This Proclamation identified the need for conservation and prudent utilization of deposits of oil and gas as a reason for the extension of coastal State jurisdiction to the natural resources of the shelf. Subsequently, in citing the unity of deposits as a

---

<sup>1</sup> *Decisions*, p. 60, para. 100. Application of the test of proportionality is dependent upon the actual coastlines and the coastal configurations of the parties. *I.C.J. Reports 1982*, p. 76, para. 104.

<sup>2</sup> *I.C.J. Reports 1982*, p. 57, para. 66.

<sup>3</sup> *Ibid.*, p. 57, para. 66; p. 58, para. 68.



factor relevant for delimiting the continental shelf, the Court in the *North Sea Continental Shelf* cases underscored the need to conserve and to manage continental shelf resources<sup>1</sup>. The principle of resource conservation and management thus is well-recognized for purposes of continental shelf delimitation.

249. The principle of conservation is particularly important in protecting the renewable resources of the sea, and in creating conditions under which those resources can be fully utilized for the benefit of the international community as well as for that of the coastal State. Thus, the delimitation of exclusive fishing zones should facilitate rather than hinder conservation of the living resources, whenever and to the extent possible.

250. The difficulties of joint management and the relative advantages of single-State management have shaped the development of the international law of fisheries. The need to facilitate conservation of the living resources of the sea by assigning responsibility for the management of stocks to a single State served as a primary basis for the extension of coastal State fisheries jurisdiction to 200 nautical miles from the coast. The Convention adopted by the Third United Nations Conference on the Law of the Sea reflects this preference for single-State management. To promote effective conservation, single maritime boundaries, to the extent possible, should not divide identifiable fish stocks. A boundary that respects a natural division between stocks, and thus places separate stocks under the jurisdiction of a single State, should be preferred over a boundary that would divide many stocks between different national jurisdictions, because the former boundary will promote, rather than undermine, effective conservation and management.

251. The effect of the Arbitral Tribunal's decision in the *Grisbadarna* case to adjust the boundary to avoid crossing the edge of a fishing bank illustrates this principle. In cases where it is not possible to avoid dividing some stocks, application of the principle should result in a boundary drawn to minimize the number of stocks divided. In this way, conservation of the separate stocks found on either side of the boundary is facilitated to the extent possible.

#### C. THE BOUNDARY SHOULD MINIMIZE THE POTENTIAL FOR INTERNATIONAL DISPUTES

252. A central function of international law generally, and of international boundary law in particular, is to avoid or to minimize both present and future conflicts. Inherent in the delimitation of a boundary is the division between the States concerned of responsibility for governing activities in the area. Any division is likely to be imperfect. Some human activities will have effects on the other side of a boundary. The object, however, should be to reduce the number and intensity of such effects because they may cause international friction. Thus, a single maritime boundary should, whenever possible, be so delimited as to place activities and their effects together, on the same side of the line.

253. The potential for international disputes is of special significance in the case of fisheries. Wherever a boundary divides a fishery, so that certain stocks may be exploited from either side of the boundary, fishing on one side will diminish the fish available to fishermen on the other side. Disputes may arise if one side overfishes or is perceived to be overfishing the resource. Conservation and

<sup>1</sup> *I.C.J. Reports 1969*, p. 51, para. 99.

management of such divided stocks require the allocation of resources between the fishermen of different States. Even if both sides have the best intentions concerning the conservation of the stocks, a conflict of interests in utilization of the stocks is inevitable. Differences in scientific opinion, incompatible management objectives and techniques, and conflicting enforcement strategies also may give rise to disputes.

254. International fishery conservation agreements historically have suffered from a lack of enforcement, due to the refusal of States involved to share authority over their fishermen with one another. Uncertainties lead to distrust among the fishermen and increase the probability that they will avoid complying with regulations intended to ensure conservation. This remains a potential source of dispute so long as fish stocks are divided by a boundary.

255. In the *Grisbadarna* case, the parties and the Tribunal agreed on the "great unsuitability of tracing the boundary-line across important [banks]".<sup>1</sup> The boundary therefore was drawn to pass through deep water between two important fishing banks, avoiding a division of authority on either bank and taking advantage of the natural buffer zone created by the channel.<sup>2</sup> The straight baselines used to delimit the limits of Norway's exclusive fishing rights were useful in minimizing the potential for dispute by facilitating enforcement and observation of those rights by the fishermen.<sup>3</sup> A similar concern may underlie, in part, the Court's discussion, in the *North Sea Continental Shelf* cases, of the problems of a continental shelf resource deposit that lies on both sides of the boundary.<sup>4</sup> Moreover, because hydrocarbon development on the continental shelf may affect fish that inhabit the ecological regime in which that activity occurs, disputes may arise if regulatory authority over a regime is divided among two or more States. The location of a single maritime boundary will minimize the potential for such disputes if responsibility for protection of the entire regime is vested in a single State.

256. Concern for minimizing the potential for international disputes is evident in cases delimiting land boundaries on the basis of customary international law. International tribunals often have used as land boundaries natural features that coincide with the extent of human activities in an area. Natural features also have been used where they create natural buffer zones that confine human activities, and their effects, to an identifiable area. Thus, in the *Island of Timor* case<sup>5</sup>, Sole Arbitrator Lardy determined the boundary to be the summit line of a watershed. Not only was this line "sufficiently natural" to be easily surveyed, but it "offered the advantage that the water courses uniformly descend from that summit line toward the territories placed wholly under Dutch sovereignty." The line proposed by Portugal, in contrast, "would attribute the upper and lower part of these several streams" to different parties<sup>6</sup>. The decision reflects the concern that natural

<sup>1</sup> *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, p. 129 (39th Whereas) [replacing 'bars' in Prof. Scott's translation of "bancs" with "banks"], Annex 4, Vol. I.

<sup>2</sup> *Ibid.*, pp. 132-133.

<sup>3</sup> *I.C.J. Reports 1951*, p. 136; Fulton, *op. cit.*, pp. 676-678, Annex 94, Vol. V.

<sup>4</sup> *I.C.J. Reports 1969*, p. 51, para. 97.

<sup>5</sup> Hague Ct. Rep. (Scott), 1916, 354; for text in French, see 11 R. Int'l Arb. Awards 481.

<sup>6</sup> Hague Ct. Rep. (Scott), 1916, 354, p. 384; for text in French, see 11 R. Int'l Arb. Awards 481, p. 508.

systems, here a river basin, not be divided between governmental authorities. Such divisions have the potential for causing riparian disputes. Watershed or summit lines have been used in several international arbitrations in recognition of their advantages in separating human activities<sup>1</sup>. In the *Walfish Bay Boundary* case, the arbitrator awarded all of a disputed plain to the United Kingdom to avoid dividing authority over the natural range of cattle pastured in the area by the local population<sup>2</sup>. A glance at a political map of the world indicates that States generally have used natural boundaries as international boundaries on land, whenever suitable natural features were available in the boundary area<sup>3</sup>.

#### D. THE BOUNDARY MUST TAKE ACCOUNT OF THE RELEVANT CIRCUMSTANCES IN THE AREA

257. It is fundamental to the requirement that a boundary be equitable that the relevant circumstances in the area be taken into account. The approach of the International Court of Justice in the *North Sea Continental Shelf* cases and the *Tunisia/Libya* case, and of the Court of Arbitration in the *Anglo-French Arbitration*, requires that, in applying each of the prior specific principles, the circumstances relevant to each such application must be considered. This general principle of taking into account the relevant circumstances in the area requires that, in addition to the circumstances considered in the application of these specific principles, any relevant circumstances not so considered must also be taken into account and balanced in arriving at an equitable solution. Thus, this general principle incorporates a consideration of the relevant circumstances taken into account in applying the preceding specific principles described above in this Section 2, but stands independent of them. To ensure an equitable solution, it is not enough to identify a discrete set of relevant circumstances, nor is it appropriate to assign an exact weight to be attached to each element. Rather, the task is to take account of the relevant circumstances and balance them in order to produce an equitable solution<sup>4</sup>. It is the consideration of the relevant circumstances taken together that is determinative.

258. In order to determine the circumstances that are relevant to the delimitation, it is necessary to identify the area relevant to the delimitation. The identification of such an area involves a determination of the relevant coast and all of the geographical factors that are themselves relevant or are the situs of relevant resources or activities.

259. International tribunals in maritime boundary delimitation cases have found a variety of circumstances to be relevant. The Court in the *North Sea Continental Shelf* cases identified as relevant the general configuration of the

---

<sup>1</sup> See e.g., Award of His Majesty, the King of Italy with regard to the Boundary between the Colony of British Guiana and the United States of Brazil, 99 *British and Foreign State Papers* 930, 1904, Turkey-Armenia Arbitration, Award of President Wilson, reprinted in *Foreign Relations of the United States*, 1920 Vol. III, p. 790.

<sup>2</sup> 11 R. Int'l Arb. Awards 263, 305 (1911).

<sup>3</sup> The United States-Canada land boundary is marked by suitable natural features, where appropriate. See Part I, Chap. I, Sec. 1.

<sup>4</sup> *I.C.J. Reports* 1969, p. 50, para. 93; *Decisions*, pp. 59-60, para. 97; *I.C.J. Reports* 1982, p. 60, para. 71.

coast<sup>1</sup>, particularly its concavity or convexity<sup>2</sup>; the relationship of coasts, whether adjacent or opposite<sup>3</sup>; special or unusual geographical features<sup>4</sup>; the physical and geological structure, so far as known or readily ascertainable, and natural resources<sup>5</sup>; and the unity of deposits located across a proposed boundary line<sup>6</sup>. The Court of Arbitration in the *Anglo-French Arbitration*, in addition to considering geographical features such as the relationship of the coasts as opposite or adjacent<sup>6</sup>, the extent of the seaward extension of the continental shelf<sup>7</sup>, and the presence and location of islands<sup>8</sup>, also considered the parties' existing coastal fisheries and territorial sea limits<sup>9</sup>; their practice in determining relevant base points<sup>10</sup>; the size, population, economy, and political autonomy of the relevant islands<sup>11</sup>; as well as arrangements concerning navigation, safety at sea, pollution, and defense<sup>12</sup>. In the *Tunisia/Libya* case, the Court considered the general direction of the coastline, particularly a marked change in its direction<sup>13</sup>; the presence of islands<sup>14</sup>; geomorphological configurations of the seabed not so significant as to interrupt natural prolongation of the continental shelf<sup>15</sup>; the position of the land frontier<sup>16</sup>; and certain maritime delimitation lines "tacitly respected" by the parties<sup>17</sup>. In the *Grisbadarna* case, a broad range of circumstances related to fisheries was considered relevant, including the historical development of a particular fishery, the number of fishermen involved, the length of time fishing had been conducted, and the assumption of responsibilities such as the measuring and charting of the sea and the establishment and maintenance of aids to navigation<sup>18</sup>.

260. The only limitation that to date has been put on the principle of taking into account relevant circumstances in the area is the holding of the Court in the *Tunisia/Libya* case that general economic considerations relating to the relative wealth of the two countries were "virtually extraneous." In explaining why such considerations could not be taken into account, the Court noted that they are "variables which unpredictable national fortune or calamity, as the case may be,

<sup>1</sup> *I.C.J. Reports 1969*, pp. 53-54, para. 101(D) [dispositif].

<sup>2</sup> *Ibid.*, p. 49, para. 91.

<sup>3</sup> *Ibid.*, p. 36, para. 57.

<sup>4</sup> *Ibid.*, pp. 53-54, para. 101(D) [dispositif].

<sup>5</sup> *Ibid.*, p. 51, para. 97.

<sup>6</sup> *Decisions*, p. 90, para. 187; p. 113, para. 242.

<sup>7</sup> *Ibid.*, p. 110, para. 233.

<sup>8</sup> *Ibid.*, p. 89, para. 183; pp. 93-94, paras. 196-197.

<sup>9</sup> *Ibid.*, pp. 90-91, para. 187.

<sup>10</sup> *Ibid.*, pp. 68-75, paras. 122-144.

<sup>11</sup> *Ibid.*, p. 89, para. 184.

<sup>12</sup> *Ibid.*, p. 82, para. 163; and p. 91, para. 188.

<sup>13</sup> *I.C.J. Reports 1982*, p. 63, para. 78.

<sup>14</sup> *Ibid.*, p. 63, para. 79.

<sup>15</sup> *Ibid.*, p. 64, para. 80.

<sup>16</sup> *Ibid.*, p. 65, para. 82.

<sup>17</sup> *Ibid.*, pp. 66-71, paras. 86-96.

<sup>18</sup> *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, pp. 127-133, Annex 4, Vol. I.

might at any time cause to tilt the scale one way or the other<sup>1</sup>." The boundary must be regarded as a permanent division of the area, and should not be unduly influenced by recent or transitory circumstances.

261. In delimiting a single maritime boundary, the historic activities of the parties in the area are a particularly relevant circumstance that is entitled to great weight in the balancing of considerations required to produce an equitable result. A boundary will rarely produce an equitable solution if it leaves to one State maritime areas within which its neighbor historically has had the predominant interest—both in using the area and in exercising international responsibilities there<sup>2</sup>. In assessing the relative interest of the parties in an area, "the Court must take into account whatever indicia are available of the line or lines which the Parties themselves may have considered equitable or acted upon as such<sup>3</sup>."

### SECTION 3. Methods of Delimitation

262. Many methods have been used for delimiting maritime areas. Prior to the 1958 United Nations Conference on the Law of the Sea, a number of methods were considered in an unsuccessful attempt to identify one rule for all cases. These methods included the prolongation of the land frontier, a perpendicular to the coast at the point at which the land boundary joins the sea, a median line, and the perpendicular to the general direction of the coast<sup>4</sup>. The Conference ultimately chose not to mandate a single method of delimitation. It adopted instead an equidistance-special circumstances rule for the territorial sea and continental shelf, which has been interpreted to allow the use of methods other than equidistance that, in light of the geographical and other circumstances, produce an equitable result<sup>5</sup>. As the Court has made clear, no single method, either strictly applied or as adjusted, nor any combination of methods of delimitation is obligatory or preferred. Any method or combination of methods that produces an equitable solution may be applied<sup>6</sup>.

263. This flexibility in the selection of a method or combination of methods is especially important in the case of a delimitation of a single maritime boundary, because of the large areas and complex factors involved. Two methods are discussed below: a perpendicular to the general direction of the coast, which is the

<sup>1</sup> *I.C.J. Reports 1982*, pp. 77-78, para. 107. The Court did note, however, that the physical presence of natural resources in an area to be delimited might, "depending on the facts, be an element to be taken into account in the process of weighing all relevant factors to achieve an equitable result." *Ibid.* While the Court was dealing with oil wells, the same reasoning would apply to fish and fishing banks.

<sup>2</sup> *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, p. 130, Annex 4, Vol. I; *I.C.J. Reports 1951*, pp. 127, 133, 142.

<sup>3</sup> *I.C.J. Reports 1982*, p. 84, para. 118.

<sup>4</sup> 1953 Y.B. Int'l L. Comm., Vol. II, p. 79.

<sup>5</sup> *Decisions*, p. 48, para. 70; pp. 59-60, para. 97.

<sup>6</sup> *I.C.J. Reports 1982*, pp. 78-80, paras. 109, 111; *I.C.J. Reports 1969*, p. 49, para. 90. The use of a combination of methods is common in State practice. For example, France and Spain settled their continental shelf boundary in the Bay of Biscay using one method close to shore (equidistance) and another (areal proportionality based upon the lengths of coastal fronts) in the more seaward area. See *Limits in the Seas*, No. 83, Annex 78, Vol. IV.

method proposed by the United States in this case, and the equidistance method, which has been used by Canada in the past.

#### A. A LINE PERPENDICULAR TO THE GENERAL DIRECTION OF THE COAST

264. The law has long regarded that a perpendicular to the general direction of the coast may be an appropriate method for the delimitation of a maritime boundary. It was used in the *Grisbadarna* case. It was studied by the International Law Commission in its effort to find one method suitable for all cases<sup>1</sup>. More recently, the Court employed a line that was perpendicular to the general direction of the coast in delimiting part of the continental shelf boundary in the *Tunisia/Libya* case.

265. State practice provides a number of other examples of the use of perpendiculars to the general direction of the coast or of similar methods to delimit maritime boundaries. As the Court noted in the *Tunisia/Libya* case<sup>2</sup>, France and Italy, during the period when they were responsible for the external relations of present-day Tunisia and Libya, used the perpendicular to the coast at the land boundary as the basis for a tacit *modus vivendi* concerning the lateral delimitation of fisheries jurisdiction. The Court noted that approximately the same line was used by Tunisia and Libya to separate their continental shelf petroleum concessions. The maritime boundaries along the west coast of South America between Chile and Peru<sup>3</sup>, Peru and Ecuador<sup>4</sup>, and Colombia and Ecuador<sup>5</sup> all adopt an approach similar in effect to the perpendicular to the general direction of the coast. These States, which were the first States to assert a 200-nautical-mile maritime jurisdiction, extended their maritime boundaries along parallels of latitude from the terminal point of their land boundaries with the coast. This method produced east-west boundaries extending seaward for long distances, thereby giving effect to the general north-south trend of the coastal direction and disregarding local coastal irregularities. Farther to the north, the Pacific Ocean boundary between Colombia and Panama, after leaving the near-shore area, also extends westward along a parallel of latitude, roughly perpendicular to the north-south orientation of the South American coast<sup>6</sup>.

266. On the east coast of South America, Brazil and Uruguay adopted a straight line perpendicular to the general direction of the coast<sup>7</sup>. The boundary between Argentina and Uruguay also uses a perpendicular to a hypothetical construction line reflecting the general coastal direction<sup>8</sup>. On the African coast, The Gambia-Senegal maritime boundary agreement of 4 June 1975 uses parallels of latitude<sup>9</sup>. The boundary between Guinea-Bissau and Senegal, established by an exchange of notes between France and Portugal on 26 April 1960, is a straight line

<sup>1</sup> 1953 Y.B. Int'l L. Comm., Vol. II, p. 79.

<sup>2</sup> *I.C.J. Reports 1982*, pp. 70-71, paras. 94-96.

<sup>3</sup> *See Limits in the Seas*, No. 86, Annex 79, Vol. IV.

<sup>4</sup> *See Limits in the Seas*, No. 88, Annex 80, Vol. IV.

<sup>5</sup> *See Limits in the Seas*, No. 69, Annex 81, Vol. IV.

<sup>6</sup> *See Limits in the Seas*, No. 79, Annex 82, Vol. IV.

<sup>7</sup> *See Limits in the Seas*, No. 73, Annex 83, Vol. IV.

<sup>8</sup> *See Limits in the Seas*, No. 64, Annex 84, Vol. IV.

<sup>9</sup> *See Limits in the Seas*, No. 85, Annex 85, Vol. IV.

that divides approximately the convergence of the two coastal fronts<sup>1</sup>. On Africa's east coast, Kenya and Tanzania have used a parallel of latitude to delimit a part of their maritime boundary<sup>2</sup>. In the Caribbean Sea, the boundary between Costa Rica and Panama contains one segment described in the agreement between them as a median line, but that is more accurately a line perpendicular to the general northwest-southeast direction of the coastline<sup>3</sup>.

267. Thus, the method of applying a perpendicular to the general direction of the coast has been used by courts in the resolution of boundary disputes and by States in fixing boundaries with their neighbors by agreement. This method gives effect to the broad geographical relationship between neighboring States and disregards local coastal irregularities. It also lends itself to adjustment to take into account the relevant circumstances in the area.

#### B. AN EQUIDISTANT LINE

268. The method that has been the subject of the most controversy is the equidistance method. This is largely because the equidistance method creates an artificial boundary that takes into account only a limited number of relevant circumstances, namely, a few selected points on the coasts of the States involved. Equidistance fails to take account of other relevant geographical circumstances, such as the broad geographical relationship of the States concerned, the general direction of the coast, the location of the land boundary, and irregular coastal configurations, as well as nongeographical relevant circumstances.

269. The equidistance method can, in appropriate circumstances, produce equitable results. The United States has used equidistance as a method to define certain of its maritime boundaries with neighboring States. This occurred in cases where the United States and the other State concerned agreed that equidistance produced an equitable solution in the relevant geographical and other circumstances of that case. Canada also has used equidistance in certain of its maritime boundary situations. In other cases, namely the pending delimitation with France concerning St. Pierre and Miquelon, and the proposed boundaries with Alaska, Canada has been a proponent of different methodologies.

270. The equidistance method has not been used more often to delimit boundaries because it is inherently inequitable in irregular geographical situations. In the *North Sea Continental Shelf* cases, the Federal Republic of Germany illustrated for the Court the effects of the equidistance method on the delimitation of sea areas in nine maritime boundary situations<sup>4</sup>. These situations are shown at Figures 21-24. Only three of the 32 boundaries included in these nine situations have been since delimited. The western boundary between the Netherlands Antilles and Venezuela, which was resolved by a negotiated settlement, is not an

<sup>1</sup> See *Limits in the Seas*, No. 68, Annex 86, Vol. IV.

<sup>2</sup> See *Limits in the Seas*, No. 92, Annex 87, Vol. IV.

<sup>3</sup> Treaty of Demarcation of Marine Areas and of Maritime Cooperation Between the Republic of Costa Rica and the Republic of Panama, signed 2 Feb. 1980; entered into force 11 Feb. 1982. Annex 88, Vol. IV.

<sup>4</sup> Memorial of the Federal Republic of Germany, *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. I, pp. 42-49, paras. 44-45.

equidistant line<sup>1</sup>. Figure 22. The continental shelf boundary between the United Kingdom and France in the area of the Channel Islands, which was determined by the *Anglo-French Arbitration*, is not an equidistant line<sup>2</sup>. Figure 23. Only one boundary, that between Greece and Italy, used the equidistance method. That boundary, which was determined by agreement of the parties, was between opposite States<sup>3</sup>. Moreover, it was merely incidental to the other boundary situation depicted by the Federal Republic — namely, the lateral boundary between Greece and Albania. Figure 21. Notably, the Gulf of Maine area was one of the examples in the Federal Republic's Memorial illustrating the capacity of the equidistance method to produce an inequitable result. That example compares the equidistant line to a line perpendicular to the general direction of the coast and displays graphically the inequity of the equidistance method in this case. Figure 24.

271. The equidistance method makes distance from the nearest coastal points the only determining factor. Therefore, it often gives disproportionate effect to slight coastal irregularities and takes no account of the broad geographical relationship between the parties. The *distorting effects of coastal configurations* may be comparatively small close to shore, but are magnified as the line is extended further seaward. The Court in the *North Sea Continental Shelf* cases recognized that this frequently leads to inequity:

“... in certain geographical circumstances which are quite frequently met with, the equidistance method, despite its known advantages, leads unquestionably to inequity, in the following sense:

... The slightest irregularity in a coastline is automatically magnified by the equidistance line as regards the consequences for the delimitation of the continental shelf. Thus it has been seen in the case of concave or convex coastlines that if the equidistance method is employed, then the greater the irregularity and the further from the coastline the area to be delimited, the more unreasonable are the results produced. So great an exaggeration of the consequences of a natural geographical feature must be remedied or compensated for as far as possible, being of itself creative of inequity<sup>4</sup>.”

The Court emphasized that special or unusual coastal configurations increasingly distort the equidistant line boundary as it extends further seaward, as illustrated by a diagram presented by the Federal Republic of Germany in that case<sup>5</sup>.

“[A] deviation from a line drawn perpendicular to the general direction of the coast, of only 5 kilometres, at a distance of about 5 kilometres

<sup>1</sup> The maritime boundary between the Netherlands and Venezuela is a negotiated line. The boundary is comprised of segments determined by points, some of which are located on an equidistant line, some of which follow a meridian, and some of which are merely agreed points. See Annex 89, Vol. IV.

<sup>2</sup> *Decisions*, p. 96, para. 203; p. 119, para. 235.

<sup>3</sup> See *Limits in the Seas*, No. 96, Annex 90, Vol. IV.

<sup>4</sup> *I.C.J. Reports 1969*, p. 49, para. 89.

<sup>5</sup> *I.C.J. Pleadings, North Sea Continental Shelf*, Vol. II, p. 29.



from that coast, will grow into one of over 30 at a distance of over 100 kilometres<sup>1</sup>."

- ③<sup>1</sup> Figure 25 is based upon the diagram presented by the Federal Republic of Germany, but extends it to 200 nautical miles. It shows that a deviation from a line drawn perpendicular to the general direction of the coast of only 5 kilometers (2.7 nautical miles), at a distance of 5 kilometers from that coast, will grow to one of 44 nautical miles (81 kilometers) at a distance of 200 nautical miles (370 kilometers) from the coast.

272. The equidistance method is particularly susceptible to creating inequities in the case of concave and convex coastlines. The Court in the *North Sea Continental Shelf* cases described the tendency of a concave coastline to pull the equidistant line inward, in the direction of the concavity, and that of a convex coastline to cause the equidistant line to diverge to the disadvantage of the adjacent State<sup>2</sup>. The Court made clear that a boundary should not be unduly influenced by coastal concavities and convexities, but should reflect the broad geographical relationship of the parties:

"... in the present case there are three States whose North Sea coastlines are in fact comparable in length and which, therefore, have been given broadly equal treatment by nature except that the configuration of one of the coastlines would, if the equidistance method is used, deny to one of these States treatment equal or comparable to that given the other two. Here indeed is a case where, in a theoretical situation of equality within the same order, an inequity is created. What is unacceptable in this instance is that a State should enjoy continental shelf rights considerably different from those of its neighbours merely because in the one case the coastline is roughly convex in form and in the other it is markedly concave, although those coastlines are comparable in length. It is therefore not a question of totally refashioning geography whatever the facts of the situation but, given a geographical situation of quasi-equality as between a number of States, of abating the effects of an incidental special feature from which an unjustifiable difference of treatment could result<sup>3</sup>."

The Court of Arbitration in the *Anglo-French Arbitration* specifically endorsed this reasoning:

"Although [the International Court of Justice's] observations on this aspect of 'adjacent States' situations were directed to the particular context of a concave coastline formed by the adjoining territories of three States, they reflect an evident geometrical truth and clearly have a more general validity<sup>4</sup>."

273. In the case of adjacent States, the equidistance method may be compared to the method of drawing a perpendicular to the general direction of the coast. Both methods produce roughly the same result in geographically regular situa-

<sup>1</sup> *I.C.J. Reports 1969*, p. 18, para. 8.

<sup>2</sup> *Ibid.*, pp. 17-18, para. 8.

<sup>3</sup> *Ibid.*, pp. 49-50, para. 91.

<sup>4</sup> *Decisions*, p. 55, para. 86.

tions. For example, in the case of a perfectly straight coastline, the equidistant line and the perpendicular to the coast will be the same. In geographically irregular situations, however, the methods produce different results. The perpendicular line, because it is determined by the general direction of the coast, is not distorted by local geographical irregularities and will reflect the broad geographical relationship between neighboring States. The equidistance method will produce inequitable results because it gives disproportionate effect to the slightest irregularity in the coast. As one commentator stated:

"If the equidistant line for two adjacent states is to be reasonable, it must be drawn perpendicularly to the common coastline . . . It is simply a formula based upon the fundamental concept of equitable apportionment, and it is successful only where an extremely simple geographic configuration exists<sup>1</sup>."

274. As a matter of law, there is no presumption in favor of the equidistance method. Most recently, in commenting on this point, the Court in the *Tunisia/Libya* case stated:

"A finding by the Court in favour of a delimitation by an equidistance line could only be based on considerations derived from an evaluation and balancing up of all relevant circumstances, since equidistance is not, in the view of the Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods.

-----

Any examination of methods, like the examination of applicable rules and principles, must take as [a] starting-point the particular geographical situation, and especially the extent and features of the area found to be relevant to the delimitation<sup>2</sup>."

275. The Third United Nations Conference on the Law of the Sea rejected all attempts to give a special role to the equidistance method in the delimitation of either the continental shelf or the exclusive economic zone. Certain States, including Canada, had favored making equidistance the general rule, with an exception for special circumstances. An early Canadian proposal provided:

"The delimitation of the Exclusive Economic Zone between adjacent and opposite States shall be effected by agreement employing, as a general rule, the median or equidistance line, taking into account special circumstances, where justified, in order to reach an equitable result<sup>3</sup>."

When this and similar proposals proved unacceptable, articles were introduced, such as Article 74 of the Informal Composite Negotiating Text, which sought to balance "equitable principles" with "equidistance":

<sup>1</sup> S. Oda, "Proposals for Revising the Convention on the Continental Shelf", *Columbia Journal of Transnational Law*, 1968, pp. 26, 27, Annex 96, Vol. IV.

<sup>2</sup> *I.C.J. Reports* 1982, p. 79, para. 110; p. 82, para. 114.

<sup>3</sup> Amendment to paragraph 1 of Article 62, Informal Single Negotiating Text II. Informal proposal by Canada, April, 1976.

“The delimitation of the exclusive economic zone between adjacent or opposite states shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance line, and taking account of all the relevant circumstances”<sup>1</sup>.

The text of the Convention, as adopted, mentions neither the equidistance method nor equitable principles. Rather, it provides that delimitation shall be effected “by agreement on the basis of international law . . . in order to achieve an equitable solution”<sup>2</sup>.

276. The equidistance method may produce a particularly inequitable result in the delimitation of a single maritime boundary because it does not take account of nongeographical circumstances. The equidistance method necessarily ignores water depth and other topographical features, as well as characteristics of the marine environment, such as the distribution of fishery resources. Moreover, the equidistance method gives no place to the predominant interest of a State as evidenced by the history of its private and governmental activities in the area. Therefore, the equidistance method is unlikely to produce an equitable solution whenever these or other nongeographical considerations are relevant to the delimitation.

---

<sup>1</sup> Article 74(1), Informal Composite Negotiating Text. U.N. Doc. A/CONF. 62/WP. 10., 15 July 1977.

<sup>2</sup> See para 237, note 2.

**PART III**  
**APPLICATION OF THE LAW TO THE FACTS**

**INTRODUCTION**

277. The analysis of the law has demonstrated that the maritime boundary between the United States and Canada in the Gulf of Maine area must be delimited in accordance with equitable principles, taking account of the relevant circumstances in the area, to produce an equitable solution. It remains then to identify those circumstances and to determine which method will best take account of them, in accordance with equitable principles, to produce an equitable solution. The single maritime boundary most in accordance with the principles and rules of international law applicable in the matter between the Parties is a line drawn perpendicular to the general direction of the coast from the starting point described in Article 2 of the Special Agreement, adjusted to protect the integrity of two fishing banks on the Scotian Shelf—German Bank and Browns Bank— (“the adjusted perpendicular line”).

**CHAPTER I**  
**THE RELEVANT CIRCUMSTANCES TO BE TAKEN INTO ACCOUNT**  
**IN THIS CASE**

278. The area within which these relevant circumstances are to be found is bounded by the coasts on both sides of the international boundary terminus, from Nantucket Island, Massachusetts, to Cape Canso, Nova Scotia. This area extends seaward for 200 nautical miles, and beyond, to the outer limit of coastal State maritime jurisdiction<sup>1</sup>.

279. For purposes of applying the law to the facts, the relevant circumstances in the area will be considered under the following headings: (1) geographical features, (2) marine environment, and (3) activities of the Parties and their nationals.

**SECTION 1. Geographical Features**

**A. THE BROAD GEOGRAPHICAL RELATIONSHIP OF THE PARTIES**

280. An equitable delimitation must respect the broad geographical relationship of the Parties. In this case, the broad geographical relationship is determined by the general northeastern direction of the coast, by the adjacency of the two States—Canada to the north and the United States to the south of the common land boundary—and by the location of the international boundary terminus in the northern corner of the Gulf of Maine.

*1. The United States and Canada are Adjacent States*

281. The United States and Canada are adjacent States across the entire North American continent. They share a 3,000-mile land boundary, with Canada to the north and the United States to the south. The broad relationship of the coasts of the Parties within the Gulf of Maine is that of adjacent States. As both Parties have recognized, the relationship of the United States and Canadian coasts is also adjacent seaward of the Gulf of Maine.

*2. The General Direction of the Coast is Northeastward*

282. The general direction of the coast determines the broad relationship between the coastlines of the Parties and the adjacent seas. Although it may be difficult in certain situations to determine the general direction of a particular coastline, the law has not hesitated to require such determinations. Thus, the Arbitral Tribunal in the *Grisbadarna* case, after concluding that international law provided for delimitation of the maritime territory of adjacent States by use of a

---

<sup>1</sup> See generally Article 76 of the Convention on the Law of the Sea, Working Paper 1, 4 June 1982.

perpendicular to the general direction of the coast, made such a determination<sup>1</sup>. The Convention on the Territorial Sea and Contiguous Zone, codifying the decision of the Court in the *Anglo-Norwegian Fisheries case*<sup>2</sup>, requires States entitled to establish a system of straight baselines to make such a determination<sup>3</sup>. The Convention proposed by the Third United Nations Conference on the Law of the Sea contains the same requirement<sup>4</sup>. Moreover, the usefulness of such determinations in delimiting the shelf was recognized by the International Court of Justice in both the *North Sea Continental Shelf cases*<sup>5</sup> and the *Tunisia/Libya case*<sup>6</sup>.

283. The general direction of the coast in the relevant area, like the general direction of the east coast of North America<sup>7</sup>, is northeastward, both within and beyond the Gulf of Maine. In the interior of the Gulf, the coast in the vicinity of the international boundary terminus forms a straight line from Cape Ann, Massachusetts to the Chignecto Isthmus, along a bearing of 54.5°. In the exterior area, the line from Nantucket Island, Massachusetts through Seal Island to Halifax, Nova Scotia is 54.1°. A bearing of 54° also corresponds to the coastal directions from Cape Charles, Virginia, to Cape Canso, Nova Scotia (53.9°), from Cape Hatteras, North Carolina through Sable Island to Cape St. Mary's on Newfoundland (54.1°), and from Northern Florida to Cape Race, Newfoundland (54.0°). Figure 26. Thus, 54° accurately reflects the general direction of the North American coast in the vicinity of the land boundary, and should be used to construct a line perpendicular to the general direction of the coast.

### 3. *The Land Boundary Lies North of the Gulf of Maine*

284. The location of the land boundary is relevant in adjacent State situations because it determines where the coastal front of one State ends and the coastal front of the other State begins. The land boundary in the Gulf of Maine area lies north of the Gulf of Maine. It reaches the sea at the mouth of the St. Croix River. The international boundary continues from there through Passamaquoddy Bay and the Bay of Fundy until it terminates at the northernmost corner of the Gulf of Maine. The effect of the location of the land boundary terminus north of the Gulf, rather than in the middle, is that most of the coastline that faces onto the Gulf of

<sup>1</sup> The Arbitral Tribunal found the general direction of the Norwegian and Swedish coastlines in the vicinity of their land boundary to be 20 degrees west of north. *Grisbadarna*, Hague Ct. Rep. (Scott), 1916, p. 129, Annex 4, Vol. I.

<sup>2</sup> *I.C.J. Reports 1951*, pp. 133-142.

<sup>3</sup> 516 U.N.T.S. 205, Art. 4, Annex 5, Vol. I.

<sup>4</sup> Convention on the Law of the Sea, Working Paper 1, 4 June 1982, Article 7.

<sup>5</sup> *I.C.J. Reports 1969*, p. 52, para. 98.

<sup>6</sup> *I.C.J. Reports 1982*, p. 85, para. 120; p. 88, para. 128; p. 91, para. 131.

<sup>7</sup> As described in Part I, Chap. I, Sec. 1, the general direction of the east coast of North America is northeastward, within a range of azimuths from 45.7° to 56.9°. To determine a specific general direction for the purpose of ascertaining the perpendicular to the general direction of the coast, the direction between the end points of the coast may be considered. This direction, between South Florida and Cape Race, is 45.7°. Such an azimuth would be advantageous to the United States but is determined by points outside the relevant area in this case and serves only to indicate the broad geographical relationship of the Parties on the east coast of North America. It is against this broad relationship that the general direction in the relevant area should be examined and determined.

Maine is United States coastline. Only the short coast of the Nova Scotia peninsula on the northeast side of the Gulf is Canadian.

285. The location of the land boundary in the Gulf of Maine area invites a comparison with the *Anglo-French Arbitration*. In that case, the United Kingdom and France did not have a common land boundary. In light of the opposite relationship of their coasts inside the English Channel, they agreed on a median-line boundary in the western portion of the Channel. The seaward extension of the boundary into the Atlantic therefore began at a point in the Channel halfway between the two coasts. By contrast, the maritime boundary in the Gulf of Maine area does not begin in the middle of the coastline bordering the Gulf, or in the middle of the hypothetical closing line across the Gulf between Nantucket Island and Cape Sable. Rather, the boundary must take account of the location of the land boundary and begin in the northern corner of the Gulf of Maine. To use, by analogy to the *Anglo-French Arbitration*, a hypothetical point midway between the Nova Scotian and Massachusetts coasts as the starting point for the maritime boundary in this case would be to ignore the location of the land boundary and the entire coasts of the states of Maine and New Hampshire.

#### B. GEOGRAPHICAL IRREGULARITIES IN THE RELEVANT AREA

286. Irregularities in the coastline are not in themselves unusual or entitled to special consideration. It is the tendency of particular delimitation methods to give disproportionate effect to an irregularity that may cause a delimitation to be inequitable. Therefore, the presence and location of irregularities must be taken into account in determining which method of delimitation will produce the most equitable result. The geographical irregularities in the relevant area in this case that must be taken into account are the four-fold change in direction of the Canadian coast, the short Canadian coastline perpendicular to the general direction of the coast, the protrusion of the Nova Scotia peninsula south of the land boundary, and the concavity in the coast forming the Gulf of Maine.

##### 1. *The Four-Fold Change in Direction of the Coast Creates a Short Canadian Coastline at Right Angles to the General Direction of the Coast*

287. The Canadian coastline changes direction four times in the relevant area: twice at the northern end of the Bay of Fundy, again at the mouth of the Bay of Fundy, and once more at Cape Sable. These changes in direction create three long stretches of Canadian coast that follow the general northeast direction of the east coast of North America, and one short stretch that is perpendicular to that direction. The coast of New Brunswick and the parallel northwest coast of the Nova Scotia peninsula, which form the Bay of Fundy, as well as the long parallel coast of Nova Scotia that faces onto the Atlantic Ocean, follow the general northeastern direction of the North American coast. It is only the short Nova Scotia coast facing onto the Gulf of Maine, part of which is situated directly across from the international boundary terminus, that departs radically from that general direction. The long coast of Nova Scotia that faces the Atlantic Ocean is Canada's primary coast in the relevant area.

288. The changes in direction of the Canadian coast create a geographical situation that is distinguishable from the situation before the Court in the *Tunisia/Libya* case. In both cases, the land boundary reaches the sea at a point where the coastline is relatively straight, but where there is a sharp change in

direction further along the coast. In this case, the change occurs 147 miles (237 kilometers) from the international boundary terminus, at the Chignecto Isthmus. In the *Tunisia/Libya* case, the coast changed direction at the western end of the Gulf of Gabes at a distance of 89 miles (143 kilometers) from the international boundary terminus. The change in direction did not affect the delimitation in the *Tunisia/Libya* case until the boundary extended a considerable distance seaward from the coast<sup>1</sup>. As a result, a line drawn perpendicular to the general direction of the coast produced an equitable basis for delimitation in the *Tunisia/Libya* case in the areas nearest to the coast, but required adjustment in the more distant areas to give effect to the change in direction of the Tunisian coast as well as the location of the Kerkennah Islands. In this case, the protrusion of the Nova Scotia peninsula in front of the land boundary and the long coastal front of Canada facing the Atlantic Ocean northeast of Cape Sable (resulting from the changes in direction of the Canadian coast), suggest that the perpendicular to the general direction of the coast may require adjustment in the vicinity of the Nova Scotia peninsula, but is an equitable boundary line not only in areas close to the international boundary terminus but also in areas seaward of the Gulf of Maine.

### 2. *The Nova Scotia Peninsula Protrudes South of the Land Boundary*

289. Although Canada generally lies north of the United States, the Nova Scotia peninsula deviates from this basic north-south relationship. The peninsula is connected to the mainland by the 17-mile (27-kilometer) wide Chignecto Isthmus, 147 miles (237 kilometers) northeast of the international boundary terminus. From there the Canadian coastline doubles back and hangs down in front of the land boundary. The resulting peninsula protrudes to a point 100 nautical miles southeast of the international boundary terminus.

### 3. *The International Boundary Terminus is Located in a Concavity in the Coast*

290. The location of the Nova Scotia peninsula opposite the international boundary terminus and the curvature of the New England coast combine to create the coastal concavity that is the Gulf of Maine. Because the international boundary terminates at the northern end of the Gulf, by far the greater part of the concavity is on the United States side of the international boundary. As recognized in previous international adjudications, such a concavity is a circumstance that may lead to an inequitable delimitation, particularly if the equidistance method is used.

## C. THE NORTHEAST CHANNEL AND THE FISHING BANKS OF THE GULF OF MAINE AREA AS SPECIAL FEATURES

291. Other special geographical features relevant to the boundary delimitation are the Northeast Channel and the fishing banks—both those on the Scotian Shelf (particularly Browns Bank and German Bank) and Georges Bank, off the coast of the United States. These features are discussed in Section 2 below.

---

<sup>1</sup> The second segment of the delimitation line indicated by the International Court of Justice begins approximately 68 nautical miles (126 kilometers) seaward from the land boundary terminus.



## SECTION 2. The Marine Environment

292. The relevant features of the marine environment include the three separate and identifiable ecological regimes associated with Georges Bank, the Gulf of Maine Basin, and the Scotian Shelf, as well as the natural boundary between the Georges Bank regime and the Scotian Shelf regime created by the Northeast Channel.

### A. THE WATERS ABOVE GEORGES BANK, THE SCOTIAN SHELF, AND THE GULF OF MAINE BASIN FORM THREE SEPARATE AND IDENTIFIABLE ECOLOGICAL REGIMES

293. The three principal ecological regimes of the Gulf of Maine area are located, respectively, above the Gulf of Maine Basin, above Georges Bank, and above the Scotian Shelf. Largely as a result of the different characteristics and circulation patterns of the waters of the three regimes, each is distinct and different from the others. Where the regimes abut, the resultant sharp changes in temperature and salinity create fronts, which in many respects act as natural barriers between various communities of flora and fauna, including fish stocks. To a large extent, each of these ecological regimes is independent of the other two. Equally important, each regime is a single integrated unit wherein damage done to the flora and fauna in any part of the unit will affect the flora and fauna throughout the unit.

294. The existence of the three separate and identifiable ecological regimes has important implications for commercial fishing. Most of the stocks of fish above Georges Bank are independent of the stocks of the same species over the Scotian Shelf. Overfishing of the stock associated with the Scotian Shelf will not deplete stocks associated with Georges Bank. Similarly, overfishing of the stocks associated with Georges Bank will not deplete stocks of the same species associated with the Scotian Shelf. By contrast, overfishing of a Georges Bank stock anywhere on the Bank will affect the abundance and even the continued existence of fish of the same stock throughout its range over Georges Bank. The same holds true for the Scotian Shelf. It is important not to divide State responsibility for identifiable stocks of fish within a separate ecological regime.

295. Other activities occurring within each of these regimes may have a similar effect. For example, development of mineral resources of the seabed within any part of a particular regime may injure the fish and shellfish populations throughout the whole of that regime.

### B. THE NORTHEAST CHANNEL IS A SIGNIFICANT GEOMORPHOLOGICAL FEATURE THAT IS A NATURAL BOUNDARY BETWEEN ECOLOGICAL REGIMES

296. The Northeast Channel is situated at a right angle to the general direction of the coast and is a significant geomorphological feature that creates a natural boundary between the separate and identifiable ecological regimes associated with Georges Bank and the Scotian Shelf. It is comparable to the channel separating the Skjottegrunde Banks and Grisbadarna Bank in the *Grisbadarna* case. Its value as a natural boundary between fisheries management units long has been recognized by international fisheries conservation organizations, i.e., NACFI and ICNAF. As one of only two significant breaks in the surface of the continental shelf along the entire east coast of North America, the Northeast Channel would

be a relevant circumstance even if this case only involved a delimitation of the continental shelf. As the natural boundary between ecological regimes that delimit and shelter important commercial fish stocks in the area, the Northeast Channel also would be a relevant circumstance if this case only involved a delimitation of 200-nautical-mile fishing zones<sup>1</sup>. It follows *a fortiori* that the Northeast Channel is a relevant circumstance in this single maritime boundary case.

### SECTION 3. Activities of the Parties and Their Nationals

297. The activities of the Parties and their nationals in the relevant area are evidence of the nature and scope of their historical as well as current interest in, and of their responsibilities to, the region. Even prior to independence from Great Britain, the United States dominated the fisheries of the entire region extending from Georges Bank to Newfoundland and the Gulf of St. Lawrence. Over the centuries, the United States fisheries off Canada's coast from Nova Scotia northward were gradually reduced. Most recently, Canada's establishment in 1977 of a 200-nautical-mile exclusive fishing zone, and its refusal to continue reciprocal fishing privileges beyond June, 1978, demonstrated Canada's intention to exclude the United States from its last fisheries off the coast of Canada. As a result, Canada now has asserted exclusive jurisdiction over vast fisheries on the Scotian Shelf, in the Gulf of St. Lawrence and on the Grand Banks of Newfoundland.

298. Georges Bank is the most important fishing bank off the east coast of the United States. There are no large United States fishing banks to the southwest that are comparable to Georges Bank or to the unusually rich fishing grounds off Canada. Except for occasional foreign vessels, only the United States fished Georges Bank from colonial days until the later years of the ICNAF regime. Its fisheries were developed by New England fishermen, who rely on them to this day. Only from the mid-1960s to the mid-1970s did foreign fishermen challenge United States dominance of Georges Bank. Even then, the United States continued to assume primary responsibility for the protection of the fisheries of Georges Bank, both diplomatically within ICNAF and by providing the principal fishery research, surveillance, and enforcement efforts. Recently, Canada sought to establish a fishery on Georges Bank, at about the time that other States began to fish there. The Canadian fishery on Georges Bank has been, and in large measure remains, dependent on the United States as a market for its products, especially scallops. It also depends on generous subsidies from the Canadian Government, which the Canadian Government could easily redirect to encourage development of the rich Canadian fishing grounds to the northeast.

299. Fishing gave rise to other activities in the Gulf of Maine area that must be taken into account to achieve an equitable delimitation. Detailed charting and surveying of the area were undertaken by private New England citizens even before the United States achieved independence. The United States Government later assumed this responsibility and has continued to assume it to the present day. Canada has not undertaken hydrographic surveys of Browns Bank and Georges Bank. Canada only recently has published charts showing Georges Bank and in

---

<sup>1</sup> The Northeast Channel thus is unlike the geomorphological features considered in previous cases that dealt only with the continental shelf—the Norwegian Trough, the Hurd Deep, and the Tripolitanian Furrow.

doing so apparently has relied on information from United States surveys. The United States first provided and continues to provide the aids to navigation. The United States Coast Guard regularly patrols Georges Bank and responds to search and rescue requests throughout the region. By agreement with Canada, the United States in World War II assumed operational responsibility for the defense of much of the Gulf of Maine area, including Georges Bank. Throughout history, it has been the United States that has conducted the principal scientific investigations covering Georges Bank and the Gulf of Maine. Canada has conducted such investigations only very recently. The timing and extent of those investigations are limited and comparable to the efforts of various other States that fished in that area before the extension of fishery jurisdictions to 200 nautical miles. In contrast, the actions by the United States and its nationals were undertaken over a long period of time with the expenditure of considerable resources. All these activities are evidence of the reality and scope of the predominant interest of the United States in the Gulf of Maine area—most particularly, Georges Bank and the Gulf of Maine—that cannot be disregarded in delimiting a single maritime boundary in the area.

300. The history of continental shelf activities in the Gulf of Maine area is brief. The Truman Proclamation in 1945 put Canada on notice of the United States position that the continental shelf should be established by agreement in accordance with equitable principles. Canada was also put on notice at that time of the United States position that the 100-fathom-depth contour, which extends from the Nantucket Shoals to the Northeast Channel, constitutes the extent of the United States continental shelf. The United States did not recognize the unilateral Canadian actions in the mid-1960s regarding the mineral resources of the seabed underlying portions of Georges Bank and was conducting its own program in regard to those resources at that time. Since then, both countries have been engaged in exploration in the area, although neither has permitted exploitation or even deep exploratory drilling on the northeastern part of Georges Bank. Only the United States has made detailed environmental studies and established a comprehensive regulatory program that will provide protection for the living resources of the Gulf of Maine and Georges Bank in the event that more extensive exploration or development is authorized on the northeastern part of Georges Bank.

## CHAPTER II

**THE BOUNDARY PROPOSED BY THE UNITED STATES IS THE  
PERPENDICULAR TO THE GENERAL DIRECTION OF THE COAST  
ADJUSTED TO TAKE ACCOUNT OF THE RELEVANT CIRCUMSTANCES  
IN THE AREA**

301. The United States proposes that the single maritime boundary in the Gulf of Maine area should be the perpendicular to the general direction of the coast, as *adjusted to take account of the relevant circumstances in the area*. Such a line has been used in earlier cases. The Arbitral Tribunal in the *Grisbadarna* case began with a line perpendicular to the general direction of the coast and adjusted it to avoid crossing the edge of the Grisbadarna fishing bank. The Court in the *Tunisia/Libya* case used a line perpendicular to the *general direction of the coast* in the area closer to the land boundary terminus, and adjusted the line further seaward to take account of the change in direction of the Tunisian coast and the position of the Kerkennah Islands. A perpendicular to the general direction of the coast, adjusted to take account of the relevant circumstances in the area, is appropriate in this case as well.

302. The general direction of the coasts of the Parties in the relevant area is 54 degrees, as noted above<sup>1</sup>. A perpendicular to the *general direction of the coast* therefore should extend seaward in the direction of 144 degrees from the international boundary terminus. As Figure 27 demonstrates, this perpendicular would intersect the Nova Scotia peninsula. The line therefore must be adjusted to take account of Nova Scotia. Just as the Arbitral Tribunal in the *Anglo-French Arbitration* established a 12-nautical-mile belt around the Channel Islands, it would be appropriate, in light of the United States recognition of Canada's 12-nautical-mile fishing zone in the early 1970s, to adjust the perpendicular so as to establish a 12-nautical-mile belt around the southwestern coastline of Nova Scotia. This would be an equitable boundary apart from other special circumstances in this case. One such circumstance is the agreement of the Parties that *the boundary to be delimited by the Court should begin at the point described in Article II of the Special Agreement*<sup>2</sup>. Therefore, the perpendicular to the general direction of the coast should begin from this point. Figure 28 depicts a line bearing 144 degrees from the agreed starting point. That line extends into the triangle described in Article I of the *Special Agreement*, in compliance with another requirement established by the Parties.

303. As shown on Figure 28, however, this perpendicular line cuts across two major fishing banks on the Scotian Shelf—Browns Bank and German Bank. To divide the Scotian Shelf, and the separate and identifiable ecological regime associated with it, would interfere with effective resource conservation and management and increase unnecessarily the potential for international disputes. Consequently, the perpendicular line should be *adjusted further to bring the entirety of Browns Bank and German Bank under the jurisdiction of Canada*. This

<sup>1</sup> See para. 283.

<sup>2</sup> See para. 4.

35 could be accomplished by making the boundary follow the 50-fathom-depth contour that defines the banks. Figure 29 depicts such a line. Because of the shifting character of the seabed in this area, however, the 50-fathom-depth contour would be a complex and difficult boundary to define permanently. It is more practical to simplify the 50-fathom-depth contour into a series of straight lines<sup>1</sup>.

36 304. The United States therefore proposes first that the boundary begin by following the perpendicular to the general direction of the coast extending from the point described in Article II of the Special Agreement; second, that it follow a series of straight lines, some perpendicular and some parallel to the general direction of the coast, constructed to enclose the 50-fathom-depth contour and thus to avoid crossing the fishing banks on the Scotian Shelf; third, that it continue along the perpendicular into the triangle described in the Special Agreement; and, fourth, that it turn northeastward, parallel to the general direction of the coast, toward the perpendicular to the general direction of the coast extending from the international boundary terminus, to the north-south leg of the triangle described in Article II of the Special Agreement. Figure 30.

---

<sup>1</sup> The use of straight lines in this manner in boundary delimitation is not unusual. The Colombia-Panama boundary in the Caribbean Sea uses lines of latitude and longitude to develop a step-like boundary between Panamanian jurisdiction and Colombian jurisdiction as measured from offshore islands. *Limits in the Seas*, No. 79, p. 6, Annex 82, Vol. IV.

### CHAPTER III

#### THE ADJUSTED PERPENDICULAR LINE PRODUCES AN EQUITABLE SOLUTION WHILE THE EQUIDISTANCE METHOD WOULD NOT

305. As the United States has demonstrated, international law governing the delimitation of a single maritime boundary requires the application of equitable principles, taking account of the relevant circumstances in the area, to produce an equitable solution. The adjusted perpendicular line fully meets those requirements. An equidistant line would not.

#### SECTION 1. The Adjusted Perpendicular Line Respects the Broad Geographical Relationship between the Coasts of the Parties and the Relevant Maritime Areas in Front of their Coasts; An Equidistant Line Would Not

306. The adjusted perpendicular line respects the broad geographical relationship between the United States and Canadian coasts and the maritime areas off these coasts in the relevant area. Such a line recognizes the coastal fronts of the Parties and reflects a reasonable degree of proportionality between the lengths of these coasts and the maritime areas to be delimited. The adjusted perpendicular line also gives effect to a natural boundary created by the principal geomorphological feature in this area—the Northeast Channel.

#### A. THE ADJUSTED PERPENDICULAR LINE RESPECTS THE COASTAL FRONTS OF THE PARTIES IN THE AREA; AN EQUIDISTANT LINE WOULD NOT

307. The adjusted perpendicular line respects the extension of Canada's coastal fronts, while an equidistant line would significantly encroach on the extension of the United States' coastal front.

308. Canada's primary coastal front in the Gulf of Maine area is its long coastline from Cape Sable to Cape Canso facing the Atlantic Ocean. The adjusted *perpendicular line* does not cross in front of Canada's primary coastal front and, consequently, does not encroach upon the extension of that front into the Atlantic Ocean.

309. Canada has a short secondary coastal front in the Gulf of Maine facing southwest onto the Gulf. Its seaward extension overlaps with the seaward extension of the long primary coastal front of the United States. Figure 31. The adjusted perpendicular line takes into account this overlap by leaving to Canada an area internal to the Gulf of Maine that also lies in front of the coast of the United States. The short secondary coastal front of Canada is a special feature, however, that deviates from the broad geographical relationship of the Parties. Consequently, that front should not be so used in the delimitation of the single maritime boundary as to deprive the United States of the extension of its primary coastal front into the sea. Accordingly, the adjusted perpendicular line leaves to the United States a larger part of the area of overlap than is left to Canada. Moreover, even though the secondary Canadian coastal front faces onto the Gulf of Maine, the adjusted perpendicular line also leaves to Canada a large area seaward of the Gulf of Maine in the Atlantic Ocean that lies solely in front of the United States coast. As measured by the difference between the adjusted perpendicular

line and a perpendicular to the general direction of the coast at the international boundary terminus, the total area left to Canada that lies in front of the United States coast would be 3,872 square nautical miles (12,280 square kilometers). Thus, the adjusted perpendicular line respects Canada's coastal front and is equitable to Canada.

310. An equidistant line, by contrast, would encroach upon maritime areas lying in front of the United States coast within the Gulf of Maine. It would also encroach on areas in front of the United States coast beyond the Gulf, specifically on Georges Bank—areas that lie solely in front of the United States coast. The concavity formed in the Gulf of Maine area by the relationship of the New England coast and the Nova Scotia peninsula, together with the convexity of the peninsula itself, causes the equidistant line to swing south across the United States' coastal front. Figure 32. The geographical configuration here resembles the situation in the *North Sea Continental Shelf* cases, where the concavity formed by the Dutch, German, and Danish coasts pulled the equidistant line across the coastal front of the Federal Republic of Germany, encroaching on the seaward extension of that coastline. Thus, it is not surprising that the Gulf of Maine was one of the examples included in the Federal Republic of Germany's Memorial to illustrate the capacity of the equidistance method to produce inequitable results. Figure 24, paragraph 270.

311. Indeed, the encroachment caused by an equidistant line would be greater in the Gulf of Maine area than in the North Sea because the boundary must extend further from the international boundary terminus and further seaward from the coast. At the point where the equidistant line is 200 nautical miles from the Canadian coast, it has projected as far south as the 40th parallel of North latitude. That is the approximate latitude of Philadelphia—67 miles south of New York City—and Boulder, Colorado, in the center of the United States. At that point, Canadian jurisdiction would extend 112 nautical miles (207 kilometers) south of the southernmost land territory of Canada (in the province of Ontario), and 285 nautical miles (528 kilometers) almost due south of the international boundary terminus in the Gulf of Maine. Figure 33.

#### B. THE ADJUSTED PERPENDICULAR LINE PRODUCES A PROPORTIONATE DELIMITATION; AN EQUIDISTANT LINE WOULD NOT

312. The adjusted perpendicular line meets the requirements of proportionality in testing the equitableness of a proposed delimitation line, as demonstrated at Figure 34. The geographical features whose proportionate or disproportionate effects are to be evaluated in this case include the entire Gulf of Maine, as well as the four-fold change in direction of the Canadian coastline that causes the Nova Scotia peninsula to protrude south of the international boundary. That four-fold change begins at the Chignecto Isthmus. Consequently, the test of proportionality is applied in the area bounded by lines drawn perpendicular to the general direction of the coast at Nantucket Island, Massachusetts and at the Chignecto Isthmus. These lines are extended to a point 200 nautical miles from the respective coasts and then are connected to enclose the area.

313. Within this area, the relevant coastlines are those that face the Gulf of Maine and the Atlantic Ocean. The length of the United States coastline, measured to reflect the sinuosities of the coast, is 1,063 nautical miles (1,969 kilometers); the Canadian coastline measured on a similar basis is 692 nautical

miles (1,282 kilometers). The proportion of the United States to the Canadian coastline is 61:39<sup>1</sup>. The adjusted perpendicular line delimits the maritime areas appertaining to the United States and Canada respectively in the proportion of 63:37. The adjusted perpendicular line therefore achieves a reasonable degree of proportionality between the relevant coastlines and the maritime areas appertaining to each State. Measuring the respective coastlines in terms of straight lines representing the respective coastal fronts rather than the sinuosities of the coasts would not substantially affect this ratio.

- ④1 314. The equidistance method would not result in a proportionate delimitation, as demonstrated at Figure 35. It would in effect reverse the 61:39 relationship by delimiting the maritime areas between the United States and Canada in a proportion of 36:64, producing a disproportionate and inequitable result<sup>2</sup>.

C. ALTHOUGH THE NATURAL PROLONGATION PRINCIPLE MAY BE INAPPLICABLE IN THIS CASE, THE NORTHEAST CHANNEL CONSTITUTES A RELEVANT CIRCUMSTANCE THAT THE ADJUSTED PERPENDICULAR LINE TAKES INTO ACCOUNT; AN EQUIDISTANT LINE WOULD NOT

315. While the Northeast Channel constitutes one of only two significant breaks in the surface of the continental shelf along the east coast of North America, this Court may be of the view that there is insufficient evidence to establish indisputably, as the Court in the *Tunisia/Libya* case appeared to require<sup>3</sup>, that it constitutes a division of the area into two continental shelves. Under such a view, the Northeast Channel would not provide grounds for delimiting the area on that basis. Should the doctrine of the *Tunisia/Libya* case render the natural prolongation doctrine inapplicable in this case, the Northeast Channel nonetheless constitutes, at the very least, a significant geomorphological factor to be taken into account as a relevant circumstance in reaching an equitable solution. This result is particularly necessary in view of the size of the Northeast Channel, and its location perpendicular to the general direction of the coast in an area where an equitable single maritime boundary should be located. Moreover, in this case, the Northeast Channel helps create and define a natural boundary between important ecological regimes. The adjusted perpendicular line takes account of the Northeast Channel by establishing a boundary parallel to the Channel and perpendicular to the general direction of the coast, and by recognizing that the Northeast Channel is a natural boundary between the two separate and identifiable ecological regimes of Georges Bank and the Scotian Shelf, respectively. The equidistant line, by contrast, would not take account of this relevant feature. Figure 32, paragraph 310.

③8

<sup>1</sup> These calculations include the length of the straight lines drawn across the Bay of Fundy. These lines, and not the coastline and the waters in the Bay of Fundy, which do not face the Gulf of Maine or the Atlantic Ocean, should be used to reflect Canada's coastal front facing onto the Gulf of Maine.

<sup>2</sup> Even should the equidistance method be tested by reference only to the points that affect the course of an equidistant line, i.e., defining the area by lines perpendicular to the general direction of the coast from the final base points on the coasts of the Parties, rather than by all relevant coasts, the result would be grossly disproportionate in the Gulf of Maine area.

④3 See Annex Doc. 99, Vol. V.

<sup>3</sup> Part II, Chap. III, Sec. 2(A)(3).



## SECTION 2. The Adjusted Perpendicular Line Facilitates Conservation and Management; An Equidistant Line Would Obstruct Them

316. The adjusted perpendicular line facilitates conservation and management of the marine living resources in the area by taking advantage of the natural boundary between important commercial fish stocks. It centralizes responsibility for conservation and management of most of the commercially important stocks in one or the other State to the maximum extent possible. It would minimize the number of stocks that would require conservation and management by international agreement between the Parties. The hazards of conservation by agreement, which led in the first place to the extension of coastal State fisheries jurisdiction to 200 nautical miles from the coast, would not be perpetuated unnecessarily as between the Parties with the adoption of the adjusted perpendicular line.

317. As more fully set forth above<sup>1</sup>, 16 species of fish and shellfish of commercial importance are found in the separate and identifiable ecological regimes associated with Georges Bank and the Scotian Shelf, respectively. Twenty-three separate stocks of 12 of these species<sup>2</sup> live in one or the other of the two regimes; each such stock is immune from over-exploitation of the same species in the other regime but is vulnerable to overfishing within the ecological regime in which it is found. Stocks of the other four species<sup>3</sup> are not confined to Georges Bank or the Scotian Shelf, and would be divided by any boundary in the area. Over-exploitation of these stocks anywhere in the area would affect them throughout their range. The adjusted perpendicular line respects the ecological integrity of the 23 stocks, by respecting the natural boundary between them at the Northeast Channel, allowing those stocks to be conserved and managed effectively by a single State. This line thereby maximizes single-State conservation and management, leaving only the stocks of four species to the vagaries of joint responsibility.

318. By contrast, the equidistant line slices through the ecological regime over Georges Bank, so that fishing or other activities on one side of the line would affect the fish on the other side for all 16 of the commercially important species. The differences between the adjusted perpendicular line, which respects the ecological integrity of commercially important species to the maximum extent possible, and the equidistant line, which shows maximum disregard for their ecological integrity, are illustrated in Figure 36. An equidistant line would divide stocks of all 16 species, whereas an adjusted perpendicular line would only divide the four stocks that would be so affected by any boundary in the area. Given the inherent difficulties of any system of conservation by agreement, and particularly the long history of unsuccessful efforts at conservation and management of these fisheries by agreement between the United States and Canada, the equidistant line would not protect the interests either of the Parties or of the international community in maintaining the productivity of marine living resources in the relevant area.

---

<sup>1</sup> See paras. 52-57.

<sup>2</sup> Scallops, herring, cod, haddock, cusk, silver hake, red hake, white hake, longfin squid, yellowtail flounder, redfish, and lobster.

<sup>3</sup> Shortfin squid, mackerel, argentine, and pollock.

319. In summary, the adjusted perpendicular line facilitates effective fishery conservation and management while an equidistant line would obstruct effective fishery conservation and management.

### **SECTION 3. The Adjusted Perpendicular Line Minimizes the Potential for Disputes; An Equidistant Line Would Invite Disputes**

320. The adjusted perpendicular line also minimizes the potential for international disputes between the Parties by reducing the number of commercially important stocks subject to joint management in the Gulf of Maine area. The adjusted perpendicular line places fishing activities in respect to a particular stock and the effects of those activities on the stock together to the maximum extent possible. The line thereby minimizes the potential for fishermen on either side of the line to be harmed (or to perceive that they are harmed) from real (or perceived) over-exploitation by fishermen on the other side of the line. It largely obviates the need for conservation by agreement, thereby avoiding the need to reconcile conflicts of interest between the Parties in the utilization of the resources. The adjusted perpendicular line also reduces the potential for disputes between the Parties resulting from differences over scientific opinion, management goals or techniques, and enforcement strategies.

321. The adjusted perpendicular line respects the integrity of the principal ecological regimes in the relevant area and would allow those regimes to be managed as units by a single State. Such a result would allow a State to make choices on continental shelf or other developmental and environmental matters after an assessment of the full range of its interests in the entire area and without concern that its decisions will affect, or be affected by, the interests of the other State. The adjusted perpendicular line thereby minimizes potential for international disputes over the coordination of hydrocarbon development and fisheries conservation and management.

322. The adjusted perpendicular line makes use of the natural buffer zone at the Northeast Channel. Little or no fishing occurs in the Northeast Channel because of the relative scarcity of fish and the difficulties of conducting fishing activities there. The Northeast Channel consequently serves as an easily observable boundary that naturally separates the fishing activities of the two States.

323. By comparison, the equidistant line is a geometric line on a chart, rather than a natural feature in the area. Figure 32, paragraph 310. The equidistant line divides responsibility for all of the major fish stocks on Georges Bank, cuts through an area of intensive fishing activity, and divides management of the Georges Bank ecological regime so that decisions made by one State will have an effect on the other. For these reasons, the equidistant line invites international disputes.

324. Fisheries issues long have been a source of difficulty in relations between the United States and Canada. Recently, the conservation and management of the fish resources of the Gulf of Maine area in particular have been contentious, emotional issues requiring persistent attention at the highest diplomatic levels. Although the United States and Canada are each responsible fishery managers, they have adopted different approaches to fishing problems and have pursued different national goals and policies in regard to fisheries management. In many respects, it was the sharp difference between the fisheries approaches of the

Parties that made it impossible for the United States to accept the fisheries agreement with Canada of 29 March 1979 calling for joint management of the fish stocks of the Northwest Atlantic. An equidistant line would perpetuate these longstanding difficulties unnecessarily.

#### **SECTION 4. The Adjusted Perpendicular Line Takes into Account the Relevant Circumstances in the Area; An Equidistant Line Would Not**

325. As previously demonstrated in Section 1 of this Chapter, the adjusted perpendicular line takes account of the coastal fronts of the Parties, of a reasonable degree of proportionality between the relevant coasts and the areas delimited, and of the Northeast Channel as a principal geomorphological feature that is a natural boundary between the separate and identifiable ecological regimes associated with Georges Bank and the Scotian Shelf, respectively. The adjusted perpendicular line also takes account of the other relevant geographical circumstances described in Section 1 of Chapter 1 of this Part, while the equidistant line would not.

326. The adjusted perpendicular line takes account of the adjacent relationship between Canada and the United States. As the Court of Arbitration stressed in the *Anglo-French Arbitration*, the equidistance method is more appropriate in a situation of opposite coasts than of adjacent coasts. Moreover, by definition, a line perpendicular to the general direction of the coast takes into account that general direction. In contrast, an equidistant line, driven as it is by a few selected base points on the respective coasts, may not. Indeed, in this case, it does not.

327. The adjusted perpendicular line takes account of the fact that the international boundary terminus lies in the northern corner of the Gulf of Maine by extending seaward at a right angle to the general direction of the coast from the point specified in Article 11 of the Special Agreement that is only 38.9 nautical miles (72 kilometers) south of this terminus. The equidistant line, by contrast, would ignore the location of the international boundary terminus and instead would swing across the long primary coastal front of the United States to a point 285 nautical miles (528 kilometers) south of the international boundary terminus.

328. The adjusted perpendicular line does not allow the irregularities in the Canadian coastline (particularly the four-fold change in the direction of the Canadian coast and the protrusion of the Nova Scotia peninsula south of the international boundary terminus) to disrupt the geographical balance between the Parties in the relevant area. The equidistance method would inequitably disrupt that balance by giving effect to a few base points on the short secondary coastal front of Canada. The distortion inherent in the application of the equidistance method to concavities is well-established. The distortion that results from applying the equidistance method to the concavity resulting from the protrusion of the Nova Scotia peninsula and the curvature of the New England coast is magnified in this case where the boundary must extend a great distance seaward.

329. By facilitating resource conservation and management and minimizing the potential for international disputes, as set forth in Sections 2 and 3 above, the adjusted perpendicular line takes account of the marine environment of the area, including the integrity of the separate and identifiable ecological regimes associated with Georges Bank and the Scotian Shelf, respectively, as well as the natural boundary between those ecological regimes at the Northeast Channel. This

natural boundary was respected by NACFI and by ICNAF and is respected by the adjusted perpendicular line. By contrast, the equidistant line, which is based on a geometric formula, would take into account only a few select base points on the coastline. It would divide Georges Bank, disregarding the associated ecological regimes, the natural division between commercially important fish stocks, and other features of the marine environment described in Section 2 of Chapter I of this Part.

330. Finally, an adjusted perpendicular line takes account of the predominant historic and present interest of the United States in the relevant area, especially in regard to Georges Bank and the Gulf of Maine, as set forth in Section 3 of Chapter I of this Part. In particular, the adjusted perpendicular line takes account of the longer and fuller use that United States fishermen have made of the fisheries of the relevant area and the exercise of responsibility for fisheries conservation and research by the United States in the Gulf of Maine and on Georges Bank.

331. The equidistance method, by sharp contrast, would disregard the activities and predominant interest of the United States in the area. An equidistant line would leave to Canada a large part of Georges Bank, an area that United States fishermen alone developed and until recently fished almost exclusively. It would disregard the exercise of responsibility by the United States for the maintenance and improvement of the fishery resources, for the safety of navigation, including surveying and charting and other aids to navigation, for scientific research, for search and rescue, and for defense. Many of these responsibilities were assumed in the area on the basis of agreements with Canada. By advancing its boundary claim, Canada now disregards the predominant interest that the United States and its nationals have developed over centuries through their activities in the area.

## CHAPTER IV

### SUMMARY OF APPLICATION OF THE LAW TO THE FACTS

332. The line perpendicular to the general direction of the coast in the Gulf of Maine area, as adjusted to respect two fishing banks on the Scotian Shelf, is in accordance with equitable principles, and takes account of the relevant circumstances in the area, to produce the most equitable solution in this case.

## SUBMISSIONS

*In view of the facts set forth in Part I of this Memorial, the statement of the law contained in Part II of this Memorial, and the application of the law to the facts as stated in Part III of this Memorial;*

*Considering that the Special Agreement between the Parties requests the Court, in accordance with the principles and rules of international law applicable in the matter as between the Parties, to decide the course of the single maritime boundary that divides the continental shelf and fisheries zones of the United States of America and Canada from a point in latitude 44°11'12"N, longitude 67°16'46"W to a point to be determined by this Court within an area bounded by straight lines connecting the following sets of coordinates: latitude 40°N, longitude 67°W; latitude 40°N, longitude 65°W; latitude 42°N, longitude 65°W;*

*May it please the Court, on behalf of the United States of America, to adjudge and declare:*

### **A. Concerning the Applicable Law**

1. That delimitation of a single maritime boundary requires the application of *equitable principles*, taking into account the relevant circumstances in the area, to produce an equitable solution;
2. That the equitable principles to be applied in this case include:
  - a) The principles that the delimitation respect the relationship between the relevant coasts of the Parties and the maritime areas lying in front of those coasts, including nonencroachment, proportionality, and, where appropriate, natural prolongation;
  - b) The principle that the delimitation facilitate conservation and management of the natural resources of the area;
  - c) The principle that the delimitation minimize the potential for disputes between the Parties; and
  - d) The principle that the delimitation take account of the relevant circumstances in the area;
3. That the equidistance method is not obligatory on the Parties or preferred, either by treaty or as a rule of customary international law, and that any method or combination of methods of delimitation may be used that produces an equitable solution.

### **B. Concerning the Relevant Circumstances to be Taken into Account**

1. That the relevant geographical circumstances in the area include:
  - a) The broad geographical relationship of the Parties as adjacent States;
  - b) The general northeastern direction of the east coast of North America, both within the *Gulf of Maine and seaward of the Gulf*;

- c) The location of the international boundary terminus in the northern corner of the Gulf of Maine;
  - d) The radical changes in the direction of the Canadian coast beginning at the Chignecto Isthmus, 147 miles northeast of the international boundary terminus;
  - e) The protrusion of the Nova Scotia peninsula 100 nautical miles southeast of the international boundary terminus, creating a short Canadian coastline perpendicular to the general direction of the coast, and across from the international boundary terminus;
  - f) The concavity in the coast created by the combination of the protrusion of the Nova Scotia peninsula and the curvature of the New England coast;
  - g) The relative length of the relevant coastlines of the Parties; and
  - h) The Northeast Channel, Georges Bank, and Browns Bank and German Bank on the Scotian Shelf, as special features;
2. That the relevant environmental circumstances in the area include:
- a) The three separate and identifiable ecological regimes associated, respectively, with the Gulf of Maine Basin, Georges Bank, and the Scotian Shelf; and
  - b) The Northeast Channel as the natural boundary dividing not only separate and identifiable ecological regimes of Georges Bank and the Scotian Shelf, but also most of the commercially important fish stocks associated with each such regime;
3. That the relevant circumstances in the area relating to the predominant interest of the United States as evidenced by the activities of the Parties and their nationals include:
- a) *The longer and larger extent of fishing by United States fishermen since before the United States became an independent country;*
  - b) The sole development, and, until recently, the almost exclusive domination of the Georges Bank fisheries by United States fishermen; and
  - c) The exercise by the United States and its nationals for more than 200 years of the responsibility for aids to navigation, search and rescue, defense, scientific research, and fisheries conservation and management.

### C. Concerning the Delimitation

1. That the application of equitable principles taking into account the relevant circumstances in the area to produce an equitable solution is best accomplished by a single maritime boundary that is perpendicular to the *general direction of the coast in the Gulf of Maine area, commencing at the starting point for delimitation specified in Article II of the Special Agreement and proceeding into the triangle described in that Article, but adjusted during its course to avoid dividing German Bank and Browns Bank, both of which would be left in their entirety to Canada;*

2. That the boundary should consist of geodetic lines connecting the following geographic coordinates:

<u>Latitude (North)</u>	<u>Longitude (West)</u>
a.) 44° 11' 12"	67° 16' 46"
b.) 43° 29' 06"	66° 34' 30"
c.) 43° 19' 30"	66° 52' 45"
d.) 43° 00' 00"	66° 33' 21"
e.) 42° 57' 13"	66° 38' 36"
f.) 42° 28' 48"	66° 10' 25"
g.) 42° 34' 24"	66° 00' 00"
h.) 42° 15' 45"	65° 41' 33"
i.) 42° 22' 23"	65° 29' 12"
j.) 41° 56' 21"	65° 03' 48"
k.) 41° 58' 24"	65° 00' 00"

(Signed) \_\_\_\_\_

DAVIS R. ROBINSON  
Agent of the United States  
of America



**ANNEXES TO THE MEMORIAL OF THE  
UNITED STATES OF AMERICA**

**Volume I**

**DOCUMENTARY ANNEXES, NOS. 1 TO 11**

**Annex 1**

## CERTIFICATION

I, the undersigned, Davis R. Robinson, Agent of the United States of America, hereby certify that each document included in the Annex or Memorial submitted by the United States of America is an accurate transcription, reproduction, or representation.

*(Signed)* \_\_\_\_\_

DAVIS R. ROBINSON  
*Agent of the United States  
of America*

\_\_\_\_\_

**Annex 2**

**SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA TO SUBMIT TO A CHAMBER OF THE INTERNATIONAL COURT OF JUSTICE THE DELIMITATION OF THE MARITIME BOUNDARY IN THE GULF OF MAINE AREA, NOTIFIED TO THE COURT ON 25 NOVEMBER 1981**

*[See I, pp. 1-26]*

---

## Annex 3

## THE TRUMAN PROCLAMATIONS

PROCLAMATION NO. 2667, POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF, 28 SEPTEMBER 1945, 10 *FEDERAL REGISTER* 12303 (2 OCTOBER 1945)

PROCLAMATION NO. 2668, POLICY OF THE UNITED STATES WITH RESPECT TO COASTAL FISHERIES IN CERTAIN AREAS OF THE HIGH SEAS, 28 SEPTEMBER 1945, 10 *FEDERAL REGISTER* 12304 (2 OCTOBER 1945)

*XIII BULLETIN*, THE DEPARTMENT OF STATE, NO. 327, 30 SEPTEMBER 1945, PP. 484-486

DRAFTS OF THE TRUMAN PROCLAMATIONS GIVEN TO THE EMBASSY OF CANADA, 26 APRIL 1945, REPRINTED IN *FOREIGN RELATIONS OF THE UNITED STATES*, 1945, VOL. 2, PP. 1495-1503

NOTE FROM THE SECRETARY OF STATE TO THE CHARGÉ D'AFFAIRES OF CANADA, DATED 22 OCTOBER 1945

NOTE NO. 383 FROM THE CHARGÉ D'AFFAIRES OF CANADA TO THE SECRETARY OF STATE, DATED 23 OCTOBER 1945

I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, OXFORD, CLARENDON PRESS, 1966, PP. 202-205<sup>1</sup>

A. L. SHALOWITZ, *SHORE AND SEA BOUNDARIES*, WASHINGTON, D.C., GOVERNMENT PRINTING OFFICE, VOL. I, 1962, PP. 182-184<sup>1</sup>

---

<sup>1</sup> Not reproduced.

CONTENTS—Continued

WAR PRODUCTION BOARD—Con. Priorities system, regulations applicable to operation— Continued.	
Service equipment, MRO ratings invalidated (PR 3, Dir. 11).....	12383
Split ratings (PR 3, revoca- tion of Dir. 6).....	12382
Textile machinery accesso- ries, (PR 3, revocation of Dir. 9).....	12383
Programs, M-328B (Schedules C, D, J, and K), special rules for 4th quarter 1945 (M-328B, Dir. 6).....	12386
Steel:	
Distributors (M-21, revoca- tion of Dir. 3).....	12387
Products for disaster relief (M-21, revocation of Dir. 4).....	12387
Suits, children's snow, and mackinaw, peacoat and cos- sack jacket programs (M- 328B, Dir. 8).....	12387
Suspension order, Entwistle Mfg. Co., Inc.....	12384

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations amended or added by documents published in this issue. Documents carried in the Cumulative Supplement by uncodified tabulation only are not included within the purview of this list.

<b>TITLE 3—THE PRESIDENT:</b>	<b>Page</b>
<b>Chapter I—Proclamations:</b>	
2885.....	12301
2886.....	12301
2887.....	12303
2888.....	12304
<b>Chapter II—Executive orders:</b>	
9429.....	12304
9431.....	12304
9432.....	12304
9433.....	12305
9444.....	12305
<b>TITLE 7—AGRICULTURE:</b>	
Subtitle A—Office of Secretary of Agriculture.....	12305
<b>Chapter VII—Production and Marketing Administration (Agricultural Adjustment):</b>	
Part 726—Fire-cured and dark air-cured tobacco (2 docu- ments).....	12305
<b>TITLE 10—ARMY; WAR DEPARTMENT:</b>	
<b>Chapter V—Military reserva- tions and national ceme- teries:</b>	
Part 502—Regulations affect- ing military reservations.....	12306
<b>TITLE 12—BANKS AND BANKING:</b>	
<b>Chapter II—Board of governors of Federal Reserve System:</b>	
Part 222—Consumer credit.....	12379
<b>TITLE 14—CIVIL AVIATION:</b>	
<b>Chapter II—Administrator of Civil Aeronautics:</b>	
Part 600—Designation of civil airways.....	12306
Part 601—Designation of air- way traffic control areas, airport approach zones and radio fixes.....	12306
<b>TITLE 19—CUSTOMS DUTIES:</b>	
<b>Chapter I—Bureau of Customs:</b>	
Part 12—Special classes of merchandise.....	12306

CODIFICATION GUIDE—Continued

<b>TITLE 26—INTERNAL REVENUE:</b>	<b>Page</b>
<b>Chapter I—Bureau of Internal Revenue:</b>	
Part 178—Wine.....	12307
<b>TITLE 32—NATIONAL DEFENSE:</b>	
<b>Chapter IX—War Production Board:</b>	
Part 944—Regulations appli- cable to operation of pri- orities system (20 docu- ments).....	12381, 12382, 12383, 12384
<b>Chapter XXIII—Surplus Prop- erty Board:</b>	
Part 8306—Sale of govern- ment-owned plant equip- ment in contractors plants.....	12408
<b>TITLE 46—SHIPPING:</b>	
<b>Chapter I—Coast Guard: In- spection and Navigation:</b>	
Part 37—Specifications for lifesaving appliances.....	12408
<b>TITLE 49—TRANSPORTATION AND RAILROADS:</b>	
<b>Chapter II—Office of Defense Transportation:</b>	
Part 500—Conservation of real equipment.....	12409

year ending June 30, 1946, and for each fiscal year thereafter, have been determined in accordance with the law to be, and shall be, as follows:

Austria.....	1,413
Germany.....	28,967

The immigration quotas assigned to Austria and Germany are designed solely for purposes of compliance with the pertinent provisions of the Immigration Act of 1924 and are not to be regarded as having any significance extraneous to this object.

This proclamation shall take effect immediately, and shall have the effect of amending Proclamation 2283 of April 28, 1938.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 28th day of September, in the year of our Lord nineteen hundred and (SEAL) forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,  
Acting Secretary of State.

[F. R. Doc. 45-18174; Filed, Oct. 1, 1945; 11:30 a. m.]

PROCLAMATION 2667

POLICY OF THE UNITED STATES WITH RESPECT TO THE NATURAL RESOURCES OF THE SUBSOIL AND SEA BED OF THE CONTINENTAL SHELF<sup>1</sup>

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA  
A PROCLAMATION

WHEREAS the Government of the United States of America, aware of the

<sup>1</sup> See Executive Order 9833, *infra*.

long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and (SEAL) forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,  
Acting Secretary of State.

[F. R. Doc. 45-18176; Filed, Oct. 1, 1945; 11:11 a. m.]

## PROCLAMATION 2668

POLICY OF THE UNITED STATES WITH RESPECT TO COASTAL FISHERIES IN CERTAIN AREAS OF THE HIGH SEAS<sup>1</sup>

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

## A PROCLAMATION

WHEREAS for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international cooperation in this field; and

WHEREAS such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

WHEREAS the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion; and

WHEREAS there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special rights and equities of the coastal State and of any other State which may have established a legitimate interest therein; NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas

of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord nineteen hundred and (SEAL) forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,  
*Acting Secretary of State.*

[F. R. Doc. 45-18175; Filed, Oct. 1, 1945; 11:11 a. m.]

## EXECUTIVE ORDER 9629

## AMENDING EXECUTIVE ORDER 9492, PRESCRIBING REGULATIONS GOVERNING NON-MILITARY AND NON-NAVAL TRANSPORTATION ON ARMY AND NAVY AIR TRANSPORTS

By virtue of the authority vested in me by the Constitution and laws of the United States, and as President of the United States and Commander in Chief of the Army and Navy of the United States, it is ordered that Executive Order 9492 of October 24, 1944, prescribing regulations governing non-military and non-naval transportation on Army and Navy air transports, be, and it is hereby, amended by substituting the words "eighteen months" for the words "one year" occurring in section 2 (c) thereof.

HARRY S. TRUMAN

THE WHITE HOUSE,  
September 25, 1945.

[F. R. Doc. 45-18185; Filed, Oct. 1, 1945; 10:00 a. m.]

## EXECUTIVE ORDER 9631

## TERMINATION OF THE OFFICE OF CENSORSHIP

By virtue of the authority vested in me by the Constitution and the statutes, and as President of the United States, and since the censoring of communications has been heretofore discontinued in accordance with my direction,<sup>1</sup> it is hereby ordered as follows:

1. The Office of Censorship, established by Executive Order No. 8985 of December 19, 1941, shall continue to function for the purposes of liquidation until the close of business on November 15, 1945, at which time the Office (including the office of the Director of Censorship) shall terminate. The Censorship Policy Board, created by the said Executive order, is terminated this date. For the purpose of completing the liquidation of the affairs of the Office of Censorship, all property and records of the Office on hand on November 15, 1945, together with its remaining personnel and any balances of appropriations than unexpended, shall be transferred to the Secretary of the

<sup>1</sup> 10 P. R. 12181.

Treasury, and so much thereof as the Director of the Bureau of the Budget shall determine to be necessary for such purpose shall be utilized by the Secretary in winding up the affairs of the Office.

2. When no longer needed for carrying out the provisions of this order, the property and records of the Office of Censorship shall be disposed of in accordance with applicable laws and regulations, and the personnel of the Office shall be transferred or separated from the Office as the interests of the Government may require.

3. Such further measures and dispositions as may be determined by the Director of the Bureau of the Budget to be necessary to effectuate the purposes and provisions of this order shall be carried out in such manner as the Director may direct and by such agencies as he may designate.

4. Nothing contained in this order shall be deemed to affect any proceedings instituted, or any forfeitures incurred, under section 303 of the First War Powers Act, 1941, or regulations prescribed pursuant thereto, for any violation of such section or regulations occurring prior to August 16, 1945.

5. All prior Executive orders which are in conflict with this order are amended accordingly.

HARRY S. TRUMAN

THE WHITE HOUSE,  
September 28, 1945.

[F. R. Doc. 45-18134; Filed, Sept. 28, 1945; 2:21 p. m.]

## EXECUTIVE ORDER 9632

## TRANSFER OF JURISDICTION FROM THE WAR DEPARTMENT TO THE DEPARTMENT OF THE INTERIOR OVER THE INTEREST OF THE UNITED STATES IN CERTAIN MINERAL DEPOSITS IN JEFFERSON PARISH, LOUISIANA

WHEREAS an agreement was entered into on February 14, 1941, by and between the United States of America and the Parish of Jefferson, Louisiana (which agreement is recorded in Conveyance Book 168, folio 663, and in Mortgage Book 113, folio 131, of the Records of the Parish of Jefferson), as to the nature and extent of certain grants made by the aforesaid Parish to the United States with respect to the Dupre Strip or Cut, described as follows:

A certain strip of land extending from Bayou Dupont to Bayou Cutler, measuring four hundred (400) feet in width, starting in Section 35 Township 18 South, Range 23 East, and running in a southeasterly direction through Sections 1 and 12 of Township 17 South, Range 23 East, and thence through Sections 7, 16, 19, 20, 29, 32 and 33, Township 17 South, Range 24 East, and thence through Section 4 Township 18 South, Range 24 East, and being commonly known as and hereinafter sometimes referred to as the Dupre Strip or Cut, all being located in Jefferson Parish, Louisiana, as indicated on a map of said four hundred (400) foot strip prepared by the United States Engineer's Office, dated New Orleans, Louisiana, July, 1919;

WHEREAS under the terms of the above agreement the United States is entitled to receive payment of royalties in an amount equal to three thirty-seconds (3/32) of all minerals produced and saved from the said Dupre Strip;

<sup>1</sup> See Executive Order 9634, *infra*.

## Proclamations Concerning United States Jurisdiction Over Natural Resources in Coastal Areas and the High Seas

(Released to the press by the White House September 28)

The President issued two proclamations on September 28 asserting the jurisdiction of the United States over the natural resources of the continental shelf under the high seas contiguous to the coasts of the United States and its territories, and providing for the establishment of conservation zones for the protection of fisheries in certain areas of the high seas contiguous to the United States. The action of the President in regard to both the resources of the continental shelf and the conservation of high-seas fisheries in which the United States has an interest was taken on the recommendation of the Secretary of State and the Secretary of the Interior.

Two companion Executive orders were also issued by the President. One reserved and set aside the resources of the continental shelf under the high seas and placed them for administrative purposes, pending legislative action, under the jurisdiction and control of the Secretary of the Interior. The other provided for the establishment by Executive orders, on recommendation of the Secretary of State and the Secretary of the Interior, of fishery conservation zones in areas of the high seas contiguous to the coasts of the United States.

Until the present the only high-seas fisheries in the regulation of which the United States has participated, under treaties or conventions, are those for whales, Pacific halibut, and fur seals.

In areas where fisheries have been or shall hereafter be developed and maintained by nationals of the United States alone, explicitly bounded zones will be set up in which the United States may regulate and control all fishing activities.

In other areas where the nationals of other countries as well as our own have developed or shall hereafter legitimately develop fisheries, zones may be established by agreements between the United States and such other states, and joint regulations and control will be put into effect.

The United States will recognize the rights of other countries to establish conservation zones off their own coasts where the interests of nationals of the United States are recognized in the same manner that we recognize the interests of the nationals of the other countries.

*The assertion of this policy has long been advocated by conservationists, including a substantial section of the fishing industry of the United States, since regulation of a fishery resource within territorial waters cannot control the misuse or prevent the depletion of that resource through uncontrolled fishery activities conducted outside of the commonly accepted limits of territorial jurisdiction.*

As a result of the establishment of this new policy, the United States will be able to protect effectively, for instance, its most valuable fishery, that for the Alaska salmon. Through painstaking conservation efforts and scientific management the United States has made excellent progress in maintaining the salmon at high levels. However, since the salmon spends a considerable portion of its life in the open sea, uncontrolled fishery activities on the high seas, by nationals of either the United States or other countries, have constituted an ever-present menace to the salmon fishery.

The policy proclaimed by the President in regard to the jurisdiction over the continental shelf does not touch upon the question of Federal versus State control. It is concerned solely with establishing the jurisdiction of the United States from an international standpoint. It will, however, make possible the orderly development of an underwater area 750,000 square miles in extent. Generally, submerged land which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water is considered as the continental shelf.

Petroleum geologists believe that portions of the continental shelf beyond the three-mile limit contain valuable oil deposits. The study of subsurface structures associated with oil deposits which have been discovered along the Gulf coast of Texas, for instance, indicates that corresponding deposits may underlie the offshore or submerged land. The trend of oil-productive salt domes extends directly into the Gulf of Mexico off the Texas coast. Oil is also being taken at present from wells within the three-mile limit off the coast of California. It is quite possible, geologists say, that the oil deposits extend beyond this traditional limit of national jurisdiction.

Valuable deposits of minerals other than oil may also be expected to be found in these submerged areas. Ore mines now extend under the sea from the coasts of England, Chile, and other countries.

While asserting jurisdiction and control of the United States over the mineral resources of the continental shelf, the proclamation in no wise abridges the right of free and unimpeded navigation of waters of the character of high seas above the shelf, nor does it extend the present limits of the territorial waters of the United States.

The advance of technology prior to the present war had already made possible the exploitation of a limited amount of minerals from submerged lands within the three-mile limit. The rapid development of technical knowledge and equipment occasioned by the war now makes possible the determination of the resources of the submerged lands outside of the three-mile limit. With the need for the discovery of additional resources of petroleum and other minerals, it became advisable for the United States to make possible orderly development of these resources. The proclamation of the President is designed to serve this purpose.

POLICY OF THE UNITED STATES WITH RESPECT TO  
THE NATURAL RESOURCES OF THE SUBSOIL AND  
SEA BED OF THE CONTINENTAL SHELF<sup>1</sup>

By the President of the United States of America

A PROCLAMATION

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord [SEAL] nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON

*Acting Secretary of State.*

<sup>1</sup> 10 *Federal Register* 12303.



**POLICY OF THE UNITED STATES WITH RESPECT TO  
COASTAL FISHERIES IN CERTAIN AREAS OF THE  
HIGH SEAS<sup>1</sup>**

By the President of the United States of America  
**A PROCLAMATION**

WHEREAS for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international cooperation in this field; and

WHEREAS such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

WHEREAS the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion; and

WHEREAS there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special rights and equities of the coastal State and of any other State which may have established a legitimate interest therein;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and main-

tained jointly by nationals of the United States and nationals of other States, explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any State to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of September, in the year of our Lord [SEAL] nineteen hundred and forty-five, and of the Independence of the United States of America the one hundred and seventieth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON

*Acting Secretary of State.*

**EXECUTIVE ORDER 9633**

**RESERVING AND PLACING CERTAIN RESOURCES OF  
THE CONTINENTAL SHELF UNDER THE CONTROL  
AND JURISDICTION OF THE SECRETARY OF THE  
INTERIOR<sup>2</sup>**

By virtue of and pursuant to the authority vested in me as President of the United States, it is ordered that the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States declared this day by proclamation to appertain to the United States and to be subject to its jurisdiction and control, be and they are hereby reserved, set aside, and placed under the jurisdiction and control of the Secretary of the Interior for administrative purposes, pending the enactment of legislation in regard thereto. Neither this Order nor the aforesaid proclamation shall be deemed to affect the determination by legislation or judicial decree of any issues between

<sup>1</sup> 10 *Federal Register* 12304.

<sup>2</sup> 10 *Federal Register* 12305.

not, therefore, hold out any great hope of any decision being taken by the Canadian Government before the general elections.

---

I then told Mr. Mahoney that there was another matter which we would be glad to have him bring to the knowledge of his Government.

This Government has also determined upon a policy which would assert jurisdiction over the mineral resources of the continental shelf. We assumed that this would not be of direct interest to Canada. It was however, a matter of considerable importance to the United States. Oil wells have been in operation for some time off the coast of California and in the Gulf of Mexico, and recent technological advances permit of drilling in waters of great depth. Although we were not aware of any areas off the coasts of Canada which could be exploited, it seemed to us that the adoption by Canada of a fishery policy similar to our own would make it desirable for the Canadian Government to know of our position in respect to another matter relating to jurisdiction beyond territorial limits. It would, of course, be most gratifying to us if the Canadian Government could see its way clear to going along with us also on this latter policy.

I then handed Mr. Mahoney the text of the policy statement<sup>39</sup> and the pertinent explanatory statement.<sup>40</sup> He said that he would forward these papers also to Ottawa with appropriate comment.<sup>41</sup>

---

Mr. Parsons informed Mr. Mahoney that Mr. Atherton<sup>42</sup> had been requested to call this afternoon at the Department of External Affairs and to make a statement with regard to fisheries along the lines just made to Mr. Mahoney.

E[UGENE] H. D[OOMAN]

---

511.0145/4-2645

*Memorandum by the Assistant Chief of the Division of British Commonwealth Affairs (Parsons)*

[WASHINGTON,] April 26, 1945.

After handing original copies of the attached papers to Mr. Mahoney of the Canadian Embassy this afternoon, Mr. Dooman and I discussed how to follow up with the Canadians.

---

<sup>39</sup> See annex 2 attached to the memorandum by the Acting Secretary of State and the Secretary of the Interior to President Roosevelt, p. 1492.

<sup>40</sup> *Ibid.*, p. 1499.

<sup>41</sup> The four documents were also transmitted by the Acting Secretary of State to the Consul General at St. John's, Newfoundland (Hopper), on May 10, with the request that they be handed to the Newfoundland Commissioner for Natural Resources, P. D. H. Dunn.

<sup>42</sup> Ray Atherton, American Ambassador in Canada.

I suggested that about the middle of next week Mr. Dooman give me a progress report on his talks with representatives of other governments and request me to have Mr. Atherton pass it along to External Affairs with a further request for favorable action. Mr. Dooman agreed to this and added that it might be well to put into Mr. Atherton's mind the thought that if the Canadian Government felt it would be victorious in the June 11 elections and if it thought it would move out on the fishery policy afterwards, we might be able to arrange postponement of publicity on the new policies until after that date.

[Annex 1]

*Explanatory Statement on the Protection and Conservation of Coastal Fisheries*

The Government of the United States, recognizing that it has a vital interest in fishery resources contiguous to its coasts and having in mind that the inadequacy of present arrangements for the protection and perpetuation of coastal fisheries constitutes a potentially disturbing element in the relations of states, has carefully examined the possibilities of improving the jurisdictional basis of conservation measures and international cooperation in this field. In so doing it has concluded that:

(1) The fisheries are essential both to the coastal communities which are dependent upon them for a livelihood and to allied and related industries which furnish employment to substantially large populations.

(2) Progressive development of new methods in fishing, utilizing the factory ship, newer types of vessels and technical devices, modern refrigeration facilities, and the like, contribute to intensified exploitation over wide areas. In important instances coastal fisheries are seriously exposed to unregulated exploitation and depletion, thus creating general anxiety for their future among the people whose economic welfare and security depend upon them. In consequence a clear need has arisen for an improved basis for the regulation and protection of fisheries in the high seas contiguous to the coasts.

(3) Equity and justice require that natural resources which have been built up by systematic conservation and self-denying restricted utilization, together with the industries based upon them, be protected and reserved from destructive exploitation by interests which have not contributed to their growth and development.

(4) The fisheries differ in species, abundance, and other characteristics, from sea to sea and area to area: regulatory measures having as their object the conservation of fishery resources must be diversified and adapted to conditions peculiar to each region, with due regard to the special rights and equities of the coastal state and of any other state which has participated in the fishery of the region. Regulation and control of coastal fishery resources should therefore be treated on a regional basis.

(5) Regulatory arrangements for a particular fishing area or region should be made among the states whose continued use of or relative proximity to the affected resources gives them the interest and intimate knowledge necessary for wise and effective control, and cannot achieve full success unless made applicable to all persons and vessels of whatsoever nationality engaged in fishing therein.

The Government of the United States has concluded that fishery regulation confined to the narrow extent of territorial waters has become inadequate for the protection of the coastal fisheries as a whole; and that important fishery resources may become depleted unless a basis for the extension of protective jurisdiction for a reasonable distance beyond territorial waters is found and adopted. Accordingly, the Government of the United States considers that its policy concerning the jurisdictional status of coastal fisheries should be as follows and that such a policy would be in keeping with the realities of the situation:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale: Where such activities have been developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which all fishing activities shall be subject to the regulation and control of the United States and may when conditions warrant be limited to the United States. Where such activities have been legitimately developed and maintained by nationals of other states, explicitly bounded conservation zones may be established under agreements between the United States and such other states; and all fishing activities in such zones shall be subject to the regulation and control of, and may when conditions warrant be limited to, the United States and such other states. The right of any state to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.

The Government of the United States believes that, in the circumstances set forth in this statement, there exists the right and obligation to protect both the resources affected and the established interests therein. The general principle here involved was given expression by Secretary Hull in 1938 in a statement relative to the Alaska fisheries, as follows:

"It must be taken as a sound principle of justice that an industry such as described which has been built up by the nationals of one country cannot in fairness be left to be destroyed by the nationals of

other countries. The American Government believes that the right or obligation to protect the Alaska salmon fisheries is not only overwhelmingly sustained by conditions of their development and perpetuation, but that it is a matter which must be regarded as important in the comity of the nations concerned."<sup>43</sup>

The foregoing policy is based upon the premise that reasonable and just bases for the exercise of jurisdiction over the fisheries of an area of the high seas in the vicinity of the coasts of a state may be found in the following factors: (a) proximity to the coasts of the state; (b) the development and maintenance of well-established fishing activities on a substantial scale by a state's nationals; (c) the absence in that area of any well-established fishing activities on the part of nationals of states other than those seeking to exercise such authority; and (d) the existence of established conservation practices, or the need for such practices, in relation to the fisheries of the area in question.

In referring to the development and maintenance of fishing activities by a state's nationals the emphasis is upon the nationality of those conducting the fishing enterprise, rather than upon occasional individuals employed on vessels of some nationality other than their own. It should be noted that the statement of policy is applicable only to areas in which fishing activities have been or in the future may be developed and maintained on a substantial scale; other areas remain unaffected.

The statement of policy declares that fishing activities within the conservation zones established when all the conditions are met, "may when conditions warrant be limited to", the United States, or to the United States and the other states joining in the establishment of the zones, as the case may be. Although the jurisdiction asserted extends so far as to permit the limitation of fishing activities to the states having the right to establish the conservation zones, when those states deem such action necessary, the Government of the United States does not contemplate that the establishment of conservation zones under this policy will effect any general exclusion from all such zones of all fishing enterprises of nationalities other than of the United States and the other states establishing the zone.

Upon consideration of the more important high seas fisheries in which the United States has a present or potential interest, it is evident that in each fishery only a limited number of countries, often only one or two, have any real or considerable interest. In case the states having a real interest in each fishery agree upon and establish a regime of conservation and regulatory control for that fishery, it is believed that such conservation efforts should have a good chance for success

---

<sup>43</sup>This statement appeared first in telegram 309, November 22, 1937, to the Ambassador in Japan. *Foreign Relations*, 1937, vol. iv, pp. 763, 768. The text of the telegram was released to the press on March 25, 1938 (Department of State *Press Releases*, March 26, 1938, p. 412).

and that other states would have no valid reason for objection to the measures taken by the states primarily concerned.

Under the policy the rights of all states which have taken any substantial part in the fishery are preserved. It is not intended to disturb in any way well-established or historic fishing activities which have been habitually carried on by nationals of other states. In areas where such activities have been carried on, the cooperation of such states with the United States in the control and regulation of the fisheries is contemplated. In like fashion, the Government of the United States expects that other governments which may adopt similar policies will respect the established interests of American fishing activities off their coasts.

No extension of territorial waters is embodied in the policy, but rather the establishment of clearly defined conservation zones in areas of the high seas contiguous to the coasts. Such areas would retain their legal character as high seas. The freedom of their use for navigation and purposes other than fishing would remain unaffected. The adoption of these measures looking solely to the conservation and economic utilization of marine resources is not to be regarded as in conflict with the general principles of international law, and especially those rules relating to navigation and other aspects of the freedom of the seas.

The Government of the United States is prepared to cooperate with any interested government in making practical application of the principles set forth above. It would welcome the opportunity to join with other governments in the working out of necessary arrangements for the determination and establishment of conservation zones in waters of common concern. Such a procedure would afford a practical basis for the conservation and utilization of high seas coastal fisheries, with fairness and justice to the coastal state and to other established fishing interests, and the Government of the United States would welcome the adoption by other governments of a similar policy as a substantial step toward this general objective and toward the improvement of the bases of international cooperation in the fisheries field.

[Annex 2]

*Explanatory Statement on the Proper Utilization and Development of Natural Resources of the Subsoil and Sea Bed of the Continental Shelf*

The Government of the United States, aware of the long-range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged. Its competent experts are

of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States, and that with modern technological progress their utilization is already practicable or will become so at an early date. Oil wells are now in operation beneath the waters of the Gulf of Mexico and off the California coast, while mines extend under the sea from the coasts of England, Chile, and elsewhere.

The utilization and development of the natural resources of the subsoil and sea bed beneath the high seas cannot proceed with assurance, however, in the absence of recognized jurisdiction over such resources. As a result these resources will not in fact be put to practical use until a definite government policy with respect to the jurisdiction under which operations will be carried on has been made known. There is a natural reluctance to make the necessary investments, and to install the expensive structures and machinery required for wells or mines, until there is reasonable assurance of title to the resultant products and of necessary governmental protection. In certain places off the coasts of the United States the beginning of operations awaits only this step. Recognized jurisdiction over these resources is also required in the interest of their conservation and prudent utilization when and as development is undertaken. In view of present needs, and of the availability of technological means for utilizing the resources beneath the shallow seas outside territorial waters, it is believed that the jurisdiction over such resources should be defined without delay.

Accordingly, the Government of the United States considers that its policy with respect to the jurisdictional status of the natural resources of the subsoil and sea bed of the continental shelf off its coasts should be as follows:

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another state, or is shared with an adjacent state, the boundary shall be determined by the United States and the state concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

The foregoing policy is based upon the premise that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous state is reasonable and just in view of the following factors: (a) the continental shelf may be regarded on geographic and physiographic grounds as an extension of

the land mass of the coastal state and thus naturally appurtenant to it: (b) these resources often form part of a pool or deposit extending seaward from within the state and their utilization may affect resources therein: (c) the effectiveness of measures which may be adopted to utilize or conserve these resources would be contingent upon cooperation and protection from the coastal state: (d) self-protection compels the coastal state to keep close watch over activities off its shores which are of the nature and relative permanence necessary for utilization of resources of the subsoil and sea bed of the continental shelf: (e) prudent conservation and practical utilization of these resources are dependent upon a clear governmental policy defining their jurisdictional status: and (f) the government of the country to whose shores the resources are contiguous is clearly the logical government to exercise jurisdiction and control over these resources.

It is believed that no foreign state would have reason to object to utilization and conservation by the United States of undersea mineral resources within a reasonable distance of its coasts. No oil wells, mines, or similar installations are operated off the coasts of the United States by foreign enterprises. Therefore, a clear distinction may be drawn between steps taken for the protection of coastal fisheries, in which recognition must be given to established fishing activities and interests of nationals of one country off the coasts of another country, and measures which may be adopted with a view to protecting undersea mineral resources contiguous to the coast.

In the exercise of its right of self-protection and as a matter of national defense, the United States could not view without serious concern any attempts by a foreign Power or the nationals thereof to exploit the resources of the sea bed or subsoil of the continental shelf off the coasts of the United States at points sufficiently near the coast to impair or endanger the security of the United States, unless such activities were undertaken with the approval of the Government of the United States. The relative permanence of the structures required for the extraction and utilization of petroleum or other mineral resources of the continental shelf would make such operations a matter of concern to the coastal state. This becomes evident in the light of the possible utilization of such installations as potential bases, refueling depots, and the like.

For many years, in some cases for centuries, certain states have claimed the right to the control and exclusive exploitation of sedentary fisheries on the sea bed of the high seas in proximity of their coasts: and these claims appear to have become established by acquiescence and to be recognized by other states. Such claims extend to oyster beds, pearl banks, chank fisheries, sponge fisheries, coral, and the like. Such rights are understood to be asserted off Ceylon and India, off



Bahrein, off Ireland, off Tunis, and in other parts of the Mediterranean, off the coasts of Australia, and elsewhere. States have likewise long been recognized to have the right to erect lighthouses, or to keep lightships permanently anchored, in locations well outside their territorial waters.

The foregoing examples indicate that as a matter of international law a state may acquire by occupation and contiguity rights of the land beneath the high seas, provided that the freedom of navigation is not thereby impaired. The rationale of the open sea being free and forever excluded from occupation on the part of any state is that it forms an international highway connecting distant lands and securing freedom of communications and commerce between states separated by the sea. There is no reason for extending this concept of the freedom of the high seas to the sea bed and subsoil beneath its bed. In the case of the sea bed and subsoil there is no reason to apply either the theoretical argument that occupation is impossible because it can take place only with respect to a determined thing, or the practical argument that the freedom of the waters of the open sea is essential to the freedom of intercourse between states.

The recognition of special jurisdictional and property rights in particular areas of the bed or subsoil of the high seas for the long-accepted purposes of sedentary fisheries or for the utilization of mineral resources does not conflict with the common enjoyment of the freedom of navigation. This statement of policy regarding the conservation and economic utilization of the natural resources of the sea bed and subsoil of the continental shelf off the shores of the United States contemplates no general extension of territorial waters and no assertion of jurisdiction over or interference with foreign vessels navigating the high seas. It is recognized that such utilization of the sea bed and subsoil resources should not be allowed to result in pollution of the sea by oil or other noxious substances, that unreasonable interference with navigation as a result of structures erected on the bottom or anchored in place must be avoided, and that all due precautions should be taken, by the use of lights and other appropriate devices, to prevent dangers to navigation. So long as these precautions are taken it would seem clear that the general benefit resulting from the orderly utilization of valuable undersea mineral resources must be regarded as outweighing other considerations.

This statement of policy is expressed in terms of the continental shelf off the coasts of the United States. As is well known, the continental shelf extends seaward for varying distances off the shores, and in most places terminates in a fairly definite "drop off". The continental shelf is usually defined as that part of the undersea land mass adjacent to the coast, over which the sea is not more than 100

fathoms (600 feet) in depth. Although the term "continental shelf" may be something of a misnomer in connection with islands, the policy is intended to apply in the shallow waters around this nation's islands as well as off the continental United States. At the present time, methods of utilizing the natural resources of the sea bed and subsoil are such that operations would be confined to much shallower areas than the maximum of 100 fathoms.

There are obviously situations where the continental shelf off the coasts of the United States is shared by an adjacent state, and in such cases it will be necessary to work out the boundary between the resources appertaining to the United States and to its neighbors, when the utilization of such resources becomes imminent. In certain locations the continental shelf extends from United States territory to the territory of a foreign country on the other side of a portion of the high seas. In such cases, likewise, the determination as to which resources will fall to each country will become necessary. The appropriate division would appear to be a proper matter for settlement between the countries immediately interested, upon a fair and equitable basis, as the utilization of undersea resources progresses. In as much as it would appear that for some time to come installations will be comparatively near shore and that there will be little practical necessity for delimitation, it would seem that this may be left until some future time when a wise and fair solution may be found in the light of the actual needs.

---

511.9145 :5-445

*Memorandum by the Acting Secretary of State and the Secretary of the Interior (Ickes) to President Truman*

WASHINGTON, April 30, 1945.

Subject: Resources of the Continental Shelf and Coastal Fisheries

Shortly before his death President Roosevelt approved the attached memorandum<sup>a</sup> which submitted to him formulae prepared by the Departments of State and of the Interior.

The effect of the adoption of these formulae will be to assert jurisdiction and control over the mineral and other resources under the sea bed of the continental shelf, and to assert the policy of establishing conservation zones for the protection of coastal fishery resources. These zones are to be controlled and regulated exclusively by the United States in areas where only our nationals have developed and maintained fishing activities on a substantial scale. In areas where

---

<sup>a</sup> Memorandum by the Acting Secretary of State and the Secretary of the Interior to President Roosevelt, January 22, 1945, p. 1490.

NOTE FROM THE SECRETARY OF STATE TO THE  
CHARGÉ D'AFFAIRES OF CANADA, DATED 23 OCTOBER 1945

The Secretary of State presents his compliments to the Chargé d'Affaires of Canada and refers to a conversation between an official of the Embassy and officers of the Department of State, on April 26, 1945, with respect to proposed policies of the *United States Government relative to the natural resources of the subsoil and sea bed of the continental shelf and to the establishment of fishery conservation zones in areas of the high seas contiguous to the coast.*

There is enclosed for the information of the Embassy a copy of a press release of September 28, 1945, together with accompanying Proclamations and Executive Orders, announcing the adoption of these policies.

Enclosure :

Press release of September 28, 1945.

Department of State,  
Washington, October 22, 1945.

NOTE NO. 383 FROM THE CHARGÉ D'AFFAIRES OF CANADA  
TO THE SECRETARY OF STATE, DATED 23 OCTOBER 1945CANADIAN EMBASSY  
AMBASSADE DU CANADA

No. 383.

The Canadian Chargé d'Affaires presents his compliments to the Secretary of State, and has the honour to acknowledge, with thanks, the receipt of the Secretary's note of October 22 enclosing a copy of a press release of September 28 and accompanying documents concerning the policy of the United States Government relative to the natural resources of the subsoil and sea bed of the *continental shelf and to the establishment of fishery conservation zones in areas of the high seas contiguous to the coast.*

Canadian Embassy,  
Washington, D.C.

October 23, 1945.

---

**Annex 4**

**THE *GRISBADARNA* CASE (NORWAY V. SWEDEN) 1909,  
HAGUE CT. REP. (SCOTT) 121 (1916)**

Carnegie Endowment for International Peace  
DIVISION OF INTERNATIONAL LAW

---

THE  
HAGUE COURT REPORTS

COMPRISING THE AWARDS, ACCOMPANIED BY SYLLABI,  
THE AGREEMENTS FOR ARBITRATION, AND OTHER  
DOCUMENTS IN EACH CASE SUBMITTED TO THE PER-  
MANENT COURT OF ARBITRATION AND TO COMMISSIONS  
OF INQUIRY UNDER THE PROVISIONS OF THE CONVEN-  
TIONS OF 1899 AND 1907 FOR THE PACIFIC SETTLEMENT  
OF INTERNATIONAL DISPUTES

---

EDITED WITH AN INTRODUCTION

BY

JAMES BROWN SCOTT

DIRECTOR

---

NEW YORK

OXFORD UNIVERSITY PRESS

AMERICAN BRANCH: 35 WEST 32ND STREET

London, Toronto, Melbourne and Bombay

HUMPHREY MILFORD

1916

# THE GRISBADARNA CASE

*between*

**NORWAY and SWEDEN**

Decided October 23, 1909

*Syllabus*

By a *compromis* signed on March 14, 1908,<sup>1</sup> Norway and Sweden agreed to arbitrate the question of the maritime boundary between the two countries in so far as it had not been regulated by the Royal Resolution of March 15, 1904.<sup>2</sup> The arbitral tribunal was called upon to decide whether the boundary was fixed either in whole or in part by the boundary treaty of 1661, and, if not, to fix the boundary or parts thereof in accordance with the principles of international law. The tribunal consisted of a national from each of the two Governments and an umpire chosen from a neutral Power. As finally agreed upon, it was composed as follows: J. A. Loeff of Holland, F. V. N. Beichmann of Norway, and K. Hj. L. Hammarskjöld of Sweden. Only the last-named was a member of the Permanent Court of Arbitration at The Hague. The tribunal held sessions from August 28 to October 18, 1909, in the course of which it visited the disputed zone. The decision was rendered on October 23, 1909.

The tribunal found that the boundary line had not been fixed by the treaty of 1661 beyond a certain point, and that a portion of the line within that point was uncertain. The tribunal therefore fixed the boundary according to the principles in force and applied by Norway and Sweden when the original boundary treaty was made. The application of these principles resulted in a line which gave the Grisbadarna fishing banks to Sweden and the Skjöttegrunde to Norway. Such a division was also supported by the state of things which the tribunal found had actually existed for a long time, especially the use made of the banks by the fishermen of the two countries and the acts of possession and ownership exercised by the two Governments.

---

<sup>1</sup>*Post*, p. 133.

<sup>2</sup>*Post*, p. 136.

## AWARD OF THE TRIBUNAL

*Arbitral award in the question of the delimitation of a certain part of the maritime boundary between Norway and Sweden.—The Hague, October 23, 1909.*<sup>1</sup>

Whereas, by convention dated March 14, 1908,<sup>2</sup> Norway and Sweden agreed to submit to the final decision of a tribunal of arbitration, comprised of a president who shall neither be a subject of either of the contracting parties nor domiciled in either of the two countries, and of two other members of whom one shall be a Norwegian and the other a Swede, the question of the maritime boundary between Norway and Sweden as far as this boundary has not been determined by the Royal Resolution of March 15, 1904;<sup>3</sup>

Whereas, in pursuance to said convention, the two Governments have appointed respectively as president and arbitrators:

Mr. J. A. Loeff, Doctor of Law and Political Sciences, former Minister of Justice, member of the Second Chamber of the States-General of the Netherlands;

Mr. F. V. N. Beichmann, President of the Court of Appeals of Trondhjem, and

Mr. K. Hj. L. Hammarskjöld, Doctor of Law, former Minister of Justice, former Minister of Public Worship and Public Construction, former Envoy Extraordinary and Minister Plenipotentiary to Copenhagen, former President of the Court of Appeals of Jönköping, former professor in the Faculty of Law of Upsal, Governor of the Province of Upsal, member of the Permanent Court of Arbitration;

Whereas, in accordance with the provisions of the convention, the memorials, counter-memorials, and replies have been duly exchanged between the parties and communicated to the arbitrators within the periods fixed by the president of the tribunal;

Whereas, the two Governments have respectively appointed as agents, to wit:

The Government of Norway, Mr. Kristen Johanssen, attorney at the Supreme Court of Norway; and the Government of Sweden, Mr. C. O. Montan, former member of the Court of Appeals of Svea, judge in the Mixed Court of Alexandria;

<sup>1</sup>*American Journal of International Law*, vol. 4, p. 226. For the original French text, see Appendix, p. 487.

<sup>2</sup>*Post*, p. 133.

<sup>3</sup>*Post*, p. 136.

Whereas, it has been agreed by Article 2 of the convention :

1. That the tribunal of arbitration shall determine the boundary line in the waters from point 18 on the chart<sup>1</sup> annexed to the proposal of the Norwegian and Swedish commissioners of August 18, 1897, into the sea up to the limit of the territorial waters ;

2. That the lines limiting the zone which is the subject of litigation in consequence of the conclusions of the parties and within which the boundary-line shall consequently be established, must not be traced in such a way as to comprise either islands, islets, or reefs which are not constantly under water ;

Whereas, it has likewise been agreed by Article 3 of the said convention :

1. That the tribunal of arbitration shall determine whether the boundary line is to be considered, either wholly or in part, as being fixed by the boundary treaty of 1661 together with the chart thereto annexed, and in what manner the line thus established should be traced.

2. That, as far as the boundary-line shall not be considered as established by said treaty and said chart, the tribunal shall determine this boundary-line, taking into account the circumstances of fact and the principles of international law ;

Whereas, the agents of the parties have presented the following conclusions to the tribunal :

The agent of the Norwegian Government :

*That the boundary between Norway and Sweden within the zone which constitutes the object of the arbitral decision, shall be determined in accordance with the line indicated on the chart annexed, under No. 35, to the memorial presented in behalf of the Norwegian Government.*

And the agent of the Swedish Government :

I. As regards the preliminary questions :

May it please the tribunal of arbitration to declare that the boundary-line in dispute, as regards the space between point 18 as already fixed on the chart of the commissioners of 1897, and point A on the chart of the boundary treaty of 1661, is but incompletely established by the said treaty and the chart annexed thereto, for the reason that the exact situation of this point is not shown clearly therein, and, as regards the rest of the space, extending westward from the same

---

<sup>1</sup>*Post*, opposite p. 140.



point A to the territorial boundary, that the boundary-line was not established at all by these documents.

II. As regards these main questions :

1. May it please the tribunal to be guided by the treaty and chart of 1661, to take into account the circumstances of fact and the principles of the law of nations, and to determine the maritime boundary-line in dispute between Sweden and Norway from point 18 as already fixed, in such a manner that in the first place the boundary-line shall be traced in a straight line to a point which constitutes the middle point of a straight line, connecting the northernmost reef of the Rösökären, belonging to the Koster Islands, that is to say, the reef indicated on table 5 of the report of 1906 as being surrounded with depths 9, 10 and 10 [*sic.*], and the southernmost reef of the Svatskjär, belonging to the Tisler Islands, and which is furnished with a beacon, which point is indicated on the same table 5 as the point 19.

2. May it please the tribunal further to take account of the circumstances of fact and the principles of the law of nations and establish the rest of the disputed boundary in such a manner that—

(a) Starting from the point fixed according to the conclusions of paragraph 1 and designated as point 19, the boundary-line shall be traced in a straight line to a point situated midway on a straight line connecting the northernmost of the reefs indicated under the name of Stora Drammen, on the Swedish side and the Hejeknub rock, situated to the southeast of Heja Island, on the Norwegian side, which point is indicated on the said table 5 as point 20; and

(b) Starting from the point last-mentioned, the boundary shall be traced in a straight line due west as far into the sea as the maritime territories of the two nations are supposed to extend;

Whereas, the line mentioned in the conclusions of the Norwegian agent is traced as follows :

From point 18 as indicated on the chart of the commissioners of 1897, in a straight line to point 19 situated midway on a line drawn between the southernmost reef of the Svatskjär (the reef which is furnished with a beacon) and the northernmost reef of the Rösökären;

From this point 19 in a straight line to point 20, situated midway on a line drawn between the southernmost reef of the Heiefluer

(Söndre Heieflu) and the northernmost of the reefs comprised under the name of Stora Drammen;

From this point 20 to point 20*a*, following a perpendicular drawn from the middle of the last-mentioned line.

From this point 20*a* to point 20*b*, following a perpendicular drawn from the middle of the line connecting the said southernmost reef of the Heieflu with the southernmost of the reefs comprised under the name of Stora Drammen.

From this point 20*b* to point 20*c*, following a perpendicular drawn from the middle of a line connecting the Söndre Heieflu with the small reef situated to the north of Klöfningen islet near Mörholmen.

From this point 20*c* to point 20*d*, following a perpendicular drawn from the middle of a line connecting the Midtre Heieflu with the said reef to the north of Klöfningen islet.

From this point 20*d*, following a perpendicular drawn from the middle of the line connecting the Midtre Heieflu with a small reef situated west of the said Klöfningen to point 21, where the circles cross which are drawn around said reefs with a radius of 4 nautical miles (60 to a degree).

Whereas, after the tribunal had visited the disputed zone, examined the documents and maps which had been presented to it, and heard the pleas and replies as well as the explanations furnished it at its request, the discussion was declared terminated at the session of October 18, 1909;

Whereas, as regards the interpretation of certain expressions used in the convention and regarding which the two parties expressed different opinions during the course of the discussion,

In the first place, the tribunal is of opinion that the clause in accordance with which it is to determine the boundary-line in the sea *as far as the limit of the territorial waters has no other purpose than to exclude the possibility of an incomplete determination, which might give rise to a new boundary dispute in future*; and

It was obviously not the intention of the parties to fix in advance the terminal point of the boundary, so that the tribunal would have only to determine the direction between two given points;

In the second place, the clause in accordance with which the lines bounding the zone which may be the subject of dispute in consequence of the conclusions of the parties *must not be traced in such*

*a manner as to comprise either islands, islets, or reefs which are not constantly under water* can not be interpreted so as to imply that the islands, islets, and reefs aforementioned ought necessarily to be taken as points of departure in the determination of the boundary;

Whereas, therefore, in the two respects aforementioned, the tribunal preserves full freedom to pass on the boundary within the *limits of the respective contentions*;

Whereas, under the terms of the convention, the task of the tribunal consists in determining the boundary line in the water from the point indicated as 18 on the chart annexed to the project of the Norwegian and Swedish commissioners of August 18, 1897, in the sea as far as the limit of the territorial waters;

Whereas, as regards the question, "whether the boundary-line should be considered, either wholly or in part, as being fixed by the boundary treaty of 1661 and the map thereto annexed," the answer to this question should be negative, at least as regards the boundary-line beyond point A on the aforementioned map;

Whereas, the exact situation of point A on this chart can not be determined with absolute precision, but at all events it is a point situated between points 19 and 20, as these points will be determined hereinafter;

Whereas, the parties in litigation agree as regards the boundary-line from point 18 on the chart of August 18, 1897, to point 19 as indicated in the Swedish conclusions;

Whereas, as regards the boundary-line from the said point 19 to a point indicated by 20 on the charts annexed to the memorials, the parties likewise agree, except that they differ with regard to whether, in determining point 20, the Heiefluer or the Heieknub should be taken as a starting point from the Norwegian side;

Whereas, in this connection, the parties have adopted, at least in practice, the rule of making the division along the median line drawn between the islands, islets, and reefs situated on both sides and not constantly submerged, as *having been in their opinion* the rule which was applied on this side of point A by the treaty of 1661;

The adoption of a rule on such grounds should, without regard to the question whether the rule invoked was really applied by said

treaty, have as a logical consequence, in applying it at the present time, that one should take into account at the same time the circumstances of fact which existed at the time of the treaty;

Whereas, the Heiefluer are reefs which, it may be asserted with sufficient certainty, did not immerge from the water at the time of the boundary treaty of 1661 and consequently they could not have served as a starting point in defining a boundary;

Whereas, therefore, from the above-mentioned standpoint the Heieknub should be preferred to the Heiefluer;

Whereas, point 20 being fixed, there remains to be determined the boundary from this point 20 to the limit of the territorial waters;

Whereas, point 20 is situated, without any doubt, beyond point A as indicated on the chart annexed to the boundary treaty of 1661;

Whereas, Norway has held the contention, which for that matter has not been rejected by Sweden, that from the sole fact of the Peace of Roskilde in 1658 the maritime territory in question was divided automatically between her and Sweden;

Whereas, the tribunal fully indorses this opinion;

Whereas, this opinion is in conformity with the fundamental principles of the law of nations, both ancient and modern, in accordance with which the maritime territory is an essential appurtenance of land territory, whence it follows that at the time when, in 1658, the land territory called the Bohuslan was ceded to Sweden, the radius of maritime territory constituting an inseparable appurtenance of this land territory must have automatically formed a part of this cession;

Whereas, it follows from this line of argument that in order to ascertain which may have been the automatic dividing line of 1658 we must have recourse to the principles of law in force at that time;

Whereas, Norway claims that, inside (on this side) of the Koster-Tisler line, the rule of the boundary documents of 1661 having been that the boundary ought to follow the median line between the islands, islets, and reefs on both sides, the same principle should be applied with regard to the boundary beyond this line;

Whereas, it is not demonstrated that the boundary-line fixed by the treaty and traced on the boundary chart was based on this rule.

and there are some details and peculiarities in the line traced which even give rise to serious doubts in this regard, and even if one admitted the existence of this rule in connection with the boundary-line fixed by the treaty, it would not necessarily follow that the same rule ought to have been applied in determining the boundary in the exterior territory;

Whereas, in this connection,

The boundary treaty of 1661 and the chart thereto annexed make the boundary-line *begin* between the Koster and Tisler Islands;

Whereas, in determining the boundary-line they went in a direction from the sea toward the coast and not from the coast toward the sea;

Whereas, it is out of the question to say that there might have been a continuation of this boundary-line in a seaward direction;

Whereas, consequently, the connecting link is lacking in order to enable us to presume, without decisive evidence, that the same rule was applied simultaneously to the territories situated this side and to those situated that side of the Koster-Tisler line;

Whereas, moreover, neither the boundary treaty nor the chart appertaining thereto mention any islands, islets, or reefs situated beyond the Koster-Tisler line, and therefore, in order to keep within the probable intent of these documents we must disregard such islands, islets, and reefs;

Whereas, again, the maritime territory belonging to a zone of a certain width presents numerous peculiarities which distinguish it from the land territory and from the maritime spaces more or less completely surrounded by these territories;

Whereas, furthermore, in the same connection, the rules regarding maritime territory can not serve as a guide in determining the boundary between two contiguous countries, especially as, in the present case, we have to determine a boundary which is said to have been automatically traced in 1658, whereas the rules invoked date from subsequent centuries;

And it is the same way with the rules of Norwegian municipal law concerning the definition of boundaries between private properties or between administrative districts;

Whereas, for all these reasons, one can not adopt the method by which Norway has proposed to define the boundary from point 20 to the territorial limit;

Whereas, the rule of drawing a median line midway between the inhabited lands does not find sufficient support in the law of nations in force in the seventeenth century;

Whereas, it is the same way with the rule of the *thalweg* or the most important channel, inasmuch as the documents invoked for the purpose do not demonstrate that this rule was followed in the present case. And,

Whereas, we shall be acting much more in accord with the ideas of the seventeenth century and with the notions of law prevailing at that time if we admit that the automatic division of the territory in question must have taken place according to the general direction of the land territory of which the maritime territory constituted an appurtenance, and if we consequently apply this same rule at the present time in order to arrive at a just and lawful determination of the boundary;

Whereas, consequently, the automatic dividing line of 1658 should be determined (or, what is exactly the same thing expressed in other words), the delimitation should be made to-day by tracing a line perpendicularly to the general direction of the coast, while taking into account the necessity of indicating the boundary in a clear and unmistakable manner, thus facilitating its observation by the interested parties as far as possible;

Whereas, in order to ascertain what is this direction we must take equally into account the direction of the coast situated on both sides of the boundary;

Whereas, the general direction of the coast, according to the expert and conscientious survey of the tribunal, swerves about 20 degrees westward from due north, and therefore the perpendicular line should run toward the west to about 20 degrees to the south;

Whereas, the parties agree in admitting the great unsuitability of tracing the boundary-line across important bars; and

A boundary-line drawn from point 20 in a westerly direction to 19 degrees to the south would completely obviate this inconvenience, since it would pass just to the north of the Grisbadarna and to the south of Skjöttegrunde and would also not cut through any other important bank; and

Consequently, the boundary-line ought to be traced from point 20 westward to 19 degrees south, so that it would pass midway between

the Grisbadarna banks on the one side and Skjöttegrunde on the other;

Whereas, although the parties have not indicated any marks of alignment for a boundary-line thus traced there is reason to believe that it will not be impossible to find such marks;

Whereas, on the other hand, we could, if necessary, avail ourselves of other known methods of marking the boundary;

Whereas, a demarkation which would assign the Grisbadarna to Sweden is supported by all of several circumstances of fact which were pointed out during the discussion and of which the following are the principal ones:

(a) The circumstance that lobster fishing in the shoals of Grisbadarna has been carried on for a much longer time, to a much larger extent, and by a much larger number of fishermen by the subjects of Sweden than by the subjects of Norway.

(b) The circumstance that Sweden has performed various acts in the Grisbadarna region, especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty; whereas Norway, according to her own admission, showed much less solicitude in this region in these various regards;

Whereas, as regards the circumstance of fact mentioned in paragraph a above, it is a settled principle of the law of nations that a state of things which actually exists and has existed for a long time should be changed as little as possible; and

This rule is specially applicable in a case of private interests which, if once neglected, can not be effectively safeguarded by any manner of sacrifice on the part of the Government of which the interested parties are subjects; and

Lobster fishing is much the most important fishing on the Grisbadarna banks, this fishing being the very thing that gives the banks their value as fisheries; and

Without doubt the Swedes were the first to fish lobsters by means of the tackle and craft necessary to engage in fishing as far out at sea as the banks in question are situated; and

Fishing is, generally speaking, of more importance to the inhabitants of Koster than to those of Hvaler, the latter having, at least until comparatively recent times, engaged rather in navigation than fishing; and

From these various circumstances it appears so probable as to be almost certain that the Swedes utilized the banks in question much earlier and much more effectively than the Norwegians; and

*The depositions and declarations of the witnesses are, generally speaking, in perfect harmony with this conclusion; and*

The arbitration convention is likewise in full accord with the same conclusion; and

According to this convention there is a certain connection between the enjoyment of the fisheries of the Grisbadarna and the keeping up of the light-boat, and, as Sweden will be obliged to keep up the light-boat as long as the present state of affairs continues, this shows that, according to the arguments of this clause, the principal enjoyment thereof is now due to Sweden;

Whereas, as regards the circumstances of fact as mentioned under *b*:

As regards the placing of beacons and of a light-boat—

The stationing of a light-boat, which is necessary to the safety of navigation in the regions of Grisbadarna, was done by Sweden without meeting any protest and even at the initiative of Norway, and likewise a large number of beacons were established there without giving rise to any protests; and

This light-boat and these beacons are always maintained by Sweden at her own expense; and

Norway has never taken any measures which are in any way equivalent except by placing a bell-buoy there at a time subsequent to the placing of the beacons and for a short period of time, it being impossible to even compare the expenses of setting out and keeping up this buoy with those connected with the beacons and the light-boat; and

It is shown by the foregoing that Sweden had no doubt as to her rights over the Grisbadarna and that she did not hesitate to incur the expenses incumbent on the owner and possessor of these banks even to the extent of a considerable sum of money.

As to the measurements of the sea—



Sweden took the first steps, about thirty years before the beginning of any dispute, toward making exact, laborious, and expensive measurements of the regions of Grisbadarna, while the measurements made some years later by Norway did not even attain the limits of the Swedish measurements. And

Whereas, therefore, there is no doubt whatever that the assignment of the Grisbadarna banks to Sweden is in perfect accord with the most important circumstances of fact;

Whereas, a demarkation assigning the Skjöttegrunde (which are the least important parts of the disputed territory) to Norway is sufficiently warranted by the serious circumstance of fact that, although one must infer from the various documents and testimony that the Swedish fishermen, as was stated above, have carried on fishing in the regions in question for a longer period, to a greater extent, and in greater numbers, it is certain on the other hand that the Norwegian fishermen have never been excluded from fishing there;

Whereas, moreover, it is averred that the Norwegian fishermen have almost always participated in the lobster fishing on the Skjöttegrunde in a comparatively more effective manner than at the Grisbadarna:

Therefore

The tribunal decides and pronounces:

That the maritime boundary between Norway and Sweden, as far as it was not determined by the Royal Resolution of March 15, 1904, is fixed as follows:

From point 18 situated as indicated on the chart annexed to the project of the Norwegian and Swedish commissioners of August 18, 1897, a straight line is traced to point 19, constituting the middle point of a straight line drawn from the northernmost reef of the Röskären to the southernmost reef of the Svartskjär, the one which is provided with a beacon;

From point 19 thus fixed, a straight line is traced to point 20, which constitutes the middle point of a straight line drawn from the northernmost reef of the group of reefs called Stora Drammen to the Hejeknub situated to the southeast of Heja Islands; from point 20 a straight line is drawn in a direction of west 19 degrees south, which line passes midway between the Grisbadarna

and the Skjöttegrunde south and extends in the same direction until it reaches the high sea.

Done at The Hague, October 23, 1909, in the Palace of the Permanent Court of Arbitration.

J. A. LOEFF, *President*

MICHIELS VAN VERDUYNEN, *Secretary General*

RÖELL, *Secretary*

### AGREEMENT FOR ARBITRATION

*Convention between Norway and Sweden for the reference to arbitration of the question of a certain portion of the sea-limit between the two countries in connection with the Grisbadarna rocks.—Signed at Stockholm, March 14, 1908.<sup>1</sup>*

His Majesty the King of Sweden and His Majesty the King of Norway, having found it desirable that the question of the sea-limit between Sweden and Norway, in so far as it was not determined by the Resolution of the 15th March, 1904,<sup>2</sup> should be referred to arbitration, have for this purpose appointed as their representatives:

His Majesty the King of Sweden: His Minister for Foreign Affairs, Eric Birger Trolle;

His Majesty the King of Norway: His Envoy Extraordinary and Minister Plenipotentiary, Paul Benjamin Vogt;

Who, after exchanging full powers, have agreed to the following conditions:

#### ARTICLE I

The parties pledge themselves to the extent stated below to leave the settling of the question of the sea-limit between Sweden and Norway to a tribunal of arbitration, consisting of a president who is neither a subject of nor domiciled in either of the two countries, and of two other members: one Swede and one Norwegian. The president shall be appointed by Her Majesty the Queen of the Netherlands, the other members one each by the parties concerned. The parties, however, retain the right, should they agree, to appoint by special arrangement either the president only or the collective members of the tribunal.

<sup>1</sup>*British and Foreign State Papers*, vol. 102, p. 731. For the original Swedish and Norwegian texts, see Appendix, p. 496.

<sup>2</sup>*Post*, p. 136.

Representation to Her Majesty the Queen of the Netherlands, or the arbitrator who may be appointed by agreement, shall be made by both parties together.

#### ARTICLE 2

The tribunal of arbitration shall, after having examined the case of each of the parties and their respective reasons and proofs, determine the boundary-line in the waters from point 18 on the chart<sup>1</sup> annexed to the Swede-Norwegian proposal of the 18th August, 1897, into the sea up to the limit of the territorial waters. It is agreed that the boundary-line of the zone which the parties maintain to be under discussion, and for which, consequently, the limit is to be defined, may not be so drawn as to include islands, islets, or reefs which are not perpetually covered with water.

#### ARTICLE 3

The tribunal of arbitration shall have power to determine how far the boundary-line shall be considered to be, either wholly or in part, determined by the boundary treaty of 1661, together with the chart appertaining to the same, and how such boundary-line is to be traced, and also, in so far as the boundary-line can not be considered as established by the treaty and chart in question, shall have power to determine the same, taking into account the circumstances of fact and the principles of international law.

#### ARTICLE 4

Until the expiry of the third calendar year after the announcement of the decision of the tribunal of arbitration, irrespective of the boundary line fixed by that decision, fishing may be carried on within the waters which, according to Article 2, are the subject of dispute by the subjects of both countries to the same extent as during the five-year period 1901-1905. In considering the extent to which fishing is carried on, regard shall be had to the number of fishermen, the kind of fish, and the manner of catching.

#### ARTICLE 5

It is agreed that that country on whose side of the eventual boundary-line the Grisbadarna fishing grounds are situated shall have no claim against the other country for contribution towards the expense of lightships or other arrangements on or in the neighborhood of such grounds.

---

<sup>1</sup>*Post.* opposite p. 140.

Sweden undertakes to maintain the present light-ship situated outside the territorial limit until the expiration of the time mentioned in Article 4.

#### ARTICLE 6

The president of the tribunal of arbitration shall appoint the time and place for the first meeting of the tribunal and shall summon the other members to it.

Time and place for further meetings shall be decided by the tribunal of arbitration.

#### ARTICLE 7

The official language to be used by the tribunal shall be English, French, or German, as may be decided in consultation with the other members.

For petitions, evidence, and directions the parties may use the language of either country, the tribunal retaining the right to have translations made.

#### ARTICLE 8

With respect to procedure and expenses, there shall apply such portions of the regulations contained in Articles 62 to 85 of the revised Convention adopted at the Second Hague Conference of 1907 for the pacific settlement of international disputes as may be applicable.

Petitions, rejoinders, and evidence referred to in Article 63 paragraph 2, of the above-mentioned Convention, shall be filed within a period to be determined by the president of the tribunal of arbitration, but before the 1st March, 1909. No change is hereby entailed in the rules of procedure for the second part, especially as regards the regulations in Articles 68, 72, and 74 of the said Convention.

The tribunal of arbitration has the right, when it is found necessary for the elucidation of the case, to arrange for the hearing of witnesses or experts in the presence of both parties and to order the undertaking in common of a hydrographical survey of the waters under dispute.

#### ARTICLE 9

This Convention shall be ratified, and the ratifications exchanged as soon as possible in Stockholm.

In respect whereof the respective plenipotentiaries have signed this Convention and affixed thereto their seals.

Done in duplicate, in Swedish and Norwegian, at Stockholm, on the 14th March, 1908.

(L. S.) ERIC TROLLE

(L. S.) BENJAMIN VOGT

## ADDITIONAL DOCUMENTS

*His Royal Majesty's gracious resolution of March 26, 1904, with accompanying Protocol of March 15, 1904, concerning the determination of the extent of a certain part of the maritime boundary between Sweden and Norway.*<sup>1</sup>

In reference to the accompanying protocol of the joint Norwegian and Swedish Council of State of March 15, 1904, as well as the extract from the protocol of the State Council regarding civil matters for this day, His Royal Majesty herewith authorizes the Riksdag to propose that the question of the extent of the maritime boundary between Sweden and Norway, from point 18 mentioned in the said protocol, and to the sea, as far as the territorial boundary extends, be referred to the decision of a special arbitral tribunal, in accordance with the text of the protocols.

The authorities of the Riksdag shall appoint a committee to conduct the examination of the acts; and with all Royal grace and favor His Royal Majesty remains ever well disposed to the Riksdag.

In the absence of His Majesty my Most gracious King and Lord,

GUSTAF

HJALMAR WESTRING

PROTOCOL CONSIDERED IN THE JOINT NORWEGIAN AND SWEDISH STATE COUNCIL BEFORE HIS ROYAL HIGHNESS THE CROWN PRINCE REGENT AT THE CASTLE OF CHRISTIANIA, MARCH 15, 1904.

Present: His Excellency the Minister of State Hagerup, his Excellency the Minister of State Ibsen, his Excellency the Minister of State Boström, his Excellency the Minister for Foreign Affairs Lagerheim, State Councilors: Kildal, Strugstad, Hauge, Schöning, Vogt, Mathiesen, and the Swedish State Councilor, Westring.

The Chief of the Department of Commerce and Industry, State Councilor Schöning submitted the following:

The Department takes the liberty of presenting considerations concerning measures anent the more definite fixation of national boundaries in the waters between Norway and Sweden.

Maritime boundaries between the two countries running from the interior of Idefjord and out to the sea were fixed in a boundary regulation of October 26, 1661, carried out in accord with the peace treaty of Roskilde of February 26/March 9, 1658, and of Copenhagen of March 27/June 6, 1660.

<sup>1</sup>Translation. For the original Swedish text, see Appendix, p. 500.

In the meantime much uncertainty has arisen regarding several points of this boundary line in view of the fact that during the long interval between 1661 and 1897 nothing was done in the matter by joint survey and investigation. In 1897 the Norwegian Department of the Interior and the Swedish Department for Civil Affairs took action whereby they might ascertain the exact course of that section of the boundary; and in the month of August of the same year two Norwegian and two Swedish commissioners met for the purpose of making a thorough search of the records and an investigation on the spot, etc., and of their presenting a proposition for the fixation and tracing upon charts of the boundary line between Norway and Sweden, from the interior of Idefjard and out into the sea.

Bureau Secretary Hroar Olsen and Commander A. Rieck were the Norwegian commissioners; Commander E. Oldberg and Judge H. Westring were the Swedish commissioners.

As the result of their labors and investigations, the commissioners presented on August 18, 1897, the "proposition of the Royal Swedish and Norwegian Commission for and description of the maritime boundary between Norway and Sweden from the interior of Idefjard to the sea."

From this it appears, as witnessed by all four commissioners, that they had reached a unanimous conclusion regarding the boundary line from the interior of Idefjard to a point between the Jyete buoy (Norwegian) and a small Island, northwest of Narro Hellsö (Swedish), which point is numbered 18 on a draft chart accompanying the proposition, so that Helleholmen is transferred to Sweden, and Knivsöarna to Norway.

Regarding the extent of the boundary line from the said point 18 even to the sea, no agreement was arrived at by the commission. The Norwegian and the Swedish members each submitted their respective proposition in reference to that part, and according to which Grisbadarna together with some shallows and ground to the north of Koster should go respectively to Norway or to Sweden.

The commissioners' propositions<sup>1</sup> together with two charts in reference thereto are subjoined.<sup>2</sup>

The Department is of opinion that the line proposed by the Norwegian and Swedish commission, from the interior of Idefjard to point 18, as indicated on the accompanying map, should be regarded as the correct boundary line.

Inasmuch as with regard to the more detailed description of this line, reference is made to the proposition of the commissioners, the Department permits itself to recommend that Your Majesty approve that line as the correct boundary between the two kingdoms.

Provided that Your Majesty be pleased to decide according to this recommendation, the Department assumes that subsequently

<sup>1</sup>*Post*, p. 138.

<sup>2</sup>*Post*, opposite p. 140.

the royal proclamation with regard to the boundary line agreed upon, will be issued by the State Council of each of the two kingdoms.

It is furthermore to be observed that it would be of importance to demarkate as soon as possible this part of the boundary line. It seems most expedient that a commissioner of each kingdom be appointed to undertake this demarkation, and the Department recommends therefore that Your Majesty approve this proposal to the effect that the State Council of each of the two kingdoms shall designate respectively one Norwegian and one Swedish commissioner.

As hereinbefore stated, the Norwegian and Swedish commissioners have not been able to agree upon the matter regarding the rectification of the extent of the boundary from the said point 18 to the sea.

The following is a more detailed presentation of the views held by the Norwegian and Swedish parties with regard to the disputed boundary line.

#### NORWEGIAN VIEW

From point 18, between the buoy Jyete and a small island northwest of Narra Hellsö, the line should run straight to the open sea through the center of a straight line from the southern extremity of the southernmost Norwegian Tislarön, Klöveren, to the northern extremity of the northern Koster island (Swedish), so that the boundary line run by Båtshake, and all islands situated to the north of this line, including Grisbadarna, remain Norwegian.

This line is traced in red color on the chart of the commissioners, and said point between Klöveren and Koster island is indicated as point 19.

#### SWEDISH VIEW

From point 18, the boundary line should be drawn in a straight line to the open sea, through a point about 300 meters north of Rödkärs Nordgrund and therefore about midway between Grisbadarna and Skättegrund, so that all islands to the south outside of this line, water and land, including Grisbadarna, remain Swedish.

Upon the chart of the commissioners this line is traced in yellow color, and the said point north of Rödkärs Nordgrund marked point 19.

This Department permits itself respectfully to propose that the question of the disputed boundary line to the arbitral decision of a special tribunal, after the consent thereto shall have been given by the representatives of both kingdoms, and that the following procedure be observed:

In each of the two kingdoms, the respective State Council shall appoint two judges.

The judges thus designated shall mutually agree upon a fifth judge who shall at the same time act as president of the tribunal. In case of a tie, the designation of the fifth member shall be referred to such foreign chief of State as Your Majesty might request to that end.

The rules of procedure of the tribunal, the deliberations as well as the place where the tribunal shall sit to be adopted by the judges themselves.

The duly announced judicial decision regarding the disputed boundary line shall be binding upon both parties.

Each kingdom shall meet the expenses of its own representatives, and the expenses of the fifth member, etc., shall be met in equal shares by the two kingdoms.

In accordance with the foregoing, the Department takes the liberty of submitting most respectfully:

That Your Majesty may most graciously resolve:

(1) That the boundary line between Norway and Sweden as proposed by the joint Norwegian and Swedish commission of 1897, from the upper end of Idefjard to point 18 as shown on the two accompanying charts<sup>1</sup> be approved according to the proposal of the commissioners;

(2) That the demarkation of the said boundary line shall be undertaken by commissioners chosen for the purpose, one from each kingdom;

(3) That questions concerning boundary lines between Norway and Sweden, from the aforesaid point 18 to the sea, as far as the territorial boundary extends shall be referred to the decision of a special arbitral tribunal, in accordance with what is hereinbefore stated, provided the representatives of the two kingdoms consent thereto.

The Swedish members of the State Council have concurred in what the present reporter has hereinbefore submitted as to the approval of the boundary lines proposed by the Swedish and Norwegian commissioners, from the upper end of Idefjard to the said point 18, including the demarkation of the boundary line.

Regarding the section of the boundary line from point 18 to the sea as far as the territorial boundary, those members declare that in several statements that have been sent in regarding this matter, suggestions have been made regarding the boundary according to which this line would in part be moved still further north than proposed by the Swedish commissioners. Expressing in regard to this the opinion that the proposal to submit to a special arbitral tribunal the decision as to

---

<sup>1</sup>*Post*, opposite p. 140.



the question of the position of the boundary line in this part, that this implied that both parties should have the opportunity to submit to the tribunal the demands in regard thereto which they might find necessary, these members agree to the proposition of the reporter even as to this part of the question.

The Norwegian members had no objection to make to the foregoing statement, which corresponded to what had been already taken for granted by the Norwegian side.

In accordance with what the members of the Council of State thus advise, may it please Your Royal Majesty the Crown Prince Regent to approve the proposal set forth by the chief of the Norwegian Department of Commerce and Industry.

---

**Annex 5**

CONVENTION ON THE CONTINENTAL SHELF, DONE AT GENEVA, ON 29 APRIL 1958,  
UN Doc. A/CONF.13/L.55, 499 UNTS 311

CONVENTION ON THE HIGH SEAS, DONE AT GENEVA, ON 29 APRIL 1958,  
UN Doc. A/CONF.13/L.53, 450 UNTS 82

CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE, DONE AT  
GENEVA, ON 29 APRIL 1958, UN Doc. A/CONF.13/L.52, 516 UNTS 205

CONVENTION ON FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE  
HIGH SEAS, DONE AT GENEVA, ON 29 APRIL 1958, UN Doc. A/CONF.13/L.54,  
559 UNTS 285

*[Not reproduced]*

---

**Annex 6**

EXCHANGE OF NOTES CONCERNING THE CONFERENCE OF OTTAWA, 23 SEPTEMBER  
1920, FOR COOPERATION IN SCIENTIFIC INVESTIGATION OF DEEP SEA FISHERIES,  
REPRINTED IN *FOREIGN RELATIONS OF THE UNITED STATES*, 1920, VOL. I,  
PP. 406-409

Conference at Ottawa, September 23, 1920, for Cooperation in Scientific  
Investigation of Deep-Sea Fisheries

711.428/588

*The British Appointed Ambassador (Geddes) to the Secretary of  
State*

No. 306

WASHINGTON, May 18, 1920.

SIR: I have the honour, at the request of the Canadian Government, to enquire whether the United States Government would be prepared to send experts to a conference to be held in Ottawa in September or October next, as may be agreed upon, to decide upon a programme of work to be taken up in 1921 in connection with a thorough scientific investigation to ascertain the migrations of fish, the causes of such migrations, the effects of different methods of capturing fish, the spawning places of fish, the haunts of young fish and the abundance of organisms which supply food for fish, etc.

In this connection I am advised by the Canadian Government that the waters resorted to by Canadian fishermen on the Atlantic coast are also frequented by the fishermen of the United States and Newfoundland, and on the Pacific coast by those of the United States. Such investigations are, therefore, of common interest to the three countries on the Atlantic coast and to Canada and the United States on the Pacific coast. It would assure more efficient, more economical and speedier investigation if these three countries would unite in carrying on the work on the Atlantic coast, and Canada and the United States on the Pacific coast.

In 1902 the various European nations engaging in the North Sea and adjacent waters formed an association known as "The International Council for the Exploration of the Sea" to carry on such work there. The work of the Council was largely prevented during the war, but is again being taken up, by the different nations. In 1912 and again since the war, Canada was very strongly urged to join this Council, but on account of the vast amount of research work that needs to be done in the waters adjacent to Canadian coasts it was considered best that Canadian efforts should be concentrated on this side. Hence the invitation was declined.

Similar reasons to those that prompted the formation by the European countries of the International Council for the Exploration of the Sea obtain for the creation of such a council between Canada, Newfoundland and the United States. Such a council, if formed, could cooperate closely with the International Council and each assist the other.

I understand that the formation of such a council has been unofficially discussed with the fisheries authorities of the United States

and with the ex-Minister of Marine and Fisheries for Newfoundland, and they both warmly favoured the idea. Indeed the United States, which became a member of the International Council for the Exploration of the Sea, before the war, has declined to do so again with a view to co-operation in carrying on such work here.

The formation of such an association has been strongly urged by the Canadian Fisheries Association, which is representative of the different branches of the industry and by the Royal Canadian Institute.

I understand that the Government of Newfoundland are also being approached by the Canadian Government with a view to their sending representatives to the Conference.

I have [etc.]

A. C. GEDDES

---

711.428/595

*The Acting Secretary of State to the British Ambassador (Geddes)*

WASHINGTON, June 14, 1920.

EXCELLENCY: Referring to your note No. 306 of May 18, 1920, in regard to participation by the Government of the United States in a conference to be held in Ottawa in September or October next, to decide on a program of scientific fishery investigation of common interest to the United States and Canada, on both the Atlantic and Pacific coasts, I have the honor to inform you that the Department of Commerce, through the Bureau of Fisheries, will be pleased to be represented at the proposed conference.

The Secretary of Commerce in making this announcement states that at the present time there appears to be no special reason for the formation of a formal international body for the purpose in view, but that there should undoubtedly be cooperative planning as to the methods scope, et cetera, in order that the maximum results may be obtained in the shortest time and at the least expense.

The Secretary of Commerce suggests that a convenient time for the conference would be in September, immediately before or after the meeting of the American Fisheries Society which occurs in Ottawa, September 20, 21, and 22.

Accept [etc.]

FRANK L. POLK

---

711.428/615

*The British Ambassador (Geddes) to the Secretary of State*

No. 663

WASHINGTON, 7 October, 1920.

SIR: I have the honour to inform you that a communication has been received from the Deputy Governor General of Canada stating that a Conference of Fishery Experts representing New-

foundland, Canada and the United States was held at Ottawa on the 23rd of September 1920 to consider the question of co-operation in scientific investigation of the deep-sea fisheries adjacent to both coasts of this continent. At this conference the following resolution was unanimously adopted:

“**BE IT RESOLVED THAT**—It is the sense of this meeting that, on the nomination of the fishery services of the countries represented, each of the respective Governments should forthwith designate three persons to constitute an International committee on marine fishery investigations, this committee to determine what measure of International co-operation is desirable, what general investigations should be undertaken, consider definite problems that may be awaiting study, submit recommendations to their respective Governments, and co-ordinate and correlate the results of the work.

It is the expectation that the respective Governments will undertake to provide the necessary ways and means for conducting such independent and co-operative investigations as may be adjudged desirable by the International committee.

It is recommended that the International committee establish contact with the Permanent International Council for the Exploration of the Sea.”

I should be grateful if you would inform me whether the recommendations contained in this Resolution meet with the approval of the United States Government. I am advised by the Canadian Government that they are prepared to approve of these recommendations and they would also be glad to learn whether the Government of the United States will agree to the Resolution being made public on the 15th of October.

I have [etc.]

A. C. GEDDES

711.428/615

*The Acting Secretary of State to the British Ambassador (Geddes)*

WASHINGTON, October 14, 1920.

EXCELLENCY: I have the honor to acknowledge the receipt of your note No. 663 of October 7, 1920, by which you bring to my attention the resolution, relative to cooperation in scientific investigation of the deep-sea fisheries adjacent to both coasts of North America, adopted at the conference of fishery experts representing Newfoundland, Canada and the United States which was held at Ottawa on the 23d of September 1920.

You state that the Government of Canada approves the recommendations contained in that resolution, and inquire whether the Government of the United States approves these recommendations and will agree to the publication of the resolution on October 15, 1920.

In reply I have the honor to inform you that the recommendations contained in the resolution meet with the approval of this Government, and that this Government is pleased to agree to the publication of the resolution on October 15, 1920. .

Accept [etc.]

NORMAN H. DAVIS

### ST. LAWRENCE WATERWAY

**Consideration of the Question of Further Improving the St. Lawrence River between Montreal and Lake Ontario—Reference to the International Joint Commission**

711.421578a29/3

*The Acting Secretary of State to the British Ambassador on Special Mission (Reading)*

WASHINGTON, April 10, 1919.

EXCELLENCY: I have the honor to refer to this Government's note No. 262 of February 24, 1914,<sup>20</sup> suggesting that the Government of the United States and the Government of Canada should refer to the International Joint Commission for investigation and report certain questions outlined in the note regarding the development and use of the waters forming the boundary between the United States and Canada, and to inquire whether the Canadian Government is now ready to submit the matter to the Commission and if not, whether it is willing to join with this Government in submitting to the Commission for investigation and report the matter referred to in Section 9 of the Act of Congress approved March 2, 1919, a copy of which was transmitted to your Embassy in the Department's note of March 31 last.<sup>21</sup>

Accept [etc.]

FRANK L. POLK

711.421578a29/9

*The British Chargé (Lindsay) to the Acting Secretary of State*

No. 552

WASHINGTON, July 25, 1919.

SIR: I have the honour to refer to the note from the Acting Secretary of State, dated April 10, 1919, in which enquiry was made as to whether the Canadian Government were now ready to submit to the International Joint Commission for investigation and report certain questions in regard to the development and use of the boundary waters between the United States and Canada.

<sup>20</sup> Not printed; no answer to this note was ever received.

<sup>21</sup> Not printed.

**Annex 7**

**RECIPROCAL FISHERIES AGREEMENT BETWEEN THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA,  
24 FEBRUARY 1977, 28 UST 5571, TIAS No. 8648**



CANADA  
Reciprocal Fisheries

*Agreement signed at Washington February 24, 1977;  
Entered into force July 26, 1977.*

---

**RECIPROCAL FISHERIES AGREEMENT BETWEEN THE  
GOVERNMENT OF THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF CANADA**

The Government of the United States of America and the Government of Canada,

CONSIDERING that both governments have extended their exclusive fishery jurisdiction to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, and considering their common approach to anadromous species;

RECALLING their cooperative fisheries relationship under the Agreement on Reciprocal Fishing Privileges in Certain Areas Off the Coasts of the United States and Canada, signed at Ottawa June 15, 1973 (the 1973 Agreement), and the subsequent extensions of that Agreement;[<sup>1</sup>]

NOTING Canadian Order-in-Council P.C. 1977-1, and the preamble thereto, as published in the Canada Gazette on November 1, 1976, and enacted on January 1, 1977, respecting certain fishing zones of Canada under the Territorial Sea and Fishing Zones Act and the limits thereof;

NOTING further the statement of the Government of the United States of America published in the Federal Register on November 4, 1976, respecting certain limits of the fishery conservation zone of the United States under the Fishery Conservation and Management Act of 1976;[<sup>2</sup>]

RECALLING that continuing consultations between the two governments have been in progress since early 1976 with respect to the limits of maritime jurisdiction in areas off their coasts;

DESIRING to facilitate future negotiations toward a comprehensive framework for their fisheries relations, including an agreement on Pacific salmon problems of mutual concern;

CONSIDERING that, without prejudice to any positions which have been or may be taken by either government with respect to the

---

<sup>1</sup> TIAS 7676, 8251; 24 UST 1729; 27 UST 1365.

<sup>2</sup> 90 Stat. 331; 16 U.S.C. § 1801 note.

limits of maritime jurisdiction, certain interim arrangements are necessary in order to permit continued fishing by the fishermen of each country off the coasts of the other, and to ensure harmony in measures taken by the governments of the two countries in the boundary regions;

Have agreed as follows:

#### ARTICLE I

1. Except as otherwise provided, this Agreement applies to the waters described in paragraph one of the 1973 Agreement, and to all waters seaward thereof which are under the fishery jurisdiction of either party. For the purposes of this Agreement, such waters shall hereinafter be referred to as the "zones" of the two parties.

2. Any reference in this Agreement to allocations and catch levels shall be construed to refer to quantities of fish caught during the entire 1977 calendar year.

#### ARTICLE II

1. The United States agrees to permit fishing within its zone by nationals and vessels of Canada in accordance with the provisions of this Agreement.

2. Canada agrees to permit fishing within its zone by nationals and vessels of the United States in accordance with the provisions of this Agreement.

3. Fishing by nationals and vessels of each party in the zone of the other shall continue in accordance with existing patterns, with no expansion of effort nor initiation of new fisheries.

4. On the Atlantic Coast, the reciprocal fishing privileges under this Agreement shall not extend to any directed fishery for any species of clam, crab, lobster or shrimp.

5. On the Pacific Coast, the reciprocal fishing privileges under this Agreement shall not extend to any directed fishery for any species of clam, scallop, crab or herring.

#### ARTICLE III

1. On the Atlantic Coast, fishing by United States nationals and vessels in the Canadian zone for those stocks included in the 1977 United States allocations agreed ad referendum at the Annual and Special Meetings of ICNAF held in 1976, shall cease when those allocations have been taken.

2. On the Atlantic Coast, fishing by Canadian nationals and vessels in the United States zone for those stocks included in the 1977 Canadian allocations agreed ad referendum at the Annual and Special Meetings of ICNAF held in 1976, shall cease when those allocations have been taken.

3. Fishing for herring by nationals and vessels of one party in the zone of the other shall be conducted only in the area beyond 12 nautical miles from the coast.

## ARTICLE IV

1. On the Pacific Coast, fishing by United States nationals and vessels in the Canadian zone for the following stocks shall cease when the following aggregate catches by United States and Canadian fishermen have been taken:

- a. rockfishes, including Pacific Ocean perch:
  - i. 6700 metric tons in and off Queen Charlotte Sound;
  - ii. 1400 metric tons in Pacific Marine Fisheries Commission Groundfish Statistical Areas 3C and 3D.
- b. black cod; 1750 metric tons.

Directed fisheries for black cod by United States nationals and vessels within 12 nautical miles of the Canadian coast shall be limited to the area off the west coast of Vancouver Island between lines projected southwest (225 degrees true) from Estevan Point and Cape Scott respectively.

2. On the Pacific Coast, fishing by Canadian nationals and vessels in the United States zone for the following stocks shall cease when the following catches have been taken:

- a. rockfishes, including Pacific Ocean perch, when a 1400 metric tons aggregate catch level has been taken by United States and Canadian fishermen in Pacific Marine Fisheries Commission Groundfish Statistical Areas 3C and 3D.
- b. black cod, when Canadian nationals and vessels have taken a catch of 33,000 pounds.

Directed fisheries for black cod by Canadian nationals and vessels within 12 nautical miles of the United States coast shall be limited to the area off the west coast of Alaska between lines projected southwest (225 degrees true) from Cape Ommaney and Cape Bingham respectively during the open seasons specified for fishing for black cod in the adjacent territorial sea.

3. Fishing by longline for halibut by fishermen of each party shall continue in the zone of the other in accordance with approved recommendations and regulations of the International Pacific Halibut Commission.

4. On the Pacific Coast, fishing for shrimp by United States nationals and vessels in the Canadian zone shall be limited to the Tofino Grounds off the west coast of Vancouver Island beyond 12 nautical miles, and shall cease when United States nationals and vessels have taken a catch of 750 metric tons, subject to possible revision in the light of a review of scientific information to be conducted by the Canadian authorities in the course of 1977.

## ARTICLE V

1. On the Pacific Coast, there shall be no fishing for salmon by nationals and vessels of either party in the zone of the other, except salmon taken by trolling beyond 12 nautical miles of the coast and

salmon taken by trolling between 3 and 12 nautical miles in the area west of a line joining Bonilla Point and Tatoosh Island; north of a line projected due west from Carroll Island (latitude 48 degrees 00.3 minutes North, longitude 124 degrees 43.3 minutes West) and south of a line projected from Bonilla Point to latitude 48 degrees 29.7 minutes North, longitude 125 degrees 00.7 minutes West.

2. Each party shall have the right to limit such fishing for salmon in its zone by nationals and vessels of the other to the same time periods as its nationals and vessels are permitted such fishing for salmon in the zone of the other.

#### ARTICLE VI

The two parties recognize the desirability of coordinating their regulations for certain salmon fisheries and agree as follows:

1. The appropriate fishery management authorities of the two countries shall consult frequently with a view to coordinating the regulatory measures to be applied by them to the fisheries for coho and chum salmon in British Columbia Statistical Area 20 and Statistical Areas 7A, 7, 6A, 6, 6C, 5 and 4B of the Washington State Department of Fisheries;

2. With respect to the chinook salmon fishery in the portion of Washington State Statistical Area 7A bounded on the north by the international boundary, on the east by the low-water line bordering the western and southern shores of Point Roberts peninsula, on the south by a line projected from Lily Point to Georgina Point on Mayne Island between Lily Point and its point of intersection with the boundary line, and on the west by the international boundary and, with respect to the chinook salmon fishery in British Columbia Statistical Area 29, the appropriate fisheries officials of the two countries shall consult for the purpose of coordinating regulations regarding the open fishing days for the two specified areas. The Canadian officials, when designating the open fishing days for the specified Canadian area, shall give appropriate weight to the needs and interests expressed by the United States officials. The United States officials shall, to the extent consistent with the needs of the United States fishery, designate the same open fishing days for the specified United States area as are designated for the specified Canadian area and shall, in any case, designate the same number of open fishing days as designated for the specified Canadian area;

3. With respect to the chum salmon fishery in the section of Washington State Statistical Area 7A westward of Point Roberts peninsula, bounded on the north by the international boundary, on the east by the low-water line of Point Roberts peninsula, and by a line projected from Iverson Dock (Point Roberts) to Turning Point No. 1 of the boundary line in latitude 49 degrees 00 minutes 08.87 seconds North and longitude 123 degrees 19 minutes 17.18 seconds West, and with respect to the chum salmon fishery in British Columbia Statistical Area 29, the appropriate fisheries officials of the two countries shall

consult for the purpose of coordinating regulations regarding the open fishing days for the two specified areas. The following provisions shall be applicable from a date agreed by the appropriate fisheries officials of the two countries, which date shall be no earlier than the fifth and no later than the fifteenth of October:

- a. the Canadian officials, when designating the open fishing days for the specified Canadian area, shall give appropriate weight to the needs and interests expressed by the United States officials; and
- b. the United States officials shall designate the same open fishing days for the specific United States area as are set for the specified Canadian area.

#### ARTICLE VII

*Notwithstanding any other provision of this Agreement and without prejudice to the positions of either party, tuna fishing will continue off the coasts of each party, and, where applicable, under appropriate regulations implementing agreed international recommendations. Both parties agree to exchange information concerning their catch of tuna off the coast of the other party in order to develop and expand the scientific basis for international cooperation in conservation matters.*

#### ARTICLE VIII

1. The two parties recognize that each shall manage fisheries within its jurisdiction within the terms of its domestic laws. They agree that in the application of their domestic laws they shall be guided by the following principles:

- a. preserving existing patterns of their reciprocal fisheries in keeping with the provisions of Article II; and
- b. in the case of reciprocal salmon fisheries, the interest of the state of origin in salmon spawned in its rivers.

2. Regulations affecting the size limits, seasons, areas, gear, and by-catch of existing fisheries established by the management entities of either party and pertaining to the taking or possession of fish in its zone shall apply equally to the nationals and vessels of both parties in the zone. In areas of the Canadian zone within 12 nautical miles in which Canadian domestic regulation at present prohibits trawl fishing by vessels exceeding 65 feet in length, such regulation shall also apply to United States vessels. These regulations shall be enforced by the government which issued them.

3. If either party proposes to introduce or alter any such regulations during the term of this Agreement, it shall notify the other party of the proposed regulatory measure as far in advance of its application as possible. At the request of either party, consultations shall be held expeditiously in order to review the proposed measure. In such consultations the parties shall be guided by the principles referred to in paragraph 1 above. Consultations on regulations respecting re-

ciprocal salmon fisheries shall take place at the technical and official levels during the process of preparing such regulations, and, prior to their final approval and application, at the Secretarial or Ministerial level upon request of either party.

4. Fishery conservation and management regulations other than those referred to in paragraph 2 above and those required for the implementation of this Agreement, shall not be applied by either party to vessels and nationals of the other fishing in its zone pursuant to this Agreement.

#### ARTICLE IX

In the boundary regions, the following principles shall be applied as interim measures of mutual restraint pending the resolution of questions pertaining to the delimitation of areas subject to the respective fishery jurisdiction of each party:

1. As between the parties, enforcement shall be conducted by the flag State.
2. Neither party shall authorize fishing by vessels of third parties in the boundary regions.
3. Either party may enforce against third parties in the boundary regions.

#### ARTICLE X

Each party, subject to its domestic laws, will continue to permit transfers of herring between nationals and vessels of the two parties in its zone. The parties agree that the principal purpose of this provision is to enable the continuation of transfers of herring intended for purposes other than reduction.

#### ARTICLE XI

Each party agrees to waive for nationals and vessels of the other party fishing in its zone pursuant to this Agreement, permit and licensing requirements set forth in the respective domestic fishery laws of each country as applicable to foreign fishermen, provided that each vessel shall be clearly and conspicuously marked to indicate its name, nationality and home port.

#### ARTICLE XII

1. Recreational fishing by vessels of each party in all waters of the other shall continue.

2. Recreational fishing under this Agreement shall be conducted in accordance with applicable regulations and permit and licensing requirements imposed by the competent state, provincial and federal authorities, except that requirements for permits and licenses under the Fishery Conservation and Management Act of 1976, in the case of the United States, and the Coastal Fisheries Protection Act, in the case of Canada, shall be waived.

## ARTICLE XIII

The two parties agree to exchange appropriate fishery statistics on a timely and regular basis where necessary to permit an accurate determination to be made of the time at which an allocation or catch level referred to in this Agreement is reached, and otherwise to ensure the effective implementation of this Agreement.

## ARTICLE XIV

Each party shall allow access to its customs ports for nationals and vessels of the other party for the purposes of purchasing bait, supplies, outfits, fuel, and effecting repairs, unless more favorable access provisions are provided in other agreements in force between the two parties. Access under this provision is subject to general requirements regarding advance notice of port entry, availability of facilities, and the needs of domestic fishermen and flag vessels.

## ARTICLE XV

The two parties agree that cooperative fishery research and the exchange of fishery biological data and statistical information through existing institutional arrangements should continue and, where appropriate, be expanded.

## ARTICLE XVI

The two parties undertake to consult as necessary to ensure the harmonious implementation of this Agreement.

## ARTICLE XVII

Nothing in this Agreement shall be construed to affect or prejudice any position or claim which has been or may subsequently be adopted by either party in the course of consultations, negotiations or third party settlement procedures respecting the maritime jurisdiction, including the limits thereof, of Canada or of the United States of America.

Nothing in this Agreement shall be construed to prejudice any current or future fishery negotiations between the two parties.

Nothing in the present Agreement shall affect either bilateral or multilateral agreements to which either government is a party.

## ARTICLE XVIII

1. This Agreement shall enter into force following the completion of the internal procedures of both parties. Each party shall notify the other when it has completed such internal procedures necessary to bring this Agreement into force. This Agreement shall enter into force on the date of the later of these two notifications.<sup>[1]</sup>

2. This Agreement shall terminate on December 31, 1977.

3. The 1973 Agreement shall be superceded upon the entry into force of this Agreement.

<sup>1</sup> July 26, 1977.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in two copies, at Washington this twenty-fourth day of February, 1977, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

*(Signed)* Rozanne L. RIDGWAY.

FOR THE GOVERNMENT OF CANADA :

*(Signed)* Leonard H. LEGAULT.

---



**Annex 8**

**FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976,  
16 USC, SECS. 1801-1882, AS ENACTED**

lands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

**(b) Application requirements for grants; approval by Secretaries**

(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture. Such application shall be in such form, and submitted in such manner, as the Secretaries shall jointly by regulation prescribe, and shall contain—

(A) assurances satisfactory to the Secretaries that individuals employed under the project for which the application is submitted shall (i) have attained the age of fifteen but not attained the age of nineteen, (ii) be permanent residents of the United States or its territories, possessions, or the Trust Territory of the Pacific Islands, (iii) be employed without regard to the personnel laws, rules, and regulations applicable to full-time employees of the applicant, (iv) be employed for a period of not more than ninety days in any calendar year, and (v) be employed without regard to their sex or social, economic, or racial classification; and

(B) such other information as the Secretaries may jointly by regulation prescribe.

(2) The Secretaries may approve applications which they determine (A) to meet the requirements of paragraph (1), and (B) are for projects which will further the development, preservation, or maintenance of non-Federal public lands or waters within the jurisdiction of the applicant.

**(c) Limitation on the amount of grant**

(1) The amount of any grant under this section shall be determined jointly by the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of such project.

(2) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretaries find necessary.

**(d) Appropriation percentage**

Thirty per centum of the sums appropriated under section 1706 of this title for any fiscal year shall be made available for grants under this section for such fiscal year.

(Pub. L. 91-378, § 4, Aug. 13, 1970, 84 Stat. 796; Pub. L. 92-597, Oct. 27, 1972, 86 Stat. 1320; Pub. L. 93-408, Sept. 3, 1974, 88 Stat. 1067.)

**AMENDMENTS**

1974—Subsec. (a). Pub. L. 93-408 substituted "jointly establish a program" for "jointly establish a pilot grant program".

1972—Pub. L. 92-579 substituted provisions relating to pilot grant program for state projects for provisions relating to Secretarial reports.

**§ 1705. Reports to President and Congress**

The Secretary of the Interior and Secretary of Agriculture shall annually prepare a joint report detailing the activities carried out under this chapter and providing recommendations. Each report for a program year shall be submitted concurrently to the President and the Con-

gress not later than April 1 following the close of that program year.

(Pub. L. 91-378, § 5, Aug. 13, 1970, 84 Stat. 796; Pub. L. 92-597, Oct. 27, 1972, 86 Stat. 1321; Pub. L. 93-408, Sept. 3, 1974, 88 Stat. 1068.)

**AMENDMENTS**

1974—Pub. L. 93-408 substituted "program year shall be submitted concurrently to the President and the Congress not later than April 1 following the close of that program year" for "fiscal year shall be submitted concurrently to the President and the Congress not later than one hundred and eighty days following the close of that fiscal year".

1972—Pub. L. 92-579 submitted provisions relating to Secretarial reports for provisions relating to authorization of funds.

**§ 1706. Authorization of appropriations**

There are authorized to be appropriated amounts not to exceed \$60,000,000 for each fiscal year, which amounts shall be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this chapter. Notwithstanding any other provision of law, funds appropriated for any fiscal year to carry out this chapter shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which appropriated.

(Pub. L. 91-378, § 6, as added Pub. L. 92-597, Oct. 27, 1972, 86 Stat. 1321, and amended Pub. L. 93-408, Sept. 3, 1974, 88 Stat. 1068.)

**AMENDMENTS**

1974—Pub. L. 93-408 substituted authorization of appropriation of amount not exceeding \$60,000,000 for each fiscal year for authorization of appropriation of amounts not exceeding \$30,000,000 for fiscal year ending June 30, 1973 and \$60,000,000 for fiscal year ending June 30, 1974.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1704 of this title.

**CHAPTER 38—FISHERY CONSERVATION AND MANAGEMENT**

**SUBCHAPTER I—GENERALLY**

**Sec.**

**1801. Findings, purposes and policy.**

- (a) Findings.
- (b) Purposes.
- (c) Policy.

**1802. Definitions.**

**SUBCHAPTER II—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES**

**1811. Fishery conservation zone.**

**1812. Exclusive fishery management authority.**

**1813. Highly migratory species.**

**SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS**

**1821. Foreign fishing.**

- (a) In general.
- (b) Existing international fishery agreements.
- (c) Governing international fishery agreements.
- (d) Total allowable level of foreign fishing.
- (e) Allocation of allowable level.
- (f) Reciprocity.
- (g) Preliminary fishery management plans.

**1822. International fishery agreements.**

- Sec.
- (a) Negotiations.
  - (b) Treaty renegotiation.
  - (c) International fishery agreements.
  - (d) Boundary negotiations.
  - (e) Nonrecognition.
1823. Congressional oversight of governing international fishery agreements.
- (a) In general.
  - (b) Referral to committees.
  - (c) Computation of 60-day period.
  - (d) Congressional procedures.
1824. Permits for foreign fishing.
- (a) In general.
  - (b) Applications and permits under governing international fishery agreements.
  - (c) Registration permits.
1825. Import prohibitions.
- (a) Determinations by Secretary of State.
  - (b) Prohibitions.
  - (c) Removal of prohibition.
  - (d) Definitions.
- SUBCHAPTER IV—NATIONAL FISHERY MANAGEMENT PROGRAM**
1851. National standards for fishery conservation and management.
- (a) In general.
  - (b) Guidelines.
1852. Regional Fishery Management Councils.
- (a) Establishment.
  - (b) Voting members.
  - (c) *Nonvoting members.*
  - (d) Compensation and expenses.
  - (e) Transaction of business.
  - (f) Staff and administration.
  - (g) Committees and panels.
  - (h) Functions.
1853. Contents of fishery management plans.
- (a) Required provisions.
  - (b) Discretionary provisions.
  - (c) Proposed regulations.
  - (d) Confidentiality of statistics.
1854. Action by the Secretary.
- (a) Action by the Secretary after receipt of plan.
  - (b) *Review by the Secretary.*
  - (c) Preparation by the Secretary.
  - (d) Establishment of fees.
  - (e) Fisheries research.
  - (f) Miscellaneous duties.
1855. Implementation of fishery management plans.
- (a) In general.
  - (b) Hearing.
  - (c) Implementation.
  - (d) Judicial review.
  - (e) Emergency actions.
  - (f) Annual report.
  - (g) Responsibility of the Secretary.
1856. State jurisdiction.
- (a) In general.
  - (b) Exception.
1857. Prohibited acts.
1858. Civil penalties.
- (a) Assessment of penalty.
  - (b) Review of civil penalty.
  - (c) Action upon failure to pay assessment.
  - (d) Compromise or other action by Secretary.
1859. Criminal offenses.
- (a) Offenses.
  - (b) Punishment.
  - (c) Jurisdiction.
1860. Civil forfeitures.
- (a) In general.

- Sec.
- (b) Jurisdiction of courts.
  - (c) Judgment.
  - (d) Procedure.
  - (e) Rebuttable presumption.
1861. Enforcement.
- (a) Responsibility.
  - (b) Powers of authorized officers.
  - (c) Issuance of citations.
  - (d) Jurisdiction of courts.
  - (e) Definitions.

**SUBCHAPTER V—MISCELLANEOUS PROVISIONS**

1881. Effect on Law of the Sea Treaty.  
1882. Authorization of appropriations.

**CHAPTER REFERRED TO IN OTHER SECTIONS**

*This chapter is referred to in section 917 of this title; title 22 section 1972.*

**SUBCHAPTER I—GENERALLY**

**§ 1801. Findings, purposes and policy**

**(a) Findings**

The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of *United States* fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and

maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

**(b) Purposes**

It is therefore declared to be the purposes of the Congress in this chapter—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

**(c) Policy**

It is further declared to be the policy of the Congress in this chapter—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this chapter;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the

conservation and management of fishery resources, as provided for in this chapter;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this chapter; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

(Pub. L. 94-265, § 2, Apr. 13, 1976, 90 Stat. 331.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out hereunder and Tables volume.

**SHORT TITLE**

Section 1 of Pub. L. 94-265 provided in part that this Act, which enacted this chapter, amended section 971 of this title and sections 1972 and 1973 of Title 22, Foreign Relations and Intercourse, enacted provisions set out as notes under this section and sections 971, 1362, 1811, and 1857 of this title, and sections 1972 and 1973 of title 22, and repealed chapters 21 and 21A of this title, may be cited as the "Fishery Conservation and Management Act of 1976".

**§ 1802. Definitions**

As used in this chapter, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

Bamboo Coral—*Acanella* spp.;  
Black Coral—*Antipathes* spp.;  
Gold Coral—*Callogorgia* spp.;  
Precious Red Coral—*Corallium* spp.;  
Bamboo Coral—*Keratoisis* spp.; and  
Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;  
Tanner Crab—*Chionoecetes opilio*;  
Tanner Crab—*Chionoecetes angulatus*;  
Tanner Crab—*Chionoecetes bairdi*;  
King Crab—*Paralithodes camtschatica*;  
King Crab—*Paralithodes platypus*;  
King Crab—*Paralithodes brevipes*;  
Lobster—*Homarus americanus*;  
Dungeness Crab—*Cancer magister*;  
California King Crab—*Paralithodes californiensis*;  
California King Crab—*Paralithodes rathbuni*;  
Golden King Crab—*Lithodes acquispinus*;  
Northern Stone Crab—*Lithodes maja*;  
Stone Crab—*Menippe mercenaria*; and  
Deep-sea Red Crab—*Geryon quinque-dens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;  
Pink Abalone—*Haliotis corrugata*;  
Japanese Abalone—*Haliotis kamtschaticana*;  
Queen Conch—*Strombus gigas*;  
Surf Clam—*Spisula solidissima*; and  
Ocean Quahog—*Arctica islandica*.

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;  
Sheepswool Sponge—*Hippiospongia lachne*;  
Grass Sponge—*Spongia graminea*; and  
Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

- (A) immobile on or under the seabed, or
- (B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this chapter.

(5) The term "Council" means any Regional Fishery Management Council established under section 1852 of this title.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

- (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, sci-

entific, technical, recreational, and economic characteristics; and

- (B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 1811 of this title.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

- (A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

- (A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 1851 of this title.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

- (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

(Pub. L. 94-265, § 3, Apr. 13, 1976, 90 Stat. 333.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 917a of this title.

### SUBCHAPTER II—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22, section 1972.

#### § 1811. Fishery conservation zone

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(Pub. L. 94-265, title I, § 101, Apr. 13, 1976, 90 Stat. 336.)

#### EFFECTIVE DATE

Section 104 of Pub. L. 94-265 provided that: "This title (which enacted this subchapter) shall take effect March 1, 1977."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

#### § 1812. Exclusive fishery management authority

The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone, except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

(Pub. L. 94-265, title I, § 102, Apr. 13, 1976, 90 Stat. 336.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

#### EFFECTIVE DATE

For effective date of this subchapter, see section 104 of Pub. L. 94-265, set out as an Effective Date note under section 1811 of this title.

#### § 1813. Highly migratory species

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

(Pub. L. 94-265, title I, § 103, Apr. 13, 1976, 90 Stat. 336.)

#### EFFECTIVE DATE

For effective date of this subchapter, see section 104 of Pub. L. 94-265, set out as an Effective Date note under section 1811 of this title.

### SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

#### § 1821. Foreign fishing

##### (a) In general

After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

(1) is authorized under subsection (b) or (c) of this section;

(2) is not prohibited by subsection (f) of this section; and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 1824 of this title.

##### (b) Existing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an

international fishery agreement (subject to the provisions of section 1822(b) or (c) of this title), if such agreement—

- (1) was in effect on April 13, 1976; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) **Governing international fishery agreements**

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this chapter, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirements that—

(A) any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 1861(b) of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 1857 of this title, and

(iii) to examine and make notations on the permit issued pursuant to section 1824 of this title for such vessel;

(B) the permit issued for any such vessel pursuant to section 1824 of this title be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

(E) any fees required under section 1824(b)(10) of this title be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, exceed such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e) of this section.

(4) The foreign nation will—

(A) apply, pursuant to section 1824 of this title, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel; and

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 1824(a) of this title and the applicable conditions and restrictions established under section 1824(b)(7) of this title.

(d) **Total allowable level of foreign fishing**

The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this chapter.

(e) **Allocation of allowable level**

The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

(1) whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

(4) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(f) **Reciprocity**

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless

such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

**(g) Preliminary fishery management plans**

The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 1824(b) of this title shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to subchapter IV of this chapter, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 1853(a)(5) of this title; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this chapter, and other applicable law, and

(C) are described in section 1853(b)(2), (3), (4), (5), and (7) of this title.

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to subchapter IV of this chapter, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 1855 of this title.

(Pub. L. 94-265, title II, § 201, Apr. 13, 1976, 90 Stat. 337.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1822, 1824, 1825, 1857, 1861 of this title.

**§ 1822. International fishery agreements**

**(a) Negotiations**

The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b) of this section;

(2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;

(3) may negotiate boundary agreements as provided for in subsection (d) of this section;

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c) of this section, as may be necessary and appropriate to further the purposes, policy, and provisions of this chapter.

**(b) Treaty renegotiation**

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

**(c) International fishery agreements**

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the fishery conservation zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 1821(c) of this title.

**(d) Boundary negotiations**

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

**(e) Nonrecognition**

It is the sense of the Congress that the United States Government shall not recognize



the claim of any foreign nation to a fishery conservation zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(Pub. L. 94-265, title II, § 202, Apr. 13, 1976, 90 Stat. 339.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1821 of this title.

#### § 1823. Congressional oversight of governing international fishery agreements

##### (a) In general

No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

##### (b) Referral to committees

Any document described in subsection (a) of this section shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

##### (c) Computation of 60-day period

For purposes of subsection (a) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

##### (d) Congressional procedures

(1) Rules of the House of Representatives and Senate

The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

##### (2) Definition

For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a) of this section; and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) of this section relating to that agreement is transmitted to the Congress.

##### (3) Placement on calendar

Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

##### (4) Floor consideration in the House

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the proce-

dure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

**(5) Floor consideration in the Senate**

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

(Pub. L. 94-265, title II, § 203, Apr. 13, 1976, 90 Stat. 340.)

**CHANGE OF NAME**

The Committee on Commerce of the Senate, referred to in subsec. (b), was abolished and replaced by the Committee on Commerce, Science, and Transportation of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1821, 1861 of this title.

**§ 1824. Permits for foreign fishing**

**(a) In general**

After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

**(b) Applications and permits under governing international fishery agreements**

**(1) Eligibility**

Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a) of this section.

**(2) Forms**

The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

**(3) Contents**

Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

**(4) Transmittal for action**

Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

**(5) Action by council**

After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with re-

spect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

**(6) Approval**

After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this chapter.

**(7) Establishment of conditions and restrictions**

The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 1821(c)(1), (2), and (3) of this title.

(D) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

**(8) Notice of approval**

The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

**(9) Disapproval of applications**

If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

**(10) Fees**

Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this chapter with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

**(11) Issuance of permits**

If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

**(12) Sanctions**

If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 1857 of this title the Secretary may, or if any civil penalty imposed under section 1858 of this title or any criminal fine imposed under section 1859 of this title has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

**(c) Registration permits**

The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 1821(b) of this title and which wishes to engage in fishing described in subsection (a) of this section. Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the

fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(Pub. L. 94-265, title II, § 204, Apr. 13, 1976, 90 Stat. 342.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title not set out under section 1801 of this title and Tables volume.

#### CHANGE OF NAME

The Committee on Commerce of the Senate, referred to in text, was abolished and replaced by the Committee on Commerce, Science, and Transportation of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1825, 1852, 1857 of this title.

#### § 1825. Import prohibitions

##### (a) Determinations by Secretary of State

If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 1821(c) and (d) and 1824(b)(7) and (10) of this title, because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign

nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

##### (b) Prohibitions

Upon receipt of any certification from the Secretary of State under subsection (a) of this section, the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

##### (c) Removal of prohibition

If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

##### (d) Definitions

As used in this section—

(1) The term "fish" includes any highly migratory species.

(2) The term "fish products" means any article which is produced from or composed of (in whole or in part) any fish.

(Pub. L. 94-265, title II, § 205, Apr. 13, 1976, 90 Stat. 345.)

### SUBCHAPTER IV—NATIONAL FISHERY MANAGEMENT PROGRAM

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1821 of this title.

#### § 1851. National standards for fishery conservation and management

##### (a) In general

Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit

throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

**(b) Guidelines**

The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

(Pub. L. 94-265, title III, § 301, Apr. 13, 1976, 90 Stat. 346.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1802 of this title.

**§ 1852. Regional Fishery Management Councils**

**(a) Establishment**

There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:

**(1) New England Council**

The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(2) Mid-Atlantic Council**

The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(3) South Atlantic Council**

The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and

Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(4) Caribbean Council**

The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(5) Gulf Council**

The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(6) Pacific Council**

The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

**(7) North Pacific Council**

The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

**(8) Western Pacific Council**

The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) of this section (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the

ocean area over which such Council is granted authority.

**(b) Voting members**

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after April 13, 1976. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

**(c) Nonvoting members**

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The Commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

**(d) Compensation and expenses**

The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed pursuant to subsection (c)(2) of this section shall be reimbursed for actual expenses incurred in the performance of such duties.

**(e) Transaction of business**

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

**(f) Staff and administration**

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this chapter.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d) of this section;

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g) of this section; and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) Committees and panels

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this chapter.

(h) Functions

Each Council shall, in accordance with the provisions of this chapter—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 1824(b)(4)(B) of this title, and any fishery management plan or amendment transmitted to it under section 1854(c)(2) of this title;

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this chapter;

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year.

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 1853(a)(3) and (4) of this title with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this chapter or which are necessary and appropriate to the foregoing functions.

(Pub. L. 94-265, title III, § 302, Apr. 13, 1976, 90 Stat. 347.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (d), is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

§ 1853. Contents of fishery management plans

(a) Required provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b) of this section, or both; and

(C) consistent with the national standards, the other provisions of this chapter, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls.

(b) Discretionary provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this chapter;

(5) incorporate (consistent with the national standards, the other provisions of this chapter, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) **Proposed regulations**

Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 1854 and 1855 of this title.

(d) **Confidentiality of statistics**

Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) of this section shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

(Pub. L. 94-265, title III, § 303, Apr. 13, 1976, 90 Stat. 351.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1821, 1852, 1854 of this title.

**§ 1854. Action by the Secretary**

(a) **Action by the Secretary after receipt of plan**

Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b) of this section; and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) **Review by the Secretary**

The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law. In carrying out such review, the Secretary shall consult with—

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) **Preparation by the Secretary**

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this chapter, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2) of this section.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of



State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this chapter, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 1855 of this title.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 1853(b)(6) of this title, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) Establishment of fees

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 1853(b)(1) of this title. Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

(e) Fisheries research

The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) Miscellaneous duties

(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(Pub. L. 94-265, title III, § 304, Apr. 13, 1976, 90 Stat. 352.)

CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1852, 1853, 1855 of this title.

§ 1855. Implementation of fishery management plans

(a) In general

As soon as practicable after the Secretary—

(1) approves, pursuant to section 1854(a) and (b) of this title, any fishery management plan or amendment; or

(2) prepares, pursuant to section 1854(c) of this title, any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

(b) Hearing

The Secretary may schedule a hearing, in accordance with section 553 of title 5, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) Implementation

The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a) of this section, and

(B) produced in any hearing held under subsection (b) of this section, and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this chapter, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) Judicial review

Regulations promulgated by the Secretary under this chapter shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated:

except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

**(e) Emergency actions**

If the Secretary finds that an emergency involving any fishery resources exists, he may—

- (1) promulgate emergency regulations, without regard to subsections (a) and (c) of this section, to implement any fishery management plan, if such emergency so requires; or
- (2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

**(f) Annual report**

The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this chapter during the preceding calendar year.

**(g) Responsibility of the Secretary**

The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this chapter. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to discharge such responsibility or to carry out any other provision of this chapter.

(Pub. L. 94-265, title III, § 305, Apr. 13, 1976, 90 Stat. 354.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1821, 1853, 1854 of this title.

**§ 1856. State jurisdiction**

**(a) In general**

Except as provided in subsection (b) of this section nothing in this chapter shall be con-

strued as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

**(b) Exception**

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominantly within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(Pub. L. 94-265, title III, § 306, Apr. 13, 1976, 90 Stat. 355.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**§ 1857. Prohibited acts**

It is unlawful—

(1) for any person—

(A) to violate any provision of this chapter or any regulation or permit issued pursuant to this chapter;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this chapter;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 1821(c) of this title;

(D) to refuse to permit any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section; and

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 1824(b) or (c) of this title.

(Pub. L. 94-265, title III, § 307, Apr. 13, 1976, 90 Stat. 355.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

#### EFFECTIVE DATE

Section 312 of Pub. L. 94-265 provided that: "Sections 307, 308, 309, 310, and 311 (this section and sections 1858 to 1861 of this title) shall take effect March 1, 1977".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1824, 1858, 1859, 1880, 1861 of this title.

#### § 1858. Civil penalties

##### (a) Assessment of penalty

Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 1857 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

##### (b) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

##### (c) Action upon failure to pay assessment

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

##### (d) Compromise or other action by Secretary

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(Pub. L. 94-265, title III, § 308, Apr. 13, 1976, 90 Stat. 356.)

#### EFFECTIVE DATE

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as an Effective Date note under section 1857 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1824 of this title.

#### § 1859. Criminal offenses

##### (a) Offenses

A person is guilty of an offense if he commits any act prohibited by—

- (1) section 1857(1)(D), (E), (F), or (H) of this title; or
- (2) section 1857(2) of this title.

##### (b) Punishment

Any offense described in subsection (a)(1) of this section is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) of this section is punishable by a fine of not more than \$100,000, or imprisonment for not more than 1 year, or both.

**(c) Jurisdiction**

There is Federal jurisdiction over any offense described in this section.

(Pub. L. 94-265, title III, § 309, Apr. 13, 1976, 90 Stat. 357.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**EFFECTIVE DATE**

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as an Effective Date note under section 1857 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1824 of this title.

**§ 1860. Civil forfeitures****(a) In general**

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 1857 of this title (other than any act for which the issuance of a citation under section 1861(c) of this title is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

**(b) Jurisdiction of courts**

Any district court of the United States which has jurisdiction under section 1861(d) of this title shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

**(c) Judgment**

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to—

- (1) the disposition of forfeited property,
- (2) the proceeds from the sale of forfeited property,
- (3) the remission or mitigation of forfeitures, and
- (4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this chapter, be per-

formed by officers or other persons designated for such purpose by the Secretary.

**(d) Procedure**

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1861(d) shall—

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(2) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

**(e) Rebuttable presumption**

For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 1857 of this title were taken or retained in violation of this chapter.

(Pub. L. 94-265, title III, § 310, Apr. 13, 1976, 90 Stat. 357.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**EFFECTIVE DATE**

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as an Effective Date note under section 1857 of this title.

**§ 1861. Enforcement****(a) Responsibility**

The provisions of this chapter shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 1823(b) of this title and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this chapter.

**(b) Powers of authorized officers**

Any officer who is authorized (by the Secretary, the Secretary of the department in which

the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) of this section) to enforce the provisions of this chapter may—

(1) with or without a warrant or other process—

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 1857 of this title;

(B) board, and search or inspect, any fishing vessel which is subject to the provisions of this chapter;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this chapter; and

(E) seize any other evidence related to any violation of any provision of this chapter;

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) exercise any other lawful authority.

(c) **Issuance of citations**

If any officer authorized to enforce the provisions of this chapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b) of this section. If a permit has been issued pursuant to this chapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) **Jurisdiction of courts**

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(e) **Definitions**

For purposes of this section—

(1) The term "provisions of this chapter" includes (A) any regulation or permit issued pursuant to this chapter, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 1821(b) or (c) of this title, with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this chapter" includes (A) the commission of any act prohibited by section 1857 of this title, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

(Pub. L. 94-265, title III, § 311, Apr. 13, 1976, 90 Stat. 358.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

**EFFECTIVE DATE**

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as an Effective Date note under section 1857 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1821, 1824, 1857, 1859, 1860 of this title.

**SUBCHAPTER V—MISCELLANEOUS PROVISIONS**

§ 1881. **Effect on Law of the Sea Treaty**

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this chapter if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

(Pub. L. 94-265, title IV, § 401, Apr. 13, 1976, 90 Stat. 359.)

**CODIFICATION**

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

§ 1882. **Authorization of appropriations**

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this chapter, not to exceed the following sums:

(1) \$5,000,000 for the fiscal year ending June 30, 1976.

(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.

(3) \$25,000,000 for the fiscal year ending September 30, 1977.

(4) \$30,000,000 for the fiscal year ending September 30, 1978.

(Pub. L. 94-265, title IV, § 406, Apr. 13, 1976, 90 Stat. 361.)

#### CODIFICATION

"This chapter" was in the original "this Act", meaning the Fishery Conservation and Management Act of 1976, Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331. For classification of this Act in the Code, in addition to enactment of this chapter, see Short Title note set out under section 1801 of this title and Tables volume.

### CHAPTER 39—MINING ACTIVITY WITHIN NATIONAL PARK SYSTEM AREAS

#### Sec.

1901. Congressional findings and declaration of policy.
1902. Preservation and management of areas by Secretary of the Interior; promulgation of regulations.
1903. Temporary cessation of certain mining operations; exceptions.
1904. Annual expenditures on mining claims; applicability to mining operations temporarily halted.
1905. Determinations by Secretary of validity of certain unpatented mining claims; recommendations for acquisition of valid claims; study and report of modifications of existing boundaries.
1906. Additional determinations by Secretary of validity of certain unpatented mining claims; recommendations for acquisition of valid claims.
1907. Recordation of mining claims; publication of notice.
1908. Damage to natural and historical landmarks; procedures for determination and enforcement of abatement of damaging activities.
1909. Severability of provisions.
1910. Civil actions for just compensation by mining claim holders.
1911. Acquisition of land by Secretary.
1912. Financial disclosure by officer or employee of Secretary.
- (a) Filing and availability of written statements; contents.
- (b) Enforcement procedures.
- (c) Exemptions.
- (d) Violation; penalty.

#### § 1901. Congressional findings and declaration of policy

The Congress finds and declares that—

(a) the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and

(b) all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.

(Pub. L. 94-429, § 1, Sept. 28, 1976, 90 Stat. 1342.)

#### CROSS REFERENCES

Coal land, entry of unappropriated or unreserved Federal coal lands, see section 71 of Title 30, Mineral Lands and Mining.

Exploration program for the discovery of minerals, financial assistance, see section 641 of Title 30.

Leases and Prospecting Permits—

Lands subject to disposition, see section 181 of Title 30.

Oil and gas lands, see section 226 of Title 30.

Oil shale lands, see section 241 of Title 30.

Phosphate lands, see section 211 of Title 30.

Potash lands, see section 281 of Title 30.

Sodium lands, see section 261 of Title 30.

Sulphur lands, see section 271 of Title 30.

Mineral Lands and Regulations—

Lands open to purchase by citizens, see section 22 of Title 30.

Locators' rights of possession and enjoyment, see section 26 of Title 30.

Mineral lands reserved, see section 21 of Title 30.

#### § 1902. Preservation and management of areas by Secretary of the Interior; promulgation of regulations

In order to preserve for the benefit of present and future generations the pristine beauty of areas of the National Park System, and to further the purposes of sections 1, and 2 to 4 of this title, as amended, and the individual organic Acts for the various areas of the National Park System, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System shall be subject to such regulations prescribed by the Secretary of the Interior as he deems necessary or desirable for the preservation and management of those areas.

(Pub. L. 94-429, § 2, Sept. 28, 1976, 90 Stat. 1342.)

#### CROSS REFERENCES

Disposal of materials on public lands, surface resources, see section 601 of Title 30, Mineral Lands and Mining.

Division of coal lands into leasing tracts, see section 201 of Title 30.

Leases and Prospecting Permits—

Lands subject to disposition, see section 181 of Title 30.

Oil and gas lands, see section 226 of Title 30.

Oil shale lands, see section 241 of Title 30.

Phosphate lands, see section 211 of Title 30.

Potash lands, see section 281 of Title 30.

Sodium lands, see section 261 of Title 30.

Sulphur lands, see section 271 of Title 30.

Mineral Lands and Regulations—

Assignment or subletting of leases, see section 187 of Title 30.

Cancellation of prospecting permits, see section 183 of Title 30.

Limitations on leases held, owned or controlled by persons, associations, or corporations, see section 184 of Title 30.

Prescription of rules and regulations, see section 189 of Title 30.

Reservation of easements or rights-of-way for working purposes, see section 188 of Title 30.

Rights-of-way for pipelines, see section 185 of Title 30.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1903 of this title.

**Annex 9**

**OUTER CONTINENTAL SHELF LANDS ACT, 43 USC, SECS. 1331-1343 (1976);  
AS AMENDED, SECS. 1331-1356 (1976, SUPPLEMENT III)**

**NOTICE OF PROPOSED AUTHORIZATION FOR GEOLOGICAL AND GEOPHYSICAL  
EXPLORATION OF ATLANTIC OUTER CONTINENTAL SHELF, 25 *FEDERAL  
REGISTER* 8759 (10 SEPTEMBER 1960)**

**REGULATIONS FOR GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS OF THE OUTER  
CONTINENTAL SHELF, 45 *FEDERAL REGISTER* 6344-6352 (25 JANUARY 1980)**

**REGULATIONS FOR GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS OF THE OUTER  
CONTINENTAL SHELF, 41 *FEDERAL REGISTER* 25891-25897 (23 JUNE 1976)**

stitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

(May 22, 1953, ch. 65, title II, § 4, 67 Stat. 31.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1301 of this title.

**§ 1313. Exceptions from confirmation and establishment of States' title, power and rights**

There is excepted from the operation of section 1311 of this title—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by 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; and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians; and

(c) all structures and improvements constructed by the United States in the exercise of its navigational servitude.

(May 22, 1953, ch. 65, title II, § 5, 67 Stat. 32.)

**§ 1314. Rights and powers retained by the United States; purchase of natural resources; condemnation of lands**

(a) 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 management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of this title.

(b) In time of war or when necessary for national defense, and the Congress or the President shall so prescribe, the United States shall have the right of first refusal to purchase at the prevailing market price, all or any portion of the said natural resources, or to acquire and use any portion of said lands by proceeding in accordance with due process of law and paying just compensation therefor.

(May 22, 1953, ch. 65, title II, § 6, 67 Stat. 32.)

**§ 1315. Rights acquired under laws of the United States unaffected**

Nothing contained in this subchapter or subchapter I of this chapter shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this subchapter or subchapter I of this chapter and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however*, That nothing contained in this subchapter or subchapter I of this chapter is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact or in law applies to the lands subject to this subchapter or subchapter I of this chapter, or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything contained in this subchapter or subchapter I of this chapter.

(May 22, 1953, ch. 65, title II, § 8, 67 Stat. 32.)

**SUBCHAPTER III—OUTER CONTINENTAL SHELF LANDS**

**CROSS REFERENCES**

Fair Labor Standards Act of 1938, applicability of, see section 213 of Title 29, Labor.

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in section 156 of this title; title 16 sections 460f-15, 470h, 1456; title 29 sections 213, 302, 402, 630, 653, 1002; title 33 sections 941, 1321, 1503; title 41 section 357; title 42 section 2000e.

**§ 1331. Definitions**

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

(Aug. 7, 1953, ch. 345, § 2, 67 Stat. 462.)

**SHORT TITLE**

For Short Title of act Aug. 7, 1953, which enacted this subchapter, see Short Title note set out under section 1301 of this chapter.

**SEPARABILITY OF PROVISIONS**

Section 17 of act Aug. 7, 1953, provided that: "If any provision of this Act (this subchapter), or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby."



#### NAVAL PETROLEUM RESERVE

Section 13 of act Aug. 7, 1953, revoked Ex. Ord. No. 10428, Jan. 16, 1953, 18 F.R. 405, which had set aside certain submerged lands as a naval petroleum reserve and had transferred functions with respect thereto from the Secretary of the Interior to the Secretary of the Navy.

#### AUTHORIZATION OF APPROPRIATIONS

Section 16 of act Aug. 7, 1953, provided that: "There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (subchapter)."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 155 of this title; title 16 section 1453; title 28 section 48.

#### § 1332. Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

(Aug. 7, 1953, ch. 345, § 3, 67 Stat. 462.)

#### § 1333. Laws and regulations governing lands

##### (a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the *civil and criminal laws* of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

##### (b) Jurisdiction of United States district courts

The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

##### (c) Applicability of longshoremen's and harbor workers' compensation provisions; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b) of this section, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

##### (d) Applicability of national labor relations provisions

For the purposes of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure.

##### (e) Coast Guard regulations; marking of islands and structures; offenses and penalties

(1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on

the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than \$100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

**(f) Prevention of obstruction to navigation by Secretary of the Army**

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the outer Continental Shelf.

**(g) Provisions as nonexclusive**

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

(Aug. 7, 1953, ch. 345, § 4, 67 Stat. 462; Jan. 3, 1975, Pub. L. 93-627, § 19(f), 88 Stat. 2146.)

**REFERENCES IN TEXT**

Longshoremen's and Harbor Workers' Compensation Act, referred to in subsec. (c), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables volume.

The National Labor Relations Act, as amended, referred to in subsec. (d), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables volume.

**AMENDMENTS**

1975—Subsec. (a)(2), Pub. L. 93-627 substituted "now in effect or hereafter adopted, amended, or repealed" for "as of the effective date of this Act" in first sentence.

**CROSS REFERENCES**

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Oil and gas leases on public lands generally, see section 181 et seq. of Title 30, Mineral Lands and Mining.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1334 of this title; title 33 section 941.

**§ 1334. Administration of leasing**

(a) Rules and regulations; amendment; cooperation with State agencies; violations and penalties; compliance with regulations as condition of lease

(1) The Secretary shall administer the provisions of this subchapter relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter. In the enforcement of conservation laws, rules, and regulations the Secretary is authorized to cooperate with the conservation agencies of the adjacent States. Without limiting the generality of the foregoing provisions of this section, the rules and regulations prescribed by the Secretary thereunder may provide for the assignment or relinquishment of leases, for the sale of royalty oil and gas accruing or reserved to the United States at not less than market value, and, in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production, reduction of rentals or royalties, compensatory royalty agreements, subsurface storage of oil or gas in any of said submerged lands, and drilling or other easements necessary for operations or production.

(2) Any person who knowingly and willfully violates any rule or regulation prescribed by the Secretary for the prevention of waste, the conservation of the natural resources, or the protection of correlative rights shall be deemed guilty of a misdemeanor and punishable by a fine of not more than \$2,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, and each day of violation shall be deemed to be a separate offense. The issuance and continuance in effect of any lease, or of any extension, renewal, or replacement of any lease under the provisions of this subchapter shall be conditioned upon compliance with the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or with the regulations issued under the provisions of section 1335(b)(2) of this title if the lease is maintained under the provisions of section 1335 of this title.

(b) Cancellation of lease; judicial review

(1) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or of the regulations issued under the provisions of section 1335(b)(2) of this title, if the lease is maintained under the provisions of section 1335 of this title, such lease may be canceled by the

Secretary, subject to the right of judicial review as provided in section 1337(j) of this title, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(2) Whenever the owner of any producing lease fails to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter and in force and effect on the date of the issuance of the lease if the lease is issued under the provisions of section 1337 of this title, or of the regulations issued under the provisions of section 1335(b)(2) of this title, hereof, if the lease is maintained under the provisions of section 1335 of this title, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of section 1333(b) of this title.

(c) **Pipeline rights-of-way: forfeiture of grant**

Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this subchapter, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other mineral under such regulations and upon such conditions as to the application therefor and the survey, location and width thereof as may be prescribed by the Secretary, and upon the express condition that such oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from said submerged lands in the vicinity of the pipeline in such proportionate amounts as the Federal Power Commission, in the case of gas, and the Interstate Commerce Commission, in the case of oil, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed thereunder shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of section 1333(b) of this title.

(Aug. 7, 1953, ch. 345, § 5, 67 Stat. 464.)

**KEY LARGO CORAL REEF PRESERVE**

Secretary of the Interior to prescribe rules and regulations governing the protection and conservation of the coral and other mineral resources in the area designated Key Largo Coral Reef Preserve, see Proc. No. 3339, Mar. 15, 1960, 25 F.R. 2352, set out as a note under section 461 of Title 16, Conservation.

**CROSS REFERENCES**

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Oil and gas leases on public lands—

Forfeiture or cancellation of, see section 188 of Title 30, Mineral Lands and Mining.

Rights-of-way for pipe lines, see section 185 of Title 30.

Rules and regulations relating to, see section 189 of Title 30.

Written relinquishment of rights under, see section 187b of Title 30.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1335 of this title.

**§ 1335. Validation and maintenance of prior leases**

(a) **Requirements for validation**

The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from August 7, 1953, or within such further period or periods as provided in section 1336 of this title or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had the authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 1336 of this title hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and August 7, 1953, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after August 7, 1953, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 1338 of this title;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on August 7, 1953;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and August 7, 1953 and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on August 7, 1953;

(10) such lease will terminate within a period of not more than five years from August 7, 1953 in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

**(b) Conduct of operations under lease; sulphur rights**

Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8)-(10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from August 7, 1953 equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 1334 of this title prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however*, That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of this subsection unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date

of expiration of such primary term or extension: *Provided further*, That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this subchapter: *Provided further*, That, if the primary term of a lease being maintained under this subsection has expired prior to August 7, 1953 and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from August 7, 1953 and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

**(c) Nonwaiver of United States claims**

The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or under the lease, or respecting activities conducted under the lease, prior to August 7, 1953.

**(d) Judicial review of determination**

Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

**(e) Lands beneath navigable waters**

In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act [43 U.S.C. 1301 et seq.], as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

(Aug. 7, 1953, ch. 345, § 6, 67 Stat. 465.)

**REFERENCES IN TEXT**

The Submerged Lands Act, referred to in subsec. (e), is act May 22, 1953, ch. 65, 67 Stat. 29, which is classified generally to subchapters I (§ 1301 et seq.) and II (§ 1311 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1334, 1336, 1337 of this title.

**§ 1336. Controversies over jurisdiction; agreements; payments; final settlement or adjudication; approval of notice concerning oil and gas operations in Gulf of Mexico**

In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this subchapter, the Secretary is authorized, notwithstanding the provisions of section 1335(a) and (b) of this title and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State.

its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or non-issuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this subchapter. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 1335(a)(4) of this title. Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this subchapter, the lessee, if he has not already done so, shall comply with the requirements of section 1335(a) of this title, and thereupon the provisions of section 1335(b) of this title shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F.R. 8835), as amended by the notice dated January 26, 1951 (16 F.R. 953), and as supplemented by the notices dated February 2, 1951 (16 F.R. 1203), March 5, 1951 (16 F.R. 2195), April 23, 1951 (16 F.R. 3623), June 25, 1951 (16 F.R. 6404), August 22, 1951 (16 F.R. 8720), October 24, 1951 (16 F.R. 10998), December 21, 1951 (17 F.R. 43), March 25, 1952 (17 F.R. 2821), June 26, 1952 (17 F.R. 5833), and December 24, 1952 (18 F.R. 48), respectively, is approved and confirmed.

(Aug. 7, 1953, ch. 345, § 7, 67 Stat. 467.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1337 of this title.

#### § 1337. Grant of leases by Secretary

(a) **Oil and gas leases; award to highest bidder; method of bidding**

In order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of section 1335(a) of this title. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12½ per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary.

(b) **Terms and provisions of oil and gas leases**

An oil and gas lease issued by the Secretary pursuant to this section shall (1) cover a compact area not exceeding five thousand seven

hundred and sixty acres, as the Secretary may determine, (2) be for a period of five years and as long thereafter as oil or gas may be produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon, (3) require the payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease, and (4) contain such rental provisions and such other terms and provisions as the Secretary may prescribe at the time of offering the area for lease.

(c) **Sulphur leases; award to highest bidder; method of bidding**

In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of section 1335(a) of this title, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(d) **Terms and provisions of sulphur leases**

A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(e) **Other mineral leases; award to highest bidder; terms and conditions**

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(f) **Publication of notices of sale and terms of bidding**

Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(g) **Disposition of revenues**

All moneys paid to the Secretary for or under leases granted pursuant to this section shall be

deposited in the Treasury in accordance with section 1338 of this title.

(h) **Issuance of lease as nonprejudicial to ultimate settlement or adjudication of controversies**

The issuance of any lease by the Secretary pursuant to this subchapter, or the making of any interim arrangements by the Secretary pursuant to section 1336 of this title shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(i) **Cancellation of leases for fraud**

The Secretary may cancel any lease obtained by fraud or misrepresentation.

(j) **Judicial review of cancellation of lease; petition within sixty days**

Any person complaining of a cancellation of a lease by the Secretary may have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review within sixty days after the Secretary takes such action.

(Aug. 7, 1953, ch. 345, § 8, 67 Stat. 468.)

**CROSS REFERENCES**

Oil and gas leases on public lands—

Conditions of, see section 225 of Title 30, Mineral Lands and Mining.

Payment of royalties from, see section 192 of Title 30.

Terms of, see section 223 of Title 30.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1334 of this title.

**§ 1338. Disposition of revenues**

All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

(Aug. 7, 1953, ch. 345, § 9, 67 Stat. 469.)

**CROSS REFERENCES**

Disposition of moneys received from royalties and rentals of public lands, see section 191 of Title 30, Mineral Lands and Mining.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1335, 1337, 1339 of this title; title 16 section 470h.

**§ 1339. Refunds; filing time limitation; certification of repayment; necessity of report to Congress**

(a) Subject to the provisions of subsection (b) of this section, when it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment, or within ninety days after August 7, 1953. The Secretary shall certify the amounts of all such repayments to the Secretary of the Treasury, who is authorized

and directed to make such repayments out of any moneys in the special account established under section 1338 of this title and to issue his warrant in settlement thereof.

(b) No refund or credit for such excess payment shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts upon which the determination of the Secretary was made is submitted to the President of the Senate and the Speaker of the House of Representatives for transmittal to the appropriate legislative committee of each body, respectively: *Provided*, That if the Congress shall not be in session on the date of such submission or shall adjourn prior to the expiration of thirty days from the date of such submission, then such payment or credit shall not be made until thirty days after the opening day of the next succeeding session of Congress.

(Aug. 7, 1953, ch. 345, § 10, 67 Stat. 469.)

**CROSS REFERENCES**

Reduction of royalties under oil and gas leases on public lands, see section 226c of Title 30, Mineral Lands and Mining.

**§ 1340. Geological and geophysical explorations**

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area.

(Aug. 7, 1953, ch. 345, § 11, 67 Stat. 469.)

**§ 1341. Reservation of lands and rights**

(a) **Withdrawal of unleased lands by President**

The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) **First refusal of mineral purchases**

In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) **National security clause**

All leases issued under this subchapter, and leases, the maintenance and operation of which are authorized under this subchapter, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

## (d) National defense areas; suspension of operations; extension of leases

The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

## (e) Source materials essential to production of fissionable materials

All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are reserved for the use of the United States.

## (f) Helium ownership; rules and regulations governing extraction

The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this subchapter, but the helium shall be extracted from such gas so as to cause no substantial delay in the delivery of gas produced to the purchaser of such gas.

(Aug. 7, 1953, ch. 345, § 12, 67 Stat. 469.)

## REFERENCES IN TEXT

Paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, referred to in subsec. (e), is par. (1) of section 5(b) of act Aug. 1, 1946, ch. 724, 60 Stat. 755, which was classified to section 1805 of Title 42, The Public Health and Welfare, prior to the general amendment of the Atomic Energy Act of 1946 by act Aug. 30, 1954, ch. 1073, 68 Stat. 921, known as the Atomic Energy Act of 1954. See section 2014(z) of Title 42.

## KEY LARGO CORAL REEF PRESERVE

Withdrawal of area designated Key Largo Coral Reef Preserve from disposition, see Proc. No. 3339, Mar. 15, 1960, 25 F.R. 2352, set out as a note under section 461 of Title 16, Conservation.

## § 1342. Prior claims as unaffected

Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this subchapter and such

rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this subchapter or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

(Aug. 7, 1953, ch. 345, § 14, 67 Stat. 470.)

## § 1343. Annual report by Secretary to Congress

As soon as practicable after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives a report detailing the amounts of all moneys received and expended in connection with the administration of this subchapter during the preceding fiscal year.

(Aug. 7, 1953, ch. 345, § 15, 67 Stat. 470.)

## CHAPTER 30—ADMINISTRATION OF PUBLIC LANDS

## SUBCHAPTER I—GENERAL PROVISIONS

Sec.

1361 to 1364. Repealed.

## SUBCHAPTER II—SERVICE CHARGES AND EXCESS PAYMENTS

1371 to 1374. Repealed.

## SUBCHAPTER III—DEPOSITS AND FORFEITURES

1381 to 1383. Repealed.

## SUBCHAPTER IV—PUBLIC LAND LAW REVIEW COMMISSION

1391 to 1400. Omitted.

## SUBCHAPTER V—CLASSIFICATION OF LANDS TO PROVIDE FOR DISPOSAL OR INTERIM MANAGEMENT

1411 to 1418. Omitted.

## SUBCHAPTER VI—SALE OF PUBLIC LAND

- 1421. Determinations affecting disposal; size of tracts; valuation.
- 1422. Notification to local zoning authority.
- 1423. Notice of land offerings; publication.
- 1424. Title reservations.
- 1425. Definitions.
- 1426. Sales in Alaska.
- 1427. Termination of authority; exceptions.

## SUBCHAPTER VII—SALE OF PUBLIC LANDS SUBJECT TO UNINTENTIONAL TRESPASS

- 1431. Authority to sell at public auction; 120-acre limit on size of tract.
- 1432. Preference right of contiguous landowners.
- 1433. Continuing liability for unauthorized prior use.
- 1434. Acreage limitation.
- 1435. Expiration date.

## SUBCHAPTER I—GENERAL PROVISIONS

§§ 1361 to 1364. Repealed. Pub. L. 91-579, title VII, § 705(a), Oct. 21, 1976, 90 Stat. 2792

Section 1361, Pub. L. 86-649, § 2, July 14, 1960, 74 Stat. 506, defined the term "public lands".

Section 1362, Pub. L. 86-649, title I, § 101, July 14, 1960, 74 Stat. 506, authorized the Secretary of the In-

Alaska; to indigent, destitute, and homeless persons inmates of hospitals and charitable and eleemosynary institutions, and to such persons when transported by charitable societies or hospitals and the necessary agents employed in such transportation; to newsboys on trains, persons injured in wrecks, and physicians and nurses attending such persons; the interchange of passes for the officers, agents, and employees of common carriers, and their families; and the carrying of passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation is permitted; to receive compensation for the transportation of passengers and property and to perform generally all the usual duties of a common carrier by railroad; to make and establish rules and regulations for the control and operation of said railroad or railroads; in his discretion, to lease the said railroad or railroads, or any portion thereof, including telegraph and telephone lines, after completion under such terms as he may deem proper, but no lease of such railroad or railroads shall be for a longer period than twenty years and no other lease authorized in sections 975 to 975g of this title shall be for a longer period than fifty-five years, or in the event of failure to lease, to operate the same until the further action of Congress. If said railroad or railroads, including telegraph and telephone lines, are leased under the authority given under said sections, then and in that event they shall be operated under the jurisdiction and control of the provisions of the interstate commerce laws; to purchase, condemn, or otherwise acquire upon such terms as he may deem proper, any other line or lines of railroad in Alaska which may be necessary to complete the construction of the line or lines of railroad designated or located by him. The price to be paid in case of purchase shall in no case exceed the actual physical value of the railroads; to make contracts or agreements with any railroad or steamship company or vessel owner for joint transportation of passengers or property over the road or roads herein provided for and such railroad or steamship line or by such vessel, and to make such other contracts as may be necessary to carry out any of the purposes of said sections; to utilize in carrying on the work herein provided for any and all machinery, equipment, instruments, material, and other property of any sort whatsoever used or acquired in connection with the construction of the Panama Canal, so far and as rapidly as the same is no longer needed at Panama, and the successors to the Isthmian Canal Commission are authorized to deliver said property to such officers or persons as the President may designate, and to take credit therefor at such percentage of its original cost as the President may approve, but this amount shall not be charged against the fund provided for in said sections.

(As amended Nov. 1, 1978, Pub. L. 95-565, § 4(a), 92 Stat. 2399.)

#### REFERENCES IN TEXT

The interstate commerce laws, referred to in text, probably mean the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended and supplemented), which was classified generally to chapters 1

(§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 13, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

#### AMENDMENTS

1978—Pub. L. 95-565 added provision authorizing the President to fix relocation, travel and transportation expenses for the General Manager of the railroad.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-565 provided that: "This section (amending this section) shall apply to the General Manager serving on the date of enactment of this section [Nov. 1, 1978] with respect to relocation, travel, or transportation expenses which were incurred before or after the date of enactment of this section."

#### RENTAL OF ALASKA RAILROAD LANDS; REPORT TO CONGRESS

Pub. L. 95-611, § 6, Nov. 8, 1978, 92 Stat. 3090, provided that:

"(a) The Secretary of Transportation shall conduct an investigation and study for purposes of determining equitable rates to be charged for the rental of Alaska Railroad lands. In carrying out such investigation and study, the Secretary shall consider—

"(1) the per centum increase in such rates proposed after 1977 as compared with rates in effect on January 1, 1977;

"(2) the services and the quality thereof provided by the renters of such land and the services and the quality thereof received by such renters from such railroad;

"(3) the burden on commerce which may result from such proposed rate increase; and

"(4) such other factors as may be appropriate.

The Secretary shall report the results of such investigation and study to the Congress not later than one year after the date of enactment of this Act [Nov. 8, 1978].

"(b) Prior to 180 days after the date on which the Secretary's report pursuant to subsection (a) is received by the Congress, rental charges on lands rented by the Alaska Railroad shall not be increased by more than 100 per centum of the amount charged for such land on January 1, 1977."

#### CHAPTER 29—SUBMERGED LANDS

##### SUBCHAPTER III—OUTER CONTINENTAL SHELF LANDS

Sec.

1344. Outer Continental Shelf leasing program (New).

- (a) Schedule of proposed oil and gas lease sales.
- (b) Estimates of appropriations and staff required for management of leasing program.
- (c) Suggestions from Federal agencies and affected State and local governments; submission of proposed program to Governors of affected States and Congress; publication in Federal Register.
- (d) Comments by Attorney General on anticipated effect on competition; comments by State or local governments; submission of program to President and Congress; issuance of leases in accordance with program.
- (e) Review, revision and reapproval of program.
- (f) Procedural regulations for management of program.



- | Sec.  | Sec.   |
|-------|--|
|       | (g) Information from public and private sources; confidentiality of classified or privileged data.   |
|       | (h) Information from all Federal departments and agencies; confidentiality of privileged or proprietary information.   |
| 1345. | Coordination and consultation with affected State and local governments (New).   |
|       | (a) Recommendations regarding size, time or location of proposed lease sales.  |
|       | (b) Time for submission of recommendations.  |
|       | (c) Acceptance or rejection of recommendations.  |
|       | (d) Finality of acceptance or rejection of recommendations.  |
|       | (e) Cooperative agreements.  |
| 1346. | Environmental studies (New).   |
|       | (a) Information for assessment and management of impacts on environment; time for study; impacts on marine biota from pollution or large spills.   |
|       | (b) Additional studies subsequent to leasing and development of area.  |
|       | (c) Procedural regulations for conduct of studies; cooperation with affected States; utilization of information from Federal, State and local governments and agencies.  |
|       | (d) Consideration of relevant environmental information in developing regulations, lease conditions and operating orders.  |
|       | (e) Assessment of cumulative effects of activities on environment; submission to Congress.   |
|       | (f) Utilization of capabilities of Department of Commerce.   |
| 1347. | Safety and health regulations (New).   |
|       | (a) Joint study of adequacy of existing safety and health regulations; submission to President and Congress.   |
|       | (b) Use of best available and safest economically feasible technologies.   |
|       | (c) Regulations applying to unregulated hazardous working conditions.  |
|       | (d) Application of other laws.   |
|       | (e) Studies of underwater diving techniques and equipment.   |
|       | (f) Coordination and consultation with Federal departments and agencies; availability to interested persons of compilation of safety regulations.  |
| 1348. | Enforcement of safety and environmental regulations (New).   |
|       | (a) Utilization of Federal departments and agencies.   |
|       | (b) Duties of holders of lease or permit.  |
|       | (c) Onsite inspection of facilities.   |
|       | (d) Investigation and report on major fires, oil spills, death or serious injury.  |
|       | (e) Review of allegations of violations.   |
|       | (f) Summoning of witnesses and production of evidence.   |
|       | (g) Report to Congress of violations and action taken.   |
| 1349. | Citizens suits, jurisdiction and judicial review (New).  |
|       | (a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security.   |
|       | (b) Jurisdiction and venue of actions.   |
|       | (c) Review of Secretary's approval of leasing program; review of approval, modification or disapproval of exploration or production plan; persons who may seek review; scope of review; certiorari to Supreme Court. |
|       | (d) Expedition of actions.   |
| 1350. | Remedies and penalties (New).  |
|       | (a) Injunctions, restraining orders, etc.  |
|       | (b) Civil penalties; hearing.  |
|       | (c) Criminal penalties.  |
|       | (d) Liability of corporate officers and agents for violations by corporation.  |
|       | (e) Concurrent and cumulative nature of penalties.   |
| 1351. | Oil and gas development and production (New).  |
|       | (a) Development and production plans; submission to Secretary; statement of facilities and operation; submission to Governors of affected States and local governments.  |
|       | (b) Development and production activities in accordance with plan as lease requirement.  |
|       | (c) Scope and contents of plan.  |
|       | (d) State concurrence in land or water zone use in coastal zone of State.  |
|       | (e) Declaration of approval of development and production plan as major Federal action; submission of preliminary or final lease plans prior to commencement of National Environmental Policy provisions procedures. |
|       | (f) Plans considered major Federal actions; submission of draft environmental impact statement to Governors of affected States and local governments.  |
|       | (g) Plans considered nonmajor Federal actions; comments and recommendations from States.   |
|       | (h) Approval, disapproval or modification of plan; re-application; periodic review.  |
|       | (i) Approval of revision of approved plan.   |
|       | (j) Cancellation of lease on failure to submit plan or comply with approved plan.  |
|       | (k) Production and transportation of natural gas; submission of plan to Federal Energy Regulatory Commission; impact statement.  |
|       | (l) Application of provisions to leases in Gulf of Mexico.   |
| 1352. | Oil and gas information program (New).   |
|       | (a) Access to data and information obtained by lessee or permittee from oil or gas exploration, etc., data obtained by Federal department or agency from geological and geophysical explorations.                    |
|       | (b) Processing, analyzing and interpreting information; availability of summary of data to affected States and local government.   |
|       | (c) Confidentiality of information; regulations.   |
|       | (d) Transmittal of information to affected State; protection of competitive position.  |
|       | (e) Agreement with State to waive defenses and hold United States harmless from failure to maintain confidentiality of information.  |

- Sec.
- (f) Civil action against United States or State for failure to maintain confidentiality of information; certain defenses unavailable.
- (g) Preemption of State law by Federal law.
- (h) Failure by State to comply with regulations; withholding of information.
1353. Federal purchase and disposition of oil and gas (New).
- (a) Payment of royalties or net profit shares in oil and gas; purchase of oil and gas by United States; transfer of title to Federal agencies.
- (b) Sale of oil by United States to public; disposition of oil to small refiners; application of other laws.
- (c) Sale of gas by United States to public.
- (d) Purchase by lessee of Federal oil or gas for which no bids received.
- (e) Definitions.
- (f) Purchase of oil and gas in time of war.
1354. Limitations on export of oil or gas (New).
- (a) Application of Export Administration provisions.
- (b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas.
- (c) Report of findings by President to Congress; joint resolution of disagreement with findings of President.
- (d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation.
1355. Restrictions on employment of former officers or employees of the Department of the Interior (New).
1356. Documentary, registry and manning requirements (New).
- (a) Regulations.
- (b) Exceptions from design, construction, alteration and repair requirements.
- (c) Exceptions from manning requirements.

### SUBCHAPTER I—GENERAL PROVISIONS

#### § 1301. Definitions

##### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1331, 1340, 1811 of this title; title 16 section 1432.

### SUBCHAPTER III—OUTER CONTINENTAL SHELF LANDS

##### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 156, 1811, 1813, 1815, 1842, 1861, 1863, 1864, 1866; title 16 sections 460l-5; 470h, 471i, 1456; 1456a; title 29 sections 213, 302, 402, 630, 653, 1002; title 33 sections 941, 1321, 1503; title 41 section 357; title 42 sections 2000e, 7152.

#### § 1331. Definitions

When used in this subchapter—

[See main edition for text of (a)]

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this subchapter transferred to, or vested in, the Secretary of Energy or the

Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term "lease" means any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 1454(b)(1) of title 16;

(f) The term "affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this subchapter, any State—

(1) the laws of which are declared, pursuant to section 1333(a)(2) of this title, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 1333(a)(1) of this title;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil

<sup>1</sup>So in original. Probably should be "accordance."

or gas from vessels, pipelines, or other transportation facilities:

(g) The term "marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term "coastal environment" means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term "human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this subchapter;

(k) The term "exploration" means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term "development" means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term "antitrust law" means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a

lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 4332(2)(C) of title 42; and

(q) The term "minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 1702 of this title.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 201, 92 Stat. 632.)

#### REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsec. (b), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, which is classified principally to chapter 84 (47101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

The Sherman Act, referred to in subsec. (n)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which enacted sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in subsec. (n)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (n)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter 1 (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Wilson Tariff Act, referred to in subsec. (n)(4), is act Aug. 27, 1894, ch. 349, §§ 73 to 77, 28 Stat. 570, as amended. Sections 73 to 76 enacted sections 8 to 11 of Title 15, Commerce and Trade. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

The Act of June 19, 1936, chapter 592, referred to in subsec. (n)(5), is act June 19, 1936, ch. 592, 49 Stat. 1526, as amended, popularly known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

#### AMENDMENTS

1978—Subsec. (b), Pub. L. 95-372, § 201(a), added provision that, with respect to functions under this sub-

chapter transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act, the term "Secretary" means the Secretary of Energy or the Federal Energy Regulatory Commission, as the case may be.

Subsec. (c), Pub. L. 95-372, § 201(a), substituted "lease" for "mineral lease" as the term defined and in the definition of that term substituted "any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;" for "any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and".

Subsec. (d), Pub. L. 95-372, § 201(b)(1), substituted a semicolon for a period.

Subsecs. (e) to (q), Pub. L. 95-372, § 201(b)(2), added subsecs. (e) to (q).

#### SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-372 as the "Outer Continental Shelf Lands Act Amendments of 1978", see Short Title of 1978 Amendment note set out under section 1801 of this title.

#### TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 1152(b) of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155, 1811, 1865 of this title; title 15 section 3301; title 16 section 1453; title 26 section 48.

#### § 1332. Congressional declaration of policy

It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

(2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts; and

(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 202, 92 Stat. 634.)

#### AMENDMENTS

1978—Pub. L. 95-372 redesignated subsecs. (a) and (b) as pars. (1) and (2) and added pars. (3) to (6).

#### § 1333. Laws and regulations governing lands

(a) Constitution and United States laws: laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures

erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for settling any outstanding international boundary dispute respecting the outer Continental Shelf.

[See main edition for text of (3)]

**(b) Longshoremen's and Harbor Workers' Compensation Act applicable; definitions**

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

**(c) National Labor Relations Act applicable**

For the purposes of the National Labor Relations Act, as amended, [29 U.S.C. 151 et seq.] any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, *except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.*

**(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations**

(1) The Secretary of the Department in which the Coast Guard is operating shall have

authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

**(e) Authority of Secretary of the Army to prevent obstruction to navigation**

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

**(f) Provisions as nonexclusive**

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

**(g) Redesignated (f)**

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 203; 92 Stat. 635.)

**REFERENCES IN TEXT**

Longshoremen's and Harbor Workers' Compensation Act, referred to in subsec. (b), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

The National Labor Relations Act, as amended, referred to in subsec. (c), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

**AMENDMENTS**

1978—Subsec. (a)(1), Pub. L. 95-372, § 203(a), substituted "and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources," for "and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom."

Subsec. (a)(2), Pub. L. 95-372, § 203(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b), Pub. L. 95-372, § 203(c), (h), redesignated former subsec. (c) as (b), and in subsec. (b) as so redesignated.

<sup>1</sup>So in original. Probably should be "settling".

ignated, substituted "conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf," for "described in subsection (b) of this section." Former subsec. (b), relating to the jurisdiction of United States district courts over cases and controversies arising out of or in connection with operations conducted on the outer Continental Shelf, was struck out. See section 1349(b) of this title.

Subsec. (c). Pub. L. 95-372, § 203(d), (h), redesignated former subsec. (d) as (c), and in subsec. (c) as so redesignated, substituted "artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device" for "artificial island or fixed structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island or structure". Former subsec. (c) redesignated (b).

Subsec. (d)(1). Pub. L. 95-372, § 203(e)(1), (f), (h), redesignated former subsec. (e)(1) as (d)(1), and in subsec. (d)(1) as so redesignated, substituted "Secretary" for "head" and "artificial islands, installations, and other devices" for "islands and structures". Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 95-372, § 203(g), (h), redesignated former subsec. (e)(2) as (d)(2), and in subsec. (d)(2) as so redesignated, substituted "Secretary" for "head" and "artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking" for "such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof", and struck out provisions which had made failure or refusal to obey any lawful rules and regulations a misdemeanor punishable by a fine of not more than \$100, with each day during which such a violation would continue to be deemed a new offense. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95-372, § 203(e)(2), (h), redesignated former subsec. (f) as (e), and in subsec. (e) as so redesignated, substituted "the artificial islands, installations, and other devices referred to in subsection (a) of this section" for "artificial islands and fixed structures located on the outer Continental Shelf". Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 95-372, § 203(e)(3), (h), redesignated former subsec. (g) as (f), and in subsec. (f) as so redesignated, substituted "the artificial islands, installations, and other devices" for "the artificial islands and fixed structures". Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 95-372, § 203(h), redesignated former subsec. (g) as (f).

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1347, 1351 of this title; title 33 section 941.

#### § 1331. Administration of leasing

(a) Rules and regulations; amendment; cooperation with State agencies; subject matter and scope of regulations

The Secretary shall administer the provisions of this subchapter relating to the leasing of the

outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views, the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment, and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit;

(2) with respect to cancellation of any lease or permit—

(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit force;

(B) that such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease or permit term continuously for a period of five years, or for a lesser period upon request of the lessee;

(C) that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (I) with respect to leases issued before September 18, 1978, such compensation shall be equal to the amount specified in clause (i) of this subparagraph; and (II) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question;

(3) for the assignment or relinquishment of a lease;

(4) for unitization, pooling, and drilling agreements;

(5) for the subsurface storage of oil and gas other than by the Federal Government;

(6) for drilling or easements necessary for exploration, development, and production;

(7) for the prompt and efficient exploration and development of a lease area; and

(8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this subchapter significantly affect the air quality of any State.

(b) Compliance with regulations as condition for issuance, continuation, assignment, or other transfer of leases

The issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this subchapter shall be conditioned upon compliance with regulations issued under this subchapter.

(c) Cancellation of nonproducing lease

Whenever the owner of a nonproducing lease fails to comply with any of the provisions of

this subchapter, or of the lease, or of the regulations issued under this subchapter, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this subchapter, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(d) Cancellation of producing lease

Whenever the owner of any producing lease fails to comply with any of the provisions of this subchapter, of the lease, or of the regulations issued under this subchapter, such lease may be forfeited and canceled by an appropriate proceeding in any United States district court having jurisdiction under the provisions of this subchapter.

(e) Pipeline rights-of-way; forfeiture of grant

Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this subchapter, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial and upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this subchapter.

(f) Competitive principles governing pipeline operation

(1) Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:

(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

(B) Upon the specific request of one or more owner or nonowner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the

costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after September 18, 1978. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(2) The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

(3) The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

(4) Nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf.

(g) Rates of production

(1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary of Energy which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

(h) Federal action affecting outer Continental Shelf; notification; recommended changes

The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter recommend such changes in such action as are considered appropriate.

(i) Flaring of natural gas

After September 18, 1978, no holder of any oil and gas lease issued or maintained pursuant to this subchapter shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 204, 92 Stat. 636.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(8), is Act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-372 expanded provisions formerly contained in subsec. (a)(1) so as to include therein the enforcement of safety and environmental laws and regulations, consultation with the Attorney General and the Federal Trade Commission, and regulations for the suspension or temporary prohibition of any operation or activity including production, the cancellation of leases or permits, the prompt and efficient exploration and development of a lease area, and compliance with the national ambient air quality standards to the extent that activities authorized significantly affect the air quality of any State.

Subsec. (b). Pub. L. 95-372 redesignated as subsec. (b) provisions formerly contained in subsec. (a)(2) conditioning the issuance and continuation of leases or of assignments or other transfers of leases upon compliance with regulations, and struck out provisions that had set a penalty of a fine of not more than \$2,000 or imprisonment for not more than six months or both for the knowing and willful violation of rules or regulations promulgated by the Secretary. See section 1350 of this title.

Subsec. (c). Pub. L. 95-372 redesignated as subsec. (c) provisions formerly contained in subsec. (b)(1) covering the cancellation of nonproducing leases for failure of the owner to comply with any of the provisions of this subchapter, or of the lease, or of the regulations issued under this subchapter.

Subsec. (d). Pub. L. 95-372 redesignated as subsec. (d) provisions formerly contained in subsec. (b)(2) covering the cancellation and forfeiture of producing leases for failure of the owner to comply with any of the provisions of this subchapter, the lease, or regulations promulgated under this subchapter.

Subsec. (e). Pub. L. 95-372 redesignated as subsec. (e) provisions formerly contained in subsec. (c) relating to pipeline rights-of-way and added provisions relating to regulations prescribed by the Secretary of Transportation and assurances of maximum environmental protection through the use of the best available and safest technologies including the safest practices for pipeline burial, and substituted references to the Federal Energy Regulatory Commission and the Secretary of Energy for existing references to the Federal Power Commission and the Interstate Commerce Commission.

Subsecs. (f) to (i). Pub. L. 95-372 added subsecs. (f) to (i).

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which

<sup>1</sup>So in original. Probably should be "lessee".



relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1337, 1340, 1351 of this title.

#### §1335. Validation and maintenance of prior leases

##### TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior that relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1336, 1337, 1353 of this title.

#### §1336. Controversies over jurisdiction; agreements; payments; final settlement or adjudication; approval of notice concerning oil and gas operations in Gulf of Mexico

##### TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior that relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1335, 1337, 1353 of this title.

#### §1337. Grant of leases by Secretary

(a) Oil and gas leases; award to highest responsible qualified bidder; method of bidding; Congressional consideration of bidding system; notice; annual report to Congress

(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 1335 of this title. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his

decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold; or

(H) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this subchapter, except that no such bidding system or modification shall have more than one bid variable.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

(3) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes

a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the *President of the Senate or the Speaker of the House of Representatives*, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the

resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

(5)(A) During the five-year period commencing on September 18, 1978, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this subchapter, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this subchapter.

(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on September 18, 1978, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this subchapter.

(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—

(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with

regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, re-drilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and areal extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

(C) If at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

(9) Within six months after the end of each fiscal year, the Secretary of Energy, in consultation with the Secretary of the Interior, shall report to the Congress with respect to the use of various bidding options provided for in this subsection. Such report shall include—

(A) the schedule of all lease sales held during such year and the bidding system or systems utilized;

(B) the schedule of all lease sales to be held the following year and the bidding system or systems to be utilized;

(C) the benefits and costs associated with conducting lease sales using the various bidding systems;

(D) if applicable, the reasons why a particular bidding system has not been or will not be utilized; and

(E) if applicable, the reasons why more than 60 per centum or less than 20 per centum of the area leased in the past year, or to be offered for lease in the upcoming year, was or is to be leased under the bidding

system authorized by subparagraph (A) of paragraph (1) of this subsection.

(b) Terms and provisions of oil and gas leases

An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of—

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions,

and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this subchapter;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 1334 of this title;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.].

(c) Antitrust review of lease sales

(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to con-

duct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

(4)(A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

(d) **Due diligence**

No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.

(e) **Secretary's approval for sale, exchange, assignment, or other transfer of leases**

No lease issued under this subchapter may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

(f) **Antitrust immunity or defenses**

Nothing in this subchapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(g) **Leasing of lands within three miles of seaward boundaries of coastal States**

(1) At the time of soliciting nominations for the leasing of lands within three miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of such State—

(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

(B) all information concerning the geographical, geological, and ecological characteristics of such regions;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) an identification of any field, geological structure, or trap located within three miles

of the seaward boundary of such coastal State.

(2) After receipt of nominations for any area of the outer Continental Shelf within three miles of the seaward boundary of any coastal State, the Secretary shall inform the Governor of such coastal State of any such area which the Secretary believes should be given further consideration for leasing. The Secretary, in consultation with the Governor of the coastal State, shall then, determine whether any such area may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State. If, with respect to such area, the Secretary selects a tract or tracts which may contain one or more oil or gas pools or fields underlying both the outer Continental Shelf and lands subject to the jurisdiction of such State, the Secretary shall offer the Governor of such coastal State the opportunity to enter into an agreement concerning the disposition of revenues which may be generated by a Federal lease within such area in order to permit their fair and equitable division between the State and Federal Government.

(3) Within ninety days after the offer by the Secretary pursuant to paragraph (2) of this subsection, the Governor shall elect whether to enter into such agreement and shall notify the Secretary of his decision. If the Governor accepts the offer, the terms of any lease issued shall be consistent with the provisions of this subchapter, with applicable regulations, and, to the maximum extent practicable, with the applicable laws of the coastal State. If the Governor declines the offer, or if the parties cannot agree to terms concerning the disposition of revenues from such lease (by the time the Secretary determines to offer the area for lease), the Secretary may nevertheless proceed with the leasing of the area.

(4) Notwithstanding any other provision of this subchapter, the Secretary shall deposit in a separate account in the Treasury of the United States all bonuses, royalties, and other revenues attributable to oil and gas pools underlying both the outer Continental Shelf and submerged lands subject to the jurisdiction of any coastal State until such time as the Secretary and the Governor of such coastal State agree on, or if the Secretary and the Governor of such coastal State cannot agree, as a district court of the United States determines, the fair and equitable disposition of such revenues and any interest which has accrued and the proper rate of payments to be deposited in the treasuries of the Federal Government and such coastal State.

(h) **State claims to jurisdiction over submerged lands**

Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.

(i) **Sulphur leases; award to highest bidder; method of bidding**

In order to meet the urgent need for further exploration and development of the sulphur de-

<sup>1</sup>So in original. The comma probably should not appear.

posits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of section 1335(a) of this title, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

**(j) Terms and provisions of sulphur leases**

A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

**(k) Other mineral leases: award to highest bidder; terms and conditions**

The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

**(l) Publication of notices of sale and terms of bidding**

Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

**(m) Disposition of revenues**

All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 1338 of this title.

**(n) Issuance of lease as nonprejudicial to ultimate settlement or adjudication of controversies**

The issuance of any lease by the Secretary pursuant to this subchapter, or the making of any interim arrangements by the Secretary pursuant to section 1336 of this title shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

**(o) Cancellation of leases for fraud**

The Secretary may cancel any lease obtained by fraud or misrepresentation.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 205(a), (b), 92 Stat. 640, 644.)

**REFERENCES IN TEXT**

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (b)(7), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

The antitrust laws, referred to in subsecs. (c)(3), (4)(B) and (f), are defined in section 1331 of this title.

**AMENDMENTS**

1978—Subsec. (a), Pub. L. 95-372, § 205(a), designated existing provisions as par. (1)(A) and (B), and in par. (1) as so redesignated, deleted provisions which restricted authority of Secretary to grant oil and gas leases to situations involving the urgent need for further exploration and development of oil and gas deposits of the submerged lands of the outer Continental Shelf and added provisions permitting the promulgation of regulations for the deposit of cash bids in interest-bearing accounts until the Secretary announces his decision on whether to accept the bids with the earned interest paid either to the Treasury or to unsuccessful bidders, in par. (1)(B) as so redesignated, substituted provisions relating to variable royalty bids based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount covering exploration or a fixed cash bonus as determined by the Secretary or both for provisions relating to straight royalty bids at not less than 12½ per centum with a cash bonus fixed by the Secretary, and added Pars. (1)(C) to (H) and pars. (2) to (9).

Subsec. (b), Pub. L. 95-372, § 205(a), redesignated cls. (1) to (4) as pars. (1), (2), (3), and (8) respectively, added pars. (4), (5), and (7), and in par. (1) as so redesignated, added provisions authorizing the Secretary to lease tracts larger than 5760 acres if a larger area is necessary to comprise a reasonable economic production unit and in par. (2) as so redesignated, added provision to allow up to a 10 year initial period if the longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions, and in par. (3) as so redesignated, substituted "payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section" for "payment of a royalty of not less than 12½ per centum, in the amount or value of the production saved, removed, or sold from the lease".

Subsecs. (c) to (h), Pub. L. 95-372, § 205(b), added subsecs. (c) to (h). Former subsecs. (c) to (h) redesignated (i) to (n).

Subsec. (i), Pub. L. 95-372, § 205(b), redesignated former subsec. (c) as (i). Former subsec. (i) redesignated (o).

Subsec. (j), Pub. L. 95-372, § 205(b), redesignated former subsec. (d) as (j). Former subsec. (j), which provided that any person complaining of the cancellation of a lease by the Secretary could have the Secretary's action reviewed in the United States District Court for the District of Columbia by filing a petition for review, was struck out. See section 1349 of this title.

Subsecs. (k) to (o), Pub. L. 95-372, § 205(b), redesignated former subsecs. (e) to (i) as (k) to (o), respectively.

**TRANSFER OF FUNCTIONS**

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in

kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1331, 1343 of this title.

**§ 1310. Geological and geophysical explorations**

**(a) Approved exploration plans**

(1) Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this subchapter, and which are not unduly harmful to aquatic life in such area.

(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this subchapter.

**(b) Oil and gas exploration**

Except as provided in subsection (f) of this section, beginning ninety days after September 18, 1978, no exploration pursuant to any oil and gas lease issued or maintained under this subchapter may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

**(c) Plan approval; State concurrence; plan provisions**

(1) Except as otherwise provided in this subchapter, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this subchapter, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this subchapter, regulations prescribed under this subchapter, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 1334(a)(2)(A)(i) of this title, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 1334(a)(2)(B) of this title, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 1334(a)(2)(C)(i) or (ii) of this title.

(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use

or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 1455 of title 16, unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 1456(c)(3)(B)(i) or (ii) of title 16, or the Secretary of Commerce makes the finding authorized by section 1456(c)(3)(B)(iii) of title 16.

(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be undertaken;

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled; and

(D) such other information deemed pertinent by the Secretary.

(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

**(d) Drilling permit**

The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

**(e) Plan revisions; conduct of exploration activities**

(1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

**(f) Drilling permits issued and exploration plans approved within 90-day period after September 18, 1978**

(1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after September 18, 1978, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 1334(a)(1)(B) of this title, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan.

(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c)(4) of this section, or to submit other information.

(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies.

**(g) Determinations requisite to issuance of permits**

Any permit for geological explorations authorized by this section shall be issued only if

So in original. Probably should be "undertaken".

the Secretary determines, in accordance with regulations issued by the Secretary, that—

- (1) the applicant for such permit is qualified;
- (2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this subchapter; and
- (3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

**(h) Lands beneath navigable waters adjacent to Point Reyes Wilderness**

The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 1301 of this title) of such State which are adjacent to such Wilderness.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 206, 92 Stat. 647.)

**AMENDMENTS**

1978—Pub. L. 95-372 designated existing provisions as subsec. (a)(1) and added subsec. (a)(2) and subsecs. (b) to (h).

**TRANSFER OF FUNCTIONS**

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1352 of this title.

**§ 1341. Reservation of lands and rights**

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1353 of this title.

**§ 1343. Annual report by Secretary to Congress**

Within six months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives the following reports:

- (1) A report on the leasing and production program in the outer Continental Shelf during such fiscal year, which shall include—
  - (A) a detailed accounting of all moneys received and expended;

- (B) a detailed accounting of all exploration, exploratory drilling, leasing, development, and production activities;

- (C) a summary of management, supervision, and enforcement activities;

- (D) a list of all shut-in and flaring wells; and

- (E) recommendations to the Congress (i) for improvements in management, safety, and amount of production from leasing and operations in the outer Continental Shelf, and (ii) for resolution of jurisdictional conflicts or ambiguities.

(2) A report prepared after consultation with the Attorney General, with recommendations for promoting competition in the leasing of outer Continental Shelf lands, which shall include any recommendations or findings by the Attorney General and any plans for implementing recommended administrative changes and drafts of any proposed legislation, and which shall contain—

- (A) an evaluation of the competitive bidding systems permitted under the provisions of section 1337 of this title, and, if applicable, the reasons why a particular bidding system has not been utilized;

- (B) an evaluation of alternative bidding systems not permitted under section 1337 of this title, and why such system or systems should or should not be utilized;

- (C) an evaluation of the effectiveness of restrictions on joint bidding in promoting competition and, if applicable, any suggested administrative or legislative action on joint bidding;

- (D) an evaluation of present measures and a description of any additional measures to encourage entry of new competitors; and

- (E) an evaluation of present measures and a description of additional measures dealing with supplies of oil and gas to independent refiners and distributors.

(As amended Sept. 18, 1978, Pub. L. 95-372, title II, § 207, 92 Stat. 648.)

**AMENDMENTS**

1978—Pub. L. 95-372 substituted provisions spelling out in detail the contents of reports to be filed with the President of the Senate and the Speaker of the House for provisions requiring only a single report detailing the amounts of all moneys received and expended in connection with the administration of this subchapter during the preceding fiscal year.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1348 of this title.

**§ 1344. Outer Continental Shelf leasing program**

**(a) Schedule of proposed oil and gas lease sales**

The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this subchapter. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet na-

tional energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deep-water ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

(b) Estimates of appropriations and staff required for management of leasing program

The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may

be compiled under the authority of this subchapter;

(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this subchapter and with section 4332(2)(C) of title 42; and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirements of applicable law and regulations, and with the terms of the lease.

(c) Suggestions from Federal agencies and affected State and local governments; submission of proposed program to Governors of affected States and Congress; publication in Federal Register

(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and the Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(3) Within nine months after September 18, 1978, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

(d) Comments by Attorney General on anticipated effect on competition; comments by State or local governments; submission of program to President and Congress; issuance of leases in accordance with program

(1) Within ninety days after the date of publication of a proposed leasing program, the At-



torney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following September 18, 1978, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this subchapter.

**(e) Review, revision, and reapproval of program**

The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed.

**(f) Procedural regulations for management of program**

The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 1454 or section 1455 of title 16.

Such procedures shall be applicable to any significant revision or reapproval of the leasing program.

**(g) Information from public and private sources; confidentiality of classified or privileged data**

The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making

other evaluations required by this subchapter. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties.

**(h) Information from all Federal departments and agencies; confidentiality of privileged or proprietary information**

The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged<sup>1</sup> or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

(Aug. 7, 1953, ch. 345, § 18, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 649.)

**TRANSFER OF FUNCTIONS**

The functions of the Secretary of the Interior to promulgate regulations under this subchapter which relate to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1349 of this title.

**§ 1345. Coordination and consultation with affected State and local governments**

**(a) Recommendations regarding size, time, or location of proposed lease sales**

Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regarding the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

<sup>1</sup>So in original. Probably should be "nonprivileged".

**(b) Time for submission of recommendations**

Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

**(c) Acceptance or rejection of recommendations**

The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this subchapter. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

**(d) Finality of acceptance or rejection of recommendations**

The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 1349 of this title, unless found to be arbitrary or capricious.

**(e) Cooperative agreements**

The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this subchapter and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 1352 of this title), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

(Aug. 7, 1953, ch. 345, § 19, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 652.)

**§ 1346. Environmental studies****(a) Information for assessment and management of impacts on environment; time for study; impacts on marine biota from pollution or large spills**

(1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Conti-

ental Shelf and the coastal areas which may be affected by oil and gas development in such area or region.

(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after September 18, 1978, with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before September 18, 1978, and not later than six months prior to the holding of a lease sale with respect to any area or region where no lease sale has been held or scheduled before September 18, 1978. The Secretary may utilize information collected in any study prior to September 18, 1978.

(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

**(b) Additional studies subsequent to leasing and development of area**

Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

**(c) Procedural regulations for conduct of studies; cooperation with affected States; utilization of information from Federal, State and local governments and agencies**

The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

**(d) Consideration of relevant environmental information in developing regulations, lease conditions and operating orders**

The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

**(e) Assessment of cumulative effects of activities on environment; submission to Congress**

As soon as practicable after the end of each fiscal year, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this subchapter on the human, marine, and coastal environments.

**(f) Utilization of capabilities of Department of Commerce**

In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into contracts or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this subchapter.

(Aug. 7, 1953, ch. 345, § 20, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 653.)

**§ 1337. Safety and health regulations**

**(a) Joint study of adequacy of existing safety and health regulations; submission to President and Congress**

Upon September 18, 1978, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.

**(b) Use of best available and safest economically feasible technologies**

In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 1333(a)(1) of this title, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a

significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

**(c) Regulations applying to unregulated hazardous working conditions**

The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the outer Continental Shelf.

**(d) Application of other laws**

Nothing in this subchapter shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.

**(e) Studies of underwater diving techniques and equipment**

The Secretary of Commerce, in cooperation with the Secretary of the Department in which the Coast Guard is operating, and the Director of the National Institute of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety and improvement of diver performance. Such studies shall include, but need not be limited to, decompression and excursion table development and improvement and all aspects of diver physiological restraints and protective gear for exposure to hostile environments.

**(f) Coordination and consultation with Federal departments and agencies; availability to interested persons of compilation of safety regulations**

(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the outer Continental Shelf. Such compilation shall be revised and updated annually.

(Aug. 7, 1953, ch. 345, § 21, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 654.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1334, 1348 of this title.

**§ 1348. Enforcement of safety and environmental regulations**

**(a) Utilization of Federal departments and agencies**

The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this subchapter. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

**(b) Duties of holders of lease or permit**

It shall be the duty of any holder of a lease or permit under this subchapter to—

(1) *maintain all places of employment* within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

(2) *maintain all operations* within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

(3) *allow prompt access*, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

**(c) Onsite inspection of facilities**

The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

(1) *scheduled onsite inspection*, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this subchapter, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) *periodic onsite inspection* without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

**(d) Investigation and report on major fires, oil spills, death, or serious injury**

(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this subchapter, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases or permits issued or main-

tained under this subchapter shall cooperate with the appropriate Secretary in the course of any such investigation.

(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this subchapter, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this subchapter shall cooperate with the appropriate Secretary in the course of any such investigation.

**(e) Review of allegations of violations**

The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this subchapter.

**(f) Summoning of witnesses and production of evidence**

In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

**(g) Report to Congress of violations and action taken**

The Secretary shall, after consultation with the Secretary of the Department in which the Coast Guard is operating, include in his annual report to the Congress required by section 1343 of this title the number of violations of safety regulations reported or alleged, any investigations undertaken, the results of such investigations, and any administrative or judicial action taken as a result of such investigations, and the results of the diving studies conducted under section 1347(e) of this title.

(Aug. 7, 1953, ch. 345, § 22, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 655.)

**REPORT AND RECOMMENDATIONS BY SECRETARY TO CONGRESS FOR TRAINING PROGRAM**

Pub. L. 95-372, title VI, § 607, Sept. 18, 1978, 92 Stat. 697, required the Secretary of the Interior, in consultation with the Secretary of the Department in which the Coast Guard is operating, not later than ninety days after Sept. 18, 1978, to prepare and submit to the Congress a training program report concerning individuals employed on any artificial island, installation, or other device located on the Outer Continental Shelf and who, as part of their employment, operate or supervise the operation of pollution-prevention equipment.

## § 1349. Citizens suits, jurisdiction and judicial review

(a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security

(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subchapter against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this subchapter or any regulation promulgated under this subchapter, or of the terms of any permit or lease issued by the Secretary under this subchapter.

(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this subchapter, or any regulation promulgated under this subchapter, or the terms of any permit or lease issued by the Secretary under this subchapter, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any

other Act or common law to seek appropriate relief.

(b) Jurisdiction and venue of actions

(1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this subchapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

(c) Review of Secretary's approval of leasing program; review of approval, modification or disapproval of exploration or production plan; persons who may seek review; scope of review; certiorari to Supreme Court

(1) Any action of the Secretary to approve a leasing program pursuant to section 1344 of this title shall be subject to judicial review only in the United States Court of Appeals<sup>1</sup> for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this subchapter shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this subchapter and any additional information upon which the Secretary based his decision, as required by section 2112 of title

<sup>1</sup>So in original. Probably should be "Appeals".

28. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

**(d) Expedition of actions**

Except as to causes of action which the court considers of greater importance, any action under this section shall take precedence on the docket over all other causes of action and shall be set for hearing at the earliest practical date and expedited in every way.

(Aug. 7, 1953, ch. 345, § 23, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 657.)

**REFERENCES IN TEXT**

The Federal Rules of Civil Procedure, referred to in subsec. (a)(5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1345 of this title.

**§ 1350. Remedies and penalties**

**(a) Injunctions, restraining orders, etc.**

At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this subchapter, any regulation or order issued under this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter.

**(b) Civil penalties; hearing**

If any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$10,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall

be assessed until the person charged with a violation has been given an opportunity for a hearing.

**(c) Criminal penalties**

Any person who knowingly and willfully (1) violates any provision of this subchapter, any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under the authority of this subchapter designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this subchapter, or (4) reveals any data or information required to be kept confidential by this subchapter shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

**(d) Liability of corporate officers and agents for violations by corporation**

Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

**(e) Concurrent and cumulative nature of penalties**

The remedies and penalties prescribed in this subchapter shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this subchapter shall be in addition to any other remedies and penalties afforded by any other law or regulation.

(Aug. 7, 1953, ch. 345, § 24, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 659.)

**§ 1351. Oil and gas development and production**

**(a) Development and production plans; submission to Secretary; statement of facilities and operation; submission to Governors of affected States and local governments**

(1) Prior to development and production pursuant to an oil and gas lease issued after September 18, 1978, in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to September 18, 1978, in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to September 18, 1978, the lessee shall submit a development and production plan (hereinafter in this section referred to as a "plan") to the Secretary, for approval pursuant to this section.

(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement, shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

**(b) Development and production activities in accordance with plan as lease requirement**

After September 18, 1978, no oil and gas lease may be issued pursuant to this subchapter in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

**(c) Scope and contents of plan**

A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

(1) the specific work to be performed;

(2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee or known by him (whether or not owned or operated by such lessee) to be directly related to the proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;

(3) the environmental safeguards to be implemented on the outer Continental Shelf and how such safeguards are to be implemented;

(4) all safety standards to be met and how such standards are to be met;

(5) an expected rate of development and production and a time schedule for performance; and

(6) such other relevant information as the Secretary may by regulation require.

**(d) State concurrence in land or water zone use in coastal zone of State**

The Secretary shall not grant any license or permit for any activity described in detail in a plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management

Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act (16 U.S.C. 1456(c)(3)(B)(i) or (ii)), or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act (16 U.S.C. 1456(c)(3)(B)(iii)).

**(e) Declaration of approval of development and production plan as major Federal action; submission of preliminary or final lease plans prior to commencement of National Environmental Policy provisions procedures**

(1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall commence.

**(f) Plans considered major Federal actions; submission of draft environmental impact statement to Governors of affected States and local governments**

If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

**(g) Plans considered nonmajor Federal actions; comments and recommendations from States**

If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to the Secretary, the executive of any affected local government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

**(h) Approval, disapproval or modification of plan; reapplication; periodic review**

(1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsec-

tion (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the *human, marine, or coastal environment, including* compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act [16 U.S.C. 1456(c)(3)(B)(i) or (ii)] unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act [16 U.S.C. 1456(c)(3)(B)(iii)]. The Secretary shall disapprove a plan—

(A) if the lessee fails to demonstrate that he can comply with the requirements of this subchapter or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 1334(a) of this title;

(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B)(i) or (ii) of such Act [16 U.S.C. 1456(c)(3)(B)(i) or (ii)] and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act [16 U.S.C. 1456(c)(3)(B)(iii)];

(C) if operations threaten national security or national defense; or

(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) *implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments,* (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

(2)(A) If a plan is disapproved—

(i) under subparagraph (A) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

the lessee shall not be entitled to compensation because of such disapproval.

(B) If a plan is disapproved—

(i) under subparagraph (C) or (D) of paragraph (1); or

(ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 [16 U.S.C. 1451 et seq.], and such approval occurs after the lessee has submitted a plan to the Secretary.

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 1334(a)(2)(C) of this title. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compensation, under the provisions of section 1334(c) of this title.

(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

(i) Approval of revision of approved plan

The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety, and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the provisions of this subchapter, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.



(j) Cancellation of lease on failure to submit plan or comply with approved plan

Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with section 1334(c) and (d) of this title. Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

(k) Production and transportation of natural gas; submission of plan to Federal Energy Regulatory Commission; impact statement

If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 717f of title 15, may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

(l) Application of provisions to leases in Gulf of Mexico

The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this subchapter, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 1333(a)(2) of this title.

(Aug. 7, 1953, ch. 345, § 25, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 659.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (e)(2), (h)(1), (k), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Coastal Zone Management Act of 1972, referred to in subsec. (h)(2)(A)(ii), (B)(ii), is title III of Pub. L. 89-454, as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, and amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

§ 1352. Oil and gas information program

(a) Access to data and information obtained by lessee or permittee from oil or gas exploration, etc., data obtained by Federal department or agency from geological and geophysical explorations

(1)(A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this subchapter shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

(C) Whenever any data and information is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(ii) by a lessee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information;

(iii) by a permittee, in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing; and

(iv) by a permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay such permittee the reasonable cost of processing and reproducing such data and information for the Secretary.

pursuant to such regulations as he may prescribe.

(2) Each Federal department and agency shall provide the Secretary with any data ob-

tained by such Federal department or agency pursuant to section 1340 of this title, and any other information which may be necessary or useful to assist him in carrying out the provisions of this subchapter.

**(b) Processing, analyzing, and interpreting information; availability of summary of data to affected States and local government**

(1) Data and information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this subchapter.

(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States, and upon request, to any affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

**(c) Confidentiality of information; regulations**

The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

**(d) Transmittal of information to affected State; protection of competitive position**

(1) The Secretary shall transmit to any affected State—

(A) an index, and upon request copies of, all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this subchapter, but no information transmitted by the Secretary under this subsection shall identify any particular tract with the name or names of any particular party so as not to compromise the competitive position of any party or parties participating in the nominations;

(B)(i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this section, unless the Secretary determines that transmittal of such data prepared pursuant to subsection (b)(1) of this section would

unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

**(e) Agreement with State to waive defenses and hold United States harmless from failure to maintain confidentiality of information**

Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f)(2) of this section, and to hold the United States harmless from any violations of the regulations prescribed pursuant to subsection (c) of this section that the State or its employees may commit.

**(f) Civil action against United States or State for failure to maintain confidentiality of information; certain defenses unavailable**

(1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate district court of the United States against the Federal Government or such State, as the case may be.

(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

**(g) Preemption of State law by Federal law**

Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this subchapter is expressly preempted by the provisions of this section, to the extent that it applies to such information.

**(h) Failure by State to comply with regulations; withholding of information**

If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

(Aug. 7, 1953, ch. 345, § 26, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 664.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 1345 of this title.

**§ 1353. Federal purchase and disposition of oil and gas****(a) Payment of royalties or net profit shares in oil and gas; purchase of oil and gas by United States; transfer of title to Federal agencies**

(1) Except as may be necessary to comply with the provisions of sections 1335 and 1336 of this title, all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease issued or maintained in accordance with this subchapter, shall, on demand of the Secretary, be paid in oil or gas.

(2) The United States shall have the right to purchase not to exceed 16½ per centum by volume of the oil and gas produced pursuant to a lease issued or maintained in accordance with this subchapter, at the regulated price, or, if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

**(b) Sale of oil by United States to public; disposition of oil to small refiners; application of other laws**

(1) The Secretary, except as provided in this subsection, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value, any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with the Secretary of Energy, the Secretary determines that small refiners do not have access to ade-

quate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this subchapter, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any allocation or lottery sale to assure such access and shall publish notice of such allocation or sale, and the terms thereof, at least thirty days in advance. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

(3) The Secretary may only sell or otherwise dispose of oil described in paragraph (1) of this subsection in accordance with any provision of law, or regulations issued in accordance with such provisions, which provide for the Secretary of Energy to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

**(c) Sale of gas by United States to public**

(1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may<sup>1</sup> offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with and advice from the Secretary of Energy, the Federal Energy Regulatory Commission determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this section, the Secretary of the Interior may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocation or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to selling or allocating any gas pursuant to this subsection, the Secretary shall consult with the Federal Energy Regulatory Commission.

**(d) Purchase by lessee of Federal oil or gas for which no bids received**

The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a)(3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if

<sup>1</sup>So in original. Probably should be "may".

no regulated price applies, the fair market value of the oil or gas so obtained.

**(e) Definitions**

As used in this section—

(1) the term "regulated price" means the highest price—

(A) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] and any rule or order issued under such Act;

(B) at which natural gas may be sold to natural-gas companies pursuant to the Natural Gas Act [15 U.S.C. 717 et seq.], any other Act, regulations governing natural gas pricing, or any rule or order issued under any such Act or any such regulations; or

(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas; and

(2) the term "small refiner" has the meaning given such term by Small Business Administration Standards 128.3-8(d) and (g), as in effect on September 18, 1978, or as thereafter revised or amended.

**(f) Purchase of oil and gas in time of war**

Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf as provided by section 1341(b) of this title.

(Aug. 7, 1953, ch. 345, § 27, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 666.)

**REFERENCES IN TEXT**

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (e)(1)(A), is Pub.L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

The Natural Gas Act, referred to in subsec. (e)(1)(B), is Act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of that Act to the Code, see section 717w of Title 15 and Tables.

**§ 1354. Limitations on export of oil or gas**

**(a) Application of Export Administration provisions**

Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

**(b) Condition precedent to exportation; express finding by President of no increase in reliance on imported oil or gas**

Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

<sup>1</sup> So in original. Probably should be "may".

**(c) Report of findings by President to Congress; joint resolution of disagreement with findings of President**

The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

**(d) Exchange or temporary exportation of oil and gas for convenience or efficiency of transportation**

The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

(Aug. 7, 1953, ch. 345, § 28, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 668.)

**REFERENCES IN TEXT**

The Export Administration Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, App., War and National Defense, and which terminated on Sept. 30, 1979, pursuant to the terms of that Act.

**§ 1355. Restrictions on employment of former officers or employees of the Department of the Interior**

No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this subchapter, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS-16 of the General Schedule shall—

(1) within two years after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

(C) knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before.

any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a

ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

(2) within one year after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to,

the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

(Aug. 7, 1953, ch. 345, § 29, as added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 668.)

#### REFERENCES IN TEXT

GS-16 of the General Schedule, referred to in provision preceding par. (1), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

§ 1356. Documentary, registry and manning requirements

#### (a) Regulations

Within six months after September 18, 1978, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

(1) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this subchapter and which is built or rebuilt at any time after such one-year period, when required to be documented by the laws of the United States, be documented under the laws of the United States;

(2) which is used for activities pursuant to this subchapter, comply, except as provided in subsection (b) of this section, with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

(3) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this subchapter, be manned or crewed, except as provided in subsection (c) of this section, by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

(b) Exceptions from design, construction, alteration, and repair requirements

The regulations issued under subsection (a)(2) of this section shall not apply to any vessel, rig, platform, or other vehicle or structure built prior to September 18, 1978, until such time after such date as such vehicle or structure is rebuilt.

(c) Exceptions from manning requirements

The regulations issued under subsection (a)(3) of this section shall not apply—

(1) to any vessel, rig, platform, or other vehicle or structure if—

(A) specific contractual provisions or national registry manning requirements in effect on September 18, 1978, provide to the contrary;

(B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work; or

(C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest; and

(2) to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its offshore areas.

(Aug. 7, 1953, ch. 345, § 30, added Sept. 18, 1978, Pub. L. 95-372, title II, § 208, 92 Stat. 669.)

#### CHAPTER 31—DEPARTMENT OF THE INTERIOR

§ 1453. Assistant Secretaries of the Interior

##### OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Audit and Investigation in the Department of Interior were transferred to the Office of Inspector General in the Department of Interior, as established by section 9(a)(1)(D) of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1456a. Repealed. Pub. L. 95-164, title III, § 306(b), Nov. 9, 1977, 91 Stat. 1322

Section, Pub. L. 93-153, title IV, § 405, Nov. 16, 1973, 87 Stat. 590, provided for the appointment by the President of the head of the Mining Enforcement and Safety Administration.

##### EFFECTIVE DATE OF REPEAL

Repeal effective 120 days after Nov. 9, 1977, see section 307 of Pub. L. 95-164, set out as an Effective Date of 1977 Amendment note under section 801 of Title 30, Mineral Lands and Mining.

# Notices

## DEPARTMENT OF THE TREASURY

### Foreign Assets Control IMPORTATION OF PEPPERMINT OIL DIRECTLY FROM KOREA

#### Available Certifications by the Republic of Korea

Notice is hereby given that certificates of origin issued by the Ministry of Commerce and Industry of the Republic of Korea under procedures agreed upon between that government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Korea of the following additional commodity:

Peppermint oil

[SEAL] MARGARET W. SCHWARTZ,  
Acting Director,  
Foreign Assets Control.

[P.R. Doc. 60-8450; Filed, Sept. 9, 1960;  
9:14 a.m.]

#### Office of the Secretary

[Treasury Dept. Order 150-52]

### INTERNAL REVENUE SERVICE

#### Establishment of New Offices

There shall be in the National Office of the Internal Revenue Service the office of Assistant Commissioner of Internal Revenue (Administration) and the office of Assistant to the Commissioner.

The office of Administrative Assistant to the Commissioner established by Treasury Department Order No. 150-44, dated November 16, 1956, is abolished.

This order shall be effective September 8, 1960.

Dated: September 1, 1960.

[SEAL] FRED C. SCHIRMER, Jr.,  
Acting Secretary of the Treasury.

[P.R. Doc. 60-8423; Filed, Sept. 9, 1960;  
8:40 a.m.]

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### OUTER CONTINENTAL SHELF, ATLANTIC COAST AREA

#### Geological and Geophysical Explorations

Notice of proposed authorization for geological and geophysical explorations in that part of the Outer Continental Shelf seaward of the submerged lands of any State bordering on the Atlantic Ocean (except Florida) appeared in the FEDERAL REGISTER of July 14, 1960 (25 F.R. 6656). Interested persons were given 30 days within which to submit written comments, suggestions or objec-

tions. No comments, suggestions, or objections have been received; however, an agreement was made with the State of Georgia for supervision of geological and geophysical explorations off the coast of that State and notice thereof appeared in the FEDERAL REGISTER of August 16, 1960 (25 F.R. 7811).

In consideration of the foregoing the proposed authorization (amended to exclude the area embraced in the agreement with the State of Georgia) is hereby adopted and set forth below. In view of the desirability of completing currently proposed explorations before the main hurricane season, this authorization shall become effective at the beginning of the calendar day on which it is published in the FEDERAL REGISTER.

(Sec. 11, 67 Stat. 469; 43 U.S.C. 1340.)

ELMER F. BENNETT,  
Acting Secretary of the Interior.

SEPTEMBER 6, 1960.

Notice is hereby given that any person, as defined in section 2(d) of the Outer Continental Shelf Lands Act of August 7, 1953 (67 Stat. 462) is hereby authorized to conduct geological and geophysical explorations in that part of the Outer Continental Shelf seaward of the submerged lands of any State bordering on the Atlantic Coast (except Florida and Georgia) upon condition (1) that he obtain a permit for such operations from the Regional Oil and Gas Supervisor of the United States Geological Survey, Washington 25, D.C. (2) that his operations shall be confined to such area or areas as may be designated in the permit, and (3) that for the protection and conservation of aquatic life he file with the said Regional Oil and Gas Supervisor his stipulation agreeing to comply with such requirements governing the methods of and restrictions upon geological and geophysical explorations in the designated area or areas as are acceptable to the Regional Oil and Gas Supervisor.

This general authorization to conduct geological and geophysical explorations does not include the right to conduct core or other exploratory drilling and is subject to termination upon not less than 60 days' notice published in the FEDERAL REGISTER. The authorization may be terminated as to any person upon reasonable notice. Any party conducting this type of exploration obtains no preference to an oil and gas lease.

[P.R. Doc. 60-8400; Filed, Sept. 9, 1960;  
8:46 a.m.]

## DEPARTMENT OF COMMERCE

### Bureau of Foreign Commerce

[Case No. 272]

#### GEE & GARNHAM LTD. ET AL.

#### Order Denying Export Privileges

In the matter of Gee & Garnham Ltd., J. Hammerson, Director, S. L. Hammerson, Director, Global Works, 1-5 Sanford Lane, Stoke Newington, London, Respondents, Case No. 272.

Gee & Garnham, Ltd., J. Hammerson, Managing Director, and S. L. Hammerson, Director, all of London, England, the respondents herein, were charged by the Director, Investigation Staff, Bureau of Foreign Commerce, U.S. Department of Commerce, with having violated the Export Control Act of 1949, as amended, in that, as alleged, they engaged in conduct which induced the exportation of goods from the United States and later transhipped such goods to Communist China contrary to the regulations and the authorizations under which the goods had been exported from the United States. They answered the charging letter admitting the substance of the charges but citing various factors in alleged mitigation.

In accordance with the practice, the case was referred to a Compliance Commissioner, who has reported that the evidence supports findings of violation and has recommended that the respondents be denied export privileges for two years.

Now, after considering the entire record consisting of the charges, the evidence submitted in support thereof, the answers and other evidence submitted by respondents, and the Report and Recommendation of the Compliance Commissioner, I hereby make the following findings of fact:

1. Gee & Garnham Ltd. ordered 400 automotive crank shafts from an American exporting firm in November 1959 for shipment to a freight forwarding firm in the Netherlands to their account, and also ordered 300 automotive crank shafts from another American exporting firm in November for shipment to the same firm in the Netherlands to their account.

2. During the month of November 1959 these orders were accepted by the American firms and shipped to the Netherlands where they were received by the freight forwarding firm. The forwarders asked Gee & Garnham Ltd. for instructions on disposition of the shipments and were requested to obtain necessary permission for transshipment to Communist China. The Dutch firm asked the American Consulate at Rotterdam for such permission which, upon inquiry, was refused. The respondents' agent was informed the goods could be transhipped to Liverpool, England, and shipment was made accordingly.

3. Gee & Garnham Ltd. then sought permission through the American Embassy in London to ship the crank shafts to Communist China and, after some negotiations and exchange of letters, permission was again refused.

4. Gee & Garnham Ltd. then shipped the crank shafts to Communist China per "SS Aegean Dolphin."

5. Gee & Garnham Ltd. and its members had known of the restrictions on re-export of U.S. origin materials to the Communist bloc areas since 1958.

dropped the specific reference and have adopted language which reflects similar provisions in 30 CFR 252.3.

#### 251.14 Disclosure of Information and Data Submitted Under Permits

The comments received regarding this section have been previously considered under "Discussion of Major Comments."

Authors: Thomas McCloskey, Office of the Assistant Secretary—Energy and Minerals, U.S. Department of the Interior (202/343-4457), Gordon D. Burton, Daniel S. Palubniak, and Leaman D. Harris, Geological Survey, U.S. Department of the Interior (703/860-7564).

#### ENVIRONMENTAL IMPACT AND

**REGULATORY ANALYSIS:** The Department of the Interior has determined that the revision of the regulations in 30 CFR Part 251, in accordance with this notice, is not a major Federal action significantly affecting the quality of the human environment and will not require preparation of an Environmental Impact Statement. The Department has also determined that this document is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: January 22, 1980.

Charles L. Eddy,

Acting Assistant Secretary of the Interior.

Part 251 of Title 30 of the Code of Federal Regulations is revised to read as follows:

#### PART 251—GEOLOGICAL AND GEOPHYSICAL (G & G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

Sec.

- 251.1 Purpose.
- 251.2 Definitions.
- 251.3 Administrative authority and applicability.
  - 251.3-1 Administrative authority.
  - 251.3-2 Functions of Director.
  - 251.3-3 Geological and geophysical activities under a lease.
  - 251.3-4 Geological and geophysical activities not under a lease.
  - 251.3-5 General requirements of notices and permits.
- 251.4 Geological and geophysical activities requiring notices or permits.
  - 251.4-1 Geological and geophysical exploration for mineral resources.
  - 251.4-2 Geological or geophysical scientific research.
- 251.5 Applying for notices or permits.
  - 251.5-1 Permit forms.
  - 251.5-2 Notices.
  - 251.5-3 Filing locations for permits to conduct exploration for mineral resources.
  - 251.5-4 Filing locations for notices or permits to conduct scientific research.
  - 251.5-5 Fishermen's Contingency Fund.

Sec.

- 251.6 Test drilling activities.
  - 251.6-1 Permit or notice requirements for shallow test drilling.
  - 251.6-2 Permit requirements for a deep stratigraphic test.
  - 251.6-3 Group participation in test drilling activities.
  - 251.6-4 Bonds.
  - 251.6-5 Duration of exploration activities.
- 251.7 Inspection and reporting of progress and results of activities conducted under permits.
  - 251.7-1 Inspection and observation of exploration activities.
  - 251.7-2 Progress report on activities conducted under a permit.
  - 251.7-3 Final report on activities conducted under a permit.
- 251.8 Suspension and cancellation of authority to conduct activities under permit.
  - 251.8 Penalties.
  - 251.10 Appeals.
  - 251.11 Inspection, selection, and submission of geological information and data.
  - 251.12 Inspection, selection, and submission of geophysical information and data.
  - 251.13 Reimbursement to permittees.
  - 251.14 Disclosure of information and data submitted under permits.
    - 251.14-1 Disclosure of information and data to the public.
    - 251.14-2 Disclosure to independent contractors.
    - 251.14-3 Sharing of information with affected States.
    - 251.14-4 Disclosure of information and data relating to specific contractual commitments.

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

#### § 251.1 Purpose.

The Act authorizes the Secretary to prescribe rules and regulations necessary to carry out the provisions of the Act. The primary purpose of the regulations in this Part is to prescribe policies, procedures, and requirements for conducting geological and geophysical activities not authorized under a lease on the Outer Continental Shelf (OCS). These activities may take place on unleased lands or on lands under lease to a third party. These activities are limited to geological and geophysical exploration for mineral resources and geological or geophysical scientific research which involves the use of solid or liquid explosives or drilling activities. The requirements of the regulations in this Part implement the provisions of sections 5, 8(g), 11 (a) and (g), 19, 24, and 26 of the Act. Federal Agencies are exempt from the regulations in this Part.

#### § 251.2 Definitions.

When used in this Part, the following terms shall have the meaning given below:

(a) "Act" means the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.).

(b) "Affected local government" means the principal governing body of a locality which is in an affected State and is identified by the Governor of that State as a locality which will be significantly affected by oil and gas activities on the OCS.

(c) "Affected State" means, with respect to any program, plan, lease sale, or other activity proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are declared, pursuant to section 4(a)(2)(A) of the Act, to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or installation or other device permanently or temporarily attached to the seabed;

(3) Which is receiving, or in accordance with the proposed activity, will receive oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to the State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment or a State in which there will be significant changes in the social, governmental, or economic infrastructure resulting from the exploration, development, and production of oil and gas anywhere in the OCS; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.

(d) "Analyzed geological information" means data collected under a permit or a lease which have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, well logs or charts, results and data obtained from formation fluid tests, and descriptions of hydrocarbon occurrences or hazardous conditions.

(e) "Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States. The coastal zone includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shoreline to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act.

(g) "Coastal Zone Management Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

(h) "Cultural resource" means a site, structure, or object of historical or archeological significance.

(i) "Data" means facts and statistics or samples which have not been analyzed or processed.

(j) "Deep stratigraphic test" means drilling which involves the penetration into the sea bottom of more than 50 feet (15.2 meters) of consolidated rock or a total of more than 300 feet (91.4 meters).

(k) "Director" means the Director of the Geological Survey, U.S. Department of the Interior or a subordinate authorized to act on the Director's behalf.

(l) "Exploration" means the process of searching for minerals. Exploration activities include but are not limited to: (1) Geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of minerals, and (2) Any drilling, whether on or off a geological structure.

(m) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(n) "Geological exploration for mineral resources" means any operation conducted on the OCS which utilizes

geological and geochemical techniques, including, but not limited to, core and test drilling, well logging techniques, and various bottom sampling methods to produce information and data on mineral resources, including information and data in support of possible exploration and development activity. The term does not include scientific research.

(o) "Geophysical exploration for mineral resources" means any operation conducted on the OCS which utilizes geophysical techniques, including, but not limited to gravity, magnetic, and various seismic methods, to produce information and data in support of possible exploration and development activity. The term does not include scientific research.

(p) "Geological or geophysical scientific research" means any investigation conducted on the OCS using solid or liquid explosives, or drilling activities for scientific research purposes involving the gathering and analysis of geological or geophysical information and data which are made available to the public for inspection and reproduction at the earliest practicable time.

(q) "Governor" means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to a Governor pursuant to the Act.

(r) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

(s) "Hydrocarbon occurrences" means the direct or indirect detection during drilling operations of any liquid or gaseous hydrocarbons by examination of well cuttings, cores, gas detector readings, formation fluid tests, wireline logs, or by any other means. The term does not include background gas, minor accumulations of gas, or heavy oil residues on cuttings and cores.

(t) "Information," when used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

(u) "Interpreted geological information" means knowledge, often in the form of schematic cross sections and maps, developed by determining the geological significance of data and analyzed geological information.

(v) "Interpreted geophysical information" means knowledge, often in the form of seismic cross sections and

maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(w) "Lease" means (1) any form of authorization which is issued under section 8 or maintained under section 6 of the Act and which authorizes exploration for, and development and production of, minerals, or (2) the area covered by such authorization, whichever is required by the context.

(x) "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for, develop, and produce the leased deposits in accordance with the regulations in Part 250 of this Chapter. The term includes all parties holding such authority by or through the lessee.

(y) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

(z) "Minerals" includes oil, gas, sulphur, geopressed-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in Section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(aa) "National Environmental Policy Act" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(bb) "Notice" means the statement of intent to conduct geological scientific research which involves shallow test drilling activities.

(cc) "OCS Order" means a formal numbered Order, issued by the Director, that implements the regulations contained in this Part and specifically applies to operations in an area in the Order.

(dd) "Oil" means any fluid hydrocarbon substance other than gas which is extracted in a fluid state from a reservoir and which exists in a fluid state under the existing temperature and pressure conditions of the reservoir. Oil includes liquefiable hydrocarbon substances such as drip gasoline or other natural condensates recovered or recoverable in a liquid state from produced gas.

(ee) "Operator" means the individual, partnership, firm, or corporation having control or management of operations on the leased area or a portion thereof. The operator may be a lessee, designated



agent of the lessee, or holder of rights under an approved operating agreement.

(ff) "Outer Continental Shelf" means all submerged lands which lie seaward and outside the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(gg) "Permit" means the contract or agreement, other than a lease, approved for a specified period of not more than 1 year under which a person acquires the right to conduct (1) geological exploration for mineral resources, (2) geophysical exploration for mineral resources, (3) geological scientific research, or (4) geophysical scientific research.

(hh) "Permittee" means the person authorized by a permit issued pursuant to this Part to conduct activities on the OCS.

(ii) "Person" means a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), a private, public, or municipal corporation organized under the laws of the United States or of any State or territory thereof, and associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States. The term does not include Federal Agencies.

(jj) "Pollution contingency plan" means the National Multi-Agency Oil and Hazardous Materials Pollution Contingency Plan or any successor plan thereto.

(kk) "Processed geophysical information" means data collected under a permit or a lease which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(ll) "Secretary" means the Secretary of the Interior or a subordinate authorized to act on the Secretary's behalf.

(mm) "Shallow test drilling" means drilling into the sea bottom to depths less than those specified in the definition of a deep stratigraphic test.

(nn) "Third party" means any person other than a representative of the United States or the permittee.

(oo) "Violation" means a failure to comply with any provision of the Act, or a provision of a regulation or order

issued under the Act, or any provision of a lease, license, or permit issued pursuant to the Act.

### § 251.3 Administrative authority and applicability.

#### § 251.3-1 Administrative authority.

Exploration or scientific research activities authorized or conducted under this Part shall be performed in accordance with the Act, the regulations in this Part, OCS Orders, other orders of the Director, and other applicable statutes and regulations, and amendments thereto.

#### § 251.3-2 Functions of Director.

The Director shall regulate all operations and other activities under this Part and perform all duties prescribed by this Part. The Director is authorized to issue OCS Orders and other written and oral orders and to take all other actions necessary to carry out the provisions of this Part and to prevent harm or damage to, or waste of, any natural resource (including any mineral deposit in areas leased or not leased), any life (including fish and other aquatic life), property, or the marine, coastal, or human environment. The Director shall confirm oral orders in writing as soon as possible.

#### § 251.3-3 Geological and geophysical activities under a lease.

The regulations in this Part shall not apply to geological and geophysical exploration conducted by or on behalf of the lessee on a lease on the OCS. Those exploration activities shall be governed by the regulations in Part 250 of this title.

#### § 251.3-4 Geological and geophysical activities not under a lease.

The regulations in this Part are applicable to permits for geological and geophysical activities issued after or unexpired as of the effective date of this final rule. Notices filed after the effective date of this final rule shall also be subject to the regulations in this Part.

If the regulations in this Part conflict with the provisions of a permit which was issued under regulations published in the Federal Register on June 23, 1976 (41 FR 25893), the requirements of the permit shall govern, except for any requirements limiting the Director's authority to inspect and require the submission of interpretations derived from information and data acquired under those permits issued after January 27, 1978, as established by Part 252 of this title.

### § 251.3-5 General requirements of notices and permits.

(a) Geological or geophysical activities for mineral exploration or scientific research activities authorized under this Part shall be conducted so that those activities do not:

(1) Interfere with or endanger operations under any lease issued or maintained pursuant to the Act;

(2) Cause harm or damage to aquatic life;

(3) Cause pollution;

(4) Create hazardous or unsafe conditions;

(5) Unreasonably interfere with or harm other uses of the area; or

(6) Disturb cultural resources.

(b) Any person conducting geological or geophysical activities for mineral exploration or scientific research under this Part shall immediately report to the Director when these activities:

(1) Detect hydrocarbon occurrences;

(2) Encounter environmental hazards which constitute an imminent threat to human activity; or

(3) Adversely affect the environment, aquatic life, cultural resources, or other uses of the area in which the exploration activity is conducted.

(c) Any person conducting shallow test drilling or deep stratigraphic test drilling geological activities under a permit for mineral exploration or scientific research under this Part shall utilize the best available and safest technologies which the Director determines to be economically feasible.

(d) Authorization granted under this Part to conduct geological and geophysical exploration for minerals or for scientific research shall not confer a right to any discovered oil, gas, or other minerals, or to a lease under the Act.

### § 251.4 Geological and geophysical activities requiring notices or permits.

#### § 251.4-1 Geological and geophysical exploration for mineral resources.

Geological or geophysical exploration for mineral resources may not be conducted on the OCS without an approved permit unless such activities are being conducted pursuant to a lease issued or maintained under the Act. Separate permits must be obtained for geological exploration for mineral resources and for geophysical exploration for mineral resources. If the Director disapproves an application, the statement of rejection shall state the reasons for the denial, and shall advise the applicant of those changes needed to obtain approval.

**§ 251.4-2 Geological or geophysical scientific research.**

Geological or geophysical scientific research may not be conducted by any person on the OCS without an approved permit or filing of a notice unless such activities are being conducted pursuant to a lease issued or maintained under the Act.

(a) Separate permits must be obtained for geological scientific research and for geophysical scientific research which involves the use of solid or liquid explosives or the drilling of a deep stratigraphic test. If the Director disapproves an application, the statement of rejection shall state the reasons for the denial, and shall advise the applicant of the changes needed to obtain approval.

(b) A notice must be filed with the Director at least 30 days prior to the commencement of scientific research activities which involve shallow test drilling. Within 21 days of the filing of the notice, the Director may disapprove the notice by sending a statement of disapproval by certified mail to the person who filed the notice. If the Director disapproves the notice, the statement shall state the reasons for disapproval and shall advise the applicant of recommended changes.

**§ 251.5 Applying for notices or permits.**

**§ 251.5-1 Permit forms.**

(a) An application for a permit shall be submitted in a form and manner prescribed and approved by the Director. Each application for a permit shall include:

(1) The name of any person who will conduct the proposed exploration or research activity;

(2) The name of any person who will participate in the proposed exploration or research activity;

(3) The type of exploration or research activity and the manner in which the activity will be conducted;

(4) The location on the OCS where the exploration or research activity will be conducted;

(5) The purpose for conducting the exploration or research activity;

(6) The dates on which the exploration or research activity is proposed to be commenced and completed; and,

(7) Such other relevant information and data as the Director may require.

(b) This reporting requirement has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 (042-5777002).

**§ 251.5-2 Notices.**

A notice shall not be on a standardized form, but shall be signed and shall state:

(1) The name of the person conducting or participating in the proposed research;

(2) The type of research and manner in which it will be conducted;

(3) The location, designated on a map, plat, or chart, where the research will be conducted;

(4) The dates, which shall designate a period of not more than 1 year, on which the research activity is proposed to be commenced and completed;

(5) The proposed time and manner in which the information and data resulting from the research will be made available to the public for inspection and reproduction, such time being the earliest practicable time;

(6) An agreement that the information and data resulting from the research will not be sold or withheld for exclusive use; and

(7) The name, registry number, registered owner, and port of registry of vessels used in the operation.

**§ 251.5-3 Filing locations for permits to conduct exploration for mineral resources.**

Each application for a permit to conduct geological or geophysical exploration for mineral resources in the OCS shall be filed, in duplicate, at the following locations:

(a) For the OCS off the Atlantic Coast—the Area Oil and Gas Supervisor for Resource Evaluation, Atlantic Area, U.S. Geological Survey, 1725 K Street N.W., Suite 204, Washington, D.C. 20006.

(b) For the OCS in the Gulf of Mexico—the Area Oil and Gas Supervisor for Resource Evaluation, U.S. Geological Survey, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70010.

(c) For the OCS off the coast of the States of California, Oregon, or Washington—the Area Oil and Gas Supervisor, U.S. Geological Survey, Pacific Area, Room 180, 1340 West Sixth Street, Los Angeles, California 90017.

(d) For the OCS off the State of Alaska—the Area Oil and Gas Supervisor, U.S. Geological Survey, Alaska Area, P.O. Box 259, Anchorage, Alaska 99510.

**§ 251.5-4 Filing locations for notices or permits to conduct scientific research.**

Each notice or application for a permit to conduct geological or geophysical scientific research on the OCS shall be filed, in duplicate, at the locations indicated in subsection 251.5-3 of this section.

**§ 251.5-5 Fishermen's Contingency Fund.**

Upon the establishment of an account under the Fishermen's Contingency Fund for any area of the OCS pursuant to subsection 402(b) of the Act, the holder of a permit for geological or geophysical exploration activities for mineral resources in the area covered by the account shall pay an amount specified by the Secretary of Commerce for the purpose of the establishment and maintenance of an account for the area. At the time of issuing a permit, the Director shall collect the amount specified and deposit it in the Fund to the credit of the appropriate account.

**§ 251.6 Test drilling activities.**

**§ 251.6-1 Permit or notice requirements for shallow test drilling.**

The Director, prior to the commencement of shallow test drilling for exploration for mineral resources or for scientific research, may require for permits or recommend for notices the gathering and submission of geophysical information and data sufficient to determine shallow structural detail across and in the vicinity of the proposed test. Other information and data may include, but is not limited to, seismic, bathymetric, side-scan sonar, and magnetometer systems, across and in the vicinity of the proposed test. When required, §§ 251.6-2(c)(1) and (e) and 251.6-3 will apply to permits issued and notices filed for shallow test drilling.

**§ 251.6-2 Permit requirements for a deep stratigraphic test.**

(a) No deep stratigraphic test drilling activities shall be initiated or conducted until a Drilling Plan has been submitted by the applicant and approved by the Director. The Drilling Plan shall include:

(1) The proposed type and sequence of drilling activities to be undertaken together with a timetable for their performance from commencement to completion;

(2) A description of the drilling rig proposed for use, unless a description has been previously submitted to the Director, indicating the important features thereof, with special attention to safety features and pollution prevention and control features, including oil spill containment and cleanup plans and onshore disposal procedures;

(3) The location of each deep stratigraphic test to be conducted, including the surface and projected bottomhole location of the borehole;

(4) The types of geophysical instrumentation to be used;

(5) Geophysical information and data sufficient to determine shallow

structural detail across and in the vicinity of the proposed test, and other information and data from, but not limited to, seismic, bathymetric, sidescan sonar, and magnetometer systems, collected across any proposed drilling location, and other geophysical data from the area of the proposed test location, and processed geophysical information and interpreted geophysical information therefrom, so as to allow evaluation of structural detail to the total depth of the proposed test; and

(6) Such other relevant information and data as the Director may require.

(b) At the same time the applicant submits a Drilling Plan to the Director, an Environmental Report shall be submitted. The report shall be in summary form and should include information available at the time the related Drilling Plan is submitted. Such information is to be accurate, current, and applicable to the geographic area and the proposed activities covered by the plan. The applicant shall refer to information and data contained in the related plan, other Environmental Reports, and other environmental analyses and impact statements prepared for the geographic area by identifying the information and indicating a source for obtaining copies of the cited materials. Information and data which are site-specific, or which are developed subsequent to the most recent Environmental Impact Statement or other environmental analyses in the immediate area, shall be specifically considered. Specific guidelines for implementing this section will be issued by the Director. The Environmental Report shall include the following:

(1)(a) A list and description of new or unusual technologies that are to be used; (b) The location of travel routes for supplies and personnel; (c) The kinds and approximate quantities of energy to be used; (d) The environmental monitoring systems that are to be used; and (e) Suitable maps and diagrams showing details of the proposed project layout.

(2) A narrative description of the existing environment. This section shall include the following information on the area: (a) Geology; (b) Physical oceanography; (c) Other uses of the area; (d) Flora and fauna; (e) Existing environmental monitoring systems; and (f) Other unusual or unique characteristics which may affect or be affected by the drilling activities.

(3) A narrative description of the probable impacts of the proposed action on the environment and the measures proposed for mitigating these impacts.

(4) A narrative description of any unavoidable or irreversible adverse

effects on the environment that could be expected to occur as a result of the proposed action.

(5) Such other relevant information and data as the Director may require.

(c)(1) When required under a coastal zone management program approved under the Coastal Zone Management Act, the activities proposed by an applicant for a permit to conduct geological or geophysical exploration for minerals or for geological or geophysical scientific research must receive State concurrence in its coastal zone consistency certification prior to the Director's approval of any of the activities covered under the permit.

(2) The applicant shall submit a sufficient number of copies of the Drilling Plan and Environmental Report to permit the Director to transmit copies of each to the Governor of each affected State and the coastal zone management agency of each affected State that has a coastal zone management program approved under the Coastal Zone Management Act. The Director shall also make the Drilling Plan and accompanying Environmental Report available to appropriate Federal Agencies and the public, in accordance with established Departmental practices and procedures.

(d) Any revisions to an approved Drilling Plan must be approved by the Director.

(e) A permittee authorized to drill a deep stratigraphic test shall, if requested by the Director, conduct studies to determine whether any cultural resources exist in the area that may be affected by such drilling, and shall report the findings of those studies to the Director. A permittee authorized to perform shallow test drilling may be required to conduct similar studies if required by the Director. The study shall include a full description of any cultural resources detected. The permittee shall take no action that will result in the disturbance of cultural resources without the prior approval of the Director and, if any cultural resource is discovered after submission of the study (i.e., during site preparation or drilling), the permittee shall immediately report the discovery to the Director and make every reasonable effort to protect the cultural resource from damage until the Director has given directions as to its preservation.

(f) All OCS regulations relating to drilling operations in Part 250 of this title and all OCS Orders relating to the drilling of wells apply, as appropriate, to drilling activities authorized under this Part.

(g) At the completion of the test activities, the borehole of all deep

stratigraphic tests shall be permanently plugged and abandoned by the permittee prior to moving the rig off location in accordance with the requirements of the regulations in Part 250 of this Chapter and applicable orders. If the tract on which deep stratigraphic test drilling has been conducted is later leased for exploration and development, the lessee will not be held responsible for the test hole, provided the lessee has not reentered or otherwise disturbed the borehole.

#### § 251.6-3 Group participation in test drilling activities.

(a) In order to minimize duplicative geological exploration activities involving the penetration of the seabed of the OCS, a person proposing to drill a deep stratigraphic test shall afford all interested persons, through a signed agreement, an opportunity to participate in the drilling on a cost-sharing basis. The provisions of the agreement for sharing the cost of a deep stratigraphic test may include a penalty for late participants of not more than 100 percent of the cost to each original participant in addition to the original share cost. The participants shall assess and distribute penalties in accordance with the terms of the agreement. If the Director releases a public notice announcing a significant hydrocarbon occurrence, the penalty for subsequent late participants may be raised to not more than 300 percent of the cost of each original participant in addition to the original share cost.

(b) An applicant proposing to conduct shallow test drilling activities shall, when ordered by the Director or when provided in the permit, afford all interested persons an opportunity to participate in the test activity on a cost-sharing basis with a penalty for late participation of not more than 50 percent of the cost to each original participant.

(c) To allow for group participation in shallow or deep test drilling activities, the applicant shall:

(1) Publish a summary statement describing the proposed activity in a manner approved or prescribed by the Director;

(2) Forward a copy of the published statement to the Director;

(3) Allow at least 30 days from the date of publishing the summary statement for other persons to join as original participants;

(4) Compute the estimated cost to an original participant by dividing the estimated total cost of the program by the number of original participants; and

(5) Furnish the Director with a complete list of all participants under

the permit prior to commencing operations, or at the end of the advertising period if operations begin prior to its close. Also, the names of all late participants shall be forwarded to the Director.

(d) If the applicant proposes changes to the original application and the Director determines that such changes are significant, the Director shall require a republication of the changes and an additional 30 days for other persons to join as original participants.

#### § 251.6-4 Bonds.

Before a permit authorizing the drilling of a deep stratigraphic test will be issued, the applicant shall furnish to the Bureau of Land Management a corporate surety bond of not less than \$50,000 conditioned on compliance with the terms of the permit, unless the applicant maintains with or furnishes to the Bureau of Land Management a bond in the sum of \$300,000 conditioned on compliance with the terms of the permit issued to him for the area of the OCS where the applicant proposes to conduct the drilling of a deep stratigraphic test. The Director may require the submission of a bond before authorizing the initiation of shallow test drilling. Any bond furnished or maintained by a person under this section shall be on a form approved or prescribed by the Director, Bureau of Land Management.

#### § 251.6-5 Duration of exploration activities.

If a deep stratigraphic test well is drilled within 50 geographic miles of any tract tentatively selected for a lease sale as listed on the currently approved OCS Leasing Schedule, all drilling activities must be completed, and the information and data submitted to the Director, at least 3 months prior to the first day of the month in which the Proposed Notice of Sale is listed. However, the Director may extend the expiration date of a permit if it is determined that such an extension is in the national interest.

#### § 251.7 Inspection and reporting of progress and results of activities conducted under permits.

##### § 251.7-1 Inspection and observation of exploration activities.

(a) A permittee, upon request by the Director, shall furnish food, quarters, and transportation for Federal representatives. Upon request, the permittee will be reimbursed by the United States for the actual costs incurred as a result of providing food, quarters, and transportation for a Federal representative's stay of more than 10 hours. The Federal representative shall observe or inspect

operations conducted pursuant to the permit and determine whether operations are having any adverse effects upon the environment, aquatic life, cultural resources, or other uses of the area.

(b) The Federal representatives shall be appointed or approved by the Director.

##### § 251.7-2 Progress report on activities conducted under a permit.

Each permittee shall submit status reports on a weekly basis in a manner approved or prescribed by the Director. This shall include a daily log of operations.

##### § 251.7-3 Final report on activities conducted under a permit.

Each permittee shall submit to the Director a final report of exploration or scientific research activities under the permit within 30 days after the completion of operations. The final report shall contain the following:

(a) A description of the work performed.

(b) Charts, maps, or plats depicting the areas and blocks in which any exploration or scientific research activities were conducted, specifically identifying the lines of geophysical traverses or the locations where geological exploration or scientific research activities were conducted, including a reference sufficient to identify the data produced during each activity.

(c) The dates on which the actual exploration or scientific research activities were performed.

(d) A narrative summary of any: (1) Hydrocarbon occurrences or environmental hazards, and (2) Adverse effects of the exploration or scientific research activities on the environment, aquatic life, cultural resources, or other uses of the area in which the activities were conducted.

(e) Such other descriptions of the activities conducted as may be specified by the Director.

##### § 251.8 Suspension and cancellation of authority to conduct activities under permit.

(a) The Director may suspend or temporarily prohibit the permittee's authority to conduct exploration or scientific research activities under a permit by notifying the permittee either orally or in writing when the Director determines that there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or

human environment. Such suspensions shall be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action, and all written notices will be sent by certified mail. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Director.

(b) The Director may suspend or temporarily prohibit the permittee's authority to conduct exploration or scientific research under a permit either orally or in writing when the Director determines the permittee fails to comply with a provision of the Act or of any applicable law, the provisions of the permit, provisions of these and other applicable regulations, OCS Orders, or any other written orders or field rules including orders for the filing of reports and well records or logs within the time specified. Such suspensions shall be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action and all written notices shall be sent by certified mail. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Director.

(c)(1) The Director may cancel, or a permittee may relinquish, a permit to conduct exploration or scientific research activities at any time by sending a notice of cancellation or a notice of relinquishment. Such notices shall state the reason for the cancellation or relinquishment and shall be sent by certified mail to the other party at least 30 days in advance of the date the cancellation or relinquishment will be effective.

(2) Cancellation of a permit to conduct exploration or scientific research activities shall not relieve the permittee of the obligation to abandon any drill sites in accordance with the requirements of paragraph 251.6-2(g) of this Part and to comply with all other obligations specified in this Part or in the permit.

##### § 251.9 Penalties.

All persons conducting geological or geophysical exploration activities for mineral resources or scientific research shall be subject to the penalty provisions of section 24 of the Act (43 U.S.C. 1350), the procedures contained in § 250.60 of this Chapter for noncompliance with any provision of the Act, or any provision of the permit, or for any violation of the provisions of any regulation or order issued under the Act. The penalties prescribed in this section shall be in addition to any other

penalty afforded by any other law or regulation.

**§ 251.10 Appeals.**

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 290 of this Chapter.

**§ 251.11 Inspection, selection, and submission of geological information and data.**

(a) Each holder of a permit for geological exploration activities for mineral resources or scientific research shall notify the Director immediately, in writing, of the acquisition, analysis, or interpretation of any geological information and data collected under the permit. All geological data, analyzed geological information, and interpreted geological information collected by the permittee shall be available for inspection by the Director. At any time within 1 year after receiving a notice of the acquisition, analysis, or interpretation of any geological information and data, the Director may select all or part of the geological data, analyzed geological information, and interpreted geological information. However, a longer period of time may be specified in the permit. The permittee shall submit reproducible copies of the information and data selected to the Director within 30 days following receipt of the Director's request, unless the Director authorizes a longer time period for the submission of the information or data.

(b) Each submission of geological data, analyzed geological information, and interpreted geological information shall contain, unless otherwise specified by the Director, the following:

(1) An accurate and complete record of all geological (including geochemical) data, analyzed geological information, and interpreted geological information resulting from each operation;

(2) Paleontological reports identifying microscopic fossils by depth, unless washed samples are maintained by the permittee for paleontological determination and are made available upon request for inspection by the Geological Survey;

(3) Copies of well logs or charts;

(4) Results and data obtained from formation fluid tests;

(5) Analyses of core or bottom samples or a representative cut or split of the core or bottom sample;

(6) Detailed descriptions of any hydrocarbons or hazardous conditions encountered during operations, including near losses of well-control, abnormal geopressures, and losses of circulation; and

(7) Such other geological data, analyzed geological information, and interpreted geological information as may be specified by the Director.

(c) In the event that geological data, analyzed geological information, or interpreted geological information is transferred from the permittee to a third party, or from a third party to another third party, the transferor shall notify the Director and shall require the receiving party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of information or data.

**§ 251.12 Inspection, selection, and submission of geophysical information and data.**

(a) Each holder of a permit for geophysical exploration activities for minerals or scientific research shall notify the Director immediately, in writing, of the acquisition, processing, reprocessing, or interpretation of any geophysical information or data collected under the permit. All geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information collected by the permittee shall be available for inspection by the Director. At any time within 1 year after receiving a notice of the acquisition, processing, reprocessing, or interpretation of any geophysical information and data, the Director may select all or part of the geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information. However, a longer period of time may be specified in the permit.

(b) The Director shall have the right to inspect geophysical data, processed geophysical information, reprocessed geophysical information, or interpreted geophysical information prior to final selection. This inspection shall be performed on the permittee's premises unless the Director requests that the permittee deliver the information or data to the Director for inspection. Such delivery shall be within 30 days following the receipt of the Director's request unless the Director authorizes a later delivery date. At any time prior to final selection, the Director may return any or all geophysical information or data following either its inspection and detailed assessment of its quality, or the establishment of a price to the Government for the processing or reprocessing of the geophysical information or data. If the Director decides to keep all or a portion of the geophysical information and data, the Director shall notify the permittee, in

writing, of this decision. If the inspection is done on the permittee's premises, the permittee shall submit the geophysical information or data selected within 30 days following receipt of the Director's request, unless the Director authorizes a longer period of time for delivery. The Director shall have the right to arrange, by contract or otherwise, for the reproduction, without the consent of the permittee, of geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information.

(c) In the event that geophysical data, processed geophysical information, reprocessed geophysical information, or interpreted geophysical information is transferred from the permittee to a third party, or from a third party to another third party, the transferor shall notify the Director and shall require the receiving third party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of information or data.

(d) Each submission of geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information, shall contain, unless otherwise specified by the Director, the following:

(1) An accurate and complete record of each geophysical survey conducted under the permit, including digital navigational data and final location maps of all survey stations;

(2) All seismic data developed under a permit presented in a format and of a quality suitable for processing;

(3) Processed geophysical information derived from seismic data with extraneous signals and interference removed, presented in a format and of a quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and

(4) Other geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information obtained from, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

**§ 251.13 Reimbursement to permittees.**

(a) After the delivery of geophysical data, processed geophysical information, and reprocessed geophysical information selected by the Director in accordance with § 251.12(b) of this Part, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the

permittee or third party shall be reimbursed for the cost of reproducing the selected information and data at the permittee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery of processed and reprocessed geophysical information selected by the Director in accordance with § 251.12(b) of this Part, and upon receipt of a request for reimbursement and determination by the Director that the requested reimbursement is proper, the permittee or third party shall be reimbursed only for the reasonable costs attributable to processing and reprocessing, as distinguished from the cost of data acquisition, as follows: (1) If the processing or reprocessing has been done by the permittee in the form and manner which is used by the permittee in the normal conduct of business, the Director shall pay the reasonable costs at the lowest rate at which the processed or reprocessed information is made available by the permittee to any party; or (2) If the processing or reprocessing has been done in a form and manner as the Director may request other than that used in the normal conduct of the permittee's business, the Director shall pay the costs of processing and reprocessing such data.

(c) Requests for reimbursement are to contain a breakdown of costs in sufficient detail to allow separation of processing and reprocessing costs from acquisition costs.

**§ 251.14 Disclosure of information and data submitted under permits.**

**§ 251.14-1 Disclosure of information and data to the public.**

(a) The Director shall make information and data available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the requirements of the Act, and the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), this Part, and 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

(b) Except as specified in this section or in Parts 250 and 252 of this Chapter, no information or data determined by the Director to be exempt from public disclosure under (a) of this section shall be provided to any affected State or be made available to the executive of any affected local government or to the public unless the permittee and all persons to whom such permittee has sold the information or data under

promise of confidentiality agree to such an action.

(c) The Director shall disclose geological data, analyzed geological information, and interpreted geological information submitted under a permit as follows:

(1) The Director shall immediately issue a public announcement when any significant hydrocarbon occurrences are detected or environmental hazards are encountered on unleased lands during drilling operations. In the case of significant hydrocarbon occurrences, the Director will announce such occurrences in a form and manner that will further the national interest without unduly damaging the competitive position of those conducting the drilling. Other information and data pertaining to the permit will be released according to the schedule provided in paragraphs (c)(2) or (3) of this section.

(2) The Director shall make available to the public all geological data, analyzed geological information, and interpreted geological information, except geological data, analyzed geological information, and interpreted geological information obtained from the drilling of a deep stratigraphic test, 10 years after the date of issuance of the permit under which the information and data was obtained.

(3) The Director shall make available to the public all geological data and information obtained from drilling a deep stratigraphic test 10 years after the completion date of the test or 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test, whichever is sooner. The Director shall make available to the public all geological information and data submitted in support of an application for a permit to drill a deep stratigraphic test well at the earlier of the following times: (a) 10 years after completion of the test; or (b) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

(d) The Director shall disclose geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted under a permit, and retained by the Director, as follows:

(1) The Director shall make available to the public geophysical data 10 years after the date of issuance of the permit under which the data is obtained.

(2) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical

information 10 years after the date it is submitted to the Director.

(3) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted in support of an application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (a) 10 years after completion of the test; or (b) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

**§ 251.14-2 Disclosure to independent contractors.**

The Director reserves the right to disclose any information or data acquired from a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting such information or data. When practicable, the Director shall notify the permittee who provided the information or data of intent to disclose the information or data to an independent contractor or agent. The Director's notice of intent will afford the permittee a period of not less than 5 working days within which to comment on the intended action. When the Director so notifies a permittee of the intent to disclose information or data to an independent contractor or agent, all other owners of such information or data shall be deemed to have been notified of the Director's intent. Prior to any such disclosure, the contractor or agent shall be required to execute a written commitment not to transfer or to otherwise disclose any information or data to anyone without the express consent of the Director. The contractor or agent shall be liable for any unauthorized use by or disclosure of information or data to third parties.

**§ 251.14-3 Sharing of information with affected States.**

(a) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, pursuant to the provisions of § 252.7(a)(4) and 252.7(b) of this Chapter and sections 8(g) and 28(e) of the Act, shall provide the Governor of the State the following information that has been acquired by the Director on such lands proposed to be offered for leasing:

(1) All information on the geographical, geological, and ecological

characteristics of the areas and regions proposed to be offered for leasing;

(2) An estimate of the oil and gas reserves in the areas proposed for leasing; and

(3) An identification of any field, geological structure, or trap located within 3 miles of the seaward boundary of the State.

(b) After the time of receipt of nominations for any area of the OCS within 3 geographic miles of the seaward boundary of any coastal State and tentative tract selection in accordance with the provisions of 43 CFR Parts 3313 and 3314, the Director, in consultation with the Governor of the State, shall determine whether any tracts being given further consideration for leasing may contain one or more oil or gas reservoirs underlying both the OCS and lands subject to the jurisdiction of the State.

(c) At any time prior to a sale, information acquired by the Director that pertains to the identification of oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of any coastal State on tracts selected for leasing within 3 geographic miles of the seaward boundary of any such State will be shared, upon request and pursuant to the provisions of § 252.7(a)(4) and 252.7(b) of this Chapter and sections 8(g) and 26 of the Act, with the Governor of such State.

(d) Knowledge obtained by a State official who receives information under subsections (a) and (b) of this section shall be subject to the requirements and limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the Act, the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), the regulations in this Part 251 (Geological and Geophysical Explorations of the Outer Continental Shelf), and the regulations contained in 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

**§ 251.14-4 Disclosure of information and data relating to specific contractual commitments.**

All information and data already received by the Director and covered by a specific contractual commitment concerning its release shall be handled in a way consistent with the contractual commitment. In the event of any conflict between this provision and a provision of any other regulation in this Part 251, or of any regulation in Part 250, this provision shall govern.

## § 1050.605 [Amended]

In column three of page 8021, section 1030.605(b), "Assistant" should be inserted immediately before "Director".

Dated: June 18, 1976.

SADYE E. DUNN,  
Secretary, Consumer Product  
Safety Commission.

[FR Doc. 76-18222 Filed 6-22 70.8:45 am]

## Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY,  
DEPARTMENT OF THE INTERIORPART 250—OIL AND GAS AND SULPHUR  
OPERATIONS OF THE OUTER CONTI-  
NENTAL SHELFPART 251—GEOLOGICAL AND GEO-  
PHYSICAL EXPLORATIONS OF THE  
OUTER CONTINENTAL SHELF

Notice is hereby given that, pursuant to the authority vested in the Secretary of the Interior by the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462, (43 U.S.C. Secs. 1331-1343), Title 30, Code of Federal Regulations is amended by changing § 250.97 and by adding Part 251.

Part 250 applies to oil, gas, and sulphur operations conducted on the Outer Continental Shelf under a lease. The purpose of changing § 250.97 is to specify a definite time when geological and geophysical data and information required to be submitted by a lessee as a result of lease operations will be made available for public inspection.

The new Part 251 applies to geological and geophysical exploration for mineral resources and for scientific research conducted on the Outer Continental Shelf under a permit or notice. The purpose of the addition of Part 251 is to prescribe when the obtaining of a permit or the filing of a notice is required in order to conduct geological and geophysical exploration of the Outer Continental Shelf and to prescribe operating procedures for conducting exploration, requirements for disclosing data and information, conditions for reimbursing permittees for certain costs, and other conditions under which exploration shall be conducted.

Part 251 supersedes the following authorizations and notices pertaining to geological and geophysical exploration of the Outer Continental Shelf and they are hereby revoked:

(1) Notice dated September 17, 1953, Outer Continental Shelf, Geological and Geophysical Explorations (General) (18 FR 5667 and footnote 1 concerning Texas).

(2) Notice dated March 23, 1954, Outer Continental Shelf, Geological and Geophysical Explorations (Louisiana) (19 FR 1730).

(3) Notice dated March 31, 1955, Outer Continental Shelf, Geological and Geophysical Explorations (California) (20 FR 2093).

(4) Notice dated March 27, 1956, Outer Continental Shelf, Geological and Geo-

physical Exploration (Florida) (21 FR 2129).

(5) Notice dated August 25, 1958, Outer Continental Shelf, Geological and Geophysical Explorations (Alabama) (23 FR 6760).

(6) Notice dated August 5, 1960, Outer Continental Shelf, Geological and Geophysical Explorations (Georgia) (25 FR 7811).

(7) Notice dated September 6, 1960, Outer Continental Shelf, Geological and Geophysical Explorations (Atlantic Coast Area) (25 FR 8759).

(8) Notice dated July 28, 1961, Outer Continental Shelf, Geological and Geophysical Explorations (Pacific Coast Area off Oregon and Washington) (26 FR 6874).

(9) Notice dated March 7, 1964, Outer Continental Shelf, Geological and Geophysical Exploration (Alaska) (29 FR 3369).

(10) Memorandum dated May 14, 1965, from the Director, Geological Survey to the Secretary of the Interior, approved by the Secretary of the Interior on May 20, 1965, authorizing the Area Oil and Gas Supervisor, Gulf of Mexico Area, to approve core drilling on the Continental Slope of the Gulf of Mexico.

(11) Memorandum dated February 16, 1967, from the Director, Geological Survey, to the Secretary of the Interior, approved by the Secretary of the Interior on March 1, 1976, authorizing the Area Oil and Gas Supervisor, Eastern Area, to approve core drilling on the Continental Slope of the Atlantic Ocean.

(12) Notice dated December 11, 1974, Outer Continental Shelf, Geological and Geophysical Exploration (39 FR 43562).

(13) Notice dated August 27, 1975, Outer Continental Shelf, Geological and Geophysical Exploration (40 FR 40563).

A draft of these regulations on geological and geophysical exploration of the Outer Continental Shelf (OCS) was published in the FEDERAL REGISTER on April 22, 1975, 40 FR 17759-17762. Since that draft was published, the regulations have been revised following a review of numerous comments received and reconsideration of several provisions. Below is an identification of significant changes which have been made since that draft was published and a discussion of several of the comments. The Final Environmental Impact Statement on the regulations was made available to the public on May 5, 1976. Some minor changes have been made in the regulations published in that statement.

This rulemaking amends one section in Part 250 of Title 30, which applies to lease operations. Two significant changes have been made in the amended section (§ 250.97) since publication of the draft in 1975. First, the term "information" has been divided into categories in order to eliminate any ambiguity. These categories of "information" are defined in the new Part 251. Second, geological data and analyzed geological information submitted by a lessee will not be made available for public inspection for as long as the lease remains in effect or for a period

of two years after submission, whichever period ends at an earlier date. The previous draft provided for release to the public six months after submission in all cases.

The remainder of the rulemaking consists of a new Part 251 of Title 30 which applies to explorations prior to leasing. The following is an explanation of significant changes made since publication of the draft in 1975.

The definitions of "Geological Exploration for Mineral Resources" (§ 251.3(j)) and "Geophysical Exploration for Mineral Resources" (§ 251.3(k)) now specifically include operations to produce data and information in support of possible exploration and development activity. This addition does not encompass any operations conducted under a lease. Rather, it covers operations customarily conducted before leasing to identify, for example, geologic hazards such as shallow faulting or slumping. These operations include such activities as the gathering of high resolution geophysical data and processed geophysical information. This data and information is important to the Department for making final tract selections and developing lease stipulations.

The definition section (§ 251.3) has been expanded to include a definition of "data" and, as explained above, to define the various kinds of information which are gathered during exploration. These new definitions are particularly pertinent to the sections governing the submission of information, reimbursement for the submission, and release of the information to the public.

In § 251.5, which explains when a notice or permit is necessary, Federal agencies are not required to obtain permits or submit notices. Any notice submitted by a person must be filed at least 30 days before exploration commences and the Supervisor shall have 21 days to reject a notice of intent to conduct shallow test drilling.

Section 251.6(a), which specifies the form of a notice, clarifies that the filing of a notice shall authorize exploration for one year. All data and information resulting therefrom shall be made available for public inspection and reproduction at the earliest practicable time.

The section governing shallow test drilling (§ 251.9(a)) has been expanded to apply to operations conducted under notices as well as permits. In § 251.9(b), a person may now be issued a permit to conduct a deep stratigraphic test before he submits a drilling plan, but he may not commence drilling until a plan is submitted and approved.

The section requiring the submission of reports of operations (§ 251.11) now requires persons operating under notices, as well as permittees, to submit a final report on their operations when exploration is completed. Persons operating under notices would not be required to submit weekly reports on operations. The submission of final reports will better enable the Department to keep informed of exploration conducted on the OCS and to check whether the exploration



completed is consistent with the proposed exploration in the notice.

The most significant changes have been made in the sections governing the submission of data and information (§ 251.12), reimbursement for processed information (§ 251.13) and the release of data and information to the public (§ 251.14).

Section 251.12, which governs the submission of data and information, is divided into subsections which correspond to geological and geophysical explorations. Under subsection (a) a permittee must notify the Supervisor when he acquires or analyzes geological data. The Supervisor will then have one year, or a longer period if specified in a permit, within which to inspect and select the data and analyzed information. The same procedure is followed under subsection (b) for the submission of geophysical data, processed geophysical information, and reprocessed geophysical information, except that the Supervisor may inspect such data and information on the permittee's premises or the Supervisor may order that it be delivered to him for inspection. Delivery for inspection will not constitute selection by the Supervisor. The Supervisor will select such data and information in writing only. Subsection (b) also specifies that if a permittee transfers geophysical data or processed geophysical information to a third party for processing or reprocessing, he will bind the third party to the obligation of submitting the information as specified in this section.

Section 251.13 provides for reimbursement to permittees for reproduction costs of geophysical data, processed geophysical information and reprocessed geophysical information after it has been delivered to the Supervisor or selected by the Supervisor. In addition, the section provides for reimbursement for processing costs of processed geophysical information and reprocessed geophysical information after it has been selected by the Supervisor. A third party who has obtained geophysical data and processed geophysical information from a permittee for processing or reprocessing may also be eligible for reimbursement. All reimbursement shall be contingent on the Supervisor's approval of the accounting of costs. There was no provision for reimbursement in the previous draft of the regulations.

Section 251.14 specifies the periods that data and information which have been submitted to the Supervisor will be kept confidential. The only significant change since the previous draft is in regard to geophysical explorations. Geophysical data shall, as in the previous draft, remain confidential for ten years following the issuance of the permit, but the ten-year period of confidentiality for processed geophysical information, reprocessed geophysical information, and interpreted geophysical information is now tied to the date it is submitted rather than the date of issuance of the permit.

Several comments were submitted to the Department on the draft regulations published on April 22, 1975. The following is a discussion of many of the suggested changes and a statement as to whether they were adopted.

Scientific research organizations have expressed their opposition to the notice requirements. The Department has a duty to remain informed of the research projects being conducted on the OCS so that it may provide for the protection of environmental values. Consequently, the notice requirement has not been deleted. Notices will also enable the Department to warn research organizations of any known hazards on the OCS.

Pursuant to one comment, the regulations have been revised to clarify that persons operating under notices will be required to comply with the terms of the notices and the regulations. Of particular note, this revision specifically incorporates into the notice the condition that scientific research operations may not create hazardous conditions or cause undue harm to the environment, and, as explained above, that a final report on operations must be submitted.

Despite a comment to the contrary, the Department decided that the use of any explosives by a scientific research organization should require a permit in order to allow time to determine whether the use of explosives in an area is environmentally acceptable. The Fish and Wildlife Service requested that it be consulted before the use of explosives is authorized. While the regulations do not provide for this consultation, there would be an opportunity for it.

Since the time will vary for processing a permit application and analyzing, if necessary, the possible impact of the proposal, the Department did not adopt a suggestion to require action on applications within specified times. Similarly, the Department did not adopt a proposal by the State of Florida to require coordination with State agencies in the issuance of permits. However, the Department makes every effort to coordinate its OCS program, encompassing both permit and lease operations, with State programs.

In accordance with one comment, persons will be notified in writing of any suspension or revocation of their authority to conduct explorations. The notice will specify the reason for the suspension or revocation.

Most of the comments on test drilling were not adopted. The Department finds that the opportunity for group participation for test drilling reduces the number of tests and the impact on the environment. In order to encourage group participation, the late participation penalty has not been increased as suggested. The use of the penalty fee is left to the discretion of the organizers of the group. To allay fears expressed in one comment, we note that group participation may not be required for all shallow test drilling. The concern is that, when it is required, it will force the disclosure of technology to competitors.

Contrary to one suggestion the final regulations require, for safety and environmental reasons, the submission of interpretations of common depth point seismic data as part of a drilling plan for a deep stratigraphic test. Similarly, the final regulations require that the drilling plan, without exception, specify an oil spill contingency plan and the equipment available to implement it. In accordance with one comment, the regulations have been changed so that after a drilling plan is approved, the Director's approval is necessary for the relocation of a drill-site exceeding 600 feet rather than 300 feet.

There were some recommendations that the requirements for submission of data and information be clarified. As explained above, the various kinds of information have been distinguished and defined to eliminate confusion. The final regulations also specify that a permittee may be required to submit analyzed geological information or processed geophysical information whether he prepares it for himself or another party and regardless of when he prepares it. However, except where specifically provided, a permittee shall not be required to submit interpreted information. Furthermore, not all data, analyzed geological information, or processed geophysical information will be required to be submitted. The permittee will be required to notify the Supervisor of its availability for inspection, and the Supervisor will then have the option to select it.

There was considerable concern that the Department should provide some reimbursement for data and information that is submitted. The Department has added a new section (§ 251.13) which, as explained above, provides for reimbursement for certain reproduction and processing costs incurred in meeting the obligations of a permit authorizing geophysical exploration for mineral resources.

Finally, the Department has received many comments on the periods that the Department must keep data and information confidential, ranging from 30 years to immediate release of it to the public. The Department had to balance the advantage of immediately alerting the States to resource potentials to assist them in planning against the disadvantage that immediate release of data and information would be to the exploration industry. Immediate release would reduce the marketability of the data and information, thus adversely affecting the exploration industry. Accordingly, the final regulations generally require that data and information collected under a permit not be disclosed to the public for ten years after the issuance of the permit. However, information identifying hydrocarbon shows or environmental hazards will be released immediately and information obtained from a deep stratigraphic test would be released five years after completion of the well and, in certain instances, earlier.

It is hereby certified that the economic and inflationary impacts of the proposed regulation have been carefully evaluated in accordance with Executive Order 11821.

Therefore, Part 250 of Title 30 of the Code of Federal Regulations is amended, and Part 251 of Title 30 of the Code of Federal Regulations is added as follows:

1. Section 250.97 of Part 250 of Title 30 of the Code of Federal Regulations is revised to read as follows:

§ 250.97 Public inspection of records.

(a) Geophysical data, processed geophysical information, interpreted geophysical information and interpreted geological information (as defined in § 251.3 of this chapter) which are submitted pursuant to the requirements of this Part shall not be available for public inspection without the consent of the lessee so long as the lease remains in effect, or for a period of 10 years after the date of submission, whichever is less, unless the Supervisor with the approval of the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(b) Geological data and analyzed geological information (as defined in § 251.3 of this chapter) which are submitted pursuant to the requirements of this Part shall not be made available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of two years after the date of submission, whichever is less, unless the Supervisor with the approval of the Director determines that earlier release of such information is necessary for the proper development of the field or area.

2. Part 251 is added to Title 30 of the Code of Federal Regulations to read as follows:

Sec.	
251.1	Purpose.
251.2	Applicability.
251.3	Definitions.
251.4	Functions of supervisor.
251.5	Requirement of notices and permits.
251.6	Forms for notices and permit applications.
251.7	Filing locations for notices and permit applications.
251.8	General conditions of notices and permits.
251.9	Test drilling under notices and permits.
251.10	Observation of exploration conducted under permits.
251.11	Report of operations conducted under notices and permits.
251.12	Submission of data and information by permittees.
251.13	Reimbursement to permittees.
251.14	Disclosure of data and information submitted under permits.
251.15	Termination, suspension, and revocation of authority to operate under notices and permits.
251.16	Penalties.
251.17	Appeals.

AUTHORITY: Sec. 11 of the Outer Continental Shelf Lands Act, 67 Stat. 468 (43 U.S.C. Sec. 1340).

§ 251.1 Purpose.

The purpose of the regulations in this Part is to prescribe policies, procedures, and requirements for conducting geological and geophysical exploration for mineral resources and scientific research on the Outer Continental Shelf without a lease.

§ 251.2 Applicability.

(a) *Permits and notices.* The regulations of this Part are applicable to permits issued and notices filed after the effective date of this Part. The regulations of this Part are also applicable to any "Permit and Agreement for Outer Continental Shelf Geophysical Exploration" which, prior to the effective date of this Part, is issued pursuant to the notice on Geological and Geophysical Exploration by the Acting Secretary of the Interior, dated August 27, 1975, and published in the FEDERAL REGISTER on September 3, 1975 (40 FR 40563). If the regulations of this Part conflict with the terms of sections 4, 5, or 8 of a "Permit and Agreement for Outer Continental Shelf Geophysical Exploration" which, prior to the effective date of this Part, was issued pursuant to that notice in the FEDERAL REGISTER on September 3, 1975, the terms of that section in the Permit and Agreement shall control.

(b) *Leases.* The regulations in this Part shall not apply to geological and geophysical exploration conducted on a lease in the Outer Continental Shelf of the United States by or on behalf of the lessee. Those explorations shall be governed by the regulations in Part 250 of this Title.

§ 251.3 Definitions.

When used in this Part, the following definitions shall apply.

(a) *Outer Continental Shelf.* All submerged lands which lie seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act, 67 Stat. 29, (43 U.S.C. Sec. 1301), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(b) *Act.* The Outer Continental Shelf Lands Act, 67 Stat. 462, (43 U.S.C. Secs. 1331-1343).

(c) *OCS Order.* A formal numbered order issued by the Supervisor with the prior approval of the Chief, Conservation Division, Geological Survey, that implements the regulations contained in this Part or Part 250 of this Title and applies to operations in an area of the Outer Continental Shelf.

(d) *Director.* The Director of the Geological Survey, United States Department of the Interior.

(e) *Supervisor.* A representative of the Secretary, or any subordinate of that representative acting under his direction, subject to the direction and supervisory authority of the Director, the Chief, Conservation Division, Geological Survey, and the appropriate Conservation Manager, Conservation Division, Geological Survey.

(f) *Person.* A citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. Sec. 1101(a)(20), a private, public, or municipal corporation organized under the laws of the United States or of any State or Territory thereof, and associations of such citizens, nationals, resident aliens, or private, public or municipal corporations, States or political subdivisions of States.

(g) *Third party.* Any person other than a representative of the United States or the permittee.

(h) *Notice.* The Statement of Intent to conduct geological and geophysical exploration for scientific research which does not include the use of solid or liquid explosives or a deep stratigraphic test.

(i) *Permit.* The contract or agreement approved for a specified period of not more than one year under which a person acquires the right to conduct (1) geological exploration for mineral resources, (2) geophysical exploration for mineral resources, or (3) geological and geophysical exploration for scientific research which includes the use of solid or liquid explosives or a deep stratigraphic test.

(j) *Geological exploration for mineral resources.* Any operation conducted on the Outer Continental Shelf which utilizes geological and geochemical techniques, including, but not limited to, core and test drilling, well logging techniques, and various bottom sampling methods, to produce data and information on mineral resources, including data and information in support of possible exploration and development activity. The term does not include exploration for scientific research.

(k) *Geophysical exploration for mineral resources.* Any operation conducted on the Outer Continental Shelf which utilizes geophysical techniques, including, but not limited to, gravity, magnetic and various seismic methods, to produce data and information on mineral resources, including data and information in support of possible exploration and development activity. The term does not include exploration for scientific research.

(l) *Geological and geophysical exploration for scientific research.* Any investigation conducted on the Outer Continental Shelf for scientific research purposes involving the gathering and analysis of geological or geophysical data and information which are made available to the public for inspection and reproduction at the earliest practicable time.

(m) *Deep stratigraphic test.* Off structure drilling which involves the penetration into the sea bottom of more than 50 feet (15.2 metres) of consolidated rock or a total of more than 300 feet (91.4 metres).

(n) *Shallow test drilling.* Drilling into the sea bottom to depths less than those specified for a deep stratigraphic test.

(o) *Data.* Facts and statistics or samples which have not been analyzed or processed.

(p) *Analyzed geological information.* Data, collected under a permit, which

have been analyzed. Analysis may include, but is not limited to, identification of lithologic and fossil content, core analyses, laboratory analyses of physical and chemical properties, logs or charts of electrical, radioactive, sonic, and other well logs, and descriptions of hydrocarbon shows or hazardous conditions.

(q) *Processed geophysical information.* Data, collected under a permit, which have been processed. Processing involves changing the form of data so as to facilitate interpretation. Processing operations may include, but are not limited to, applying corrections for known perturbing causes, rearranging or filtering data, and combining or transforming data elements.

(r) *Interpreted geological information.* Knowledge, often in the form of maps, developed by determining the geological significance of data and analyzed geological information.

(s) *Interpreted geophysical information.* Knowledge, often in the form of maps, developed by determining the geological significance of geophysical data and processed geophysical information.

(t) *Information.* This term, as used without a qualifying adjective, includes analyzed geological information, processed geophysical information, interpreted geological information, and interpreted geophysical information.

#### § 251.4 Functions of supervisor.

The Supervisor shall regulate all operations and other activities under this Part and perform all duties prescribed by this Part. In order to do so effectively, the Supervisor is authorized to issue OCS Orders and other written and oral orders and to take all other actions necessary to carry out the provisions of this Part and to prevent damage to, or waste of, any natural resource or injury to life and property from any activity hereunder. The Supervisor shall confirm oral orders in writing as soon as possible.

#### § 251.5 Requirement of notices and permits.

(a) *Geological or geophysical exploration for mineral resources.* A person may not conduct geological or geophysical exploration for mineral resources without a permit. Separate permits will be issued for geological exploration for mineral resources and for geophysical exploration for mineral resources.

(b) *Geological and geophysical exploration for scientific research.* (1) A person may not conduct geological and geophysical exploration for scientific research without a permit if the exploration includes the use of solid or liquid explosives or a deep stratigraphic test. Separate permits will be issued for geological exploration for scientific research and for geophysical exploration for scientific research.

(2) A person may conduct geological and geophysical exploration for scientific research without a permit if the exploration does not include the use of solid or liquid explosives or a deep stratigraphic test. However, the person must file with the Supervisor a notice to the

Director of intent to conduct exploration which does not involve such explosives or a deep stratigraphic test at least 30 days prior to commencing the exploration. Shallow test drilling may not be conducted if, within 21 days of the filing of the notice, the Supervisor rejects the notice by sending a statement of rejection by certified mail to the person who filed the notice. A statement of rejection may advise the person of changes in the notice which, if filed again, would render the notice acceptable to the Supervisor.

#### § 251.6 Forms for notices and permit applications.

(a) *Notices.* A notice shall not be on a standardized form, but shall be signed and shall state:

(1) The name(s) of the person(s) conducting or participating in the proposed exploration;

(2) The type of exploration and manner in which it will be conducted;

(3) The location, designated on a map, plat, or chart, where the exploration will be conducted;

(4) The dates, which shall designate a period of not more than one year, on which the exploration will be commenced and completed;

(5) The proposed time and manner in which the data and information resulting from the exploration will be made available to the public for inspection and reproduction, such time being the earliest practicable time;

(6) An agreement that the data and information resulting from the exploration will not be sold or withheld for exclusive use; and

(7) An agreement to comply with the Act, the regulations in this Part, applicable OCS orders, other written or oral orders of the Supervisor, and other applicable statutes and regulations, whether such statutes, regulations or orders are enacted, promulgated, issued or amended before or after the notice is filed.

(8) The name, registry number, registered owner and port of registry of vessels used in the operation.

(b) *Permit applications.* An application for a permit shall be on form approved by the Director. Each application shall include:

(1) The name(s) of the person(s) conducting or participating in the proposed exploration;

(2) The type of exploration and manner in which it will be conducted;

(3) The location on the Outer Continental Shelf where the exploration will be conducted;

(4) The purpose of conducting the exploration;

(5) The dates on which the exploration will be commenced and completed; and

(6) Such other descriptions of the proposed exploration as the Supervisor may request of the applicant.

#### § 251.7 Filing locations for notices and permit applications.

(a) *Geological or geophysical exploration for mineral resources.* (1) Applications for permits to conduct geological or

geophysical exploration for oil, gas and sulphur shall be filed in duplicate at the following Geological Survey offices:

(i) For the Outer Continental Shelf off the Atlantic Coast—the Area Oil and Gas Supervisor, Eastern Area, 1725 K Street, N.W., Suite 213, Washington, D.C. 20244.

(ii) For the Outer Continental Shelf off the Gulf of Mexico—the Area Oil and Gas Supervisor, Gulf of Mexico Area, P.O. Box 7944, Metairie, Louisiana 70011.

(iii) For the Outer Continental Shelf off the coast of the States of California, Oregon, and Washington—the Area Oil and Gas Supervisor, Pacific Area, Room 7744, Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

(iv) For the Outer Continental Shelf off the State of Alaska—the Area Oil and Gas Supervisor, Alaska Area, P.O. Box 259, Anchorage, Alaska 99510.

(2) Applications for permits to conduct geological or geophysical exploration for minerals other than oil, gas and sulphur shall be filed in duplicate at the following Geological Survey offices:

(i) For the Outer Continental Shelf off the Atlantic Coast and in the Gulf of Mexico—the Area Mining Supervisor, Eastern Area, Suite 213, 1725 K Street, N.W., Washington, D.C. 20244.

(ii) For the Outer Continental Shelf off the States of Alaska, California, Oregon, and Washington—the Area Mining Supervisor, Alaska—Pacific Area, 345 Middlefield Road, Menlo Park, California 94025.

(b) *Geological and geophysical exploration for scientific research.* Notices and applications for permits to conduct geological and geophysical exploration for scientific research shall be filed in duplicate with the Area Oil and Gas Supervisor as indicated in paragraph (a) (1) of this section.

#### § 251.8 General conditions of notices and permits.

(a) *Statutes, regulations and orders.* Exploration authorized under this Part shall be conducted in accordance with the Act, the regulations in this Part, applicable OCS orders, other written or oral orders of the Supervisor, and other applicable statutes and regulations, whether such statutes, regulations and orders are enacted, promulgated, issued, or amended before or after the notice is filed or the permit is issued.

(b) *General restrictions on operations.* Exploration authorized under this Part shall be conducted so that operations do not:

(1) Interfere with or endanger operations under any lease maintained or granted pursuant to the Act;

(2) Cause undue harm to aquatic life;

(3) Cause pollution;

(4) Create hazardous or unsafe conditions;

(5) Unreasonably interfere with or harm other uses of the area; or

(6) Disturb cultural resources, including sites, structures or objects of historical or archaeological significance.

(c) *Report of hydrocarbon shows or adverse effects.* Any person conducting

exploration under this Part shall immediately report to the Director through the Supervisor any hydrocarbon shows or any adverse effects of the exploration on the environment, aquatic life, cultural resources or uses of the area in which the exploration is conducted.

(d) *No right to a lease.* Authorizations granted under this Part to conduct exploration shall not confer a right to a lease under the Act.

**§ 251.9 Test drilling under notices and permits.**

(a) *Shallow test drilling.* (1) Permits authorizing geological exploration for mineral resources by means of shallow test drilling may be issued by the Supervisor. The Supervisor will also review notices under which shallow test drilling will be conducted.

(2) As a condition of a permit or after receipt of a notice, the Supervisor may require the gathering and submission of, prior to the commencement of operations, high resolution geophysical data, processed geophysical information, and interpreted geophysical information from, but not limited to, bathymetric, side-scan sonar and magnetometer systems, so as to determine shallow structural detail across and in the vicinity of the proposed test.

(b) *Deep stratigraphic tests.* Permits authorizing geological exploration for mineral resources or scientific research by means of deep stratigraphic tests may be issued by the Supervisor, with the approval of the Director.

(1) The holder of a permit that authorizes deep stratigraphic tests may not commence any drilling operations unless he has submitted a drilling plan and the Director has approved the plan. Each drilling plan shall include:

(i) A description of the drilling rig proposed for use showing the design and major features thereof, including features intended to prevent or control pollution;

(ii) The location of each deep stratigraphic test to be conducted including surface and projected bottom hole location for directionally drilled tests;

(iii) An oil spill contingency plan and a description of all equipment and materials available to the permittee for use in containment and recovery of an oil spill, with a description of the capabilities of such equipment under different sea and weather conditions;

(iv) High resolution geophysical data, processed geophysical information, and interpreted geophysical information from, but not limited to, bathymetric, side-scan sonar and magnetometer systems, collected across any proposed drilling location so as to permit determination of shallow structural detail in the vicinity of the proposed test, and for stratigraphic tests proposed to depths greater than 1,000 feet (304.8 metres) below the mudline, common depth point seismic data from the area of the proposed test location and processed geophysical information and interpreted geophysical information therefrom; and

(v) Such other pertinent data and information as the Supervisor may request.

(2) After approval of a drilling plan, any modifications must be approved by the Supervisor. A modification including relocation of a drillsite or bottom hole location exceeding 600 feet (182.8 metres) must be approved by the Director.

(3) A deep stratigraphic test authorized by a permit shall be conducted in a manner which prevents blowouts, prevents release of fluids from strata into the sea, and prevents communication between fluid-bearing strata of oil, gas, or water. The permittee shall utilize appropriate protective measures and devices specified by the Supervisor.

(c) *Group participation.* In order to minimize duplicative geological exploration involving penetration of the seabed of the Outer Continental Shelf, a permittee proposing to conduct a deep stratigraphic test shall afford all interested persons an opportunity to participate in the test on a cost-sharing basis with a penalty for late participation of not more than 100 percent of the cost to each original participant. A permittee proposing to conduct shallow test drilling shall, when ordered by the Supervisor or when provided in the permit, afford all interested persons an opportunity to participate in the test on a cost-sharing basis with a penalty for late participation of not more than 50 percent of the cost to each original participant. To allow for group participation a permittee shall:

(1) Publish a summary statement of the proposed test in a manner approved by the Supervisor;

(2) Allow at least 30 days from the date of the publication for other persons to consider participation in the program as described by the permit and join as original participants;

(3) Forward a copy of the published notice(s) to the Supervisor;

(4) Compute the cost to an original participant by dividing the total cost of the program by the number of original participants; and

(5) Furnish the Supervisor with a complete list of all participants under the permit prior to commencing operations, or at the end of the advertising period if operations begin prior to its close, and submit, on a timely basis, a list of all late participants.

If the Supervisor determines that a change made in the permit or drilling plan is significant, he shall require additional publications. Persons wishing to join as a result of such readvertisements within the time frame allowed will be considered to be original participants.

(d) *Cultural resources.* Any person who holds a permit authorizing a deep stratigraphic test shall, prior to commencing the test, conduct studies sufficient to determine the possible existence of any cultural resources, including sites, structures, or objects of historical or archaeological significance that may be affected by such drilling, and shall report the findings of the studies to the

Supervisor. Any person who holds a permit authorizing shallow test drilling or who has filed a notice for Shallow test drilling may be required to conduct such studies at the discretion of the Supervisor. If any study indicates the possible presence of a cultural resource, a full explanation will be included in the report. The person shall take no action that may result in the disturbance of cultural resources without the prior approval of the Supervisor, and if any cultural resource is discovered during a test, the person shall immediately report the finding to the Supervisor and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its disposition.

(e) *Orders and regulations.* All Outer Continental Shelf regulations relating to drilling operations in Part 250 of this title and all OCS Orders relating to the drilling and abandonment of wells apply, as appropriate, to drilling authorized under this Part. Departures from the requirements of OCS Orders shall be permitted as provided in § 250.12(b) of this title.

(f) *Bonds.* Before a permit authorizing a deep stratigraphic test will be issued, the applicant shall furnish to the Bureau of Land Management a surety bond of not less than \$100,000 conditioned on compliance with the terms of the permit, unless he already maintains with or furnishes to the Bureau of Land Management a bond in the sum of \$300,000 conditioned on compliance with the terms of the permit issued to him for the area of the Outer Continental Shelf where he proposes to conduct a deep stratigraphic test. The Supervisor may require a bond for shallow test drilling. Any bond furnished or maintained by a person under this section will be on a form approved by the Supervisor.

**§ 251.10 Observation of exploration conducted under permits.**

(a) *Advisor.* A permittee shall, on request of the Supervisor, furnish food, quarters, and transportation for an advisor who is approved by the Supervisor, and the permittee will be reimbursed by the United States for actual costs. The advisor shall observe operations conducted pursuant to the permit and advise the Supervisor on the conduct of the operations as well as on any adverse effects of the operations upon the environment, aquatic life, cultural resources, and other uses of the area. The fees charged by an advisor shall be paid by the United States.

(b) *Federal inspector.* A permittee shall, on request of the Supervisor, furnish food, quarters, and transportation for a Federal representative to inspect operations, and the permittee will be reimbursed by the United States for actual costs.

**§ 251.11 Report of operations conducted under notices and permits.**

(a) *Weekly reports.* Each permittee shall submit to the Supervisor weekly reports which include a daily log of operations.

(b) *Final reports.* Each permittee and each person operating under a notice shall submit a final report to the Supervisor within 30 days after the completion of exploration under the permit or notice. The final report shall contain the following:

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the areas in which the exploration was conducted and specifically identifying the lines over which geophysical traverses were run or the locations where geological exploration was conducted, including a reference sufficient to identify the data produced during each such operation;

(3) The dates on which the exploration was performed;

(4) A report of any hydrocarbon shows or any adverse effects of the exploration on the environment, aquatic life, cultural resources, or other uses of the area in which the exploration was conducted;

(5) Such other descriptions of the exploration as may be specified by the Supervisor.

**§ 251.12 Submission of data and information by permittees.**

(a) *Submission of geological data and analyzed geological information.* (1)

Each holder of a permit for geological exploration shall notify the Supervisor immediately, in writing, of the acquisition or analysis of any geological data collected under the permit. At any time within one year of receiving a notice of acquisition or analysis from a permittee, or within a longer period if specified in the permit, the Supervisor may select all or part of the geological data and analyzed geological information. The permittee shall keep the geological data and analyzed geological information available for inspection and selection by the Supervisor during such period, and the permittee shall submit geological data and analyzed geological information to the Supervisor within 30 days after receiving a request for submission of them.

(2) Each submission of geological data and analyzed geological information shall, at the direction of the Supervisor, contain all or part of the following:

(i) An accurate and complete record of all geological (including geochemical) data and information resulting from each operation;

(ii) Paleontological reports identifying microscopic fossils by depth (not resulting in age interpretations based upon such identification) unless washed samples are maintained by the permittee for paleontological determination and are made available for inspection by the Geological Survey;

(iii) Copies of logs or charts of electrical, radioactive, sonic, and other well logs;

(iv) Analyses of core or bottom samples or a representative cut or split of the core or bottom sample;

(v) Detailed descriptions of any hydrocarbon shows or hazardous conditions encountered during operations, in-

cluding near losses of well control, abnormal geopressures, and losses of circulation; and

(vi) Such other geological data and analyzed geological information obtained under the permit as may be specified by the Supervisor.

(3) A permittee shall not be required to submit interpreted geological information under this Part of Title 30 unless specifically required in this Part.

(b) *Submission of geophysical data and processed geophysical information.*

(1) Each holder of a permit for geophysical exploration shall notify the Supervisor immediately, in writing, of the acquisition, processing, or reprocessing of any geophysical data collected under the permit. At any time within one year after receiving a notice of acquisition, processing, or reprocessing from a permittee, or within a longer period if specified in the permit, the Supervisor may select all or part of the geophysical data, processed geophysical information, and reprocessed geophysical information. The permittee shall keep the geophysical data, processed geophysical information, and reprocessed geophysical information available for inspection and selection by the Supervisor during such period.

(2) *The Supervisor shall have the right to inspect the geophysical data, processed geophysical information, or reprocessed geophysical information prior to selection in writing.* This inspection may be performed on the permittee's premises or, if the Supervisor shall so request, the permittee shall deliver the geophysical data, processed geophysical information, or reprocessed geophysical information to the Supervisor for inspection. Such delivery shall be within 30 days after the request for delivery is received. At any time prior to selection in writing, the Supervisor shall have the right to return, without cost to the Government except for reproduction costs, any or all geophysical data, processed geophysical information, or reprocessed geophysical information following either inspection and detailed assessment of quality or establishment of price to the Government for processing or reprocessing. If the Supervisor decides to keep any or all of the geophysical data, processed geophysical information, or reprocessed geophysical information, he shall select them in writing; and if they are on the permittee's premises, the permittee shall submit them within 30 days after receiving a request for submission of them. The Supervisor shall have the right to arrange, by contract or otherwise, for the reproduction of geophysical data, processed geophysical information and reprocessed geophysical information independently of the permittee and without reimbursement of the permittee for reproduction costs.

(3) In the event a permittee transfers geophysical data or processed geophysical information to a third party, or a third party who has received geophysical data or processed geophysical infor-

mation directly or indirectly from a permittee transfers the geophysical data or processed geophysical information to another third party, the transferor shall notify the Supervisor of such transmittal and the transferor shall bind the third party, in writing, to the obligations of the permittee as specified in this Section.

(4) Each submission of geophysical data, processed geophysical information and reprocessed geophysical information shall, at the direction of the Supervisor, contain all or part of the following:

(i) An accurate and complete record of each geophysical survey conducted under the permit, including final location maps of all survey stations; and

(ii) All common depth point and high resolution seismic data developed under a permit in a format and of a quality suitable for processing; processed geophysical information derived therefrom with extraneous signals and interference removed, in a format and of a quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques; and other geophysical data and processed geophysical information obtained from, but not limited to, shallow and deep subbottom profiles, bathymetry, side-scan sonar and magnetometer systems, bottom profiles, gravity and magnetic surveys and special studies such as refraction and velocity surveys.

(5) A permittee shall not be required to submit interpreted geophysical information under this Part of Title 30 unless specifically required by this Part.

**§ 251.13 Reimbursement to permittees.**

(a) *Reimbursement for reproduction costs.* After the delivery or submission of geophysical data, processed geophysical information and reprocessed geophysical information in accordance with § 251.12(b)(2), the permittee or third party shall, upon a request for reimbursement and upon a determination by the Supervisor that the request is proper, be reimbursed for the cost of reproducing the geophysical data, processed geophysical information and reprocessed geophysical information at the permittee's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) *Reimbursement for processing or reprocessing costs.* After the Supervisor selects in writing processed and reprocessed geophysical information in accordance with § 251.12(b)(2), the permittee or third party shall, upon a request for reimbursement and upon a determination by the Supervisor that the request is proper, be reimbursed for the cost attributable to processing and reprocessing only, as distinguished from the cost of data acquisition. The amount of reimbursement will not exceed the lowest rate available to any purchaser. If the processed and reprocessed geophysical information is not available for sale and the permittee or third party is the only participant, the permittee or third party shall be reimbursed for not more than one-half of the processing and re-

processing cost incurred by the permittee or third party. The permittee or third party shall refund to the United States any amount by which the lowest share of the total processing and reprocessing cost is reduced following reimbursement to the permittee or third party by the United States.

(c) *Procedures for establishing amount of reimbursement.* If a permittee or third party intends to request reimbursement under this section, he shall submit to the Supervisor a request for reimbursement which specifies the cost of reproducing the geophysical data, processed geophysical information, and reprocessed geophysical information, and the cost of processing or reprocessing the geophysical data. The request shall be submitted at the time the permittee or third party delivers for inspection geophysical data, processed geophysical information or reprocessed geophysical information or upon demand by the Supervisor if the inspection is on the permittee's or third party's premises. Any reimbursement to a permittee or third party shall be conditioned upon a determination by the Supervisor that the request for reimbursement as originally submitted or as revised is proper. Reimbursement procedures shall be in accordance with applicable laws and regulations.

**§ 251.14 Disclosure of data and information submitted under permits.**

(a) *General.* Except as specified in this Section, the United States shall not make available to the public (1) trade secrets and commercial or financial information which are privileged or confidential and which are received from permittees, and (2) geological and geophysical information and data, including maps, concerning wells, which are received from permittees.

(b) *Disclosure of geological data, analyzed geological information and interpreted geological information.* The Supervisor shall disclose geological data, analyzed geological information and interpreted geological information submitted under a permit as follows:

(1) He shall immediately issue a public notice identifying any hydrocarbon shows or environmental hazards on unleased lands discovered during drilling operations when the shows or hazards are judged to be significant by the Director:

(2) He shall make available to the public all other geological data, analyzed geological information and interpreted geological information, except geological data, analyzed geological information and interpreted geological information obtained from deep stratigraphic tests, ten years after issuance of the permit; and

(3) He shall make available to the public geological data, analyzed geological information and interpreted geological information obtained from deep stratigraphic tests, five years after completion of the test well or 60 calendar days after the issuance of the first Federal lease within 50 geographic miles

(93.6 kilometres) of the test site, whichever is earlier.

(c) *Disclosure of geophysical data, processed geophysical information and interpreted geophysical information.* The Supervisor shall disclose geophysical data, processed geophysical information, reprocessed geophysical information and interpreted geophysical information submitted under a permit and retained by the Supervisor as follows:

(1) He shall make available to the public geophysical data 10 years after the issuance of the permit.

(2) He shall make available to the public processed geophysical information, reprocessed geophysical information and interpreted geophysical information 10 years after it has been submitted to the Supervisor.

**§ 251.15 Termination, suspension and revocation of authority to operate under notices and permits.**

(a) *Termination.* The Supervisor or a person who has filed a notice or who holds a permit may terminate the authority to conduct exploration under a notice or permit, as the case may be, at any time and without cause by sending a statement of termination by certified mail to the other party at least 30 days in advance of the date such termination is to be effective.

(b) *Suspension and revocation.* (1) The Supervisor may, by sending a statement of suspension or revocation by certified mail, suspend or revoke the authority to conduct exploration under a permit or notice when in his judgment the exploration or proposed exploration threatens immediate, serious, or irreparable harm or damage to life, including aquatic life, to property, to cultural resources, to valuable mineral deposits, or to the environment. Such suspensions and revocations shall be effective immediately upon receipt of the statement.

(2) The Supervisor may, by sending a statement of suspension or revocation by certified mail, suspend or revoke the authority to conduct exploration under a notice or permit for noncompliance with the Act, the regulations in this Part, the terms and conditions of the permit, applicable OCS Orders, other written orders of the Supervisor including requests for any reports, and other applicable laws and regulations. A suspension shall be effective immediately upon receipt of the statement and a revocation shall be effective without further notice on the thirtieth day after receipt of the statement, unless the breach or violation is corrected by that time. Upon receipt of a statement of revocation asserting a breach or violation, the authority to conduct exploration under the notice or permit shall be suspended immediately, and the suspension shall remain in effect until the breach or violation has been corrected or the revocation becomes final.

(c) *Continuing obligations.* Termination or revocation of the authority to conduct exploration under a notice or permit shall not relieve the person who filed

the notice or who holds the permit of the obligation to abandon any drill sites in compliance with § 251.9(e), and to comply with all other obligations specified in this Part or in the permit or notice.

**§ 251.16 Penalties.**

All persons conducting geological or geophysical exploration for mineral resources and exploration for scientific research shall be subject to the penalty provisions of section 5(a)(2) of the Act, (43 U.S.C. Sec. 1334(a)(2)), for violation of regulations for the prevention of waste, the conservation of natural resources, or the protection of correlative rights. This is in addition to any penalty which may be prescribed in the permit for noncompliance with its provisions or any action which may be brought by the United States to compel compliance with the provisions of the permit.

**§ 251.17 Appeals.**

Orders or decisions issued under the regulations in this Part may be appealed as provided in Part 290 of this Title.

Effective: June 11, 1976.

Approved: June 11, 1976.

TOM KLEPPE,  
Secretary of the Interior.

[FR Doc.76-18259 Filed 6-22-76;8:45 am]

**Title 32—National Defense**  
**CHAPTER XII—DEFENSE SUPPLY**  
**AGENCY**

**SUBCHAPTER B—MISCELLANEOUS**

[DSAR 5400.21: RCS DD (A & AR)1379]

**PART 1286—PERSONAL PRIVACY AND**  
**RIGHTS OF INDIVIDUALS REGARDING**  
**THEIR PERSONAL RECORDS**

**Correction**

On September 30, 1975, there was published in the FEDERAL REGISTER (40 FR 45113) (FR Doc. 75-25987) a notice of proposed rulemaking to implement the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a).

The following paragraph was inadvertently omitted when the final document was published (41 FR 18836, May 7, 1976), and should now be added to page 18844, third column, immediately below the center heading "Appendix C" to read as follows:

All systems of records maintained by the Defense Supply Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may

**Annex 10**

**NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 USC, SECS. 4321-4347,  
AS ENACTED**

**COASTAL ZONE MANAGEMENT ACT OF 1972, 16 USC, SECS. 1451-1464,  
AS ENACTED**

**ENDANGERED SPECIES ACT OF 1973, 16 USC, SECS. 1531-1543, AS ENACTED**

**MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT OF 1972, 33 USC,  
SECS. 1401-1444, AS ENACTED**

preceding year, including in such report any recommendations the Committee deems appropriate to accomplish the purposes of this chapter. (Pub. L. 91-181, § 11, Dec. 30, 1969, 83 Stat. 840.)

#### § 4312. Termination.

This chapter shall expire five years after it becomes effective. (Pub. L. 91-181, § 12, Dec. 30, 1969, 83 Stat. 840.)

#### REFERENCES IN TEXT

"This chapter", referred to in text, was, in the original, "this Act", meaning Pub. L. 91-181, which was approved Dec. 30, 1969.

### Chapter 55.—NATIONAL ENVIRONMENTAL POLICY

Sec.

4321. Congressional declaration of purpose.

#### SUBCHAPTER I.—POLICIES AND GOALS

4331. Congressional declaration of national environmental policy.

4322. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.

4333. Conformity of administrative procedures to national environmental policy.

4334. Other statutory obligations of agencies.

4335. Efforts supplemental to existing authorizations.

#### SUBCHAPTER II.—COUNCIL ON ENVIRONMENTAL QUALITY

4341. Reports to Congress; recommendations for legislation.

4342. Establishment; membership; Chairman; appointments.

4343. Employment of personnel, experts and consultants.

4344. Duties and functions.

4345. Consultation with the Citizen's Advisory Committee on Environmental Quality and other representatives.

4346. Tenure and compensation of members.

4347. Authorization of appropriation.

§ 4321. Congressional declaration of purpose.

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (Pub. L. 91-190, § 2, Jan. 1, 1970, 83 Stat. 852.)

#### SHORT TITLE

Section 1 Pub. L. 91-190 provided: "That this Act [enacting this chapter] may be cited as the 'National Environmental Policy Act of 1969.'"

#### TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT

The Cabinet Committee on the Environment was terminated and its functions transferred to the Domestic Council, see section 2(b) of Ex. Ord. No. 11541, July 1, 1970, 35 F.R. 10737, set out as a note under section 16 of Title 31, Money and Finance.

#### EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

#### PART I. CABINET COMMITTEE ON THE ENVIRONMENT

##### Section 101. Establishment of the Cabinet Committee.

(a) There is hereby established the Cabinet Committee on the Environment (hereinafter referred to as "the Cabinet Committee").

(b) The President of the United States shall preside over meetings of the Cabinet Committee. The Vice President shall preside in the absence of the President.

(c) The Cabinet Committee shall be composed of the following members:

The Vice President of the United States  
Secretary of Agriculture  
Secretary of Commerce  
Secretary of Health, Education and Welfare  
Secretary of Housing and Urban Development  
Secretary of the Interior  
Secretary of Transportation

and such other heads of departments and agencies and others as the President may from time to time direct.

(d) Each member of the Cabinet Committee may designate an alternate, who shall serve as a member of the Cabinet Committee whenever the regular member is unable to attend any meeting of the Cabinet Committee.

(e) When matters which affect the interest of Federal agencies the heads of which are not members of the Cabinet Committee are to be considered by the Cabinet Committee, the President or his representative may invite such agency heads or their alternates to participate in the deliberations of the Cabinet Committee.

(f) The Director of the Bureau of the Budget (now the Director of the Office of Management and Budget), the Director of the Office of Science and Technology, the Chairman of the Council of Economic Advisers, and the Executive Secretary of the Council for Urban Affairs or their representatives may participate in the deliberations of the Cabinet Committee on the Environment as observers.

(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee.

Sec. 102. Functions of the Cabinet Committee. (a) The Cabinet Committee shall advise and assist the President with respect to environmental quality matters and shall perform such other related duties as the President may from time to time prescribe. In addition thereto, the Cabinet Committee is directed to:

(1) Recommend measures to ensure that Federal policies and programs, including those for development and conservation of natural resources, take adequate account of environmental effects.

(2) Review the adequacy of existing systems for monitoring and predicting environmental changes so as to achieve effective coverage and efficient use of facilities and other resources.

(3) Foster cooperation between the Federal Government, State and local governments, and private organizations in environmental programs.

(4) Seek advancement of scientific knowledge of changes in the environment and encourage the development of technology to prevent or minimize adverse effects that endanger man's health and well-being.

(5) Stimulate public and private participation in programs and activities to protect against pollution of the Nation's air, water, and land and its living resources.

(6) Encourage timely public disclosure by all levels of government and by private parties of plans that would affect the quality of environment.

(7) Assure assessment of new and changing technologies for their potential effects on the environment.

(8) Facilitate coordination among departments and agencies of the Federal Government in protecting and improving the environment.

(b) The Cabinet Committee shall review plans and actions of Federal agencies affecting outdoor recreation and natural beauty. The Cabinet Committee may conduct studies and make recommendations to the President on matters of policy in the fields of outdoor recreation and natural beauty. In carrying out the foregoing provisions of this subsection, the Cabinet Committee shall, as far as may be practical, advise Federal agencies with respect to the effect of their respective plans and programs on recreation and natural beauty, and may suggest to such



agencies ways to accomplish the purposes of this order. For the purposes of this order, plans and programs may include, but are not limited to, those for or affecting: (1) Development, restoration, and preservation of the beauty of the countryside, urban and suburban areas, water resources, wild rivers, scenic roads, parkways and highways, (2) the protection and appropriate management of scenic or primitive areas, natural wonders, historic sites, and recreation areas, (3) the management of Federal land and water resources, including fish and wildlife, to enhance natural beauty and recreational opportunities consistent with other essential uses, (4) cooperation with the States and their local subdivisions and private organizations and individuals in areas of mutual interest, (5) interstate arrangements, including Federal participation where authorized and necessary, and (6) leadership in a nationwide recreation and beautification effort.

Sec. 103. Coordination. The Secretary of the Interior may make available to the Cabinet Committee for coordination of outdoor recreation the authorities and resources available to him under the Act of May 28, 1963, 77 Stat. 49 [section 4601 et seq. of this title], to the extent permitted by law, he may make such authorities and resources available to the Cabinet Committee also for promoting such coordination of other matters assigned to the Cabinet Committee by this order.

Sec. 104. Assistance for the Cabinet Committee. In compliance with provisions of applicable law, and as necessary to serve the purposes of this order, (1) the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall provide or arrange for necessary administrative and staff services, support, and facilities for the Cabinet Committee, and (2) each department and agency which has membership on the Cabinet Committee under Section 101(c) hereof shall furnish the Cabinet Committee such information and other assistance as may be available.

#### PART II. CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Sec. 201. Establishment of the Committee. There is hereby established the Citizens' Advisory Committee on Environmental Quality (hereinafter referred to as the "Citizens' Committee"). The Citizens' Committee shall be composed of a chairman and not more than 14 other members appointed by the President. Appointments to membership on the Citizens' Committee shall be for staggered terms, except that the chairman of the Citizens' Committee shall serve until his successor is appointed.

Sec. 202. Functions of the Citizens' Committee. The Citizens' Committee shall advise the President and the Cabinet Committee on matters assigned to the Cabinet Committee by the provisions of this order.

Sec. 203. Expenses. Members of the Citizens' Committee shall receive no compensation from the United States by reason of their services under this order but shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) [sections 5701-5708 of Title 5, Government Organization and Employees] for persons in the Government service employed intermittently.

Sec. 204. Continuity. Persons who on the date of this order are members of the Citizens' Advisory Committee on Recreation and Natural Beauty established by Executive Order No. 11278 of May 4, 1966, as amended, shall, until the expirations of their respective terms and without further action by the President, be members of the Citizens' Committee established by the provisions of this Part in lieu of an equal number of the members provided for in section 201 of this order.

#### PART III. GENERAL PROVISIONS

Sec. 301. Construction. Nothing in this order shall be construed as subjecting any department, establishment, or other instrumentality of the executive branch of the Federal Government or the head thereof, or any function vested by law in or assigned pursuant to law to any such agency or head, to the authority of any other such agency or head or as abrogating, modifying, or restricting any such function in any manner.

Sec. 302. Prior bodies and orders. The President's Council on Recreation and Natural Beauty and the Citizens' Advisory Committee on Recreation and Natural Beauty are hereby terminated and the following are revoked:

- (1) Executive Order No. 11278 of May 4, 1966.
- (2) Executive Order No. 11359A of June 29, 1967.
- (3) Executive Order No. 11402 of March 29, 1968.

RICHARD NIXON

#### EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969 [sections 4331-4335 of this Title], hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act [section 4332 of this title].

Sec. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of

pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act [section 4332 (2)(C) of this title].

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act [section 4341 of this title].

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. Amendments of E.O. 11472. Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget," the following: "the Director of the Office of Science and Technology".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) [this chapter] shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190) [this chapter]".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

RICHARD NIXON

EX ORD. NO. 11523. NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

EX. ORD. NO. 11523, APR. 9, 1970, 35 F.R. 5993, PROVIDED: BY VIRTUE OF THE AUTHORITY VESTED IN ME AS PRESIDENT

of the United States, and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

SECTION 1. *Establishment of the Council.* (a) There is hereby established the National Industrial Pollution Control Council (hereinafter referred to as "the Industrial Council") which shall be composed of a Chairman, a Vice-chairman, and other representatives of business and industry appointed by the Secretary of Commerce (hereinafter referred to as "the Secretary").

(b) The Secretary, with the concurrence of the Chairman, shall appoint an Executive Director of the Industrial Council.

Sec. 2. *Functions of the Industrial Council.* The Industrial Council shall advise the President and the Chairman of the Council on Environmental Quality, through the Secretary, on programs of industry relating to the quality of the environment. In particular, the Industrial Council may—

(1) Survey and evaluate the plans and actions of industry in the field of environmental quality.

(2) Identify and examine problems of the effects on the environment of industrial practices and the needs of industry for improvements in the quality of the environment, and recommend solutions to those problems.

(3) Provide liaison among members of the business and industrial community on environmental quality matters.

(4) Encourage the business and industrial community to improve the quality of the environment.

(5) Advise on plans and actions of Federal, State, and local agencies involving environmental quality policies affecting industry which are referred to it by the Secretary, or by the Chairman of the Council on Environmental Quality through the Secretary.

Sec. 3. *Subordinate Committees.* The Industrial Council may establish, with the concurrence of the Secretary, such subordinate committees as it may deem appropriate to assist in the performance of its functions. Each subordinate committee shall be headed by a chairman appointed by the Chairman of the Industrial Council with the concurrence of the Secretary.

Sec. 4. *Assistance for the Industrial Council.* In compliance with applicable law, and as necessary to serve the purposes of this order, the Secretary shall provide or arrange for administrative and staff services, support, and facilities for the Industrial Council and any of its subordinate committees.

Sec. 5. *Expenses.* Members of the Industrial Council or any of its subordinate committees shall receive no compensation from the United States by reason of their services hereunder, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

Sec. 6. *Regulations.* The provisions of Executive Order No. 11007 of February 26, 1962 (3 CFR 573) [set out as a note under section 901 of Title 5] prescribing regulations for the formation and use of advisory committees, are hereby made applicable to the Industrial Council and each of its subordinate committees. The Secretary may exercise the discretionary powers set forth in that order.

Sec. 7. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency to the authority of any other Federal agency or of the Industrial Council or of any of its subordinate committees, or as abrogating or restricting any such function in any manner.

RICHARD NIXON

REORGANIZATION PLAN NO. 3 OF 1970

EF. DEC. 2, 1970, 35 F.R. 15623, 84 Stat. —

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

(a) There is hereby established the Environmental Protection Agency, hereinafter referred to as the "Agency."

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313).

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate.

#### SEC. 2. TRANSFERS TO ENVIRONMENTAL PROTECTION AGENCY

(a) There are hereby transferred to the Administrator:

(1) All functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered through the Federal Water Quality Administration, all functions which were transferred to the Secretary of the Interior by Reorganization Plan No. 2 of 1965 (80 Stat. 1608), and all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by provisions of law amendatory or supplementary thereof.

(2) (i) The functions vested in the Secretary of the Interior by the Act of August 1, 1958, 72 Stat. 479, 16 U.S.C. 742d-1 (being an Act relating to studies on the effects of insecticides, herbicides, fungicides, and pesticides upon the fish and wildlife resources of the United States), and (ii) the functions vested by law in the Secretary of the Interior and the Department of the Interior which are administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(3) The functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the following components thereof:

- (i) The National Air Pollution Control Administration,
- (ii) The Environmental Control Administration:

  - (A) Bureau of Solid Waste Management,
  - (B) Bureau of Water Hygiene,
  - (C) Bureau of Radiological Health.

except that functions carried out by the following components of the Environmental Control Administration of the Environmental Health Service are not transferred: (i) Bureau of Community Environmental Management, (ii) Bureau of Occupational Safety and Health, and (iii) Bureau of Radiological Health, insofar as the functions carried out by the latter Bureau pertain to (A) regulation of radiation from consumer products, including electronic product radiation, (B) radiation as used in the healing arts, (C) occupational exposures to radiation, and (D) research, technical assistance, and training related to clauses (A), (B), and (C).

(4) The functions vested in the Secretary of Health, Education, and Welfare of establishing tolerances for pesticide chemicals under the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 346, 346a, and 346, together with authority, in connection with the functions transferred, (i) to monitor compliance with the tolerances and the effectiveness of surveillance and enforcement, and (ii) to provide technical assistance to the States and conduct research under the Federal Food, Drug, and Cosmetic Act, as amended, and the Public Health Service Act, as amended.

(5) So much of the functions of the Council on Environmental Quality under section 204(5) of the National Environmental Policy Act of 1969, [section 4944(5) of this title], (Public Law 91-190, approved January 1, 1970, 83 Stat. 855), as pertains to ecological systems.

(6) The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material. As used herein, standards mean limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(7) All functions of the Federal Radiation Council (42 U.S.C. 2021(h)).

(8) (i) The functions of the Secretary of Agriculture and the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k), (ii) the functions of the Secretary of Agriculture and the Department of Agriculture under section 409(1) of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346a(1)), and (iii) the functions vested by law in the Secretary of Agriculture and the Department of Agriculture which are administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(9) So much of the functions of the transferor offices and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Administrator of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions, and (2) the functions vested in the Secretary of the Interior and the Secretary of Health, Education, and Welfare by section 160(d)(1)(B) and (3) of the Internal Revenue Code of 1954 (as enacted by section 704 of the Tax Reform Act of 1969, 83 Stat. 668); but shall be deemed to exclude the transfer of the functions of the Bureau of Reclamation under section 3(b)(1) of the Water Pollution Control Act (33 U.S.C. 466(b)(1)).

(b) There are hereby transferred to the Agency:

(1) From the Department of the Interior, (i) the Water Pollution Control Advisory Board (33 U.S.C. 466f), together with its functions, and (ii) the hearing boards provided for in sections 10(c)(4) and 10(f) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466(c)(4); 466g(f)). The functions of the Secretary of the Interior with respect to being or designating the Chairman of the Water Pollution Control Advisory Board are hereby transferred to the Administrator.

(2) From the Department of Health, Education, and Welfare, the Air Quality Advisory Board (42 U.S.C. 1857e), together with its functions. The functions of the Secretary of Health, Education, and Welfare with respect to being a member and the Chairman of that Board are hereby transferred to the Administrator.

#### SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Administrator may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any other officer, or by any organizational entity or employee, of the Agency.

#### SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Administrator or the Agency by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Agency at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of Office of Management and Budget shall deem

to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

#### SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator, authorize any such person to act as Assistant Administrator, and authorize any such person to act as the head of any principal constituent organizational entity of the Administration.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

#### SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Federal Water Quality Administration in the Department of the Interior (33 U.S.C. 466-1).

(2) The Federal Radiation Council (73 Stat. 690; 42 U.S.C. 2021(h)).

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of the Interior in the case of the Federal Water Quality Administration and by the Administrator of General Services in the case of the Federal Radiation Council.

#### SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect sixty days after the date they would take effect under 5 U.S.C. 906(a) in the absence of this section.

#### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code and providing for an Environmental Protection Agency. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 3 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a) (1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a) (3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 1 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

Section 907 of title 5 of the United States Code will operate to preserve administrative proceedings, including any public hearing proceedings, related to the transferred functions, which are pending immediately prior to the taking effect of the reorganization plan.

The reorganization plan should result in more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON

THE WHITE HOUSE,  
July 9, 1970.

#### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment—land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically. As a major step in this direction, I am transmitting today two reorganization plans: one to establish an Environmental Protection Agency, and one to establish, within the Department of Commerce, a National Oceanic and Atmospheric Administration.

#### ENVIRONMENTAL PROTECTION AGENCY (EPA)

Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action.

Despite its complexity, for pollution control purposes the environment must be perceived as a single, interrelated system. Present assignments of departmental responsibilities do not reflect this interrelatedness.

Many agency missions, for example, are designed primarily along media lines—air, water, and land. Yet the sources of air, water, and land pollution are interrelated and often interchangeable. A single source may pollute the air with smoke and chemicals, the land with solid wastes, and a river or lake with chemical and other wastes. Control of the air pollution may produce more solid wastes, which then pollute the land or water. Control of the water-polluting effluent may convert it into solid wastes, which must be disposed of on land.

Similarly, some pollutants—chemicals, radiation, pesticides—appear in all media. Successful control of them at present requires the coordinated efforts of a variety of separate agencies and departments. The results are not always successful.

A far more effective approach to pollution control would:

- Identify pollutants.
- Trace them through the entire ecological chain, observing and recording changes in form as they occur.
- Determine the total exposure of man his environment.
- Examine interactions among forms of pollution.
- Identify where in the ecological chain interdiction would be most appropriate.

In organizational terms, this requires pulling together into one agency a variety of research, monitoring, standard-setting and enforcement activities now scattered through several departments and agencies. It also requires that the new agency include sufficient support elements—in research and in aids to State and local antipollution programs, for example—to give it the needed strength and potential for carrying out its mission. The new agency would also, of course, draw upon the results of research conducted by other agencies.

#### COMPONENTS OF THE EPA

Under the terms of Reorganization Plan No. 3, the following would be moved to the new Environmental Protection Agency:

- The functions carried out by the Federal Water Quality Administration (from the Department of the Interior).
- Functions with respect to pesticides studies now vested in the Department of the Interior.
- The functions carried out by the *National Air Pollution Control Administration* (from the Department of Health, Education, and Welfare).
- The functions carried out by the Bureau of Solid Waste Management and the Bureau of Water Hygiene, and portions of the functions carried out by the Bureau of Radiological Health of the Environmental Control Administration (from the Department of Health, Education and Welfare).

- Certain functions with respect to pesticides carried out by the Food and Drug Administration (from the Department of Health, Education and Welfare).
- Authority to perform studies relating to ecological systems now vested in the Council on Environmental Quality.
- Certain functions respecting radiation criteria and standards now vested in the Atomic Energy Commission and the Federal Radiation Council.
- Functions respecting pesticides registration and related activities now carried out by the Agricultural Research Service (from the Department of Agriculture).

With its broad mandate, EPA would also develop competence in areas of environmental protection that have not previously been given enough attention, such, for example, as the problem of noise, and it would provide an organization to which new programs in these areas could be added.

In brief, these are the principal functions to be transferred:

**FEDERAL WATER QUALITY ADMINISTRATION.**—Charged with the control of pollutants which impair water quality, it is broadly concerned with the impact of degraded water quality. It performs a wide variety of functions, including research, standard-setting and enforcement, and provides construction grants and technical assistance.

**CERTAIN PESTICIDES RESEARCH AUTHORITY FROM THE DEPARTMENT OF THE INTERIOR.**—Authority for research on the effects of pesticides on fish and wildlife would be provided to the EPA through transfer of the specialized research authority of the pesticides act enacted in 1958. Interior would retain its responsibility to do research on all factors affecting fish and wildlife. Under this provision, only one laboratory would be transferred to the EPA—the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries. The EPA would work closely with the fish and wildlife laboratories remaining with the Bureau of Sport Fisheries and Wildlife.

**NATIONAL AIR POLLUTION CONTROL ADMINISTRATION.**—As the principal Federal agency concerned with air pollution, it conducts research on the effects of air pollution, operates a monitoring network, and promulgates criteria which serve as the basis for setting air quality standards. Its regulatory functions are similar to those of the Federal Water Quality Administration. NAPCA is responsible for administering the Clean Air Act, which involves designating air quality regions, approving State standards and providing financial and technical assistance to State Control agencies to enable them to comply with the Act's provisions. It also sets and enforces Federal automotive emission standards.

**ELEMENTS OF THE ENVIRONMENTAL CONTROL ADMINISTRATION.**—ECA is the focal point within HEW for evaluation and control of a broad range of environmental health problems, including water quality, solid wastes, and radiation. Programs in the ECA involve research, development of criteria and standards, and the administration of planning and demonstration grants. From the ECA, the activities of the Bureau of Water Hygiene and Solid Waste Management and portions of the activities of the Bureau of Radiological Health would be transferred. Other functions of the ECA including those related to the regulation of radiation from consumer products and occupational safety and health would remain in HEW.

**PESTICIDES RESEARCH AND STANDARD-SETTING PROGRAMS OF THE FOOD AND DRUG ADMINISTRATION.**—FDA's pesticides program consists of setting and enforcing standards which limit pesticide residues in food. EPA would have the authority to set pesticide standards and to monitor compliance with them, as well as to conduct related research. However, as an integral part of its food protection activities, FDA would retain its authority to remove from the market food with excess pesticide residues.

**GENERAL ECOLOGICAL RESEARCH FROM THE COUNCIL ON ENVIRONMENTAL QUALITY.**—This authority to perform studies and research relating to ecological systems would be in addition to EPA's other specific research authorities, and it would help EPA to measure the impact of pollutants. The Council on Environmental Quality would retain its authority to conduct studies and research relating to environmental quality.

**ENVIRONMENTAL RADIATION STANDARDS PROGRAMS.**—The Atomic Energy Commission is now responsible for establishing environmental radiation standards and emission limits for radioactivity. Those standards have been based largely on broad guidelines recommended by the Federal Radiation Council. The Atomic Energy Commission's authority to set standards for the protection of the general environment from radioactive material would be transferred to the Environmental Protection Agency. The functions of the Federal Radiation Council would also be transferred. AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority.

**PESTICIDES REGISTRATION PROGRAM OF THE AGRICULTURAL RESEARCH SERVICE.**—The Department of Agriculture is currently responsible for several distinct functions related to pesticides use. It conducts research on the efficacy of various pesticides as related to other pest control methods and on the effects of pesticides on non-target plants, livestock, and poultry. It registers pesticides, monitors their persistence and carries out an educational program on pesticide use through the extension service. It conducts extensive pest control programs which utilize pesticides.

By transferring the Department of Agriculture's pesticides registration and monitoring function to the EPA and merging it with the pesticides programs being transferred from HEW and Interior, the new agency would be given a broad capability for control over the introduction of pesticides into the environment.

The Department of Agriculture would continue to conduct research on the effectiveness of pesticides. The Department would furnish this information to the EPA, which would have the responsibility for actually licensing pesticides for use after considering environmental and health effects. Thus the new agency would be able to make use of the expertise of the Department.

#### ADVANTAGES OF REORGANIZATION

This reorganization would permit response to environmental problems in a manner beyond the previous capability of our pollution control programs. The EPA would have the capacity to do research on important pollutants irrespective of the media in which they appear, and on the impact of these pollutants on the total environment. Both by itself and together with other agencies, the EPA would monitor the condition of the environment—biological as well as physical. With these data, the EPA would be able to establish quantitative "environmental baselines"—critical if we are to measure adequately the success or failure of our pollution abatement efforts.

As no disjointed array of separate programs can, the EPA would be able—in concert with the States—to set and enforce standards for air and water quality and for individual pollutants. This consolidation of pollution control authorities would help assure that we do not create new environmental problems in the process of controlling existing ones. Industries seeking to minimize the adverse impact of their activities on the environment would be assured of consistent standards covering the full range of their waste disposal problems. As the States develop and expand their own pollution control programs, they would be able to look to one agency to support their efforts with financial and technical assistance and training.

In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.

In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission—such as resource development, transportation, health, defense, urban growth or agriculture—which necessarily affects its own view of environmental questions.

In the second place, if the critical standard-setting functions were centralized within any one existing department, it would require that department constantly

to make decisions affecting other departments—in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.

Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area.

#### ROLES AND FUNCTIONS OF EPA

The principal roles and functions of the EPA would include:

- The establishment and enforcement of environmental protection standards consistent with national environmental goals.
- The conduct of research on the adverse effects of pollution and on methods and equipment for controlling it, the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes.
- Assisting others, through grants, technical assistance and other means in arresting pollution of the environment.
- Assisting the Council on Environmental Quality in developing and recommending to the President new policies for the protection of the environment.

One natural question concerns the relationship between the EPA and the Council on Environmental Quality, recently established by Act of Congress.

It is my intention and expectation that the two will work in close harmony, reinforcing each other's mission. Essentially, the Council is a top-level advisory group (which might be compared with the Council of Economic Advisers), while the EPA would be an operating, "line" organization. The Council will continue to be a part of the Executive Office of the President and will perform its overall coordinating and advisory roles with respect to all Federal programs related to environmental quality.

The Council, then, is concerned with all aspects of environmental quality—wildlife preservation, parklands, land use, and population growth, as well as pollution. The EPA would be charged with protecting the environment by abating pollution. In short, the Council focuses on what our broad policies in the environment field should be; the EPA would focus on setting and enforcing pollution control standards. The two are not competing, but complementary—and taken together, they should give us, for the first time, the means to mount an effectively coordinated campaign against environmental degradation in all of its many forms.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

The oceans and the atmosphere are interacting parts of the total environmental system upon which we depend not only for the quality of our lives, but for life itself.

We face immediate and compelling needs for better protection of life and property from natural hazards, and for a better understanding of the total environment—and understanding which will enable us more effectively to monitor and predict its actions, and ultimately, perhaps to exercise some degree of control over them.

We also face a compelling need for exploration and development leading to the intelligent use of our marine resources. The global oceans, which constitute nearly three-fourths of the surface of our planet, are today the least-understood, the least-developed, and the least-protected part of our earth. Food from the oceans will increasingly be a key element in the world's fight against hunger. The mineral resources of the ocean beds and of the oceans themselves, are being increasingly tapped to meet the growing world demand. We must understand the nature of these resources, and assure their development without either contaminating the marine environment or upsetting its balance.

Establishment of the National Oceanic and Atmospheric Administration—NOAA—within the Department of Commerce would enable us to approach these tasks in a coordinated way. By employing a unified approach to the problems of the oceans and atmosphere, we can increase

our knowledge and expand our opportunities not only in those areas, but in the third major component of our environment, the solid earth, as well.

Scattered through various Federal departments and agencies, we already have the scientific, technological, and administrative resources to make an effective, unified approach possible. What we need is to bring them together. Establishment of NOAA would do so.

By far the largest of the components being merged would be the Commerce Department's Environmental Science Services Administration (ESSA), with some 10,000 employees (70 percent of NOAA's total personnel strength) and estimated Fiscal 1970 expenditures of almost \$200 million. Placing NOAA within the Department of Commerce therefore entails the least dislocation, while also placing it within a Department which has traditionally been a center for service activities in the scientific and technological area.

#### COMPONENTS OF NOAA

Under terms of Reorganization Plan No. 4, the programs of the following organizations would be moved into NOAA:

- The Environmental Science Services Administration (from within the Department of Commerce).
- Elements of the Bureau of Commercial Fisheries (from the Department of the Interior).
- The marine sport fish program of the Bureau of Sport Fisheries and Wildlife (from the Department of the Interior).
- The Marine Minerals Technology Center of the Bureau of Mines (from the Department of the Interior).
- The Office of Sea Grant Programs (from the National Science Foundation).
- Elements of the United States Lake Survey (from the Department of the Army).

In addition, by executive action, the programs of the following organizations would be transferred to NOAA:

- The National Oceanographic Data Center (from the Department of the Navy).
- The National Oceanographic Instrumentation Center (from the Department of the Navy).
- The National Data Buoy Project (from the Department of Transportation).

In brief, these are the principal functions of the programs and agencies to be combined:

#### THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(ESSA) comprises the following components:

- The Weather Bureau (weather, marine, river and flood forecasting and warning).
- The Coast and Geodetic Survey (earth and marine description, mapping and charting).
- The Environmental Data Service (storage and retrieval of environmental data).
- The National Environmental Satellite Center (observation of the global environment from earth-orbiting satellites).
- The ESSA Research Laboratories (research on physical environmental problems).

ESSA's activities include observing and predicting the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth. It maintains the nation's warning systems for such natural hazards as hurricanes, tornadoes, floods, earthquakes and seismic sea waves. It provides information for national defense, agriculture, transportation and industry.

ESSEA monitors atmospheric, oceanic and geophysical phenomena on a global basis, through an unparalleled complex of air, ocean, earth and space facilities. It also prepares aeronautical and marine maps and charts.

**BUREAU OF COMMERCIAL FISHERIES AND MARINE SPORT FISH ACTIVITIES.**—Those fishery activities of the Department of the Interior's U.S. Fish and Wildlife Service which are ocean related and those which are directed toward commercial fishing would be transferred. The Fish and Wildlife Service's Bureau of Commercial Fisheries has the dual function of strengthening the fishing industry and promoting conservation of fishery stocks. It conducts research on important marine species and on fundamental oceanography, and operates a fleet of oceanographic vessels and a number of laboratories. Most of its

activities would be transferred. From the Fish and Wildlife Service's Bureau of Sport Fisheries and Wildlife, the marine sport fishing program would be transferred. This involves five supporting laboratories and three ships engaged in activities to enhance marine sport fishing opportunities.

THE MARINE MINERALS TECHNOLOGY CENTER is concerned with the development of marine mining technology.

OFFICE OF SEA GRANT PROGRAMS.—The Sea Grant Program was authorized in 1966 to permit the Federal Government to assist the academic and industrial communities in developing marine resources and technology. It aims at strengthening education and training of marine specialists, supporting applied research in the recovery and use of marine resources, and developing extension and advisory services. The Office carries out these objectives by making grants to selected academic institutions.

THE U.S. LAKE SURVEY has two primary missions. It prepares and publishes navigation charts of the Great Lakes and tributary waters and conducts research on a variety of hydraulic and hydrologic phenomena of the Great Lakes' waters. Its activities are very similar to those conducted along the Atlantic and Pacific coasts by ESSA's Coast and Geodetic Survey.

THE NATIONAL OCEANOGRAPHIC DATA CENTER is responsible for the collection and dissemination of oceanographic data accumulated by all Federal agencies.

THE NATIONAL OCEANOGRAPHIC INSTRUMENTATION CENTER provides a central Federal service for the calibration and testing of oceanographic instruments.

THE NATIONAL DATA BUOY DEVELOPMENT PROJECT was established to determine the feasibility of deploying a system of automatic ocean buoys to obtain oceanic and atmospheric data.

#### ROLE OF NOAA

Drawing these activities together into a single agency would make possible a balanced Federal program to improve our understanding of the resources of the sea, and permit their development and use while guarding against the sort of thoughtless exploitation that in the past laid waste to so many of our precious natural assets. It would make possible a consolidated program for achieving a more comprehensive understanding of oceanic and atmospheric phenomena, which so greatly affect our lives and activities. It would facilitate the cooperation between public and private interests that can best serve the interests of all.

I expect that NOAA would exercise leadership in developing a national oceanic and atmospheric program of research and development. It would coordinate its own scientific and technical resources with the technical and operational capabilities of other government agencies and private institutions. As important, NOAA would continue to provide those services to other agencies of government, industry and private individuals which have become essential to the efficient operation of our transportation systems, our agriculture and our national security. I expect it to maintain continuing and close liaison with the new Environmental Protection Agency and the Council on Environmental Quality as part of an effort to ensure that environmental questions are dealt with in their totality and they benefit from the full range of the government's technical and human resources.

Authorities who have studied this matter, including the Commission on Marine Science, Engineering and Resources, strongly recommended the creation of a National Advisory Committee for the Oceans. I agree. Consequently, I will request, upon approval of the plan, that the Secretary of Commerce establish a National Advisory Committee for the Oceans and the Atmosphere to advise him on the progress of governmental and private programs in achieving the nation's oceanic and atmospheric objectives.

#### AN ON-GOING PROCESS

The reorganizations which I am here proposing afford both the Congress and the Executive Branch an opportunity to re-evaluate the adequacy of existing program authorities involved in these consolidations. As these two new organizations come into being, we may well find that

supplementary legislation to perfect their authorities will be necessary. I look forward to working with the Congress in this task.

In formulating these reorganization plans, I have been greatly aided by the work of the President's Advisory Council on Executive Organization (the Ash Council), the Commission on Marine Science, Engineering and Resources (the Stratton Commission, appointed by President Johnson), my special task force on oceanography headed by Dr. James Wakelin, and by the information developed during both House and Senate hearings on proposed NOAA legislation.

Many of those who have advised me have proposed additional reorganizations, and it may well be that in the future I shall recommend further changes. For the present, however, I think the two reorganizations transmitted today represent a sound and significant beginning. I also think that in practical terms, in this sensitive and rapidly developing area, it is better to proceed a step at a time—and thus to be sure that we are not caught up in a form of organizational indigestion from trying to rearrange too much at once. As we see how these changes work out, we will gain a better understanding of what further changes—in addition to these—might be desirable.

Ultimately, our objective should be to insure that the nation's environmental and resource protection activities are so organized as to maximize both the effective coordination of all and the effective functioning of each.

The Congress, the Administration and the public all share a profound commitment to the rescue of our natural environment, and the preservation of the Earth as a place both habitable by and hospitable to man. With its acceptance of these reorganization plans, the Congress will help us fulfill that commitment.

RICHARD NIXON.

THE WHITE HOUSE,  
July 9, 1970.

### SUBCHAPTER I.—POLICIES AND GOALS

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4342, 4344 of this title.

#### § 4331. Congressional declaration of national environmental policy.

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and  
(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (Pub. L. 91-190, title I, § 101, Jan. 1, 1970, 83 Stat. 852.)

#### COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE

Pub. L. 91-213, Mar. 16, 1970, 84 Stat. 67, provided:

"That the Commission on Population Growth and the American Future is hereby established to conduct and sponsor such studies and research and make such recommendations as may be necessary to provide information and education to all levels of government in the United States, and to our people, regarding a broad range of problems associated with population growth and their implications for America's future.

#### "MEMBERSHIP OF COMMISSION

"Sec. 2 (a) The Commission on Population Growth and the American Future (hereinafter referred to as the 'Commission') shall be composed of—

"(1) two Members of the Senate who shall be members of different political parties and who shall be appointed by the President of the Senate;

"(2) two Members of the House of Representatives who shall be members of different political parties and who shall be appointed by the Speaker of the House of Representatives; and

"(3) not to exceed twenty members appointed by the President.

"(b) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Commission.

"(c) The majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

#### "COMPENSATION OF MEMBERS OF THE COMMISSION

"Sec. 3. (a) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(b) Members of the Commission who are not officers or full-time employees of the United States shall each receive \$100 per diem when engaged in the actual performance of duties vested in the Commission.

"(c) All members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

#### "DUTIES OF THE COMMISSION

"Sec. 4. The Commission shall conduct an inquiry into the following aspects of population growth in the United States and its foreseeable social consequences:

"(1) the probable course of population growth, internal migration, and related demographic developments between now and the year 2000;

"(2) the resources in the public sector of the economy that will be required to deal with the anticipated growth in population;

"(3) the ways in which population growth may affect the activities of Federal, State, and local government;

"(4) the impact of population growth on environmental pollution and on the depletion of natural resources; and

"(5) the various means appropriate to the ethical values and principles of this society by which our Nation can achieve a population level properly suited for its environmental, natural resources, and other needs.

#### "STAFF OF THE COMMISSION

"Sec. 5. (a) The Commission shall appoint an Executive Director and such other personnel as the Commission deems necessary without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and shall fix the compensation of such personnel without regard to the provisions of chapter 51 and subtitle II of chapter 53 of such title relating to classification and General Schedule pay rates: Provided, That no personnel so appointed shall receive compensation in excess of the rate authorized for GS-18 by section 5332 of such title.

"(b) The Executive Director, with the approval of the Commission, is authorized to obtain services in accordance with the provisions of section 3109 of title 5 of the United States Code, but at rates for individuals not to exceed the per diem equivalent of the rate authorized for GS-18 by section 5332 of such title.

"(c) The Commission is authorized to enter into contracts with public agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

#### "GOVERNMENT AGENCY COOPERATION

"Sec. 6. The Commission is authorized to request from any Federal department or agency any information and assistance it deems necessary to carry out its functions; and each such department or agency is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman or any other member when acting as Chairman.

#### "ADMINISTRATIVE SERVICES

"Sec. 7. The General Services Administration shall provide administrative services for the Commission on a reimbursable basis.

#### "REPORTS OF COMMISSION: TERMINATION

"Sec. 8. In order that the President and the Congress may be kept advised of the progress of its work, the Commission shall, from time to time, report to the President and the Congress such significant findings and recommendations as it deems advisable. The Commission shall submit an interim report to the President and the Congress one year after it is established and shall submit its final report two years after the enactment of this Act. The Commission shall cease to exist sixty days after the date of the submission of its final report.

#### "AUTHORIZATION OF APPROPRIATIONS

"Sec. 9. There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions of this Act."

Ex. Ord. No. 11507, PREVENTION, CONTROL, AND ABATEMENT OF AIR AND WATER POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, provided: By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and



policy of the Clean Air Act, as amended (42 U.S.C. 1857), the Federal Water Pollution Control Act, as amended (33 U.S.C. 466), and the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

**SECTION 1. Policy.** It is the intent of this order that the Federal Government in the design, operation, and maintenance of its facilities shall provide leadership in the nationwide effort to protect and enhance the quality of our air and water resources.

**Sec. 2. Definitions.** As used in this order:

(a) The term "respective Secretary" shall mean the Secretary of Health, Education, and Welfare in matters pertaining to air pollution control and the Secretary of the Interior in matters pertaining to water pollution control.

(b) The term "agencies" shall mean the departments, agencies, and establishments of the executive branch.

(c) The term "facilities" shall mean the buildings, installations, structures, public works, equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured for the purpose of leasing to the Federal Government.

(d) The term "air and water quality standards" shall mean respectively the quality standards and related plans of implementation, including emission standards, adopted pursuant to the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended, or as prescribed pursuant to section 4(b) of this order.

(e) The term "performance specifications" shall mean permissible limits of emissions, discharges, or other values applicable to a particular Federal facility that would, as a minimum, provide for conformance with air and water quality standards as defined herein.

(f) The term "United States" shall mean the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

**Sec. 3. Responsibilities.** (a) Heads of agencies shall, with regard to all facilities under their jurisdiction:

(1) Maintain review and surveillance to ensure that the standards set forth in section 4 of this order are met on a continuing basis.

(2) Direct particular attention to identifying potential air and water quality problems associated with the use and production of new materials and make provisions for their prevention and control.

(3) Consult with the respective Secretary concerning the best techniques and methods available for the protection and enhancement of air and water quality.

(4) Develop and publish procedures, within six months of the date of this order, to ensure that the facilities under their jurisdiction are in conformity with this order. In the preparation of such procedures there shall be timely and appropriate consultation with the respective Secretary.

(b) The respective Secretary shall provide leadership in implementing this order, including the provision of technical advice and assistance to the heads of agencies in connection with their duties and responsibilities under this order.

(c) The Council on Environmental Quality shall maintain continuing review of the implementation of this order and shall, from time to time, report to the President thereon.

**Sec. 4. Standards.** (a) Heads of agencies shall ensure that all facilities under their jurisdiction are designed, operated, and maintained so as to meet the following requirements:

(1) Facilities shall conform to air and water quality standards as defined in section 2(d) of this order. In those cases where no such air or water quality standards are in force for a particular geographical area, Federal facilities in that area shall conform to the standards established pursuant to subsection (b) of this section. Federal facilities shall also conform to the performance specifications provided for in this order.

(2) Actions shall be taken to avoid or minimize wastes created through the complete cycle of operations of each facility.

(3) The use of municipal or regional waste collection or disposal systems shall be the preferred method of disposal of wastes from Federal facilities. Whenever use of

such a system is not feasible or appropriate, the heads of agencies concerned shall take necessary measures for the satisfactory disposal of such wastes, including:

(A) When appropriate, the installation and operation of their own waste treatment and disposal facilities in a manner consistent with this section.

(B) The provision of trained manpower, laboratory and other supporting facilities as appropriate to meet the requirements of this section.

(C) The establishment of requirements that operators of Federal pollution control facilities meet levels of proficiency consistent with the operator certification requirements of the State in which the facility is located. In the absence of such State requirements the respective Secretary may issue guidelines, pertaining to operator qualifications and performance, for the use of heads of agencies.

(4) The use, storage, and handling of all materials, including but not limited to, solid fuels, ashes, petroleum products, and other chemical and biological agents, shall be carried out so as to avoid or minimize the possibilities for water and air pollution. When appropriate, preventive measures shall be taken to entrap spillage or discharge or otherwise to prevent accidental pollution. Each agency, in consultation with the respective Secretary, shall establish appropriate emergency plans and procedures for dealing with accidental pollution.

(5) No waste shall be disposed of or discharged in such a manner as could result in the pollution of ground water which would endanger the health or welfare of the public.

(6) Discharges of radioactivity shall be in accordance with the applicable rules, regulations, or requirements of the Atomic Energy Commission and with the policies and guidance of the Federal Radiation Council as published in the *FEDERAL REGISTER*.

(b) In those cases where there are no air or water quality standards as defined in section 2(d) of this order in force for a particular geographic area or in those cases where more stringent requirements are deemed advisable for Federal facilities, the respective Secretary, in consultation with appropriate Federal, State, interstate, and local agencies, may issue regulations establishing air or water quality standards for the purpose of this order, including related schedules for implementation.

(c) The heads of agencies, in consultation with the respective Secretary, may from time to time identify facilities or uses thereof which are to be exempted, including temporary relief from provisions of this order in the interest of national security or in extraordinary cases where it is in the national interest. Such exemptions shall be reviewed periodically by the respective Secretary and the heads of the agencies concerned. A report on exemptions granted shall be submitted to the Council on Environmental Quality periodically.

**Sec. 5. Procedures for abatement of air and water pollution at existing Federal facilities.** (a) Actions necessary to meet the requirements of subsections (a) (1) and (b) of section 4 of this order pertaining to air and water pollution at existing facilities are to be completed or under way no later than December 31, 1972. In cases where an enforcement conference called pursuant to law or air and water quality standards require earlier actions, the earlier date shall be applicable.

(b) In order to ensure full compliance with the requirements of section 5(a) and to facilitate budgeting for necessary corrective and preventive measures, heads of agencies shall present to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget] by June 30, 1970, a plan to provide for such improvements as may be necessary to meet the required date. Subsequent revisions needed to keep any such plan up-to-date shall be promptly submitted to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget].

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility to meet the requirements of subsections 4 (a) (1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements, he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) As may be found necessary, heads of agencies may submit requests to the Director of the Bureau of the Budget [now the Director of the Office of Management and Budget] for extensions of time for a project beyond the time specified in section 5(a). The Director, in consultation with the respective Secretary, may approve such requests if the Director deems that such project is not technically feasible or immediately necessary to meet the requirements of subsections 4 (a) and (b). Full justification as to the extraordinary circumstances necessitating any such extension shall be required.

(e) Heads of agencies shall not use for any other purpose any of the amounts appropriated and apportioned for corrective and preventive measures necessary to meet the requirements of subsection (a) for the fiscal year ending June 30, 1971, and for any subsequent fiscal year.

**Sec. 6. Procedures for new Federal facilities.** (a) Heads of agencies shall ensure that the requirements of section 4 of this order are considered at the earliest possible stage of planning for new facilities.

(b) A request for funds to defray the cost of designing and constructing new facilities in the United States shall be included in the annual budget estimates of an agency only if such request includes funds to defray the costs of such measures as may be necessary to assure that the new facility will meet the requirement of section 4 of this order.

(c) Heads of agencies shall notify the respective Secretary as to the performance specifications proposed for each facility when action is necessary to meet the requirements of subsections 4 (a) (1) and (b) of this order. Where the respective Secretary finds that such performance specifications are not adequate to meet such requirements he shall consult with the agency head and the latter shall thereupon develop adequate performance specifications.

(d) Heads of agencies shall give due consideration to the quality of air and water resources when facilities are constructed or operated outside the United States.

**Sec. 7. Procedures for Federal Water Resources Projects.** (a) All water resources projects of the Departments of Agriculture, the Interior, and the Army, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission shall be consistent with the requirements of section 4 of this order. In addition, all such projects shall be presented for the consideration of the Secretary of the Interior at the earliest feasible stage if they involve proposals or recommendations with respect to the authorization or construction of any Federal water resources project in the United States. The Secretary of the Interior shall review plans and supporting data for all such projects relating to water quality, and shall prepare a report to the head of the responsible agency describing the potential impact of the project on water quality, including recommendations concerning any changes or other measures with respect thereto which he considers to be necessary in connection with the design, construction, and operation of the project.

(b) The report of the Secretary of the Interior shall accompany at the earliest practicable stage any report proposing authorization or construction, or a request for funding, of such a water resource project. In any case in which the Secretary of the Interior fails to submit a report within 90 days after receipt of project plans, the head of the agency concerned may propose authorization, construction, or funding of the project without such an accompanying report. In such a case, the head of the agency concerned shall explicitly state in his request or report concerning the project that the Secretary of the Interior has not reported on the potential impact of the project on water quality.

**Sec. 8. Saving provisions.** Except to the extent that they are inconsistent with this order, all outstanding rules, regulations, order, delegations, or other forms of administrative action issued, made, or otherwise taken under the orders superseded by section 9 hereof or relating to the subject of this order shall remain in full force and effect until amended, modified, or terminated by proper authority.

**Sec. 9. Orders superseded.** Executive Order No. 11282 of May 26, 1966, and Executive Order No. 11288 of July 2, 1966, are hereby superseded.

RICHARD NIXON

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts.

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes:

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and

information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by subchapter II of this chapter. (Pub. L. 91-190, title I, § 102, Jan. 1, 1970, 83 Stat. 853.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 4334 of this title.

§ 4333. Conformity of administrative procedures to national environmental policy.

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this chapter and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this chapter. (Pub. L. 91-190, title I, § 103, Jan. 1, 1970, 83 Stat. 854.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 4334 of this title.

§ 4334. Other statutory obligations of agencies.

Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency. (Pub. L. 91-190, title I, § 104, Jan. 1, 1970, 83 Stat. 854.)

§ 4335. Efforts supplemental to existing authorizations.

The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies. (Pub. L. 91-190, title I, § 105, Jan. 1, 1970, 83 Stat. 854.)

**SUBCHAPTER II—COUNCIL ON ENVIRONMENTAL QUALITY**

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in section 4332 of this title.

§ 4341. Reports to Congress; recommendations for legislation.

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such

environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and non-governmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (Pub. L. 91-190, title II, § 201, Jan. 1, 1970, 83 Stat. 854.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 4344 of this title.

§ 4342. Establishment; membership; Chairman; appointments.

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (Pub. L. 91-190, title II, § 202, Jan. 1, 1970, 83 Stat. 854.)

§ 4343. Employment of personnel, experts and consultants.

The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this chapter, in accordance with section 3109 of Title 5 (but without regard to the last sentence thereof). (Pub. L. 91-190, title II, § 203, Jan. 1, 1970, 83 Stat. 855.)

§ 4344. Duties and functions.

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 4341 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter I of this chapter, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in subchapter I of this chapter for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(Pub. L. 91-190, title II, § 204, Jan. 1, 1970, 83 Stat. 855.)

#### TRANSFER OF FUNCTIONS

So much of the functions of the Council on Environmental Quality under par. (4) of this section as pertains to ecological systems was transferred to the Administrator of the Environmental Protection Agency by 1970 Reorg. Plan No. 3, § 2(a)(5), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. —, set out under section 4321 of this title.

§ 4345. Consultation with the Citizen's Advisory Committee on Environmental Quality and other representatives.

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

(Pub. L. 91-190, title II, § 205, Jan. 1, 1970, 83 Stat. 855.)

#### REFERENCES IN TEXT

Executive Order numbered 11472, dated May 29, 1969, referred to in par. (1), is set out as a note under section 4321 of this title.

§ 4346. Tenure and compensation of members.

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates. The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates. (Pub. L. 91-190, title II, § 206, Jan. 1, 1970, 83 Stat. 856.)

#### REFERENCE IN TEXT

Levels II and IV of the Executive Schedule Pay Rates, referred to in text, are set out as sections 5313 and 5315, respectively, of Title 5, Government Organization and Employees.

§ 4347. Authorization of appropriation.

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter. (Pub. L. 91-190, title II, § 207, Jan. 1, 1970, 83 Stat. 856.)

### Chapter 56.—ENVIRONMENTAL QUALITY IMPROVEMENT

Sec.

4371. Congressional findings, declarations, and purposes.

4372. Office of Environmental Quality.

(a) Establishment; Director; Deputy Director.

(b) Compensation of Deputy Director.

(c) Employment of personnel, experts, and consultants; compensation.

(d) Duties and functions of Director.

(e) Authority of Director to contract.

4373. Referral of Environmental Quality Reports to standing committees having jurisdiction.

4374. Authorization of appropriations.

§ 4371. Congressional findings, declarations, and purposes.

(a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b) (1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this chapter are—

(1) to assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this chapter and can be carried out within the regulations promulgated under this section.

(g) Accordance of regulations with treaties, conventions, and other agreements.

The regulations issued pursuant to subsection (f) of this section shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States. (Pub. L. 92-532, title III, § 302, Oct. 23, 1972, 86 Stat. 1061.)

#### § 1433. Penalties.

(a) Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this chapter shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this chapter shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this chapter, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary. (Pub. L. 92-532, title III, § 303, Oct. 23, 1972, 86 Stat. 1062.)

#### § 1434. Authorization of appropriations.

There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out the provisions of this chapter, including sums for the costs of acquisition, development, and operation of marine sanctuaries designated under this chapter, but the sums appropriated for any such fiscal year shall not exceed

\$10,000,000. (Pub. L. 92-532, title III, § 304, Oct. 23, 1972, 86 Stat. 1063.)

#### REFERENCES IN TEXT

The fiscal year in which this Act is enacted, referred to in text, is the fiscal year in which Pub. L. 92-532 is enacted. Pub. L. 92-532 was approved on Oct. 23, 1972.

### Chapter 33.—COASTAL ZONE MANAGEMENT [NEW]

#### Sec.

- 1451. Congressional findings.
- 1452. Congressional declaration of policy.
- 1453. Definitions.
- 1454. Management development program grants.
  - (a) Authorization.
  - (b) Program requirements.
  - (c) Limits on grants.
  - (d) Submission of program for review and approval.
  - (e) Allocation of grants.
  - (f) Reversion of unobligated grants.
  - (g) Grants to other political subdivisions.
  - (h) Expiration date of grant authority.
- 1455. Administrative grants.
  - (a) Authorization.
  - (b) Allocation of grants.
  - (c) Program requirements.
  - (d) Required authority for management of coastal zone.
  - (e) Required findings.
  - (f) Allocation to other political subdivisions.
  - (g) Program modification.
  - (h) Segmental development.
- 1456. Interagency coordination and cooperation.
  - (a) Federal agencies.
  - (b) Adequate consideration of views of Federal agencies; mediation of disagreements.
  - (c) Consistency of Federal activities with state management programs; certification.
  - (d) Applications of local governments for Federal assistance; relationship of activities with approved management programs.
  - (e) Construction with other laws.
  - (f) Construction with existing requirements of water and air pollution programs.
  - (g) Concurrence with programs which affect inland areas.
- 1457. Public hearings.
- 1458. Review of performance; termination of financial assistance.
- 1459. Records and audit.
- 1460. Coastal Zone Management Advisory Committee.
- 1461. Estuarine sanctuaries.
- 1462. Annual report.
- 1463. Rules and regulations.
- 1464. Authorization of appropriations.

#### § 1451. Congressional findings.

The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse

changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance. (Pub. L. 89-454, title III, § 302, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280.)

#### SHORT TITLE

Section 301 of Pub. L. 89-454, as added by Pub. L. 92-583, provided that: "This title [enacting this chapter] may be cited as the 'Coastal Zone Management Act of 1972.'"

#### § 1452. Congressional declaration of policy.

The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems. (Pub. L. 89-454, title III, § 303, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1281.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1455 of this title.

#### § 1453. Definitions.

For purposes of this chapter—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this chapter, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality

standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 1456(f) of this title.

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 1456(g) of this title. (Pub. L. 89-454, title III, § 304, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1281.)

#### § 1454. Management development program grants.

##### (a) Authorization.

The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

##### (b) Program requirements.

Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decision;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

##### (c) Limits on grants.

The grants shall not exceed 66 $\frac{2}{3}$  per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 1455 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program.

##### (d) Submission of program for review and approval.

Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for review and approval, pursuant to the provisions of section 1455 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary,

the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 1455 of this title.

##### (e) Allocation of grants.

Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided, however*, That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

##### (f) Reversion of unobligated grants.

Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

##### (g) Grants to other political subdivisions.

With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 3334 of Title 42, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

##### (h) Expiration date of grant authority.

The authority to make grants under this section shall expire on June 30, 1977. (Pub. L. 89-454, title III, § 305, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1282.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1461, 1464 of this title.

#### § 1455. Administrative grants.

##### (a) Authorization.

The Secretary is authorized to make annual grants to any coastal state for not more than 66 $\frac{2}{3}$  per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) of this section. Federal funds received from other sources shall not be used to pay the states' share of costs.

##### (b) Allocation of grants.

Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however*, That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

##### (c) Program requirements.

Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal

agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title.

(2) The state has:

(A) coordinated its program with local, area-wide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an area-wide agency designated pursuant to regulations established under section 3334 of Title 42, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and area-wide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this chapter.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provisions for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Required authority for management of coastal zone.

Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, area-wide agencies designated under section 3334 of Title 42, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Required findings.

Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) Allocation to other political subdivisions.

With the approval of the Secretary, a state may allocate to a local government, an area-wide agency designated under section 3334 of Title 42, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(g) Program modification.

The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

(h) Segmental development.

At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable. (Pub. L. 89-454, title XII, § 306, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1283.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1454, 1456, 1459, 1461, 1464 of this title.



§ 1456. Intergovernmental coordination and cooperation.

(a) Federal agencies.

In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies; mediation of disagreements.

The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

(c) Consistency of Federal activities with state management programs; certification.

(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter

or is otherwise necessary in the interest of national security.

(d) Application of local governments for Federal assistance; relationship of activities with approved management programs.

State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968. Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws.

Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs.

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) Concurrence with programs which affect inland areas.

When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter

enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas. (Pub. L. 89-454, title III, § 307, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1285.)

#### REFERENCES IN TEXT

The Intergovernmental Coordination Act of 1968, referred to in text, presumably refers to the Intergovernmental Cooperation Act of 1968. Title IV thereof is classified to section 4231 et seq. of Title 42, The Public Health and Welfare.

The Federal Water Pollution Control Act and the Clean Air Act, referred to in text, are classified, respectively, to section 1251 et seq. of Title 33, Navigation and Navigable Waters, and section 1857 et seq. of Title 42, The Public Health and Welfare.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1453, 1462 of this title.

#### § 1457. Public hearings.

All public hearings required under this chapter must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency. (Pub. L. 89-454, title III, § 308, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1287.)

#### § 1458. Review of performance; termination of financial assistance.

(a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 1455 of this title and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program. (Pub. L. 89-454, title III, § 309, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1287.)

#### § 1459. Records and audit.

(a) Each recipient of a grant under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds

granted are used in accordance with this chapter. (Pub. L. 89-454, title III, § 310, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1287.)

#### § 1460. Coastal Zone Management Advisory Committee.

(a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for individuals in the Government service employed intermittently. (Pub. L. 89-454, title III, § 311, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1287.)

#### TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### § 1461. Estuarine sanctuaries.

The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 percent of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed \$2,000,000. No Federal funds received pursuant to section 1454 or 1455 of this title shall be used for the purpose of this section. (Pub. L. 89-454, title III, § 312, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1288.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1464 of this title.

#### § 1462. Annual report.

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this chapter for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this chapter during the preceding

Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this chapter and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this chapter, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 1456 of this title, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this chapter in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this chapter and enhance its effective operation. (Pub. L. 89-454, title III, § 313, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1288.)

#### § 1463. Rules and regulations.

The Secretary shall develop and promulgate, pursuant to section 553 of Title 5, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this chapter. (Pub. L. 89-454, title III, § 314, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1288.)

#### § 1461. Authorization of appropriations.

(a) There are authorized to be appropriated—

(1) the sum of \$9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 1454 of this title, to remain available until expended;

(2) such sums, not to exceed \$30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 1455 of this title to remain available until expended; and

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 1461 of this title, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed \$3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this chapter. (Pub. L. 89-454, title III, § 315, as added Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1289.)

### Chapter 34.—RURAL ENVIRONMENTAL CONSERVATION PROGRAM [NEW]

#### Sec.

1501. Establishment and purpose of programs; contracting and purchasing authority of Secretary; maintenance of continuing and stable supply of agricultural commodities and forest products.

1502. Plan of farming operations or land use; necessity for contract applicants to furnish Secretary; contents of plan.

1503. Contracts.

(a) Approved conservation plans as basis; duties of landowner or operator under contracts.

(b) Duties of Secretary under contracts; shared costs.

(c) Termination and modification of contracts.

1504. Authority of Secretary to furnish eligible owners and operators conservation materials, etc.

#### Sec.

1505. Multiyear set-aside contracts; contracting authority of Secretary; duration of contracts; eligibility of producers; duties of producers under contracts; cost-sharing incentives for farm operators.

1506. Rules and regulations; limitations on total acreage retired from production pursuant to contracts.

1507. Advisory boards.

(a) State boards; functions; membership; appointment and qualifications of members; meetings.

(b) National board; establishment in consultation with Secretary of Interior; functions and duties.

1508. Coordination with and utilization by Secretary of Federal, State, and local services and facilities to carry out programs and plans.

1509. Forestry incentives program.

(a) Establishment and purposes of program.

(b) Definition.

(c) Consultations by Secretary; criteria for distribution of funds by Secretary for cost-sharing; approval of contracts for tracts greater than 500 acres.

(d) Advertising and bid procedure for contracts.

(e) Implementation of program; periodic reports to appropriate Congressional committees.

1510. Authorization of appropriations; construction and continuation of programs, contracts, and authorities; limitation on authorization of appropriation for forestry incentives program.

§ 1501. Establishment and purpose of programs; contracting and purchasing authority of Secretary; maintenance of continuing and stable supply of agricultural commodities and forest products.

Notwithstanding any other provision of law the Secretary shall carry out the purposes specified in clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title, section 590p(b) of this title, and in the Water Bank Act by entering into contracts of three, five, ten, or twenty-five years with, and at the option of, eligible owners and operators of land as determined by the Secretary and having such control as the Secretary determines to be needed on the farms, ranches, wetlands, forests, or other lands covered thereby. In addition, the Secretary is hereby authorized to purchase perpetual easements to promote said purpose of this chapter, including the sound use and management of flood plains, shore lands, and aquatic areas of the Nation. Such contracts shall be designed to assist farm, ranch, wetland, and nonindustrial private forest owners and operators, or other owners or operators, to make, in orderly progression over a period of years, such changes, if any, as are needed to effectuate any of the purposes specified in clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title; section 590p(b) of this title; the Water

forestry incentives improvement program. The Secretary shall periodically report to the appropriate congressional committees of the progress and conduct of the program established under this section. (Pub. L. 91-524, title X, § 1009, as added Pub. L. 93-86, § 1(28), Aug. 10, 1973, 87 Stat. 245.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1503, 1510 of this title.

§ 1510. Authorization of appropriations; construction and continuation of programs, contracts, and authorities; limitation on authorization of appropriation for forestry incentives program.

There are hereby authorized to be appropriated annually such sums as may be necessary to carry out the provisions of this chapter. The programs, contracts, and authority authorized under this chapter shall be in addition to, and not in substitution for, other programs in such areas authorized by this chapter or any other title or Act, and shall not expire with the termination of any other title or Act: *Provided*, That not more than \$25,000,000 annually shall be authorized to be appropriated for the programs authorized under section 1509 of this title. (Pub. L. 91-524, title X, § 1010, as added Pub. L. 93-86, § 1(28), Aug. 10, 1973, 87 Stat. 245.)

**REFERENCES IN TEXT**

"Any other title or Act", referred to in the text, has reference to any other title of Pub. L. 91-524. For distribution of such title in this Code, see Short Title note set out under section 1305 of Title 7, Agriculture.

**Chapter 35.—ENDANGERED SPECIES [NEW]**

Sec.

1531. Congressional findings and declaration of purposes and policy.

1532. Definitions.

1533. Determination of endangered species and threatened species.

- (a) Generally.
- (b) Basis for determinations.
- (c) Lists.
- (d) Protective regulations.
- (e) Similarity of appearance cases.
- (f) Regulations.

1534. Land acquisition.

1535. Cooperation with the States.

- (a) Generally.
- (b) Management agreements.
- (c) Cooperative agreements.
- (d) Allocation of funds.
- (e) Review of State programs.
- (f) Conflicts between Federal and State laws.
- (g) Transition.
- (h) Regulations.
- (i) Authorization of appropriations.

1536. Interagency cooperation.

1537. International cooperation.

- (a) Financial assistance.
- (b) Encouragement of foreign programs.
- (c) Personnel.
- (d) Investigations.
- (e) Convention implementation.

1538. Prohibited acts.

- (a) Generally.
- (b) Species held in captivity or controlled environment.
- (c) Violation of Convention.
- (d) Imports and exports.
- (e) Reports.
- (f) Designation of ports.
- (g) Violations.

Sec.

1539. Exceptions.

- (a) Permits.
- (b) Hardship exemptions.
- (c) Notice and review.
- (d) Permit and exemption policy.
- (e) Alaska natives.

1540. Penalties and enforcement.

- (a) Civil penalties.
- (b) Criminal violations.
- (c) District court jurisdiction.
- (d) Rewards.
- (e) Enforcement.
- (f) Regulations.
- (g) Citizen suits.
- (h) Coordination with other laws.

1541. Endangered plants.

1542. Authorization of appropriations.

1543. Construction with Marine Mammal Protection Act of 1972.

**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 1362, 1371, 1372 of this title; title 7 section 138.

§ 1531. Congressional findings and declaration of purposes and policy.

(a) The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conserva-

tion of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter. (Pub. L. 93-205, § 2, Dec. 28, 1973, 87 Stat. 884.)

#### EFFECTIVE DATE

Section 16 of Pub. L. 93-205 provided that: "This Act [enacting this chapter, amending sections 460K-1, 460I-9, 668dd, 7151, 715s, 1362, 1371, 1372, and 1402 of this title and section 136 of Title 7, Agriculture, repealing sections 668aa to 668cc-8 of this title, and enacting provisions set out as notes under this section] shall take effect on the date of its enactment [Dec. 28, 1973]."

#### SHORT TITLE

Section 1 of Pub. L. 93-205 provided: "That this Act [enacting this chapter, amending sections 460K-1, 460I-9, 668dd, 7151, 715s, 1362, 1371, 1372, and 1402 of this title and section 136 of Title 7, Agriculture, repealing sections 668aa to 668cc-8 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Endangered Species Act of 1973'."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1539 of this title.

#### § 1532. Definitions.

For the purpose of this chapter—

(1) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling.

(2) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(3) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(4) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.

(5) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other

international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(6) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(7) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(9) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(10) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term means the Secretary of Agriculture.

(11) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed with mature.

(12) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(13) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish or wildlife resources within a State.

(14) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(15) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(16) The term "United States", when used in a geographical context, includes all States. (Pub. L. 93-205, § 3, Dec. 28, 1973, 87 Stat. 885.)

REFERENCES IN TEXT

Reorganization Plan Numbered 4 of 1970, referred to in par. (10), is set out as a note under section 1511 of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

§ 1533. Determination of endangered species and threatened species.

(a) Generally.

(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) overutilization for commercial, sporting, scientific, or educational purposes;
- (3) disease or predation;
- (4) the inadequacy of existing regulatory mechanisms; or
- (5) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(b) Basis for determinations.

(1) The Secretary shall make determinations required by subsection (a) of this section on the basis of the best scientific and commercial data available to him and after consultation, as appropriate, with the affected States, interested persons and organizations, other interested Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned is normally found or whose citizens harvest such species on the high seas; except that in any case in

which such determinations involve resident species of fish or wildlife, the Secretary of the Interior may not add such species to, or remove such species from, any list published pursuant to subsection (c) of this section, unless the Secretary has first—

(A) published notice in the Federal Register and notified the Governor of each State within which such species is then known to occur that such action is contemplated;

(B) allowed each such State 90 days after notification to submit its comments and recommendations, except to the extent that such period may be shortened by agreement between the Secretary and the Governor or Governors concerned; and

(C) published in the Federal Register a summary of all comments and recommendations received by him which relate to such proposed action.

(2) In determining whether or not any species is an endangered species or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under the jurisdiction of any such nation or political subdivision, or on the high seas.

(3) Species which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive full consideration by the Secretary to determine whether each is an endangered species or a threatened species.

(c) Lists.

(1) The Secretary of the Interior shall publish in the Federal Register, and from time to time he may by regulation revise, a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under section 553(e) of Title 5, conduct a review of any listed or unlisted species proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list in effect on December 27, 1973, of species of fish or wildlife determined by the Secretary of the Interior, pursuant to the Endangered Species Conservation Act of 1969, to be threatened with extinction shall be republished to conform to the classification of endangered species or threatened species, as the case may be, provided for in this chapter, but until such republication, any such species so listed shall be deemed an endangered species within the meaning of this chapter. The republication of any species pursuant to this para-

graph shall not require public hearing or comment under section 553 of Title 5.

(d) *Protective regulations.*

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(a) of this title only to the extent that such regulations have also been adopted by such State.

(e) *Similarity of appearance cases.*

The Secretary may, by regulation, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) *Regulations.*

(1) Except as provided in paragraphs (2) and (3) of this subsection and subsection (b) of this section, the provisions of section 553 of Title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

(2) (A) In the case of any regulation proposed by the Secretary to carry out the purposes of this chapter—

(i) the Secretary shall publish general notice of the proposed regulation (including the complete text of the regulation) in the Federal Register not less than 60 days before the effective date of the regulation; and

(ii) if any person who feels that he may be adversely affected by the proposed regulation files (within 45 days after the date of publication of general notice) objections thereto and requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the Federal Register.

(B) Neither subparagraph (A) of this paragraph nor section 553 of Title 5 shall apply in the case of any of the following regulations and any such regulation shall, at the discretion of the Secretary, take

effect immediately upon publication of the regulation in the Federal Register:

(i) Any regulation appropriate to carry out the purposes of this chapter which was originally promulgated to carry out the *Endangered Species Conservation Act of 1969*.

(ii) Any regulation (including any regulation implementing section 1535(g)(2)(B)(ii) of this title) issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife, but only if (I) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary, and (II) in the case such regulation applies to resident species of fish and wildlife, the requirements of subsection (b) (A), (B), and (C) of this section have been complied with. Any regulation promulgated under the authority of this clause (ii) shall cease to have force and effect at the close of the 120-day period following the date of publication unless, during such 120-day period, the rulemaking procedures which would apply to such regulation without regard to this subparagraph are complied with.

(3) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a statement by the Secretary of the facts on which such regulation is based and the relationship of such facts to such regulation. (Pub. L. 93-205, § 4, Dec. 28, 1973, 87 Stat. 886.)

REFERENCES IN TEXT

Reorganization Plan Numbered 4 of 1970, referred to in subsec. (a)(2), is set out as a note under section 1611 of this title.

The *Endangered Species Conservation Act of 1969*, referred to in subsecs. (c)(3) and (f)(2)(B)(i), was classified to section 668aa et seq. of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460k-1, 668dd, 715l, 715s, 1402, 1534-1540 of this title.

§ 1534. Land acquisition.

(a) The Secretary of the Interior shall establish and implement a program to conserve (A) fish or wildlife which are listed as endangered species or threatened species pursuant to section 1533 of this title; or (B) plants which are concluded in Appendices to the Convention. To carry out such program, he—

(1) shall utilize the land acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring

lands, waters, or interests therein under subsection (a) of this section. (Pub. L. 93-205, § 5, Dec. 28, 1973, 87 Stat. 889.)

#### REFERENCES IN TEXT

The Fish and Wildlife Act of 1956, as amended, referred to in subsec. (a) (1), is classified to section 742a et seq. of this title.

The Fish and Wildlife Coordination Act, as amended, referred to in subsec. (a) (1), is classified to section 661 et seq. of this title.

The Migratory Bird Conservation Act, referred to in subsec. (a) (1), is classified to section 715 et seq. of this title.

The Land and Water Conservation Fund Act of 1965, as amended, referred to in subsec. (b), is classified to section 4601-4 et seq. of this title.

#### EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4601-9 of this title.

§ 1535. Cooperation with the States.

(a) Generally.

In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management agreements.

The Secretary may enter into agreements with any State for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 715s of this title.

(c) Cooperative agreements.

In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this subsection, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(1) authority resides in the States agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(2) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of fish or wildlife in the State which

are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(4) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species; and

(5) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened.

(d) Allocation of funds.

(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species. The Secretary shall make an allocation of appropriated funds to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this chapter;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

So much of any appropriated funds allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for (A) the actions to be taken by the Secretary and the States; (B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species; (C) the estimated cost of these actions; and (D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66 $\frac{2}{3}$  per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may



be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary. The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Review of State programs.

Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Conflicts between Federal and State laws.

Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

(g) Transition.

(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973, and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after December 28, 1973, or (B) the date of the close of the 15-month period following December 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1533(d) and 1538(a)(1)(B) of this title shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within any State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an

emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of Title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) Regulations.

The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) Authorization of appropriations.

For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed \$10,000,000. (Pub. L. 93-205, § 6, Dec. 28, 1973, 87 Stat. 889.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 18 of Pub. L. 93-205, set out as a note under section 1531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 866dd, 1533, 1538, 1540, 1542 of this title.

§ 1536. Interagency cooperation.

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical. (Pub. L. 93-205, § 7, Dec. 28, 1973, 87 Stat. 892.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

§ 1537. International cooperation.

(a) Financial assistance.

As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 724 of Title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or

threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

(b) Encouragement of foreign programs.

In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 1533 of this title;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) Personnel.

After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations.

After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this chapter.

(e) Convention implementation.

The President is authorized and directed to designate agencies to act as the Management Authority or Authorities and, the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, where appropriate, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

The President shall also designate those agencies which shall act on behalf of and represent the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. (Pub. L. 93-205, § 8, Dec. 28, 1973, 87 Stat. 892.)

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a), is classified to section 1691 et seq. of Title 7, Agriculture.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

§ 1538. Prohibited acts.

(a) Generally.

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(C) sell or offer for sale in interstate or foreign commerce any such species; or

(D) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment.

The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With

respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973.

(c) Violation of Convention.

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports.

(1) It is unlawful for any person to engage in business as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants without first having obtained permission from the Secretary,

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(e) Reports.

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to sec-

tion 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports.

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 688cc-4 (d) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations.

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in his section. (Pub. L. 93-205, § 9, Dec. 28, 1973, 87 Stat. 893.)

REFERENCES IN TEXT

Section 688cc-4(d) of this title, referred to in subsec. (f) (2), was repealed by section 14 of Pub. L. 93-205.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section as 1533, 1535, 1539, 1540, 1542 of this title.

§ 1539. Exceptions.

(a) Permits.

The Secretary may permit, under such terms and conditions as he may prescribe, any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species.

(b) Hardship exemptions.

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before

the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538(a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section 668cc-3 of this title; and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and review.

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and exemption policy.

The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds

and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title.

(e) Alaska natives.

(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 1373 of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared. (Pub. L. 93-205, § 10, Dec. 28, 1973, 87 Stat. 896.)

## REFERENCES IN TEXT

Section 668cc-3 of this title, referred to in subsec. (b), was repealed by section 14 of Pub. L. 93-205.

## EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1538 of this title.

## § 1540. Penalties and enforcement.

## (a) Civil penalties.

(1) Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1) (A), (B), (C), (D), (E), or (F), (a) (2) (A), (B), or (C), (c), (d) (other than regulation relating to record-keeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Any person who knowingly violates, or who knowingly commits an act in the course of a commercial activity which violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than \$5,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$1,000 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey

such order of the court may be punished by such court as a contempt thereof.

## (b) Criminal violations.

(1) Any person who willfully commits an act which violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a) (1) (A), (B), (C), (D), (E), or (F); (a) (2) (A), (B), or (C), (c), (d) (other than a regulation relating to record-keeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than \$20,000 or imprisoned for not more than one year, or both. Any person who willfully commits an act which violates any provisions of any other regulation issued under this chapter shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

## (c) District court jurisdiction.

The several district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

## (d) Rewards.

Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed \$2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this chapter or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

## (e) Enforcement.

(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel,

services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) (A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b) (1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed

by the Secretary or by such persons as he may designate.

(f) Regulations.

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen suits.

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g) (2) (B) (ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a) (1) (B) of this title with respect to the taking of any resident endangered species or threatened species within any State.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2) (A) No action may be commenced under subparagraph (1) (A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1) (B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) If the Secretary has commenced and is diligently prosecuting action under section 1535(g) (2) (B) (ii) of this title to determine whether any such emergency exists.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination with other laws.

The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (sections 101 to 105, 111 to 135b, and 612 to 614 of Title 21) and section 1306 of Title 19. Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 1527 of Title 19, relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country. (Pub. L. 93-205, § 11, Dec. 28, 1973, 87 Stat. 897.)

#### REFERENCES IN TEXT

The amendments "made by this Act", referred to in subsec. (b), refer to the amendments made by Pub. L. 93-205, which amended sections 460K-1, 460I-9, 668dd, 715i, 715s, 1362, 1371, 1372, and 1402 of this title and section 136 of Title 7, and repealed sections 668aa to 668cc-6 of this title.

The Tariff Act of 1930, referred to in subsec. (h), is classified to section 1202 et seq. of Title 19, Customs Duties.

#### EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

#### § 1541. Endangered plants.

The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after December 28, 1973, the results of such review including recommendations for new legislation or the amendment of existing legislation. (Pub. L. 93-205, § 12, Dec. 28, 1973, 87 Stat. 901.)

#### EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

#### § 1542. Authorization of appropriations.

Except as authorized in section 1535 of this title, there are authorized to be appropriated—

(A) not to exceed \$4,000,000 for fiscal year 1974, not to exceed \$8,000,000 for fiscal year 1975 and not to exceed \$10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this chapter; and

(B) not to exceed \$2,000,000 for fiscal year 1974, \$1,500,000 for fiscal year 1975 and not to exceed \$2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this chapter.

(Pub. L. 93-205, § 15, Dec. 28, 1973, 87 Stat. 903.)

#### EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1537 of this title.

#### § 1543. Construction with Marine Mammal Protection Act of 1972.

Except as otherwise provided in this chapter, no provision of this chapter shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972. (Pub. L. 93-205, § 17, Dec. 28, 1973, 87 Stat. 903.)

#### REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in text, is Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, which is classified to section 1361 et seq. of this title.

#### EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as a note under section 1531 of this title.

needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this chapter or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

(June 30, 1948, ch. 758, title V, § 516, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 895, and amended Jan. 2, 1974, Pub. L. 93-243, § 4, 87 Stat. 1069.)

#### AMENDMENTS

1974—Subsec. (b), Pub. L. 93-243 designated existing paragraph as par. (1) and cis. (1) to (4) as (A) to (D), and added par. (2).

#### STUDY AND REPORT TO CONGRESS BY SECRETARY OF INTERIOR OF FINANCING WATER POLLUTION PREVENTION, CONTROL, AND ABATEMENT PROGRAMS

Pub. L. 91-224, title I, § 109, Apr. 3, 1970, 34 Stat. 113, directed the Secretary of the Interior to conduct a full and complete investigation and study of the feasibility of all methods of financing the cost of preventing, controlling, and abating water pollution, other than methods authorized by existing law, with results of such investigation and study to be reported to Congress no later than Dec. 31, 1970, together with the recommendations of the Secretary for financing the programs for preventing, controlling, and abating water pollution for the fiscal years beginning after fiscal year 1971, including any necessary legislation.

#### TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a

Board established by the President or an officer of the Federal Government, such Board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1285, 1290 of this title.

#### § 1376. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, other than sections 1254, 1255, 1256(a), 1257, 1258, 1262, 1263, 1264, 1265, 1286, 1287, 1288(f) and (h), 1289, 1314, 1321(c), (d), (i), (j), and (k), 1324, 1325, and 1327 of this title, \$250,000,000 for the fiscal year ending June 30, 1973, \$300,000,000 for the fiscal year ending June 30, 1974, and \$350,000,000 for the fiscal year ending June 30, 1975.

(June 30, 1948, ch. 758, title V, § 517, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 896.)

#### REFERENCES IN TEXT

Section 1264 of this title, referred to in text, was omitted from the Code as executed.

#### CHAPTER 27—OCEAN DUMPING

##### Sec.

1401. Congressional finding, policy, and declaration of purpose.

1402. Definitions.

#### SUBCHAPTER I—REGULATION

1411. Prohibited acts.

1412. Dumping permit program.

(a) Environmental Protection Agency permits.

(b) Permit categories.

(c) Sites and times for dumping.

(d) Fish wastes.

(e) Foreign State permits; acceptance.

1413. Dumping permit program for dredged material.

(a) Issuance by Secretary of the Army.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations.

(c) Disagreement of Administrator with determination of Secretary of the Army.

(d) Waiver of requirements.

(e) Federal projects involving dredged material.

1414. Permit conditions.

(a) Designated and included conditions.

(b) Permit processing fees; reporting requirements.

(c) General permits.

(d) Review.

(e) Information for review and evaluation of applications.

(f) Public information.

(g) Display of issued permits.

1415. Penalties.

(a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief.

(b) Criminal penalties.

(c) Separate offenses.

(d) Injunctive relief.

(e) Liability of vessels in rem.

(f) Revocation and suspension of permits.

(g) Civil suits by private persons.

(h) Emergencies.



Sec

1416. Relationship to other laws.
- (a) Voiding of preexisting licenses.
  - (b) Actions under authority of Rivers and Harbors Act.
  - (c) Impairment of navigation.
  - (d) Consistent State programs.
  - (e) Existing conservation programs not affected.
1417. Enforcement.
- (a) Utilization of other departments, agencies, and instrumentalities.
  - (b) Delegation of review and evaluation authority.
  - (c) Surveillance and other enforcement activity.
1418. Regulations.
1419. International cooperation.
1420. Authorization of appropriations.
1421. Annual report to Congress.

#### SUBCHAPTER II—RESEARCH

1441. Monitoring and research program; reports to Congress.
1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems.
- (a) Secretary of Commerce.
  - (b) Action with other nations.
  - (c) Annual report to Congress.
  - (d) Cooperation of other departments, agencies, and independent instrumentalities.
  - (e) Utilization of personnel, services, and facilities; inter-agency agreements.
1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals.
1444. Authorization of appropriations.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1503 of this title; title 42 section 6905.

#### § 1401. Congressional finding, policy, and declaration of purpose

(a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) It is the purpose of this chapter to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and

(2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the contiguous zone of the United States.

(Pub. L. 92-532, § 2, Oct. 23, 1972, 86 Stat. 1052; Pub. L. 93-254, § 1(1), Mar. 22, 1974, 88 Stat. 50.)

#### REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92-532, which enacted this chapter and sections 1431 to 1434 of Title 16, Conservation.

#### AMENDMENTS

1974—Subsec. (b). Pub. L. 93-254 deleted statement of the purpose of this chapter as being the regulation of transportation of material from the United States for dumping into ocean waters, and the dumping of material, transported from outside the United States, if the dumping occurs in ocean waters over which the United States has jurisdiction or over which it may exercise control, under accepted principles of international law, in order to protect its territory or territorial sea, now covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 93-254 added subsec. (c).

#### EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93-254 provided in part that amendment of subsecs. (b) and (c) of this section and sections 1402, 1411, and 1412(a), other than last sentence of subsec. (a), of this title, by Pub. L. 93-254 shall become effective Mar. 22, 1974.

#### SHORT TITLE

Section 1 of Pub. L. 92-532 provided: "That this Act [enacting this chapter and sections 1431 to 1434 of Title 16, Conservation] may be cited as the 'Marine Protection, Research, and Sanctuaries Act of 1972.'"

#### PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

#### § 1402. Definitions

For the purposes of this chapter the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), under the provisions of section 407 of this title, or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided, further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And Provided further*, That it does not include the deposit of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

(l) "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

(Pub. L. 92-532, § 3, Oct. 23, 1972, 86 Stat. 1052; Pub. L. 93-254, § 1(2), Mar. 22, 1974, 88 Stat. 50.)

#### REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92-532, which enacted this chapter and sections 1431 to 1434 of Title 16, Conservation.

The Federal Water Pollution Control Act, as amended, referred to in subsec. (f), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables volume.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (f), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables volume.

#### AMENDMENTS

1974—Subsec. (c). Pub. L. 93-254, § 1(2)(A), substituted "sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping." for "oil within the meaning of section 11 of the Federal Water Pollution Control Act and does not mean sewage from vessels within the meaning of section 13 of such Act."

Subsec. (d). Pub. L. 93-254, § 1(2)(C), added subsec. (d).

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as an Effective Date of 1974 Amendment note under section 1401 of this title.

#### SUBCHAPTER I—REGULATION

##### § 1411. Prohibited acts

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title,

(1) no person shall transport from the United States, and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location

any material for the purpose of dumping it into ocean waters.

(b) Except as may be authorized by a permit issued pursuant to section 1412 of this title, and subject to regulations issued pursuant to section 1418 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(Pub. L. 92-532, title I, § 101, Oct. 23, 1972, 86 Stat. 1053; Pub. L. 93-254, § 1(3), Mar. 22, 1974, 88 Stat. 51.)

#### AMENDMENTS

1974—Subsec. (a). Pub. L. 93-254 incorporated existing provisions in the introductory text, substituting reference to permits issued under section 1412 or section 1413 of this title for prior reference to such issuance under this subchapter; incorporated existing provisions in item designated (1); added item (2); and substituted prohibition against transportation of any material for ocean dumping for former prohibition against such dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (b). Pub. L. 93-254 substituted reference to permits issued under section 1412 of this title for

former reference to such issuance under this subchapter, made any ocean dumping subject to regulations issued under section 1418 of this title, and substituted prohibition against dumping of any material for former prohibition against dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (c). Pub. L. 93-254 deleted subsec. (c) which prohibited any officer, employee, agent, department, agency, or instrumentality of the United States from transporting from any location outside the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit, any other material for purpose of dumping in ocean waters, now covered in subsec. (b) of this section.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as an Effective Date of 1974 Amendment note under section 1401 of this title.

#### EFFECTIVE DATE

Section 110(a) of Pub. L. 92-532 provided that: "This title [this subchapter] shall take effect six months after the date of the enactment of this Act [Oct. 23, 1972]."

#### SAVINGS PROVISIONS

Section 110(b) of Pub. L. 92-532 provided that: "No legal action begun, or right of action accrued, prior to the effective date of this title [this subchapter] shall be affected by any provision of this title [this subchapter]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title.

### § 1412. Dumping permit program

#### (a) Environmental Protection Agency permits

Except in relation to dredged material, as provided for in section 1413 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 1411(b) of this title, where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes.

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this subchapter, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

#### (b) Permit categories

The Administrator may establish and issue various categories of permits, including the general permits described in section 1414(c) of this title.

#### (c) Sites and times for dumping

The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

#### (d) Fish wastes

No permit is required under this subchapter for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific

location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) Foreign State permits; acceptance

In the case of transportation of material, by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued pursuant to subsection (a) of this section, shall be accepted, for the purposes of this subchapter, as if it were issued by the Administrator under the authority of this section.

(Pub. L. 92-532, title I, § 102, Oct. 23, 1972, 86 Stat. 1054; Pub. L. 93-254, § 1(4), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-254, § 1(4)(A), substituted "for which no permit may be issued," for "as provided for in section 1411 of this title," inserted "or in the case of a vessel or aircraft registered in the United States or flying the United States flag," after "instrumentality of the United States," and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93-254, § 1(4)(B), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93-254 provided in part that: "The amendments made by subparagraph 1(4)(A)(iii) and paragraph 1(4)(B) of this Act (enacting provision of subsec. (a) respecting application of standards by Administrator and subsec. (e) of this section) shall become effective on the date that the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters enters into force for the United States."

Amendment of subsec. (a) of this section, other than last sentence, by Pub. L. 93-254 effective Mar. 22, 1974, see section 2 of Pub. L. 93-254, set out in part as an Effective Date of 1974 Amendment note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1413 to 1415 of this title.

§ 1413. Dumping permit program for dredged material

(a) Issuance by Secretary of the Army

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations

In making the determination required by subsection (a) of this section, the Secretary shall apply those criteria, established pursuant to section 1412(a) of this title, relating to the effects of the dumping. Based upon an evaluation

of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title.

(c) Disagreement of Administrator with determination of Secretary of the Army

Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of the dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d) of this section, the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) Waiver of requirements

If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) Federal projects involving dredged material

In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section.

(Pub. L. 92-532, title I, § 103, Oct. 23, 1972, 86 Stat. 1055.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1414, 1415 of this title.

#### § 1411. Permit conditions

##### (a) Designated and included conditions

Permits issued under this subchapter shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

##### (b) Permit processing fees; reporting requirements

The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.

##### (c) General permits

Consistent with the requirements of sections 1412 and 1413 of this title, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

##### (d) Review

Any permit issued under this subchapter shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this subchapter, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

##### (e) Information for review and evaluation of applications

The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this subchapter to provide such information as he may consider necessary to review and evaluate such application.

##### (f) Public information

Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public

record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

##### (g) Display of issued permits

A copy of any permit issued under this subchapter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee.

(Pub. L. 92-532, title I, § 104, Oct. 23, 1972, 86 Stat. 1056.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title.

#### § 1415. Penalties

##### (a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief

Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

##### (b) Criminal penalties

In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this subchapter, regulations promulgated under this subchapter, or a permit issued under this subchapter shall be fined not more than \$50,000, or imprisoned for not more than one year, or both.

##### (c) Separate offenses

For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

##### (d) Injunctive relief

The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this subchapter, of regulations promulgated under this subchapter, or of permits issued under this subchapter, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

**(e) Liability of vessels in rem**

A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended, used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

**(f) Revocation and suspension of permits**

If the provisions of any permit issued under section 1412 or 1413 of this title are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

**(g) Civil suits by private persons**

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

**(2) No action may be commenced—**

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this subchapter.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert wit-

ness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

**(h) Emergencies**

No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

(Pub. L. 92-532, title I, § 105, Oct. 23, 1972, 86 Stat. 1057.)

**REFERENCES IN TEXT**

Section 13 of the Federal Water Pollution Control Act, referred to in subsec. (e), is section 13 of act June 30, 1948, ch. 758, as added by act Apr. 3, 1976, Pub. L. 91-224, title I, § 102, 84 Stat. 100, which was classified to as section 1163 of this title and was superseded by Pub. L. 92-500, Oct. 18, 1972, 86 Stat. 816. See section 1322 of this title.

**§ 1416. Relationship to other laws****(a) Voiding of preexisting licenses**

After the effective date of this subchapter, all licenses, permits, and authorizations other than those issued pursuant to this subchapter shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this subchapter, and whether issued before or after the effective date of this subchapter.

**(b) Actions under authority of Rivers and Harbors Act**

The provisions of subsection (a) of this section shall not apply to actions taken before the effective date of this subchapter under the authority of the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

**(c) Impairment of navigation**

Prior to issuing any permit under this subchapter, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

**(d) Consistent State programs**

After the effective date of this subchapter, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this subchapter. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after

notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this subchapter, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

**(e) Existing conservation programs not affected**

Nothing in this subchapter shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666c).

(Pub. L. 92-532, title I, § 106, Oct. 23, 1972, 86 Stat. 1058.)

**REFERENCES IN TEXT**

The effective date of this subchapter, referred to in subsecs. (a), (b), and (d), means the effective date of title I of Pub. L. 92-532. See section 110(a) of Pub. L. 92-532, set out as an Effective Date note under section 1411 of this title.

The Rivers and Harbors Act of 1899, referred to in subsec. (b), is act Mar. 3, 1899, ch. 425, 30 Stat. 1151, which enacted sections 401, 403, 404, 406 to 409, 411 to 416, 418, 502, 549, 686, and 687 of this title. For complete classification of this Act to the Code, see Tables volume.

The Fish and Wildlife Coordination Act referred to in subsec. (e), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, which enacted sections 661 to 666c of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables volume.

**§ 1417. Enforcement**

**(a) Utilization of other departments, agencies, and instrumentalities**

The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this subchapter.

**(b) Delegation of review and evaluation authority**

The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

**(c) Surveillance and other enforcement activity**

The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 1418 of this title, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the Department in which the Coast Guard is operating shall supply to the Administrator

and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this subchapter.

(Pub. L. 92-532, title I, § 107, Oct. 23, 1972, 86 Stat. 1059.)

**§ 1418. Regulations**

In carrying out the responsibilities and authority conferred by this subchapter, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate.

(Pub. L. 92-532, title I, § 108, Oct. 23, 1972, 86 Stat. 1059.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1411, 1417 of this title.

**§ 1419. International cooperation**

The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other component international organizations for the development of appropriate international rules and regulations in support of the policy of this chapter.

(Pub. L. 92-532, title I, § 109, Oct. 23, 1972, 86 Stat. 1060.)

**REFERENCES IN TEXT**

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92-532, which enacted this chapter and sections 1431 to 1434 of Title 16, Conservation.

**§ 1420. Authorization of appropriations**

There are hereby authorized to be appropriated not to exceed \$3,600,000 for fiscal year 1973, not to exceed \$5,500,000 for each of the fiscal years 1974 and 1975, not to exceed \$5,300,000 for fiscal year 1976, not to exceed \$1,325,000 for the transition period (July 1 through September 30, 1976), and not to exceed \$4,800,000 for fiscal year 1977, for the purposes and administration of this subchapter, and for succeeding fiscal years only such sums as the Congress may authorize by law.

(Pub. L. 92-532, title I, § 111, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 93-472, Oct. 26, 1974, 88 Stat. 1430; Pub. L. 94-62, § 1, July 25, 1975, 89 Stat. 303; Pub. L. 94-326, § 1, June 30, 1976, 90 Stat. 725.)

**AMENDMENTS**

1976—Pub. L. 94-326 added provision authorizing to be appropriated not to exceed \$4,800,000 for fiscal year 1977.

1975—Pub. L. 94-62 substituted "not to exceed \$5,500,000 for each of the fiscal years 1974 and 1975" for "and not to exceed \$5,500,000 for fiscal years 1974 and 1975", and added provisions authorizing appropriation of an amount not to exceed \$5,300,000 for fiscal

year 1976, and not to exceed \$1,325,000 for the transition period (July 1 through Sept. 30, 1976).

1974—Pub. L. 93-472 substituted "fiscal years 1974 and 1975," for "fiscal year 1974."

#### § 1421. Annual report to Congress

The Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating shall each individually report annually, on or before March 1 of each year, with the first report to be made on or before June 30, 1973 to the Congress, on his administration of this subchapter, including recommendations for additional legislation if deemed necessary.

(Pub. L. 92-532, title I, § 112, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 94-326, § 2, June 30, 1976, 90 Stat. 725.)

#### AMENDMENTS

1976—Pub. L. 94-326 substituted provision that the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating shall each individually report, for provision that the Administrator shall report and substituted "March 1 of each year" for "June 30 of each year".

### SUBCHAPTER II—RESEARCH

#### § 1441. Monitoring and research program: reports to Congress

The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall report from time to time, not less frequently than annually, his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress.

(Pub. L. 92-532, title II, § 201, Oct. 23, 1972, 86 Stat. 1060.)

#### § 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems

##### (a) Secretary of Commerce

The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.

##### (b) Action with other nations

In carrying out his responsibilities under this section, the Secretary of Commerce, under the

foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.

##### (c) Annual report to Congress

In March of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year.

##### (d) Cooperation of other departments, agencies, and independent instrumentalities

Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.

##### (e) Utilization of personnel, services, and facilities; inter-agency agreements

The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action.

(Pub. L. 92-532, title II, § 202, Oct. 23, 1972, 86 Stat. 1060; Pub. L. 94-62, § 2, July 25, 1975, 89 Stat. 303.)

#### AMENDMENTS

1975—Subsec. (c). Pub. L. 94-62 substituted "March" for "January".

#### § 1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals

The Secretary of Commerce shall conduct and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of minimizing or ending all dumping of materials within five years of the effective date of this Act.

(Pub. L. 92-532, title II, § 203, Oct. 23, 1972, 86 Stat. 1061.)

#### REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably means Oct. 23, 1972, the date of enactment of Pub. L. 92-532, which enacted this chapter.

#### § 1444. Authorization of appropriations

There are authorized to be appropriated for the first fiscal year after October 23, 1972, and for the next two fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any



such fiscal year may not exceed \$6,000,000. There are authorized to be appropriated not to exceed \$1,500,000 for the transition period (July 1 through September 30, 1976), and not to exceed \$5,800,000 for fiscal year 1977.

(Pub. L. 92-532, title II, § 204, Oct. 23, 1972, 86 Stat. 1061; Pub. L. 94-62, § 3, July 25, 1975, 89 Stat. 303; Pub. L. 94-326, § 3, June 30, 1976, 90 Stat. 725.)

#### AMENDMENTS

1976—Pub. L. 94-326 added provision authorizing to be appropriated not to exceed \$5,600,000 for fiscal year 1977.

1975—Pub. L. 94-62 added provision authorizing the appropriation of an amount not to exceed \$1,500,000 for the transition period (July 1, through Sept. 30, 1976).

### CHAPTER 28—OIL POLLUTION CASUALTIES ON THE HIGH SEAS: UNITED STATES INTERVENTION

#### Sec.

1471. Definitions.  
 1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.  
 1473. List of Federal interests directly threatened or affected.  
 1474. Federal intervention actions.  
 1475. Consultation procedure.  
 1476. Emergencies.  
 1477. Reasonable measures; considerations.  
 1478. Personal, flag state, and foreign state considerations.  
 1479. Federal liability for unreasonable damages; jurisdiction.  
 1480. Notification by Secretary of State.  
 1481. Violations; penalties.  
 1482. Experts and arbitrators; nomination.  
 1483. Foreign Government ships; immunity.  
 1484. Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected.  
 1485. Rules and regulations.  
 1486. Revolving fund for Federal actions and activities.  
 1487. Effective date.

#### § 1471. Definitions

As used in this chapter—

- (1) "ship" means—  
 (A) any seagoing vessel of any type whatsoever, and  
 (B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;  
 (2) "oil" means crude oil, fuel oil, diesel oil, and lubricating oil;  
 (3) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;  
 (4) "Secretary" means the Secretary of the department in which the Coast Guard is operating; and  
 (5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 93-248, § 2, Feb. 5, 1974, 88 Stat. 8.)

#### SHORT TITLE

Section 1 of Pub. L. 93-248 provided: "That this Act (which enacted this chapter) may be cited as the 'Intervention on the High Seas Act.'"

#### § 1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas

Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 1479 of this title, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the Convention and this chapter, to prevent, mitigate, or eliminate that danger.

(Pub. L. 93-248, § 3, Feb. 5, 1974, 88 Stat. 8.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 1479 of this title.

#### § 1473. List of Federal interests directly threatened or affected

In determining whether there is grave and imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States directly threatened or affected including but not limited to, fish, shellfish, and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches.

(Pub. L. 93-248, § 4, Feb. 5, 1974, 88 Stat. 9.)

#### § 1474. Federal intervention actions

Upon a determination under section 1472 of this title of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

- (1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;  
 (2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and  
 (3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

(Pub. L. 93-248, § 5, Feb. 5, 1974, 88 Stat. 9.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1486 of this title.

**Annex 11****CANADIAN LAWS:**

THE PUBLIC LANDS GRANTS ACT, 1950, *CANADA REVISED STATUTES* (1952),  
CHAP. 224, PP. 115-117

OIL AND GAS PRODUCTION AND CONSERVATION ACT OF 1968-1969, *REVISED  
STATUTES OF CANADA, 1970, CHAP. 30 (1ST SUPP.), SEC. 3*

**CANADIAN REGULATIONS:**

CANADA OIL AND GAS LAND REGULATIONS AND  
CANADA OIL AND GAS DRILLING AND PRODUCTION REGULATIONS, 6 JUNE 1961  
(SOR/61-253), PARAS. 24-40, *CANADA GAZETTE, PART II, VOL. 95,*  
PP. 805, 813-817, 28 JUNE 1961

# 14 GEORGE VI.

## CHAP. 19.

### An Act respecting Grants of Public Lands.

[Assented to 1st June, 1950.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

#### SHORT TITLE.

1. This Act may be cited as *The Public Lands Grants Act, 1950.* Short title.

#### INTERPRETATION.

2. In this Act

- (a) "grant" means letters patent under the Great Seal of Canada and any other instrument by which public lands may be granted in fee simple or for an equivalent estate; Definitions. "grant".
- (b) "land" includes mines, minerals, easements, servitudes and all other interests in real property; and "land".
- (c) "public lands" means lands belonging to His Majesty in right of Canada and includes lands of which the Government of Canada has power to dispose. "public lands".

#### GRANTS OF PUBLIC LANDS.

3. Where under the laws of a province an instrument transferring land without words of limitation operates as an absolute transfer of all such right and title as the transferor has therein, a grant of public lands in such province, if His Majesty has power to convey such an estate therein, and if no contrary or different intention is expressed in the grant, operates as a conveyance of an estate in fee simple or an equivalent estate in such lands, although no words of limitation are used in the grant. Crown grant to convey fee simple.

4. The Governor in Council may

- (a) authorize the sale, lease or other disposition of any Sale or lease of public lands.

- public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in the law;
- Regulations authorizing Ministers to dispose of public lands (b) make regulations authorizing the Minister having the control, management and administration of any such public lands to sell, lease or otherwise dispose of them, subject to such limitations and conditions as the Governor in Council may prescribe;
- Tariff of fees. (c) prescribe a tariff of fees for copies of maps, plans, field notes, documents, papers and other records pertaining to public lands, for the preparation of documents evidencing a sale, lease or other disposition of public lands and for the registration in any government department of any documents pertaining to public lands;
- Interest. (d) fix the rate of interest to be paid for or on account of the purchase money or rent of any public lands sold or leased under this Act.
- No title by prescription. **5.** No right, title or interest in or to public lands shall be acquired by any person by prescription.

#### LEASES.

- Authority to sign leases **6.** All leases of public lands issued by special authority of the Governor in Council or pursuant to any regulation of the Governor in Council may be executed on behalf of His Majesty by the Minister having the control, management and administration of the lands or by some person thereunto authorized by the Minister.

#### DEFENCE LANDS.

- Defence lands. R.S., c.115 **7.** Such of the lands mentioned in the Schedule to the *Ordnance and Admiralty Lands Act* as at the commencement of this Act are vested in His Majesty in right of Canada, by whatever mode of conveyance they were acquired or taken, whether in fee, for life, for years or otherwise, and all the appurtenances thereof, are and continue absolutely vested in His Majesty for the purposes of Canada in the same manner and to the same extent as at the date of the coming into force of this Act.
- Defence lands not to be sold. **8.** (1) Public lands that are declared by the Governor in Council to be necessary for the defence of Canada shall not be sold, alienated or otherwise disposed of but may be leased or otherwise used as the Governor in Council thinks best for the advantage of Canada.
- Lands for the defence of Canada. R.S., c.115 (2) Until the Governor in Council otherwise provides, lands that at the commencement of this Act were lands in class one under the *Ordnance and Admiralty Lands Act*

shall be deemed to have been declared by the Governor in Council to be necessary for the defence of Canada.

#### CORRECTION OF GRANTS.

**9.** A grant that is issued to or in the name of a person who is dead is not therefore void, but the title to the land thereby granted or intended to be granted vests in the heirs, assigns, devisees or other legal representatives of the deceased person according to the laws in force in the province in which the land is situate, as if the grant had issued to or in the name of the deceased person during his lifetime.

Grants issued after death of grantee.

**10.** Where a grant has issued to, or in the name of, a wrong person, or contains a clerical error, misnomer or wrong or defective description of the land thereby intended to be granted, or where there is in a grant an omission of the conditions of the grant, the Governor in Council may, if there is no adverse claim, direct the defective grant to be cancelled and a correct grant to be issued in lieu thereof, and the correct grant shall relate back to the date of the grant so cancelled and have the same force and effect as if issued at the date of the cancelled grant.

Correction of grants containing error

**11.** Where through error grants have issued for the same land, inconsistent with each other, or where sales or appropriations of the same land, inconsistent with each other, have been made, the Governor in Council may

Conflicting grants.

- (a) order a new grant to the person thereby deprived, of land to a value equal to that of the original grant at the time of the grant,
- (b) in the case of a sale, lease or licence, order a refund to be made of any money paid on account of the sale, lease or licence, with interest at the rate of five per cent per annum, or
- (c) when the land has passed from the original holder, or has been improved before the discovery of the error, or when the original grant was a free grant, grant to the original holder such land as to the Governor in Council seems just and equitable under the circumstances,

but no claim under this section shall be entertained unless it is made within one year after the discovery of the error.

**12.** *The Public Lands Grants Act and the Ordnance and Admiralty Lands Act* are repealed.

Repealed.  
R.S., c. 114.  
R.S., c. 115

**CHAPTER 30 (1st Supp.)**

An Act to amend the Oil and Gas Production and Conservation Act

[1969-70, c. 43]

1. The long title of the *Oil and Gas Production and Conservation Act*, chapter 0-4 of the Revised Statutes of Canada, 1970, is repealed and the following substituted therefor:

“An Act respecting the production and conservation of oil and gas”

2. (1) The definition “Chief Conservation Officer” in section 2 of the said Act is repealed and the following substituted therefor:

“Chief  
Conservation  
Officer”

“‘Chief Conservation Officer’ means

- (a) in relation to any area in respect of which the Minister of Indian Affairs and Northern Development has administrative responsibility for the natural resources therein, such officer of the Department of Indian Affairs and Northern Development as that Minister may designate from time to time, and
- (b) in relation to any area in respect of which the Minister of Energy, Mines and Resources has administrative responsibility for the natural resources therein, such officer of the Department of Energy, Mines and Resources as that Minister may designate from time to time;”

(2) The definition “Minister” in section 2 of the said Act is repealed and the following substituted therefor:

“Minister”

“‘Minister’ means

- (a) in relation to any area in respect of which the Minister of Indian Affairs and Northern Development has administrative responsibility for the natural resources therein, the Minister of Indian Affairs and Northern Development, and
- (b) in relation to any area in respect of which the Minister of Energy, Mines and Resources has administrative responsibility for the natural resources therein, the Minister of Energy, Mines and Resources;”

(3) The definition “pipeline” in section 2 of the said Act is repealed and the following substituted therefor:

“pipeline”

“‘pipeline’ means any pipe or any system or arrangement of pipes by which oil, gas or water incidental to the drilling for or production of oil or gas is conveyed from any wellhead or other place at which it is produced to any other place, or from any place where it is stored, processed or treated to any other place, and includes all property of any kind used for the purpose of, or in connection with or incidental to, the operation of a pipeline in the gathering, transporting, handling and delivery of oil or gas, and without restricting the generality of the foregoing, includes off shore installations or vessels, tanks, surface reservoirs, pumps, racks, storage and loading facilities, compressors, compressor stations, pressure measuring and controlling equipment and fixtures, flow controlling and measuring equipment and fixtures, metering equipment and fixtures, and heating, cooling

and dehydrating equipment and fixtures, but does not include any pipe or any system or arrangement of pipes that constitutes a distribution system for the distribution of gas to ultimate consumers;”

3. Section 3 of the said Act is repealed and the following substituted therefor:

Application

“3. This Act applies in respect of oil and gas in any of the following areas, namely:

- (a) the Yukon Territory or the Northwest Territories;
- (b) those submarine areas adjacent to the coast of Canada to a water depth of two hundred meters or beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the seabed and subsoil thereof; and
- (c) any lands that belong to Her Majesty in right of Canada or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the minerals therein;

but does not apply in respect of oil and gas in any such area if the area is within the geographical limits of, or if the administration of the oil and gas resources in the area has been transferred by law to, any of the ten provinces of Canada.”

4. Subsection 4 (1) of the said Act is repealed and the following substituted therefor:

Oil and Gas  
Committee

“4. (1) The Governor in Council may establish a committee to be known as the Oil and Gas Committee, which shall consist of five members, not more than three of whom shall be employees in the public service of Canada.

Ministerial  
direction

(1.1) The Committee shall be under the direction of

- (a) the Minister of Indian Affairs and Northern Development in relation to any area in respect of which that Minister has administrative responsibility for the natural resources therein, and
- (b) the Minister of Energy, Mines and Resources in relation to any area in respect of which that Minister has administrative responsibility for the natural resources therein.”

5. Subsections 5 (2) and (3) of the said Act are repealed and the following substituted therefor:

Depart-  
mental  
personnel  
and  
assistance

“(2) Persons employed in any division, branch or bureau of the Department of Indian Affairs and Northern Development, or the Department of Energy, Mines and Resources, that is designated by order of the Minister concerned as the division, branch or bureau charged with the day-to-day administration and management of oil and gas resources for the Department, are not eligible to be members of the Committee; but the Ministers concerned may each designate one officer from any such division, branch or bureau who shall act as secretaries to the Committee.

Staff

(3) The Minister of Indian Affairs and Northern Development and the Minister of Energy, Mines and Resources shall provide the Committee with such officers, clerks and employees as may be necessary for the proper conduct of the affairs of the Committee, and may provide the Committee with such professional or technical assistance for temporary periods or for specific work as the Committee may request, but no such assistance shall be provided otherwise than from the public service of Canada except with the approval of the Treasury Board.”

6. Paragraphs 12 *(j)* and *(k)* of the said Act are repealed and the following substituted therefor:

- (j)* authorizing the Minister, or such other person as the Governor in Council deems suitable, to exercise such powers and perform such duties as may be necessary for the removal of oil or gas from any area referred to in section 3, and authorizing the making of such orders as may be specified;
- (k)* authorizing the Minister, or such other person as the Governor in Council deems suitable, to exercise such powers and perform such duties as may be necessary for the construction of pipeline within any area referred to in section 3, and authorizing the making of such orders as may be specified;”



SOR/61-253

**TERRITORIAL LANDS ACT**  
**PUBLIC LANDS GRANTS ACT**  
**Canada Oil and Gas Land Regulations**  
**Canada Oil and Gas Drilling and Production Regulations**

PC. 1961-797

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 6th day of JUNE, 1961.

**PRESENT:**

**HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL**

His Excellency the Governor General in Council, on the recommendation of the Minister of Northern Affairs and National Resources, pursuant to the Territorial Lands Act and the Public Lands Grants Act, is pleased hereby to revoke the Canada Oil and Gas Regulations made by Order in Council P.C. 1960-474 of 13th April, 1960<sup>(1)</sup>, and to make in substitution therefor Canada Oil and Gas Land Regulations and Canada Oil and Gas Drilling and Production Regulations, hereto appended.

<sup>(1)</sup> SOR/60-182, CANADA GAZETTE PART II, Vol. 94, No. 9, May 11, 1960

19. (1) Where, due to a discordance of reference points or imprecisions in measuring, a subsequently surveyed grid area, section, unit or target area appears to overlap a grid area, section, unit or target area the position of which is deemed to be true by section 18, the subsequently surveyed grid area, section, unit or target area shall be laid out and surveyed as though no overlap existed except that it shall be reduced by that portion that lies within the overlap.

(2) Subject to subsection (1), a grid area that has been reduced pursuant to subsection (1) shall, for the purposes of these Regulations, be considered to be a whole grid area.

(3) Where, due to a discordance of reference points or imprecisions in measuring, a parcel of Canada lands appears not to lie within a grid area, that parcel may be disposed of pursuant to section 58.

20. Any legal survey made pursuant to these Regulations shall be made by and paid for by the permittee or lessee as the case may be.

21. (1) Where a monument is damaged, destroyed, moved or altered as a result of the operations of a licensee, permittee or lessee

(a) he shall report the matter to the Chief as soon as possible; and

(b) he shall

(i) pay to the Receiver General of Canada the cost of restoration or re-establishment of the monument, or

(ii) with the consent of the Surveyor General, cause the monument to be restored or re-established at his own expense.

(2) Every permittee or lessee shall maintain and keep in good repair all monuments that are situated on or mark the boundaries of his permit area or lease area as the case may be.

(3) The restoration or re-establishment of a monument shall be done by a Dominion Land Surveyor under the instruction of the Surveyor General.

22. Every licensee, permittee or lessee who finds that a monument has been destroyed, damaged, moved or altered shall report the matter to the Chief as soon as possible.

#### *Prohibition*

23. (1) No person shall, for the purpose of searching for oil or gas, carry out exploratory work on Canada lands except as authorized by these Regulations.

(2) No person shall produce from Canada lands any oil, gas or related hydrocarbons (other than coal or valuable stone) or any minerals or substances that are produced in association with any of the foregoing except as authorized by these Regulations.

#### *Exploratory Licences*

24. (1) The Chief or the Oil Conservation Engineer may, upon application, issue a licence.

(2) Every application for a licence shall be accompanied by the fee set out in Schedule A.

(3) Every licence expires on the thirty-first day of March next following the date of its issue.

(4) A licence may not be assigned or transferred.

25. A licence shall not be issued to

- (a) a person who is less than twenty-one years of age; or
- (b) a company unless that company is incorporated or licensed to do business in Canada or is incorporated in a province of Canada.

26. (1) Subject to subsection (2), a licensee may, for the purpose of searching for oil or gas enter upon and use the surface of any Canada lands in order to

- (a) make geological or geophysical examinations;
- (b) carry out aerial mapping; or
- (c) investigate the subsurface.

(2) No licensee shall enter upon Canada lands that have been disposed of in any way by Her Majesty, except Canada lands that are included in a permit or oil and gas lease granted under these Regulations, unless the licensee has obtained

- (a) the consent of the occupier thereof; or
- (b) an order for entry from the arbitrator.

27. No licensee shall drill on any Canada lands a hole deeper than one thousand feet unless

- (a) in the case of Canada lands included in a permit or lease, the licensee has obtained the written consent of the permittee or lessee; or
- (b) in the case of Canada lands not included in a permit or lease, the licensee has obtained the written consent of the Chief.

28. Every licensee who carries out work on Canada lands not held by him under permit or lease shall, upon completion of the work, furnish the Chief with three copies of

- (a) a map on a scale of not less than four miles to one inch showing the area covered by the examination and indicating the location of all roads and airstrips;
- (b) information obtained as to the presence of water, coal, gravel, sand or other potentially useful minerals; and
- (c) all reports, photographs, maps and data referred to in section 54.

29. A licensee shall upon request by the Oil Conservation Engineer report the location and progress of any field party employed by the licensee.

## PERMITS

### *Permit upon Application*

30. (1) Where the Minister is satisfied that exploratory work will be carried out, he may, upon application, issue an exploratory permit for Canada lands that have not previously been held under permit or lease.

(2) Every application for an exploratory permit shall be delivered in person by the applicant or his authorized agent to the office of the Chief in Ottawa between nine o'clock in the forenoon and four o'clock in the afternoon on any day except a Saturday or a holiday and shall be accompanied by

- (a) the fee set out in Schedule A;
- (b) the deposit required by section 41;
- (c) a statement in duplicate of the extent and character of the examination to be made and the estimated cost thereof; and
- (d) a description of the area for which application is made.

(3) The Chief shall cause to be endorsed on each application the date and time that the application is received.

31. (1) Where an application is not accepted, the fee and deposit shall be returned to the applicant.

(2) Where an application is withdrawn by the applicant before the permit is issued, the deposit shall be returned to the applicant.

#### *Permit upon Tender*

32. (1) Before a permit may be issued for Canada lands that have been held under a permit or lease which permit or lease has expired, been cancelled or surrendered, the Minister shall call for tenders for the purchase of a permit in the manner provided in this section.

(2) A permit issued pursuant to subsection (1) may be granted upon such terms and conditions as the Minister may order.

(3) A call for tenders under this section shall

- (a) be advertised in the *Canada Gazette* and in such other manner as the Minister considers advisable at least thirty days before the date fixed for the closing of tenders; and
- (b) state the terms and conditions upon which the tender is called and upon which the permit is to be granted.

(4) Where tenders are called pursuant to subsection (1) and no tender is received, the Minister may dispose of those lands by permit pursuant to section 30 on or after the day following the date fixed for the closing of tenders.

(5) Where tenders are called pursuant to subsection (1) and a tender has been received, but the Minister has refused to accept that tender, the Minister may continue to call tenders for the purchase of a permit for those lands.

33. (1) Every permit shall be issued for a grid area or one-half of a grid area.

(2) A permit shall not be issued to

- (a) a person who is less than twenty-one years of age; or
- (b) a company unless that company is incorporated or licensed to do business in Canada or is incorporated in a province of Canada.

34. (1) A permittee must be the holder of a licence before he may carry out exploratory work on Canada lands.

(2) Where a permittee is authorized to carry out exploratory work under these Regulations, that work may be performed by any person employed or hired by the permittee.

(3) A permittee may, for the purpose of carrying out exploratory work for oil and gas,

(a) enter upon the Canada lands described in his permit; and

(b) use such part of the surface of the Canada lands described in his permit as may be necessary.

(4) A permittee may produce from the Canada lands described in his permit such quantity of oil and gas that, in the opinion of the Oil Conservation Engineer, is necessary for test purposes or for conducting operations of the permittee on that permit area.

35. (1) Subject to these Regulations, a permittee has the exclusive option to obtain an oil and gas lease for the Canada lands described in his exploratory permit.

(2) Every permit shall state the term of the oil and gas lease for which an option is given and the royalty payable under the lease.

#### *Term of Permit*

36. (1) Except as provided in subsection (3), where the whole or greater part of a permit area is located south of latitude 65°, the permit is valid for three years from the date of issue.

(2) Except as provided in subsection (3), where the whole or greater part of a permit area is located between latitude 65° and latitude 70°, the permit is valid for four years from the date of issue.

(3) Where a permit area is located north of latitude 70° or where the whole or greater part of a permit area is, in the opinion of the Chief, covered by seacoast waters, the permit is valid for six years from the date of issue.

37. A permittee may at any time surrender the grid area or one-half of the grid area for which he holds a permit but, except as provided in section 42, no deposit shall be refunded to the permittee.

#### *Renewal of Permits*

38. (1) The Chief shall, upon application, renew a permit for the term of one year.

(2) The application for renewal shall be made to the Chief in Ottawa before the expiry date of the permit and shall be accompanied by the deposit required by section 41.

(3) A permit may be renewed pursuant to subsection (1) not more than six times.

## 39. (1) Where

- (a) a permit has been renewed six times;
- (b) a well is being drilled in a manner satisfactory to the Chief; and
- (c) in the opinion of the Chief, the well will not be completed or abandoned before the expiration of the permit,

the Chief may, upon application extend the term of the permit for one or more periods of ninety days.

(2) The application for extension shall be made to the Chief and shall be accompanied by the deposit required by section 41.

40. Where a permit has been renewed six times, the Minister may, upon application, renew the permit for such term and subject to such conditions and deposits as he may prescribe.

*Deposits*

41. (1) Every permittee shall deposit with the Chief, before the commencement of a period, money or bonds of a value equal to the deposit required for that period.

(2) The deposit required for the period set out in Column I of Schedule B is the amount set out in Column II of that Schedule.

42. (1) The portion of a deposit equal to the allowable expenditure made during the period, shall be returned to the permittee.

(2) Subject to subsection (3), the portion of the deposit not returned to the permittee is forfeited to Her Majesty.

(3) Where in the opinion of the Chief a permittee has not been able to make allowable expenditure equal to the deposit required for any period, and the permittee has given notice to the Chief, and during the renewal period next following the permittee makes allowable expenditure equal to the aggregate of

- (a) the deposit required for the renewal period next following; and
- (b) the portion of the deposit for the period, heretofore not returned to the permittee,

the portion of the deposit heretofore not returned shall be returned to the permittee.

(4) The notice required under subsection (3) shall be given before the end of the period and shall state the reasons that the permittee has not been able to make allowable expenditures equal to the deposit required for that period and that the permittee intends to make allowable expenditure, during the renewal period next following, equal to the aggregate of

- (a) the deposit required for the renewal period; and
- (b) the portion of the deposit for the period heretofore not returned to the permittee.

(5) Subsection (3) does not apply to the first period of a permit.

---

Volume II  
DOCUMENTARY ANNEXES, NOS. 12 TO 44

Annex 12

S. E. MORISON, *THE MARITIME HISTORY OF MASSACHUSETTS: 1783-1860*, BOSTON, NORTHEASTERN UNIVERSITY PRESS, 1979, CHAP. II, "THE COLONIAL BACKGROUND: 1602-1760", PP. 8-26, AND CHAP. XIX, "CAPE COD AND CAPE ANN: 1820-1860", PP. 300-313

[Not reproduced]

---

Annex 13

H. A. INNIS, *THE COD FISHERIES: THE HISTORY OF AN INTERNATIONAL ECONOMY*, NEW HAVEN, YALE UNIVERSITY PRESS, 1940, PP. 111-119

[Not reproduced]

---

**Annex 14**

L. SABINE, *REPORT ON THE PRINCIPAL FISHERIES OF THE AMERICAN SEAS*,  
WASHINGTON, D.C., THE TREASURY DEPARTMENT OF THE UNITED STATES, ROBERT  
ARMSTRONG, PRINTER, 1853, P. 174

*[Not reproduced]*

---

**Annex 15**

*JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789*, VOL. XIV, 1779,  
WASHINGTON, GOVERNMENT PRINTING OFFICE, 1909, PP. 960-962

*[Not reproduced]*

---



**Annex 16**

TREATY OF PEACE, 1783, UNITED STATES-GREAT BRITAIN, 8 STAT. 80, TS No. 104.  
REPRINTED FROM *TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE  
UNITED STATES: 1776-1949*, CHARLES BEVANS, ED., VOL. 12, PP. 8-12

MAP DEPICTING THE COASTS COVERED BY THE CONVENTION OF 1818 (FROM C. C.  
TANSILL, *CANADIAN-AMERICAN RELATIONS: 1875-1911*, NEW HAVEN,  
YALE UNIVERSITY PRESS, 1943, FACING P. 1)<sup>1</sup>

CONVENTION ON FISHERIES, BOUNDARY AND RESTORATION OF SLAVES, 1818,  
UNITED STATES-GREAT BRITAIN, 8 STAT. 248, TS No. 112, REPRINTED FROM  
*TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES:  
1776-1949*, CHARLES BEVANS, ED., VOL. 12, PP. 57-60

---

<sup>1</sup> Not reproduced.

## TREATY OF PEACE

*Signed at Paris September 3, 1783*

*Ratified and proclaimed by the Congress of the United States (Continental Congress) January 14, 1784*

*Ratified by Great Britain April 9, 1784*

*Ratifications exchanged at Paris May 12, 1784*

*Entered into force May 12, 1784*

*Article 4 supplemented by convention of January 8, 1802<sup>1</sup>*

*Articles 2 and 3 superseded by subsequent conventions regarding boundaries and fisheries*

*Articles 4-7, 9, and 10 terminated upon fulfillment of terms*

*Article 8 annulled by War of 1812<sup>2</sup>*

8 Stat. 80; Treaty Series 104

In the Name of the most Holy & undivided Trinity.

It having pleased the Divine Providence to dispose the Hearts of the most Serene and most potent Prince George the Third, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunenbourg, Arch-Treasurer and Prince Elector of the Holy Roman Empire &ca. and of the United States of America, to forget all past Misunderstandings and Differences that have unhappily interrupted the good Correspondence and Friendship which they mutually wish to restore, and to establish such a beneficial and satisfactory Intercourse, between the two Countries upon the Ground of reciprocal Advantages and mutual Convenience as may promote and secure to both perpetual Peace & Harmony, and having for this desirable End already laid the Foundation of Peace and Reconciliation, by the Provisional Articles signed at Paris on the 30th of November 1782,<sup>4</sup> by the Commissioners empowered on each Part, which Articles were agreed to be inserted in and to constitute the Treaty of Peace proposed to be concluded between the Crown of Great Britain and the said United States, but which Treaty was not to be concluded until Terms of Peace should be agreed upon between Great Britain and France and his Britannic Majesty should be ready to conclude such Treaty accordingly; and

<sup>1</sup> TS 108, *post*, p. 38.

<sup>2</sup> See Moore, *Digest of International Law*, vol. V, pp. 381 and 382.

<sup>3</sup> For a detailed study of this treaty, see 2 Miller 151.

<sup>4</sup> TS 102, *ante*, p. 1.

the Treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full Effect the Provisional Articles above mentioned, according to the Tenor thereof, have constituted and appointed, that is to say His Britannic Majesty on his Part, David Hartley, Esqr. Member of the Parliament of Great Britain, and the said United States on their Part John Adams, Esqr. late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and Chief Justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, Esq'r. late Delegate in Congress from the State of Pennsylvania, President of the Convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles, John Jay Esqr late President of Congress and Chief Justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid; to be the Plenipotentiaries for the concluding and signing the present Definitive Treaty; who after having reciprocally communicated their respective Full Powers have agreed upon and confirmed the following Articles.

ARTICLE 1<sup>st</sup>

His Britannic Majesty acknowledges the said United States, viz, New-Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free Sovereign & independent States, that he treats with them as such, & for himself, His Heirs and Successors, relinquishes all Claims to the Government, Propriety and Territorial rights of the same and every Part thereof.

ARTICLE 2<sup>d</sup> 5

And that all Disputes which might arise in future on the Subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are & shall be their Boundaries viz: From the North West angle of Nova Scotia viz, that angle which is formed by a Line drawn due North from the Source of St. Croix River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the North-Western-most Head of Connecticut River: Thence down along the Middle of that River to the Forty Fifth Degree of North Latitude; from thence by a Line due West on said Latitude until it strikes the River Iroquois or Cataraguay; Thence along the middle of said River into Lake Ontario;

<sup>5</sup> For text of decisions of commissioners appointed pursuant to art. 4 of treaty of Dec. 24, 1814 (TS 109, *post*, p. 41), see 8 Stat. 250, 274; TS 111, 113.

through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication into Lake Erie, through the middle of said Lake until it arrives at the water communication between that Lake and Lake Huron, thence along the middle of said water communication into the Lake Huron, thence through the middle of said Lake to the water communication between that Lake and Lake Superior, thence through Lake Superior Northward of the Isles Royal & Phelipeaux to the Long Lake, thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said Lake to the most Northwestern Point thereof, and from thence on a due West Course to the River Mississippi, thence by a Line to be drawn along the middle of the said River Mississippi until it shall intersect the Northernmost Part of the thirty first degree of North Latitude. South, by a Line to be drawn due East from the Determination of the Line last mentioned in the Latitude of thirty one Degrees North of the Equator, to the middle of the River Apalachicola or Catahouche thence along the middle thereof to its Junction with the Flint River, thence straight to the head of Saint Mary's River; and thence down along the middle of Saint Mary's River to the Atlantic Ocean; East, by a Line to be drawn along the middle of the River Saint Croix, from its mouth in the Bay of Fundy to its Source, and from its Source directly North to the aforesaid Highlands which divide the Rivers that fall into the Atlantic Ocean from those which fall into the River Saint Lawrence; comprehending all Islands within twenty Leagues of any Part of the Shores of the United States, and lying between Lines to be drawn due East from the Points where the aforesaid Boundaries between Nova Scotia on the one Part and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are or heretofore have been within the Limits of the said Province of Nova Scotia.

#### ARTICLE 3<sup>d</sup>

It is agreed that the People of the United States shall continue to enjoy unmolested the Right to take Fish of every Kind on the Grand Bank, and on all the other Banks of New-foundland, also in the Gulph of Saint Lawrence and at all other Places in the Sea, where the Inhabitants of both Countries used at any time heretofore to fish. And also that the Inhabitants of the United States shall have Liberty to take Fish of every Kind on such Part of the Coast of New-foundland as British Fishermen shall use, (but not to dry or cure the same on that Island) and also on the Coasts Bays & Creeks of all other of his Britannic Majesty's Dominions in America, and that the American Fishermen shall have Liberty to dry and cure Fish in any of the unsettled Bays, Harbours and Creeks of Nova Scotia, Magdalen Islands and Labrador, so long as the same shall remain unsettled, but so

soon as the same or either of them shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Settlement without a previous Agreement for that Purpose with the Inhabitants, Proprietors or Possessors of the Ground.

ARTICLE 4<sup>th</sup> <sup>6</sup>

It is agreed that Creditors on either Side shall meet with no lawful Impediment to the Recovery of the full Value in Sterling Money of all bonâ fide Debts heretofore contracted.

ARTICLE 5<sup>th</sup>

It is agreed that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the Restitution of all Estates, Rights and Properties, which have been confiscated belonging to real British Subjects; and also of the Estates, Rights and Properties of Persons resident in Districts in the Possession of his Majesty's Arms and who have not borne Arms against the said United States: And that Persons of any other Description shall have free Liberty to go to any Part or Parts of any of the thirteen United States and therein to remain twelve months unmolested in their Endeavours to obtain the Restitution of such of their Estates, Rights and Properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a Reconsideration and Revision of all Acts or Laws regarding the Premises, so as to render the said Laws or Acts perfectly consistent not only with Justice and Equity but with that Spirit of Conciliation which on the return of the Blessings of Peace should universally prevail. And that Congress shall also earnestly recommend to the several States, that the Estates, Rights and Properties, of such last mentioned Persons shall be restored to them, they refunding to any Persons who may be now in Possession the bonâ fide price (where any has been given) which such Persons may have paid on purchasing any of the said Lands, Rights or Properties since the Confiscation.

And it is agreed that all Persons who have any Interest in confiscated Lands, either by Debts, marriage Settlements, or otherwise, shall meet with no lawful Impediment in the Prosecution of their just Rights.

ARTICLE 6<sup>th</sup>

That there shall be no future Confiscations made nor any Prosecutions commenced against any Person or Persons for, or by Reason of, the Part which he or they may have taken in the present War, and that no Person shall on that Account suffer any future Loss or Damage either in his Person, Liberty or Property; and that those who may be in Confinement on such Charges at the time of the Ratification of the Treaty in America, shall

\* For a supplement to art. 4, see convention of Jan. 8, 1802 (TS 108), *post.* p. 39.

be immediately set at Liberty, and the Prosecutions so commenced be discontinued.

ARTICLE 7<sup>th</sup>

There shall be a firm and perpetual Peace between His Britannic Majesty and the said States, and between the subjects of the one, and the Citizens of the other, wherefore all Hostilities both by Sea and Land shall from henceforth cease: All Prisoners on both Sides shall be set at Liberty, and His Britannic Majesty shall with all convenient Speed, and without causing any Destruction, or carrying away any Negroes, or other Property of the American Inhabitants, withdraw all his Armies, Garrisons and Fleets from the said United States, and from every Post, Place and Harbour within the same; leaving in all Fortifications, the American Artillery that may be therein: And shall also order and cause all Archives, Records, Deeds and Papers belonging to any of the said States, or their Citizens, which in the Course of the War may have fallen into the Hands of His officers, to be forthwith restored and delivered to the proper States and Persons to whom they belong.

ARTICLE 8<sup>th</sup>

The Navigation of the River Mississippi, from its Source to the Ocean, shall for ever remain free and open to the Subjects of Great Britain and the Citizens of the United States.

ARTICLE 9<sup>th</sup>

In case it should so happen that any Place or Territory belonging to Great Britain or to the United States should have been conquered by the Arms of either from the other, before the Arrival of the said Provisional Articles in America, it is agreed that the same shall be restored without Difficulty and without requiring any Compensation.

ARTICLE 10<sup>th</sup>

The solemn Ratifications of the present Treaty expedited in good and due Form shall be exchanged between the contracting Parties in the Space of six Months or sooner, if possible, to be computed from the Day of the Signature of the Present Treaty. In Witness whereof We the undersigned, their Ministers Plenipotentiary, have in their Name and in Virtue of our full Powers, signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this third Day of September in the Year of our Lord, one thousand, seven hundred and Eighty three.

D. HARTLEY	[SEAL]
JOHN ADAMS	[SEAL]
B. FRANKLIN	[SEAL]
JOHN JAY	[SEAL]

## FISHERIES, BOUNDARY, AND RESTORATION OF SLAVES

*Convention signed at London October 20, 1818*

*Ratified by the United Kingdom November 2, 1818*

*Senate advice and consent to ratification January 25, 1819*

*Ratified by the President of the United States January 28, 1819*

*Ratifications exchanged at Washington January 30, 1819*

*Entered into force January 30, 1819*

*Proclaimed by the President of the United States January 30, 1819*

*Article III continued in force by convention of August 6, 1827*<sup>1</sup>

8 Stat. 248; Treaty Series 112<sup>2</sup>

The United States of America, and His Majesty The King of the United Kingdom of Great Britain and Ireland, desirous to cement the good Understanding which happily subsists between them, have, for that purpose, named their respective Plenipotentiaries, that is to say: The President of the United States, on his part, has appointed, Albert Gallatin, Their Envoy Extraordinary and Minister Plenipotentiary to the Court of France; and Richard Rush, Their Envoy Extraordinary and Minister Plenipotentiary to the Court of His Britannic Majesty:—And His Majesty has appointed The Right Honorable Frederick John Robinson, Treasurer of His Majesty's Navy, and President of the Committee of Privy Council for Trade and Plantations; and Henry Goulburn Esquire, one of His Majesty's Under Secretaries of State:—Who, after having exchanged their respective Full Powers, found to be in due and proper Form, have agreed to and concluded the following Articles.

### ARTICLE I

Whereas differences have arisen respecting the Liberty claimed by the United States for the Inhabitants thereof, to take, dry, and cure Fish on certain Coasts, Bays, Harbours, and Creeks of His Britannic Majesty's Dominions in America, it is agreed between The High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends

<sup>1</sup> TS 116, *post*, p. 74.

<sup>2</sup> For a detailed study of this convention, see 2 Miller 658.

from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the Shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straights of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the Ground.—And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits; provided however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, or purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them.

#### ARTICLE II

It is agreed that a Line drawn from the most North Western Point of the Lake of the Woods, along the forty Ninth Parallel of North Latitude, or, if the said Point shall not be in the Forty Ninth Parallel of North Latitude, then that a Line drawn from the said Point due North or South as the Case may be, until the said Line shall intersect the said Parallel of North Latitude, and from the Point of such Intersection due West along and with the said Parallel shall be the Line of Demarcation between the Territories of the United States, and those of His Britannic Majesty, and that the said Line shall form the Northern Boundary of the said Territories of the United States, and the Southern Boundary of the Territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

#### ARTICLE III

It is agreed, that any Country that may be claimed by either Party on the North West Coast of America, Westward of the Stony Mountains, shall, together with it's Harbours, Bays, and Creeks, and the Navigation of all



Rivers within the same, be free and open, for the term of ten years<sup>3</sup> from the date of the Signature of the Present Convention, to the Vessels, Citizens, and Subject of the Two Powers: it being well understood, that this Agreement is not to be construed to the Prejudice of any Claim, which either of the Two High Contracting Parties may have to any part of the said Country, nor shall it be taken to affect the Claims of any other Power or State to any part of the said Country; the only object of the High Contracting Parties, in that respect, being to prevent disputes and differences amongst Themselves.

#### ARTICLE IV

All the Provisions of the Convention "to regulate the Commerce between the Territories of the United States and of His Britannic Majesty" concluded at London on the third day of July in the year of our Lord one Thousand Eight Hundred and Fifteen,<sup>4</sup> with the exception of the Clause which limited its duration to Four years, & excepting also so far as the same was affected by the Declaration of His Majesty respecting the Island of S<sup>t</sup> Helena, are hereby extended and continued in force for the term of ten years from the date of the Signature of the present Convention, in the same manner, as if all the Provisions of the said Convention were herein specially recited.

#### ARTICLE V

Whereas it was agreed by the first Article of the Treaty of Ghent,<sup>5</sup> that "All Territory, Places, and Possessions whatsoever taken by either Party from the other during the War, or which may be taken after the signing of this Treaty, excepting only the Islands hereinafter mentioned, shall be restored without delay, and without causing any destruction, or carrying away any of the Artillery or other public Property originally captured in the said Forts or Places which shall remain therein upon the Exchange of the Ratifications of this Treaty, or any Slaves or other private Property", and whereas under the aforesaid Article the United States claim for their Citizens, and as their private Property, the Restitution of, or full Compensation for all Slaves who, at the date of the Exchange of the Ratifications of the said Treaty, were in any Territory, Places, or Possessions whatsoever directed by the said Treaty to be restored to the United States, but then still occupied by the British Forces, whether such Slaves were, at the date aforesaid, on Shore, or on board any British Vessel lying in Waters within the Territory or Jurisdiction of the United States; and whereas differences have arisen, whether, by the true intent and meaning of the aforesaid Article of the Treaty of Ghent the United States are entitled to the Restitution of, or full Compensation for all or any Slaves as above described, the High Contracting Parties hereby agree

<sup>3</sup> For an extension of art. III, see convention of Aug. 6, 1827 (TS 116), *post*, p. 74.

<sup>4</sup> TS 110, *ante*, p. 49.

<sup>5</sup> TS 109, *ante*, p. 41.

to refer the said differences to some Friendly Sovereign or State to be named for that purpose; and the High Contracting Parties further engage to consider the decision of such Friendly Sovereign or State, to be final and conclusive on all the matters referred.<sup>6</sup>

#### ARTICLE VI

This Convention, when the same shall have been duly ratified by The President of the United States, by and with the Advice and Consent of their Senate, and by His Britannic Majesty, and the respective Ratifications mutually exchanged, shall be binding and obligatory on the said United States and on His Majesty; and the Ratifications shall be exchanged in Six Months from this date, or sooner, if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have thereunto affixed the Seal of their Arms.

Done at London this Twentieth day of October, in the Year of Our Lord One Thousand Eight Hundred and Eighteen.

ALBERT GALLATIN	[SEAL]
RICHARD RUSH	[SEAL]
FREDERICK JOHN ROBINSON	[SEAL]
HENRY GOULBURN	[SEAL]

---

<sup>6</sup> For a convention signed at St. Petersburg July 12, 1822, under mediation of Emperor of Russia, see TS 114, *post*, p. 61.

**Annex 17**

R. MCFARLAND, *A HISTORY OF THE NEW ENGLAND FISHERIES*, NEW YORK, UNIVERSITY OF PENNSYLVANIA PRESS, BY D. APPLETON AND CO. AGENTS, 1911, CHAP. XIX, "THE FISHERIES QUESTION", PP. 321-337

## LIST OF TREATIES

*[Not reproduced]*

---

**Annex 18**

G. B. GOODE, *THE FISHERIES AND FISHERY INDUSTRIES OF THE UNITED STATES*, WASHINGTON, D.C., GOVERNMENT PRINTING OFFICE, 1887, VOL. I, "HISTORY OF THE FRESH HALIBUT FISHERY", PP. 29-34

———, VOL. I, "THE GEORGES BANK COD FISHERY", PP. 187-198

———, VOL. II, P. 201

———, ATLAS, PLATE 4, "GEORGE'S WELL SMACK - 1836 TO 1847"

———, ATLAS, PLATES 30-35, "THE GEORGES BANK COD FISHERY"

*[Not reproduced]*

---

**Annex 19**

TABLE OF GLOUCESTER SHIPS AND MEN LOST ON GEORGES BANK: 1837 - 1 JULY 1873 (ADAPTED FROM A LIST FROM G. H. PROCTOR, *THE FISHERMAN'S MEMORIAL AND RECORD BOOK*, GLOUCESTER, PROCTOR BROTHERS PUBLISHERS, 1873)

*[Not reproduced]*

---

**Annex 20**

UNITED STATES DEPARTMENT OF COMMERCE, *FISHERY INDUSTRIES OF THE UNITED STATES: 1928*, WASHINGTON, D.C., GOVERNMENT PRINTING OFFICE, 1929, BUREAU OF FISHERIES DOCUMENT NO. 1067, P. 471

*[Not reproduced]*

---

**Annex 21**

R. M. DOHERTY, G. P. DRAHEIM, D. J. WHITE, AND C. L. VAUGHN, "SEA SCALLOP INDUSTRY OF CANADA", PRINTED IN *COMMERCIAL FISHERIES REVIEW*, NO. 7, JULY 1963, PP. 11-16

*[Not reproduced]*

---

**Annex 22**

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, "REVIEW OF THE STATE OF WORLD FISHERY RESOURCES", COMMITTEE ON FISHERIES, 14TH SESSION, FIRM/C710 (REV. 2), COFI/81/INF. 5, MARCH 1981, PP. 4-5, 29-30

*[Not reproduced]*

---

**Annex 23**

C. SOUTHACK, *THE NEW ENGLAND COASTING PILOT* (1718)

*[Not reproduced]*

---

**Annex 24**

P. PINKHAM, *A CHART OF GEORGES BANK INCLUDING CAPE COD AND NANTUCKET*  
(1797)

*[Not reproduced]*

---

**Annex 25**

E. M. BLUNT, *NEW CHART OF THE NORTHEASTERN COAST OF NORTH AMERICA*  
*EXTENDING FROM LAT. 37° 20' N. LONG. 75° 20' W. TO LAT. 47° 55' N.*  
*LONG. 62° 5' W.* (1821)

E. M. BLUNT, *A NEW CHART OF THE ATLANTIC OR WESTERN OCEAN* (1826)

E. M. BLUNT, *THE NORTHEASTERN COAST OF NORTH AMERICA FROM NEW YORK*  
*TO CAPE CANSO INCLUDING SABLE ISLAND* (1844)

*[Not reproduced]*

---

**Annex 26**

G. ELDRIDGE, *A NEW CHART OF THE COAST OF NEW ENGLAND FROM MOUNT*  
*DESERT ROCK TO GAY HEAD INCLUDING GEORGES BANK AND SHOALS* (1856)

*[Not reproduced]*

---

**Annex 27**

C. WILKES, *CHART OF GEORGES SHOAL AND BANK* (1837)

*[Not reproduced]*

---

**Annex 28**

UNITED STATES COAST AND GEODETIC SURVEY, CHART No. 1000: AN INDEX OF HYDROGRAPHIC SURVEYS CONDUCTED BY THE UNITED STATES BETWEEN 1842 AND 1928 FROM CAPE SABLE TO CAPE HATTERAS

UNITED STATES COAST AND GEODETIC SURVEY, CHART No. 1000: AN INDEX OF HYDROGRAPHIC SURVEYS CONDUCTED BY THE UNITED STATES BETWEEN 1929 AND 1939 FROM CAPE SABLE TO CAPE HATTERAS

UNITED STATES COAST AND GEODETIC SURVEY, CHART No. 1000: AN INDEX OF HYDROGRAPHIC SURVEYS CONDUCTED BY THE UNITED STATES BETWEEN 1940 AND 1975 FROM CAPE SABLE TO CAPE HATTERAS

*[Not reproduced]*

---

**Annex 29**

UNITED STATES COAST AND GEODETIC SURVEY, CHART No. 3075: GEORGES BANK, EASTERN PART, SPECIAL CHART FOR FISHING INDUSTRY (JUNE 1934)

UNITED STATES COAST AND GEODETIC SURVEY, CHART No. 3076: GEORGES BANK, WESTERN PART, SPECIAL CHART FOR FISHING INDUSTRY (1942)

*[Not reproduced]*

---

**Annex 30**

CANADIAN HYDROGRAPHIC SERVICE 1980 ANNUAL ACTIVITIES REPORT:  
"STATUS OF SURVEYS", pp. 44-45

CANADIAN HYDROGRAPHIC SERVICE CHART – APPROACHES TO THE BAY OF FUNDY,  
CANADIAN CHART 425, FIRST EDITION, 1924

*[Not reproduced]*

---

**Annex 31**

AGREEMENT ON ESTABLISHMENT OF LONG RANGE AID TO NAVIGATION  
(LORAN-C) STATION IN NEWFOUNDLAND, 1964, UNITED STATES-CANADA,  
15 UST 1835, TIAS No. 5657

*[Not reproduced]*

---

**Annex 32**

UNITED STATES CONGRESS, JOINT RESOLUTION NO. 22, 9 FEBRUARY 1871,  
*CONGRESSIONAL GLOBE*, 41ST CONG., 3RD SESS., APPENDIX, P. 398

*[Not reproduced]*

---

**Annex 33**

H. BIGELOW, "PHYSICAL OCEANOGRAPHY OF THE GULF OF MAINE", WASHINGTON,  
D.C., GOVERNMENT PRINTING OFFICE, 1928, IN *BULLETIN OF THE UNITED STATES*  
*BUREAU OF FISHERIES*, VOL. XL, 1924, PART II, PP. 511-521

*[Not reproduced]*

---

**Annex 34**

NORTH AMERICAN COUNCIL ON FISHERY INVESTIGATIONS,  
*PROCEEDINGS: 1921-1930*, No. 1, 1932, P. 27

*[Not reproduced]*

---

**Annex 35**

SEARCH AND RESCUE AGREEMENT BETWEEN THE ROYAL CANADIAN AIR FORCE AND  
THE UNITED STATES COAST GUARD, DATED 7 OCTOBER 1957

SEARCH AND RESCUE AGREEMENT BETWEEN THE CHIEF OF DEFENCE STAFF,  
CANADIAN FORCES, AND THE COMMANDANT, UNITED STATES COAST GUARD,  
DATED 6 AUGUST 1965, AMENDED 19 APRIL 1966

SEARCH AND RESCUE AGREEMENT BETWEEN THE CHIEF OF DEFENCE STAFF,  
CANADIAN FORCES, AND THE COMMANDANT, UNITED STATES COAST GUARD,  
DATED 25 OCTOBER 1974

*[Not reproduced]*

---

**Annex 36**

MAP DEPICTING FLIGHT INFORMATION REGIONS (FIR) IN THE ATLANTIC AREA, AS  
ADOPTED BY ICAO (AIR NAVIGATION PLAN, NORTH AMERICAN AND PACIFIC  
REGIONS, 10 Ed., 1977, DOC. 8755/10, INTERNATIONAL CIVIL AVIATION  
ORGANIZATION)

*[Not reproduced]*

---

**Annex 37**

MAP DEPICTING AIR DEFENSE IDENTIFICATION ZONES  
OF THE NEW ENGLAND REGION

UNITED STATES REGULATIONS : 14 CFR, SEC. 99 (1981)

CANADIAN REGULATIONS : SECURITY CONTROL OF AIR TRAFFIC ORDER,  
*CONSOLIDATED REGULATIONS OF CANADA*, VOL. I, CHAP. 63, 1978, PP. 432-438

*[Not reproduced]*

---



**Annex 38**

GEOLOGICAL SURVEY OF CANADA, "CANADA'S CONVENTIONAL OIL AND GAS RESOURCES", OPEN-FILE 767, MARCH 1981, PP. 10-14

*[Not reproduced]*

---

**Annex 39**

A MAP OF SELECTED PHYSIOGRAPHIC REGIONS OF EASTERN NORTH AMERICA

*[Not reproduced]*

---

**Annex 40**

**PERMITS FOR EXPLORATORY WORK INCLUDING THE NORTHEAST PORTION OF  
GEORGES BANK**

**SAMPLE EXPLORATION PERMIT: OCS PERMIT E2-68, ISSUED TO EXPLORATION  
SURVEYS, INC., DATED 2 APRIL 1968**

## Permits for Exploratory Work Including Northeast Portion of Georges Bank

Permit No.	Date Approved	Company	Permit Area	Work Commenced	Work Completed	Remarks	Approximate Number of Line Miles in Northeast Portion of Georges Bank
E3-67	06-29-67	Chevron (Group Survey)	North, Mid-Atlantic	07-03-67	10-16-67	Seismic (Vibroseis)	325
E2-68	04-23-68	Exploration Surveys, Inc.	North, Mid-Atlantic	07-02-68	12-04-68	Seismic (Sparker)	570
E3-68B	06-05-68	Shell (by Shell)	North, South, Mid-Atlantic	06-12-68	09-06-68	Gravity	570
E4-69	07-16-69	Exploration Surveys, Inc.	North, Mid-Atlantic	08-19-69	10-19-69	Seismic (Sparker)	160
E1-70	03-30-70	Digicon (Group Survey)	North Atlantic	04-25-70	09-25-70	Gravity	78
E1-71	05-13-71	Digicon (Group Shoot)	North, Mid-Atlantic	06-26-71	10-13-71	Magnetics	78
E2-72	05-04-72	Digicon (Group Survey)	Georges Bank	05-22-72	10-13-71	Seismic (Air Gun)	1130
E1-74	02-13-74	Digicon (for Getty)	North, South, Mid-Atlantic	02-20-74	12-07-74	Seismic (Air Gun)	737
E3-75	05-15-75	Digicon (Group Survey)	North, Mid-Atlantic	05-17-75	11-17-75	Seismic (Air Gun)	2075
E6-75	06-03-75	Mobil (for Mobil)	North, South, Mid-Atlantic	06-19-75	09-01-76	Seismic (Air Gun)	2600
E8-75	07-10-75	GSI (Group Survey)	Georges Bank	08-12-75	12-03-75	Seismic (Air Gun)	4400
E21-75	10-30-75	Digicon (for USGS)	North, Mid-Atlantic	10-02-75	11-20-75	Seismic (Air Gun)	1700
E13-76	04-29-76	Texaco (by Texaco)	Georges Bank	05-21-76	07-19-76	Seismic (Air Gun)	1425
E22-76	07-13-76	Chevron (by Digicon)	North, Mid-Atlantic	07-23-76	09-06-76	Seismic (Air Gun)	364
E25-76	09-03-76	Digicon (for Petty Ray)	North Atlantic	09-09-76	11-22-76	Air Gun	600
E32-76	09-28-79	Exxon (by Esso)	Georges Bank	11-08-76	11-15-76	Seismic (Air Gun)	150
E8-77	08-10-77	Digicon (by Gulf)	Georges Bank	08-11-77	08-14-77	Sparker	1400
E-9-77	08-17-77	Digicon (for Mobil)	Georges Bank	08-15-77	08-26-77	Seismic (Air Gun)	40
E4-78	05-05-78	USGS (by Geophysical Service, Inc.)	North, Mid-Atlantic	05-24-78	11-05-78	Seismic	40
E12-78	10-11-78	Geophysical Service, Inc. (for GSI)	North Atlantic	10-30-78	11-08-78	Gravity	40
E17-78	12-12-78	USGS (by Prakla-Seimos)	North Atlantic	08-11-79	09-04-79	Magnetics	46
E2-79	04-13-79	Exxon (by Teledyne)	North, Mid-Atlantic	06-01-79	07-27-79	Seismic (Air Gun)	46
E1-81	02-20-81	Exxon (by Petty-Ray)	North, South, Mid-Atlantic	03-15-81	12-31-81	CDP Seismic	27
E10-82	05-17-82	GECO (U.S.), Inc.	North, South, Mid-Atlantic	05-17-82	07-15-82	CDP Seismic	503
						Seismic	Not Available
						Gravity	Available

SAMPLE EXPLORATION PERMIT: OCS PERMIT E2-68, ISSUED TO EXPLORATION SURVEYS INC., DATED 2 APRIL 1968

April 23, 1968

Mr. D. V. Sibila  
Exploration Surveys, Inc.  
5615 Daniels Avenue  
Dallas, Texas 75206

Re: OCS Permit E2-68

Dear Mr. Sibila:

Your letter of April 3 requests authorization for Exploration Surveys, Inc., to conduct a seagravity and marine magnetometer survey of the continental shelf of the Northeastern United States from Cape Cod to the Chesapeake Bay (due east of all states from Massachusetts to Virginia) in the area covered by proposed lines of control shown on the enclosed plat (Enclosure I).

The program is more fully described in the proposal dated November 1967, received with your letter. The primary equipment to be used consists of a gravity meter, a magnetometer, and a fathometer. You advised me by telephone that the boat to be used is the *Golden Fleece*, that the cable to be towed will not extend more than 250 feet behind the vessel, and that it is likely the operation will be commenced about May 15 and be completed late this year.

Your proposed operations in that portion of the requested area which lies in the "outer Continental Shelf" as that term is defined in Section 2 of the Outer Continental Shelf Lands Act of August 7, 1953, are approved for the period May 10 to December 31, 1968, subject to the following conditions.

1. That you furnish reports of areas in which operations are conducted and notices of your expected areas of operations to appropriate offices of the Navy, Coast Guard, Bureau of Commercial Fisheries and to this office as specified on the enclosed sheets (Enclosures II and III).
2. That the operations be conducted in such a manner as will provide minimum interference with fishing operations.
3. That, if and when requested by this office, you make the necessary arrangements for a representative of the Geological Survey or the Bureau of Commercial Fisheries to observe the operations on board the survey vessel.
4. That this approval may be suspended or revoked at any time for failure to comply reasonably with the above requirements or for other unjustified action.

Please note that this approval is not applicable to that portion of the Continental Shelf which extends from the coast line to three geographical miles into the Atlantic Ocean, as these State-owned lands are areas over which I have no jurisdiction.

By letter dated April 12, you transmitted a supply of plats on which operational blocks are overprinted in red, copy enclosed (Enclosure IV). These were intended for our use in notifying various parties of your areas of operations. However, as such notices will be furnished by Exploration Surveys, Inc., rather than by us, we are returning these plats to you under separate cover, except for several copies being retained for our files.

A copy of this letter with enclosures is being furnished to the Navy, Coast Guard, and Bureau of Commercial Fisheries offices shown on Enclosure III.

Sincerely yours,

/s/ H. A. DUPONT

H. A. Dupont  
Regional Oil and Gas Supervisor  
Eastern Region  
Enclosures 4

**Enclosure I**

*[Not reproduced]*

OCS Permit E2-68

**Enclosure II**

Notices are to be sent to the Commander, Eastern Sea Frontier, with *copies* to the Regional Oil and Gas Supervisor, U.S. Geological Survey, and to appropriate offices of the U.S. Coast Guard and Bureau of Commercial Fisheries as shown on the attached sheet (Enclosure III), as follows:

1. To be mailed a few days prior to commencement of operations: Date you expect to commence operations and the expected area or lines of operations during the first two weeks.
2. To be mailed at the end of successive periods not exceeding one week each: Report showing or describing lines run or areas surveyed (including approximate number of miles of line run) subsequent to each preceding report and containing notice of your expected area or lines of operations for the next two weeks following the date of your report.

Plats similar to those enclosed (Enclosure I or IV) may be used to show the lines or areas in lieu of describing them in your reports or notices. This reporting procedure may be modified as necessary at the discretion of the Regional Oil and Gas Supervisor.

OCS Permit E2-68

**Enclosure III**

Commander, Eastern Sea Frontier  
United States Navy  
90 Church Street  
New York, New York 10007

\* Commander, 7th Coast Guard District  
U.S. Coast Guard  
150 S.E. 3rd Avenue  
Miami, Florida 33131  
(Florida to South Carolina)

---

\* = Crossed out on the original.

Commander, 5th Coast Guard District.  
 U.S. Coast Guard  
 Custom House  
 Norfolk, Virginia 23514  
 (North Carolina to Maryland)

Commander, 3rd Coast Guard District  
 U.S. Coast Guard  
 Custom House  
 New York, New York 10004  
 (Delaware to point in Massachusetts)

Commander, 1st Coast Guard District  
 U.S. Coast Guard  
 Custom House  
 Boston, Massachusetts 02109  
 (Massachusetts to Maine)

\* Regional Director, Region 2  
 Bureau of Commercial Fisheries  
 Federal Office Building  
 144 First Avenue  
 St. Petersburg, Florida 33701  
 (Florida to North Carolina)

Telephone - A.C. 813  
 898-0846 Ext. 3141

Regional Director, Region 3  
 Bureau of Commercial Fisheries  
 Federal Building  
 14 Elm Street  
 Gloucester, Massachusetts 01930  
 (Virginia to Maine)

Telephone - A.C. 617  
 281-0640

Regional Oil and Gas Supervisor  
 Eastern Region  
 U.S. Geological Survey  
 3221 GSA Building  
 Washington, D.C. 20242

Telephone - A.C. 202  
 343-4528

PERMIT GRANTED TO EXPLORATION SURVEYS, INC. TO CONDUCT A SEAGRAVITY  
 AND MARINE MAGNETOMETER SURVEY OF THE CONTINENTAL SHELF OFF THE COAST  
 OF DELAWARE

UPON RECOMMENDATION OF THE WATER AND AIR RESOURCES COMMISSION

AND NOW, to-wit, this 17th day of May, A.D. 1968, the State of Delaware  
 does hereby accept the report and recommendation of the Water and Air  
 Resources Commission upon the application of Exploration Surveys, Inc.,  
 Dallas, Texas, for authority to conduct a seagravity and marine magnetometer  
 survey of the continental shelf off the coast of Delaware, as represented

---

\* = Crossed out on the original.

upon application to the Water and Air Resources Commission dated 26 March 1968, copy of which is attached hereto and made a part hereof.

AND, THE STATE OF DELAWARE, pursuant to the authority contained in Subsection II, Chapter 64, Title 7, Page VII, Delaware Code of 1953 as amended does hereby grant a permit to perform the above work at the location shown and with dimensions proposed on the attached application, without charge or fee; said permit will be continued until 31 December 1968 or so long as the conditions attached to this permit are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this permit shall expire and become null and void unless prior thereto the permittee shall have applied for and received a renewal of this permit. A renewal may be denied if the State determines that the permit is no longer in the public interest. This permit shall be subject to the following conditions:

1. The project is to be carried out in accordance with the plans submitted. If changes are necessary, revised plans must be submitted and a supplemental approval issued prior to actual construction.
2. Representatives of the Water and Air Resources Commission may inspect such exploration during any phase of the operation.
3. Any actions, operations or installations which are considered by the Commission to be contrary to the best interests of the public shall constitute reason for the discontinuance and/or removal of said action, operation or installation.
4. That reports of areas in which operations are conducted and notices of expected areas of operations be supplied to the offices of the Water and Air Resources Commission.
5. That the operations be conducted in a manner sufficient to provide minimum interference with fishing and navigation.
6. That no drilling, explosives, chemicals or radioactive materials be employed.
7. Approval from the Corps of Engineers and/or the Delaware River Basin Commission, where their jurisdiction is in effect, shall be obtained before this permit is considered to be valid.
8. This permit is void if the project has not been initiated by six (6) months from the date of issuance.
9. This permit will be revoked upon violation of any of the above conditions.

IN WITNESS WHEREOF, I, CHARLES L. TERRY, JR., Governor of the State of Delaware have hereunto set my hand and the Great Seal of the State of Delaware has been hereunto affixed by the Secretary of State, at Dover, on this 17th day of May, in the year of our Lord One Thousand Nine Hundred and Sixty-eight.

/s/ Charles L. TERRY

By the Governor

/s/ Elijah C. DUKES

By the Secretary of State

**Enclosure IV**  
(Chart to be inserted)

EXPLORATION SURVEYS, INC.

Executive Offices  
5615 Daniels Avenue  
Dallas, Texas 75206

August 19, 1968

Mr. George Brown  
Regional Oil & Gas Supervisor (Acting)  
U.S. Geological Survey  
3221 GSA Building  
Washington, D.C. 20242

Dear Mr. Brown:

With reference to our telephone conversation of this date, we hereby request approval for the installation of a marine sub-bottom profiling system aboard the MV *Caldwell* (re: our letter of 8-12-68).

This unit is to be operated aboard the *Caldwell* within the area as established in Permit OCS E2-68.

The equipment used in conjunction with this addition to our survey is as follows:

1. Model 24218, 30,000 joule "SSP", sparker source (one unit measuring 20 in. x 20 in. x 50 in.) to be mounted aboard the survey vessel.
2. Model 24257 "Hydro Streamer" cable and reel assembly (one unit measuring 30 in. x 30 in.) to be mounted aboard the survey vessel. (Streamer is towed a maximum of 500 feet behind vessel while on line.)
3. Model 24220 Amplifier (one unit measuring 19 in. x 6 in.) to be mounted aboard the survey vessel.
4. Model 24255 facsimile recorder with incorporated Model 26140 signal programmer (one unit measuring 36 in. x 30 in. x 12 in.) to be mounted aboard survey vessel.

As with our standard surveying equipment, the operation of this device is in no way harmful to the wildlife and natural resources of the area.

Please furnish a copy of the attachment to our permit to:

Mr. Wayne Gilpin  
Ravenwood Motel  
310 Washington  
Fairhaven, Mass.

Yours very truly,

EXPLORATION SURVEYS, INC.

/s/ D. V. SIBILA

D. V. Sibila  
Manager-Seagravity

---



**Annex 41**

UNITED STATES GEOLOGICAL SURVEY, "NORTH ATLANTIC SUMMARY REPORT",  
OPEN-FILE REPORT 82-16, 1 APRIL 1982 UPDATE, P. 10

*[Not reproduced]*

---

**Annex 42**

SELECTED DOCUMENTS RELATING TO OUTER CONTINENTAL SHELF  
LEASE SALE NO. 42:

CALL FOR NOMINATIONS, 40 *FEDERAL REGISTER* 25608-25609 (17 JUNE 1975)

THE COVERS AND TABLES OF CONTENTS FOR THE DRAFT AND FINAL  
ENVIRONMENTAL IMPACT STATEMENTS FOR OUTER CONTINENTAL SHELF  
LEASE SALE NO. 42

DEPARTMENT OF THE INTERIOR PRESS RELEASES, DATED 17 JUNE 1975,  
2 JANUARY 1976, 12 OCTOBER 1976 AND 7 DECEMBER 1976

44 *FEDERAL REGISTER* 56042-56049 (28 SEPTEMBER 1979)

44 *FEDERAL REGISTER* 66149-66173 (16 NOVEMBER 1979)

*[Not reproduced]*

---

**Annex 43**

SELECTED DOCUMENTS RELATING TO OUTER CONTINENTAL SHELF  
LEASE SALE NO. 52:

CALL FOR NOMINATIONS, 47 *FEDERAL REGISTER* 18805-18823 (30 APRIL 1982)

THE COVERS AND TABLES OF CONTENTS FOR THE DRAFT AND FINAL  
ENVIRONMENTAL IMPACT STATEMENTS FOR OUTER CONTINENTAL SHELF  
LEASE SALE NO. 52

*[Not reproduced]*

---

**Annex 44**

TABLE I: ZOOPLANKTON: SPRING DISTRIBUTION OF TAXA IN TERMS OF PERCENTAGE  
COMPOSITION OF THE TOTAL BIOMASS (MAY 1977) SPECIES COMPOSITION  
(OCTOBER 1974)

TABLE II: ZOOPLANKTON: SPRING DISTRIBUTION OF TAXA IN TERMS OF  
PERCENTAGE COMPOSITION OF THE TOTAL BIOMASS (MAY 1977)

TABLE III: BENTHOS: DISTRIBUTION OF DOMINANT TAXA IN TERMS OF PERCENTAGE  
COMPOSITION OF THE TOTAL BIOMASS

*[Not reproduced]*

---

Volume III  
DOCUMENTARY ANNEXES, NOS. 45 TO 51

**Annex 45**

INTERNATIONAL CONVENTION FOR THE NORTHWEST ATLANTIC FISHERIES,  
DONE AT WASHINGTON, ON 8 FEBRUARY 1949, 157 UNTS 157

MAP DEPICTING THE SUBAREAS ESTABLISHED BY THE INTERNATIONAL CONVENTION  
FOR THE NORTHWEST ATLANTIC FISHERIES

*[Not reproduced]*

---

**Annex 46**

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES,  
*STATISTICAL BULLETIN*, VOL. 2 FOR THE YEAR 1952

*[Not reproduced]*

---

**Annex 47**

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES,  
*STATISTICAL BULLETIN*, VOLS. 3-28, FOR THE YEARS 1953-1978, SELECTED PAGES —  
INCLUDING TABLE 1 FOR EACH YEAR INDICATING TOTAL LANDINGS BY COUNTRY  
AND SUBAREA

NORTHWEST ATLANTIC FISHERIES ORGANIZATION, "PROVISIONAL NOMINAL  
CATCHES IN THE NORTHWEST ATLANTIC, 1980", BY THE ASSISTANT EXECUTIVE  
SECRETARY, SERIAL No. N366, NAFO SCS Doc. 81/VI/15 (REV. 6 JULY 1981)

*[Not reproduced]*

---

**Annex 48**

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, "MESH REGULATION TO INCREASE THE YIELD OF THE GEORGES BANK HADDOCK FISHERY", BY H. W. GRAHAM, *SECOND ANNUAL REPORT*, 1951-1952, pp. 23-33

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORT OF PANEL 5, ADMINISTRATIVE REPORT FOR THE YEAR ENDING 30 JUNE 1952, *SECOND ANNUAL REPORT*, 1951-1952, p. 7

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORTS OF THE COMMITTEE ON RESEARCH AND STATISTICS AND PANELS, PANEL 5, MESH REGULATION, *SECOND ANNUAL REPORT*, 1951-1952, pp. 13-14

*[Not reproduced]*

---

**Annex 49**

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORTS OF MEETINGS OF PANELS, *ANNUAL PROCEEDINGS*, VOL. 19, 1968-1969, pp. 24-28

*[Not reproduced]*

---

**Annex 50**

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORT OF THE 23RD ANNUAL MEETING, JUNE 1973, *ANNUAL REPORT*, VOL. 23, 1972-1973, PP. 50-51

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORT OF THE 3RD SPECIAL MEETING, 15-19 OCTOBER 1973, REPORT OF PANEL 5, *ANNUAL REPORT*, VOL. 24, 1973-1974, PP. 18-20

INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES, REPORT OF THE 3RD SPECIAL MEETING, 15-19 OCTOBER 1973, PRESS NOTICE, *ANNUAL REPORT*, VOL. 24, 1973-1974, PP. 32-33

*[Not reproduced]*

---

**Annex 51**

P. FINKLE, "THE INTERNATIONAL COMMISSION FOR THE NORTHWEST ATLANTIC FISHERIES: AN EXPERIMENT IN CONSERVATION", IN *DALHOUSIE LAW JOURNAL*, VOL. 1, OCTOBER 1974, PP. 526-550

*[Not reproduced]*

---

## Volume IV

## DOCUMENTARY ANNEXES, NOS. 52 TO 91

## Annex 52

UNITED NATIONS, CONVENTION ON THE CONTINENTAL SHELF (1958), RATIFICATION BY CANADA, 4 MARCH 1970, "MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 31 DECEMBER 1981", UN DOC. ST/LEG/SER.E/1 AT P. 604; SEE ALSO 716 UNTS 390 (1970); SEE ALSO LETTER C.N. 21.1970. TREATIES-2 OF 4 MARCH 1970

UNITED NATIONS, CONVENTION ON THE CONTINENTAL SHELF (1958), COMMUNICATION FROM THE UNITED STATES OF AMERICA, 13 AUGUST 1970, "MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL: STATUS AS AT 31 DECEMBER 1981", UN DOC. ST/LEG/SER.E/1 AT P. 607; SEE ALSO 737 UNTS 394; SEE ALSO LETTER C.N. 119.1970. TREATIES-3 OF 13 AUGUST 1970

*[Not reproduced]*

---

**Annex 53**

LETTER FROM THE ASSISTANT DIRECTOR FOR LANDS AND MINERALS, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, TO THE DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, DATED 1 APRIL 1965

LETTER FROM A. D. HUNT, CHIEF, RESOURCES DIVISION, DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, TO L. T. HOFFMAN, ASSISTANT DIRECTOR FOR LANDS AND MINERALS, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, DATED 8 APRIL 1965

*[See I, pp. 361-362]*

LETTER FROM L. T. HOFFMAN, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, TO D. G. CROSBY, DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, DATED 14 MAY 1965

LETTER FROM A. D. HUNT, CHIEF, RESOURCE MANAGEMENT DIVISION, DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, TO L. T. HOFFMAN, ASSISTANT DIRECTOR - LANDS AND MINERALS, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, DATED 28 MAY 1965

LETTER FROM A. D. HUNT, CHIEF, RESOURCE MANAGEMENT DIVISION, DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, TO L. T. HOFFMAN, ASSISTANT DIRECTOR - LANDS AND MINERALS, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, DATED 16 JUNE 1965

*[See I, p. 371]*

LETTER FROM THE ASSISTANT DIRECTOR FOR LANDS AND MINERALS, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR TO THE DEPARTMENT OF NORTHERN AFFAIRS AND NATURAL RESOURCES OF CANADA, DATED 1 APRIL 1965

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Washington, D.C. 20240

9187 (713a)  
April 1, 1965

Department of Northern Affairs & Natural Resources  
Resources Division, Northern Division Branch  
Kent Building  
150 Kent Street  
Ottawa, Canada

Gentlemen:

This Bureau is charged with the responsibility for mineral leasing on the Outer Continental Shelf pertaining to the United States of America. In this connection, we have information that the Canadian Federal Government recently has issued offshore permits for mineral prospecting on the Outer Continental Shelf.

Some of the submerged lands we understand you have leased under offshore permits are approximately 125 nautical miles east of Cape Cod. We refer specifically to an offshore permit of some 190,657 acres to Secony Mobil Oil Company of Canada Ltd., and 1,332,753 acres leased to California Standard. We would like to identify these two leases with reference to the median line as defined in Article 6 of the Convention on the Continental Shelf, agreed upon at the 1958 United Nations Conference on the Law of the Sea at Geneva. We understand that this convention came into full effect on June 10, 1964. Therefore, we would appreciate a description of the two leases mentioned above.

We also would appreciate a set of your regulations and instructions pertaining to offshore permits and mineral leasing. For your information we have enclosed a copy of our regulations pertaining to Mineral Leasing and Pipelines on the Outer Continental Shelf. We also are enclosing a set of our Outer Continental Shelf leasing maps. These maps represent the Outer Continental Shelf off Washington to a depth of 500 fathoms. You will note on the sheet showing the Cape Flattery Area that the leasing blocks do not cross the median line seaward from AP12.

Sincerely yours,

/s/ MAX CAPLAN  
(for) L. T. HOFFMAN

Assistant Director - Lands and Minerals



LETTER FROM L. T. HOFFMAN, BUREAU OF LAND MANAGEMENT, UNITED STATES  
DEPARTMENT OF THE INTERIOR, TO D. G. CROSBY, DEPARTMENT OF NORTHERN AFFAIRS  
AND NATURAL RESOURCES OF CANADA, DATED 14 MAY 1965

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

May 14, 1965

Mr. D. G. Crosby  
Department of Northern Affairs and National Resources  
Northern Administrative Branch  
Kent Building, 150 Kent Street  
Ottawa, Canada

Dear Mr. Crosby:

Thank you for the maps showing locations and holders of the offshore oil and gas permits you have issued on the east and west coasts. We also appreciate the copy of your printed oil and gas land regulations.

As a matter of some concern to us, we believe that you have issued offshore permits on the Outer Continental Shelf pertaining to the United States. We believe this is the case in the Gulf of Maine, off the Straits of Juan de Fuca, and Dixon Entrance. We are unable to comment on the permits you have issued in the Arctic Ocean as we do not have a map showing their locations.

Inasmuch as the location of a median line might be subject to different interpretations, we suggest that you check the locations of your permits which approach submerged lands under United States jurisdiction to see if they are within Canadian jurisdiction under an application of Article 6 of the Convention on the Continental Shelf of the 1958 Geneva Conference.

This communication is being written solely in the interest of seeing if there is a basis for disagreement as to the location of a median line separating our respective jurisdictions on the Outer Continental Shelf. As an operating Bureau, we, of course, have no authority to enter into any formal discussion of the location of a median line in case of a dispute. However, we are hopeful that there could be a simple misunderstanding on either our part or yours, of the elements positioning a median line. If this is the case, then the matter could be amicably determined without resort to high authority.

In the last paragraph of your letter of April 8 you ask for the location of leases we might have issued off the east coast and the State of Washington. No Federal oil and gas leases on the Outer Continental Shelf off the east coast have been issued. However, certain seismic permits have been issued. These permits allow only geophysical activities and no deep drilling. Although a number of blocks off Washington were leased as a result of our October 1, 1964 sale, we believe you will be interested in only Blocks 21 N., and 61 and 62 W. that are nearest to the Canadian-United States boundary.

Sincerely yours,  
/s/ L. T. HOFFMAN  
Assistant Director

---

**Annex 54**

LETTER FROM ROBERT K. OLSON, SECOND SECRETARY OF THE UNITED STATES EMBASSY, TO J. W. MCNEIL, DIRECTOR, RESEARCH DEVELOPMENT BRANCH, DEPARTMENT OF MINES AND TECHNICAL SURVEYS OF CANADA, DATED 16 AUGUST 1966

LETTER FROM THE UNDERSECRETARY OF STATE FOR EXTERNAL AFFAIRS OF CANADA, TO ROBERT K. OLSON, SECOND SECRETARY OF THE UNITED STATES EMBASSY, DATED 30 AUGUST 1966

*[See I, pp. 373-376]*

---

EMBASSY  
OF THE  
UNITED STATES OF AMERICA

Ottawa, August 16, 1966

J. W. McNeil, Esq.  
*Director*  
Research Development Branch  
Department of Mines and Technical Surveys  
Ottawa, Ontario

Dear Mr. McNeil:

I refer to our telephone conversation of August 16 regarding oil exploration activities in Canadian continental shelf areas.

It would be appreciated if you could provide me with available information on permits issued for exploration in the Cape Flattery and Gulf of Maine areas, as well as information on operational plans and schedules of oil companies holding permits.

Sincerely yours,

/s/ Robert K. OLSON

Robert K. OLSON

Second Secretary of Embassy

---

**Annex 55****AIDE-MÉMOIRE FROM THE UNITED STATES DEPARTMENT OF STATE TO THE EMBASSY OF CANADA, DATED 10 MAY 1968**

As the Government of Canada is aware, the United States Government has been considering the desirability of delineating the boundary between the United States and Canada on the continental shelf in the Gulf of Maine as well as in the area of the Straits of Juan de Fuca. Since the mineral interests in both countries are urgently seeking to begin exploration of the areas, it appears to the United States highly desirable that early discussions be undertaken between the two governments with a view to reaching agreement on the location of these dividing lines. At the same time, it would also seem opportune for the two governments to consult with regard to steps to be taken to protect the living resources of the sea against the pollution and disturbance which might result from mineral exploration and exploitation. In this connection, in order that some reassurance can be given to the fishing interests involved, it appears to the United States that particular urgency attaches to the question with regard to the fishing resources now being exploited by a number of nations in the area of the Georges Banks.

The United States, therefore, proposes that appropriate representatives of the two governments consult at an early date with regard to the nature and application of possible safeguard measures before the beginning of exploration for mineral resources or their exploitation. In licensing offshore activities in other areas, for example, the United States Government has applied the safeguards envisaged in Article V of the Convention on the Continental Shelf of April 29, 1958, to insure against any "unjustifiable interference with . . . fishing or the conservation of the living resources of the sea". United States authorities, accordingly, would be pleased to share with their Canadian colleagues the benefit of their technical experience in the application of the safeguards.

The United States also suggests that in the meantime there be a temporary suspension of exploration and exploitation activities with regard to mineral resources in the area of the northern half of the Georges Banks to permit consultation to take place and to provide time to seek an agreement on the exact location of the boundary in this area.

Department of State  
Washington, May 10, 1968.

---

**Annex 56**

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 5 NOVEMBER 1969

NOTE NO. 366 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 1 DECEMBER 1969

*[See I, p. 390]*

---

The Department of State refers to the aide-mémoire given to the Canadian Embassy on May 10, 1968, suggesting the suspension by Canada of exploration and exploitation activities on the Georges Bank until agreement could be reached on the exact location of the United States-Canada Atlantic continental shelf boundary and to permit consultation on measures to safeguard fisheries interests from possible oil pollution. The Government of Canada agreed to a moratorium on mineral exploitation on the Georges Bank, but declined to stop exploratory activities, claiming that Canadian exploration regulations adequately safeguarded fisheries resources.

Earlier this year considerable pollution of the seas occurred as a result of drilling operations off Santa Barbara, California. In the light of this incident, continued uncertainty regarding the United States-Canada continental shelf boundaries, and the importance of the fishery resources of the Georges Bank, the Government of the United States hopes that Canada will now agree to a complete moratorium on all mineral exploration and exploitation in the entire Gulf of Maine until agreement can be reached on the exact location of the United States-Canada continental shelf boundary in this area and mutually acceptable regulations safeguarding the fisheries of the area from pollution can be formulated. If Canada cannot agree to a complete suspension of mineral exploration and exploitation in the Gulf of Maine, the United States hopes that, at a minimum, Canada will agree to a moratorium on all drilling in the area. Until mineral exploration and exploitation are suspended in the Gulf of Maine and mutually acceptable regulations safeguarding the fisheries of the area are adopted, the United States will hold the Government of Canada completely liable for any and all damages for pollution of the Gulf and the Georges Bank resulting from such activities authorized by Canada.

The Government of Canada has already issued exploration permits for the northern portion of the Georges Bank continental shelf. The United States is concerned that, pending settlement of the boundary question, substantial investment in exploration and exploitation of the area could greatly increase the difficulty of negotiating a satisfactory boundary. For this reason, the United States has refrained from authorizing mineral exploration or exploitation in the area.

Until the exact location of the United States-Canada continental shelf boundary in the Gulf of Maine is agreed upon, the United States cannot acquiesce in any Canadian authorization of exploration or exploitation of the natural resources of the Georges Bank continental shelf. The United States Government, therefore, cannot recognize the validity of Canadian permits for any part

of the Georges Bank, reserves its rights and the rights of its nationals to this continental shelf area, and intends to make its position a matter of public record in the *Federal Register* so that individuals and companies concerned with exploration and exploitation in the area may be aware of this position.

The United States Government further reserves its rights and those of its nationals in all continental shelf areas in the vicinity of the other boundaries between the United States and Canada pending agreement on continental shelf boundaries in these areas as well.

Regarding the suggestion made in its aide-mémoire of May 10 for consultation on measures to safeguard fisheries from possible oil pollution anywhere in the Gulf of Maine, the United States Government would welcome a Canadian Government response and a proposal for a convenient place and time of meeting.

In the near future, the United States Government will suggest to the Canadian Government dates for the initiation of formal negotiation of all of the United States-Canada continental shelf boundaries.

Department of State,  
Washington, November 5, 1969.

---

**Annex 57**

**NOTICE OF RESERVATION OF EXPLORATION AND EXPLOITATION RIGHTS OF THE  
UNITED STATES AND ITS NATIONALS, 35 *FEDERAL REGISTER* 3301 (21 FEBRUARY  
1970)**

# Notices

## DEPARTMENT OF STATE

Office of the Secretary  
[Public Notice 320]

### UNITED STATES-CANADIAN CONTINENTAL SHELF BOUNDARY QUESTION

#### Notice of Reservation of Exploration and Exploitation Rights of United States and Its Nationals

On November 5, 1969, the United States passed to the Canadian Government a diplomatic note presenting the U.S. Government's position with respect to use of the Georges Bank continental shelf.

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), notice is hereby given that the U.S. Government has refrained from authorizing geologic exploration or mineral exploitation in the area of the Georges Bank continental shelf. Pending agreement on the delimitation of the continental shelf in the Gulf of Maine, the U.S. Government does not acquiesce in or recognize the validity of permits or other authorizations issued by the Government of Canada to explore or exploit the natural resources of any part of the Georges Bank continental shelf, and reserves its rights and those of its nationals in that area.

[MIL.] ELLIOT RICHARDSON,  
Acting Secretary of State.

FEBRUARY 12, 1970.

[P.R. Doc. 70-2239; Filed, Feb. 20, 1970; 8:40 a.m.]

## DEPARTMENT OF THE INTERIOR

Office of the Secretary  
GEORGE V. KENNEDY

### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1965, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of January 1, 1970.

Dated: January 16, 1970.

GEORGE V. KENNEDY.

[P.R. Doc. 70-2237; Filed, Feb. 20, 1970; 8:49 a.m.]

JOHN P. MADGETT

### Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1965, the following changes have taken place in my financial interests during the past 6 months:

- (1) No change.
- (2) No change.
- (3) No change.
- (4) No change.

This statement is made as of February 4, 1970.

Dated: February 4, 1970.

JOHN P. MADGETT.

[P.R. Doc. 70-2238; Filed, Feb. 20, 1970; 8:49 a.m.]

## DEPARTMENT OF AGRICULTURE

Office of the Secretary  
KANSAS

### Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named county in the State of Kansas, natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

KANSAS

Sherman.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after December 31, 1970, except to applicants who previously received emergency or special livestock loan assistance and can qualify under established policies and procedures.

Done at Washington, D.C., this 17th day of February 1970.

CLIFFORD M. HARDIN,  
Secretary of Agriculture.

[P.R. Doc. 70-2218; Filed, Feb. 20, 1970; 8:47 a.m.]

### Packers and Stockyards Administration

[P & S Docket No. 436]

### SIoux CITY STOCK YARDS, DIVISION OF UNITED STOCKYARDS CORP.

#### Notice of Petition To Vacate Order and Dismiss Proceeding

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as

amended (7 U.S.C. 181 et seq.), a basic order was issued December 13, 1934, in the case of In regard Sioux City Stock Yards Co., respondent, prescribing the rates and charges to be assessed by the respondent for the stockyard services rendered by it at the Sioux City Stock Yards, Sioux City, Iowa. Such rates and charges have been modified from time to time by subsequent orders issued in the proceeding. The latest such order was issued on January 6, 1970, prescribing the rates and charges to be assessed by the respondent to and including December 31, 1971, unless modified or extended by further order before the latter date.

On January 27, 1970, the respondent filed a petition requesting that the rate orders in this proceeding be dismissed in conformity with § 203.11 of the Statements of General Policy under the Packers and Stockyards Act. The petition reads as follows:

This is a rate proceeding under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

Respondent is now operating under an order issued January 6, 1970, which became effective January 13, 1970, and which shall remain in effect to and including December 31, 1971, unless modified or extended.

The basic rate order in this proceeding was issued December 13, 1934, as a part of P. & S. Docket No. 420. During the period since the basic rate order has been in effect, the respondent has followed the procedure, prior to filing a petition for modification of basic order, of submitting statistical information supporting such proposals.

Respondent feels after some discussion with the Department that changing economic condition in the industry, together with a changing marketing structure in the trade territory and other circumstances, have brought about a situation which makes the necessity and continuation of formal procedure for obtaining modification in rates and charges no longer necessary.

It is requested, therefore, that in conformity with the policy expressed in section 203.11 of the Statements of General Policy under the Packers and Stockyards Act (9 CFR 203.11) that the rate order in this proceeding be vacated and the proceeding be dismissed.

Any interested person may file with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 10 days after the publication of this notice in the FEDERAL REGISTER, written data, views, comments, or arguments with respect to the petition filed by the respondent.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Done at Washington, D.C., this 16th day of February 1970.

DONALD A. CAMPBELL,  
Administrator, Packers and Stockyards Administration.

[P.R. Doc. 70-2214; Filed, Feb. 20, 1970; 8:47 a.m.]

**Annex 58**

**BARTLETT ACT, 16 USC, SECS. 1081-1086 (1966)**

*[Not reproduced]*

---



**Annex 59****NOTE FROM THE SECRETARY OF STATE TO THE AMBASSADOR OF CANADA,  
DATED 18 JANUARY 1974**

**SECRETARY OF STATE'S CIRCULAR NOTE TO THE GOVERNMENTS WHOSE FISHERMEN  
HAVE BEEN KNOWN TO OR CURRENTLY DO FISH IN THE NORTHWEST ATLANTIC  
OCEAN OFF THE COAST OF THE UNITED STATES AND OTHERS CONCERNED WITH  
NORTHWEST ATLANTIC FISHERIES, DATED 18 JANUARY 1974**

**NOTE FROM THE SECRETARY OF STATE TO THE AMBASSADOR OF CANADA,  
DATED 11 SEPTEMBER 1974**

**SECRETARY OF STATE'S CIRCULAR NOTE TO THE GOVERNMENTS WHOSE FISHERMEN  
HAVE BEEN KNOWN TO OR CURRENTLY DO FISH IN THE WATERS ADJACENT TO THE  
COAST OF THE UNITED STATES OF AMERICA, DATED 5 SEPTEMBER 1974**

---

**NOTE FROM THE SECRETARY OF STATE TO THE AMBASSADOR OF CANADA,  
DATED 18 JANUARY 1974**

The Secretary of State presents his compliments to His Excellency the Ambassador of Canada and has the honor to refer to the accompanying note relating to lobster fishing which is being circulated to a number of governments. The United States understands that a Canadian fishery for lobster exists off the coast of the United States and, accordingly, the matters covered in the accompanying note will not be applied to Canadian vessels engaged in the lobster fishery at least for the time being. Appropriate authorities of the United States will be prepared to discuss this matter with the appropriate authorities of Canada.

The Secretary of State would be grateful if the Ambassador of Canada would forward this information to his Government in conjunction with the accompanying note.

Department of State,  
Washington, January 18, 1974.

**SECRETARY OF STATE'S CIRCULAR NOTE TO THE GOVERNMENTS WHOSE FISHERMEN  
HAVE BEEN KNOWN TO OR CURRENTLY DO FISH IN THE NORTHWEST ATLANTIC OCEAN  
OFF THE COAST OF THE UNITED STATES AND OTHERS CONCERNED WITH NORTHWEST  
ATLANTIC FISHERIES, DATED 18 JANUARY 1974**

The Secretary of State presents his compliments to Their Excellencies and Messieurs the Chiefs of Mission of the Governments whose fishermen have been known to or currently do fish in the Northwest Atlantic Ocean off the coast of the United States and others concerned with Northwest Atlantic fisheries, and has the honor to inform the Chiefs of Mission that the President of the United States on January 2, 1974 signed into law an Act (Public Law 93-242)

adding "lobster" (*Homarus americanus*) to the list of continental shelf fishery resources which appertain to the United States.

As identified in the Convention on the Continental Shelf, 499 UNTS 311, and domestic United States legislation, the United States exercises over the American lobster (also known as northern lobster) and other continental shelf fishery resources located on its continental shelf sovereign rights for the purposes of exploration and exploitation and such rights are exclusive in the sense that if the United States does not exploit these resources no one may exploit them without the express consent of the United States.

The United States will regulate the American lobster fishery with due consideration being given to the principles of conservation of the resource and the maximum sustainable yield from the fishery. It is a violation of United States law for any foreign fishing vessel to take and retain American lobster or any other continental shelf fishery resource from the continental shelf of the United States without the express consent of the United States. Heavy penalties may be imposed for such violation upon conviction in a court of the United States.

The United States seeks the active cooperation of all fishermen operating off its Atlantic coast in conserving and protecting the American lobster resource. Such fishermen are expected to return to the sea immediately any American lobsters which may be taken incidentally in the course of directed fisheries for other species found in the region. Fishermen who encounter concentrations of American lobsters in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows. United States enforcement officers will act with discretion during a short period to allow fishermen operating in the region to become familiar with the new legislative requirements with regard to American lobster before enforcing the law to the fullest extent. Warnings will be issued immediately in the case of observation of American lobster being caught and retained aboard fishing vessels not authorized to do so, and appropriate enforcement action may be taken at any time in the case of flagrant violations. Accordingly, it is requested that all fishermen operating in the region be informed of this matter as soon as possible. The cooperation of all Governments and fishermen will be appreciated.

The Secretary of State would be grateful if each Chief of Mission would forward this information to his Government.

Enclosures:

1. List of Addressees
2. Excerpt from Public Law 93-242

*List of Addressees*

Government of Canada  
Government of the Czechoslovak Socialist Republic (in charge of Cuban Interests)  
Government of Denmark  
Government of the Federal Republic of Germany  
Government of Finland  
Government of France  
Government of Great Britain  
Government of Greece  
Government of Iceland  
Government of Italy

Government of Japan  
Government of the Republic of Korea  
Government of Mexico  
Government of Norway  
Government of the People's Republic of Bulgaria  
Government of the Polish People's Republic  
Government of Portugal  
Government of Spain  
Government of the Socialist Republic of Romania  
Government of the Union of Soviet Socialist Republics  
Government of Venezuela

NOTE FROM THE SECRETARY OF STATE TO THE AMBASSADOR OF CANADA,  
DATED 11 SEPTEMBER 1974

The Secretary of State presents his compliments to His Excellency the Ambassador of Canada and has the honor to refer to the accompanying Circular Note relating to the living resources of the continental shelf of the United States which is being circulated to a number of governments. Reference is also made to the reciprocal fishing agreement between the United States and Canada, to fishing activities of the nationals of the respective countries off each other's coasts, and to the practices of the two governments with respect to such fishing. In light of the foregoing, the procedure referred to in the accompanying note will not be applied to Canadian vessels at this time. Appropriate authorities of the United States are prepared to discuss this matter with the appropriate authorities of the Government of Canada.

The Secretary of State would be grateful if the Ambassador of Canada would forward this information to his Government in conjunction with the accompanying note.

Department of State,  
Washington, September 11, 1974.

SECRETARY OF STATE'S CIRCULAR NOTE TO THE GOVERNMENTS WHOSE FISHERMEN  
HAVE BEEN KNOWN TO OR CURRENTLY DO FISH IN THE WATERS ADJACENT TO THE  
COAST OF THE UNITED STATES OF AMERICA, DATED 5 SEPTEMBER 1974

The Secretary of State presents his compliments to Their Excellencies and Messieurs the Chiefs of Mission of the Governments whose fishermen have been known to or currently do fish in the waters adjacent to the coasts of the United States of America, and has the honor to inform the Chiefs of Mission of new guidelines for the enforcement of the rights of the United States to the living resources of the continental shelf.

Pursuant to the Convention on the Continental Shelf and international law, the United States exercises exclusive sovereign rights for the purposes of exploration and exploitation of the living resources of its continental shelf. These rights have been implemented by domestic legislation.

Any vessel taking continental shelf fishery resources of the United States will be subject to arrest and seizure, except as provided by the United States in bi-

lateral agreements. For the purpose of determining whether such a taking has occurred, vessels may be boarded when engaging in either of the following acts:

- (a) fishing with gear which is designed specifically to catch continental shelf fishery resources of the United States, or
- (b) fishing with bottom gear (including bottom trawling gear) which would normally result in the catch of continental shelf fishery resources of the United States, except where the procedures used are designed to reduce and control such incidental catch pursuant to an agreement with the United States.

In those instances where the taking of continental shelf fishery resources does not result in a substantial catch and such taking does not appear to be deliberate or repeated, a warning will normally be given. In any event, fishermen are expected to return to the sea immediately any continental shelf fishery resources which may be taken incidentally in the course of directed fisheries for other species. Fishermen who encounter concentrations of continental shelf fishery resources in the course of their fishing operations should take immediate steps to avoid such concentrations in future tows.

To facilitate the transition in fishing methods required by these procedures, United States enforcement officers will act with discretion during a short period to allow fishermen operating in the region to become familiar with these procedures.

The boarding and where appropriate the arrest of any vessel pursuant to these procedures shall be in strict conformity with the above.

The effective date of these new procedures will be December 5, 1974.

The United States Government is prepared to enter into negotiations with any government for the purpose of establishing procedures designed to reduce and control the incidental catch of continental shelf fishery resources of the United States by fishermen using bottom gear (including bottom trawling gear).

The Secretary of State would be grateful if each Chief of Mission would forward this information to his Government.

Attachment:

List of Addressees

Department of State,  
Washington, September 5, 1974.

*List of Addressees*

Government of Canada  
 Government of the Czechoslovak Socialist Republic (in charge of Cuban Interests)  
 Government of Denmark  
 Government of the Federal Republic of Germany  
 Government of the German Democratic Republic  
 Government of Finland  
 Government of France  
 Government of the United Kingdom  
 Government of Greece  
 Government of Iceland  
 Government of Italy  
 Government of Japan

Government of the Republic of Korea  
Government of Mexico  
Government of Norway  
Government of the People's Republic of Bulgaria  
Government of the Polish People's Republic  
Government of Portugal  
Government of Spain  
Government of the Socialist Republic of Romania  
Government of the Union of Soviet Socialist Republics  
Government of Venezuela

---

**Annex 60**

LETTER FROM DIGICON, INC., TO THE UNITED STATES GEOLOGICAL SURVEY,  
DATED 1 FEBRUARY 1974

*[Not reproduced]*

LETTER FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES  
GEOLOGICAL SURVEY, TO DIGICON, INC., DATED 13 FEBRUARY 1974

*[Not reproduced]*

NOTE NO. 1126 FROM THE DEPARTMENT OF EXTERNAL AFFAIRS TO THE EMBASSY OF  
THE UNITED STATES, DATED 19 SEPTEMBER 1974

*[See 1, p. 396]*

NOTE FROM THE EMBASSY OF THE UNITED STATES TO THE DEPARTMENT OF  
EXTERNAL AFFAIRS, DATED 11 OCTOBER 1974

The Embassy of the United States of America presents its compliments to the Department of External Affairs and has the honor to refer to the Department's Note Number 1126, dated September 19, 1974, concerning the issuance by the United States of a permit authorizing certain seismic explorations relating to areas of the continental shelf in the Gulf of Maine.

The position of the United States Government with regard to its jurisdiction over the areas referred to in the Department's Note was fully set forth in the Department of State's Note of November 5, 1969. It continues to be the United States' position that the exploration and exploitation of the natural resources of the areas of the continental shelf subject to the permit referred to by the Department of External Affairs are subject to the jurisdiction of the United States.

The United States Government wishes to reiterate its interest in an appropriate settlement of this matter, and accordingly wishes to inform the Government of Canada of its willingness to resume negotiations aimed at establishing a mutually accepted delimitation of the continental shelf in the area of the Gulf of Maine, at a mutually convenient time and place.

The Embassy of the United States of America avails itself of this opportunity to renew to the Government of Canada the assurances of its highest consideration.

---

## Annex 61

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 15 MAY 1975

NOTE NO. 180 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 3 JUNE 1975

[See I, p. 398]

DEPARTMENT OF STATE  
WASHINGTON

The Department of State refers the Embassy of Canada to the interest of both the Government of Canada and the Government of the United States in an amicable delimitation of the boundary of the continental shelf in the Gulf of Maine.

The United States Government accordingly wishes to bring to the attention of the Government of Canada certain measures being planned relating to the continental shelf in the Gulf of Maine. First, the United States Government wishes to note that in the near future the United States Department of the Interior expects to issue a call for nominations in the Gulf of Maine area pursuant to United States domestic legislation relating to the Outer Continental Shelf. In response to this action, interested persons may indicate to the Department of the Interior those areas of the continental shelf which should subsequently be opened for leasing for exploration and exploitation of mineral resources. There will be no legal obligation for any areas so nominated to be offered for leasing. It is anticipated that the process of tract evaluation initiated by the call for nominations will require at least one year from the date of the call for nominations.

The area within which nominations will be sought lies within two hundred miles of the US coastline and to the south and west of lines described as follows:

The line drawn from a point at  
42° 21' 14.63" N, 67° 46' 33.97" W  
thence to 42° 20' 12.85" N, 66° 40' 10.00" W  
to 42° 17' 37.35" N, 66° 40' 15.74" W to  
42° 17' 04.96" N, 66° 15' 49.99" W to  
42° 09' 18.60" N, 66° 16' 10.12" W to  
42° 08' 57.85" N, 66° 02' 14.57" W to  
42° 03' 47.00" N, 66° 02' 29.05" W to  
42° 03' 57.56" N, 65° 50' 33.77" W to  
41° 58' 46.66" N, 65° 50' 19.92" W to  
41° 58' 56.77" N, 65° 43' 23.25" W to  
41° 53' 45.84" N, 65° 43' 10.02" W to  
41° 53' 50.172" N (*sic*), 65° 39' 41.94" W and  
thence south along the line of longitude  
at 65° 49' 41.94" W.

The United States Government recognizes that this area may extend into an

area within which the continental shelf boundary between the United States and Canada has not been resolved. However, it notes that the solicitation of nominations does not of itself obligate the United States to take any further measures with respect to this area pending further efforts to resolve the location of such boundary.

The United States Government also wishes to bring to the attention of the Government of Canada the intention of the United States Geological Survey to conduct certain deep sea drilling operations within the Gulf of Maine during the course of the coming summer as a portion of the Deep Sea Drilling Program. It is anticipated that one or more of such drilling operations may take place within an area in which the precise boundary between the United States and Canada may not have been resolved. The United States wishes to assure the Government of Canada that the strictest environmental safeguards will be maintained during the course of these operations.

The above measures contemplated by United States authorities are consistent with the views of the United States concerning the appropriate delimitation of the continental shelf and the rights of the United States in accordance with international law. They do not, however, entail the creation of any private rights. The call for nominations will be accompanied by appropriate public notice of the possible absence of an agreed boundary in the affected area.

The United States further notes that its contemplated actions are not dissimilar to those actions taken by the Government of Canada within the area in question. These actions were the subject of the United States note of November 5, 1969 and an accompanying notice in the *Federal Register*.

The United States Government also wishes to take this opportunity to reiterate its desire that negotiations concerning this continental shelf boundary between the U.S. and Canada may be resumed in the coming months. It is hoped that this matter will be finally and amicably resolved on mutually satisfactory terms.

Department of State,  
Washington, May 15, 1975.

---



**Annex 62**

NOTE NO. 52 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 2 FEBRUARY 1976

*[See I, p. 402]*

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 10 FEBRUARY 1976

The Department of State refers to the note of the Embassy of Canada No. 52 of February 2, 1976, concerning the intention of the United States Department of the Interior to prepare a draft environmental impact statement preliminary to a possible sale of oil and gas leases on the continental shelf in the Gulf of Maine area.

The preparation of a draft environmental impact statement preliminary to a possible sale of oil and gas leases is a standard procedure under United States regulations. It is part of the process of which the Embassy of Canada was advised in the Department of State's note of May 15, 1975. The Department calls the attention of the Embassy of Canada to the news release issued by the Department of the Interior on January 2, 1976, which states that "Announcement of the tracts to be studied does not constitute a decision to hold an OCS sale." It is not anticipated that the studies being carried out by the Department of the Interior can be concluded in less than ten months or more. Any decision with regard to oil and gas leasing in the Gulf of Maine area will await the results of those studies.

The Department of State does not believe that this procedural step in a continuing process initiated last spring should affect the constructive discussions now being carried on by the two governments concerning the delimitation of the continental shelf in the Gulf of Maine area. The Department of State reiterates the interest of the Government of the United States in an amicable delimitation of the continental shelf and shares the view of the Canadian authorities that an acceptable delimitation on the basis of the principles of international law is possible notwithstanding the difficulties to be overcome in the discussions.

At the same time, in view of the position restated in Note No. 52 of the Embassy of Canada, the Department of State believes it necessary to reiterate that the steps being taken by United States authorities are consistent with the views of the Government of the United States concerning the appropriate delimitation of the continental shelf and the rights of the United States in accordance with the 1958 Convention on the Continental Shelf and international law. As is well known to the Government of Canada, the Government of the United States does not believe that an equidistance line in the Gulf of Maine area would satisfy these criteria. It is the view of the United States that all the tracts being studied by the Department of the Interior are situated on the continental shelf of the United States.

The Department of State is confident that the two governments will be able to reach agreement on a continental shelf boundary and related matters that take into account the interests of both Canada and the United States, and it is hoped that a basic understanding on these matters can be reached in the near

future. To that end, the Department looks forward to the visit of the Canadian delegation to Washington on February 17 to resume the discussions which began so constructively in Ottawa on December 15.

Department of State,  
Washington, February 10, 1976.

---

**Annex 63**

TERRITORIAL SEA AND FISHING ZONES ACT, PROPOSED FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, 110 *CANADA GAZETTE*, PART I (EXTRA), No. 101, 1 NOVEMBER 1976, PP. 1-6

TERRITORIAL SEA AND FISHING ZONES ACT, FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, 111 *CANADA GAZETTE*, PART II (EXTRA), 1 JANUARY 1977, PP. 1-5

*[Not reproduced]*

---

**Annex 64**

**MARITIME BOUNDARIES BETWEEN THE UNITED STATES AND CANADA, DEPARTMENT  
OF STATE, PUBLIC NOTICE 506, 41 *FEDERAL REGISTER* 48619-48620  
(4 NOVEMBER 1976)**

**DEPARTMENT OF STATE PRESS RELEASE NO. 543, DATED 4 NOVEMBER 1976**

*[Not reproduced]*

**FISHERY CONSERVATION ZONE, NOTICE OF LIMITS, DEPARTMENT OF STATE, PUBLIC  
NOTICE 526, 42 *FEDERAL REGISTER* 12937-12940 (7 MARCH 1977)**

*[Not reproduced]*

if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

#### NEW FORMS

##### DEPARTMENT OF COMMERCE

Bureau of Census, Reinterview Schedule - Special Enumeration on Navajo Reservation, AIN-4, single-time, responsible member of household in three test sites, Raynsford, R. R. 395-3814.

##### DEPARTMENT OF LABOR

Bureau of Labor Statistics, Survey of Hours and Earnings of Employees in Selected Occupations in Selected Transportation Industries, BLS-3010F, single-time, establishments in transportation industries, Strasser, A. 395-5887.

Bureau of International Labor Affairs, Standard Questionnaire for Manufacturing Firms, ILAB-81, on occasion, manufacturers, Laverne V. Collins, 395-6667.

#### REVISIONS

##### DEPARTMENT OF COMMERCE

Bureau of Census:

Survey of Expenditure and Employment for Civil and Criminal Justice Activities of Local Governments, CJ-4, CJ-23, CJ-6D, annually, county and municipal governments, George Hall, 395-8140.

Survey of Oallomage Sales of Gasoline, SO-1, SO-2, SO-3, monthly, retail gasoline service stations, David T. Hullett, 395-4730.

#### EXTENSIONS

##### DEPARTMENT OF COMMERCE

Bureau of Census, Shoes and Slippers - Production and Shipments—Monthly Report, M31A, monthly, shoe manufacturing, Martha Traynam, 395-4529.

##### DEPARTMENT OF LABOR

Bureau of Labor Statistics, Digest of Selected Health and Insurance Plans, BLS 2856, on occasion, Health and Insurance Plan Administrators, Strasser, A. 395-5867.

PHILLIP D. LURSEN,

*Budget and Management Officer.*

[FR Doc.76-32621 Filed 11-3-76; 8:45 am]

### OFFICE OF TELECOMMUNICATIONS POLICY

#### FREQUENCY MANAGEMENT ADVISORY COUNCIL

##### Meeting

Notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet at 9:30 a.m. in Room 712, Office of Telecommunications Policy, 1800 G Street, NW., Washington, D.C., on Thursday, November 18, 1976.

The principal agenda items will be: (1) status of International Telecom-

munication Union (ITU) Conference; (2) presentation by COMSAT Corporation on MARISAT; (3) presentation by General Electric Corporation on tethered balloon transmitter systems; and (4) consideration of alternatives to the international planning and coordination of radio frequencies.

The meeting will be open to the public; any member of the public will be permitted to file a written statement with the Council before or after the meeting.

The names of the members of the Council, a copy of the agenda, a summary of the meeting, and other information pertaining to the meeting may be obtained from Mr. S. E. Probst, Office of Telecommunications Policy, Washington, D.C. 20504 (telephone: 202/395-5623).

Dated: November 1, 1976.

L. DANIEL O'NEILL,

*Advisory Committee  
Management Officer.*

[FR Doc.76 32465 Filed 11-3-76; 8:45 am]

### DEPARTMENT OF STATE

[Public Notice 506]

#### MARITIME BOUNDARIES

##### Between the United States and Canada

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) establishes a fishery conservation zone contiguous to the territorial sea of the United States, effective March 1, 1977, the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

The United States exercises sovereign rights, in accordance with international law, over the continental shelf appertaining to the United States for the purpose of exploring it and exploiting its natural resources.

The Government of the United States of America has been, is, and will be engaged in consultations and negotiations with the governments of neighboring countries concerning the delimitation of areas subject to the respective jurisdiction of the United States and of these countries.

The Government of the United States of America intends in due course to determine and publish the limits of the entire fishery conservation zone off its coast.

The Government of Canada, on November 1, 1976, announced in an Order-in-Council the extent of the fishery zone to be asserted by Canada which will become effective on January 1, 1977.

The United States and Canada have not agreed on maritime boundaries and the United States does not accept all of the coordinates published by Canada on November 1.

Therefore, in order to protect the rights of the United States and those of its nationals, the Department of State, on behalf of the Government of the United States of America, hereby an-

nounces the lateral limits, in certain maritime areas off the coasts of the United States adjacent to areas off the coasts of Canada, within which the United States will exercise its fishery management authority and its sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources in accordance with international law.

The limits of the maritime jurisdiction of the United States as set forth below are intended to be without prejudice to any negotiations with Canada or to any positions which may have been or may be adopted respecting the limits of maritime jurisdiction in such areas.

Publication of a proposed announcement on this subject for public comment has been found unnecessary and impracticable because of the necessity for the United States to react immediately to the announcement of the Government of Canada. An announcement which is effective immediately upon publication also is necessary to effectively exercise the foreign affairs responsibility of the Department of State. (See Title 5, United States Code, sections 553(a) (1) and (b) (3)).

##### U.S.—CANADA GULF OF MAINE 1 AND 2

1. 44°46'35.346"N,	10. 44°21'43"N,
66°54'11.253"W	67°02'33"W
2. 44°44'41"N,	11. 44°18'08"N,
66°56'17"W	67°08'38"W
3. 44°43'56"N,	12. 44°07'43"N,
66°56'26"W	67°26'30"W
4. 44°39'13"N,	13. 43°32'00"N,
66°57'29"W	67°50'00"W
5. 44°36'58"N,	14. 43°23'00"N,
67°00'36"W	67°46'00"W
6. 44°33'27"N,	15. 42°27'30"N,
67°02'57"W	67°06'00"W
7. 44°30'38"N,	16. 42°23'42"N,
67°02'38"W	66°21'36"W
8. 44°29'03"N,	17. 42°00'00"N,
67°03'42"W	65°40'00"W
9. 44°25'23"N,	18. 41°23'41"N
67°02'18"W	65°00'11"W

##### U.S.—CANADA JUAN DE PUCA 2

1. 48°29'37.19"N,	10. 48°20'16"N,
124°43'33.19"W	125°22'48"W
2. 48°30'11"N,	11. 48°18'22"N,
124°47'13"W	125°29'58"W
3. 48°30'22"N,	12. 48°11'05"N,
124°50'21"W	125°53'48"W
4. 48°30'14"N,	13. 47°49'15"N,
124°54'52"W	126°40'57"W
5. 48°29'57"N,	14. 47°38'47"N,
124°59'14"W	127°11'58"W
6. 48°29'44"N,	15. 47°32'00"N,
125°00'06"W	127°41'23"W
7. 48°28'09"N,	16. 46°42'05"N,
125°05'47"W	128°51'56"W
8. 48°27'10"N,	17. 46°31'47"N,
125°08'25"W	129°07'39"W
9. 48°26'47"N,	18. 46°29'12"W

##### U.S.—CANADA DIXON ENTRANCE 2

1. 54°43'30.15"N,	6. 54°42'47"N,
130°37'37.01"W	130°38'08"W
2. 54°43'24"N,	7. 54°42'22"N,
130°37'39"W	130°38'28"W
3. 54°43'15"N,	8. 54°41'09"N,
130°37'44"W	130°38'58"W
4. 54°43'00"N,	9. 54°39'54"N,
130°37'55"W	130°38'58"W
5. 54°42'58"N,	10. 54°39'14"N,
130°37'57"W	130°39'18"W

## U.S.—CANADA DIXON ENTRANCE 2—CON.

11. 54°30'48" N, 130°41'35" W	20. 54°42'27" N, 130°56'18" W
12. 54°40'03" N, 130°42'22" W	21. 54°42'34" N, 130°57'06" W
13. 54°40'42" N, 130°44'43" W	22. 54°43'00" N, 130°57'41" W
14. 54°40'41" N, 130°44'59" W	23. 54°43'46" N, 130°58'56" W
15. 54°40'40" N, 130°45'51" W	24. 54°44'12" N, 130°59'44" W
16. 54°41'06" N, 130°48'31" W	25. 54°46'39" N, 131°03'06" W
17. 54°41'05" N, 130°49'17" W	26. 54°48'18" N, 131°04'43" W
18. 54°41'21" N, 130°53'18" W	27. 54°42'11" N, 131°13'00" W
19. 54°41'26" N, 130°53'39" W	28. 54°40'52" N, 131°13'54" W
20. 54°42'27" N, 130°56'18" W	29. 54°39'09" N, 131°16'17" W
21. 54°42'34" N, 130°57'06" W	30. 54°36'53" N, 131°19'22" W
22. 54°43'00" N, 130°57'41" W	31. 54°29'53" N, 131°33'48" W
23. 54°43'46" N, 130°58'56" W	32. 54°30'32" N, 131°38'01" W
24. 54°44'12" N, 130°59'44" W	33. 54°28'18" N, 131°45'20" W
25. 54°46'39" N, 131°03'06" W	34. 54°26'41" N, 131°49'28" W
26. 54°48'18" N, 131°04'43" W	35. 54°21'81" N, 132°02'54" W
27. 54°42'11" N, 131°13'00" W	
28. 54°40'52" N, 131°13'54" W	
29. 54°39'09" N, 131°16'17" W	
30. 54°36'53" N, 131°19'22" W	
31. 54°29'53" N, 131°33'48" W	
32. 54°30'32" N, 131°38'01" W	
33. 54°28'18" N, 131°45'20" W	
34. 54°26'41" N, 131°49'28" W	
35. 54°21'81" N, 132°02'54" W	

## U.S.—CANADA BEAUFORT SEA 2

1. 69°38'48.88" N, 140°59'52.57" W	12. 70°29'19" N, 140°09'45" W
2. 69°38'62" N, 140°59'51" W	13. 70°37'31" N, 140°02'47" W
3. 69°39'37" N, 140°59'01" W	14. 70°48'25" N, 139°52'31" W
4. 69°40'10" N, 140°58'34" W	15. 70°58'02" N, 139°47'16" W
5. 69°41'30" N, 140°57'00" W	16. 71°01'15" N, 139°44'24" W
6. 69°46'25" N, 140°49'45" W	17. 71°11'58" N, 139°33'58" W
7. 69°47'54" N, 140°47'07" W	18. 71°23'10" N, 139°21'46" W
8. 69°51'40" N, 140°42'37" W	19. 72°12'18" N, 138°26'10" W
9. 70°09'26" N, 140°19'22" W	20. 72°46'39" N, 137°39'02" W
10. 70°11'30" N, 140°18'09" W	21. 72°56'49" N, 137°34'08" W
11. 70°29'07" N, 140°09'51" W	

## FOOTNOTES

1. In view of the fact that the claimed boundaries published by the United States and Canada would leave an unclaimed area within the Gulf of Maine, the United States will exercise its fisheries management jurisdiction to the Canadian-claimed line where that line is situated eastward of the United States-claimed line, until such time as a perma-

nent maritime boundary with Canada is established in the Gulf of Maine.

2. Where the continental shelf extends beyond 200 miles the claimed continental shelf boundary of the United States will extend to the seaward limit of the continental shelf in accordance with international law and in a direction determined by application of the principles by which the described boundary segment is determined.

Dated: November 1, 1976.

MONROE LEIGH,  
Legal Adviser.

[FR Doc.76-32705 Filed 11-3-76; 9:25 am]

## DEPARTMENT OF TRANSPORTATION

[CGD 76-202]

United States Coast Guard  
EQUIPMENT, CONSTRUCTION, AND MATERIALS

## Termination of Approval Notice

1. Certain laws and regulations (46 CFR Chapter I) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels subject to Coast Guard inspection, on certain motorboats and other recreational vessels, and on the artificial islands and fixed structures on the outer Continental Shelf be of types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been terminated as herein described during the period from September 28, 1975 to September 10, 1976 (List No. 22-76). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of Title 46, United States Code, and section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction, and materials are set forth in 46 CFR Parts 160 to 164.

3. Notwithstanding the termination of approval listed in this document, the equipment affected may be used as long as it remains in good and serviceable condition.

## BUOYANT CUSHIONS, KAPOK, OR FIBROUS GLASS

The Buddy Schoellkopf Products, Inc., 148 Fordyce, Dallas, Texas 75207, no longer manufactures certain kapok buoyant cushions for Belknap Hardware & Manufacturing Company, 111 East Main Street, Louisville, Kentucky 40201 and Approval Nos. 160.048/225-0 and 160.048/227/0 were therefore terminated effective September 8, 1976.

## WORK VESTS, UNICELLULAR PLASTIC FOAM

The Sparkle Star, Inc., 135 Mill Street, Canandaigua, New York 14424, no longer manufactures certain unicellular plastic foam work vests for Protection Equipment, Sales Division of Vogt Manufacturing Corporation, 100 Fernwood Avenue, Rochester, New York 14621 and Approval No. 160.053/2/5 was therefore terminated effective September 10, 1976.

## MARINE BUOYANT DEVICE

The Fabronics, Inc., West Austin Street, Tolono, Illinois 61880, no longer manufactures certain marine buoyant devices for Miltec Products Corporation, 139 Emerson Place, Brooklyn, New York 11205 and Approval Nos. 160.064/500/0, 160.064/501/0 and 160.064/502/0 were therefore terminated effective September 10, 1976.

## BACKFIRE FLAME CONTROL, GASOLINE ENGINES; FLAME ARRESTERS; FOR MERCHANT VESSELS AND MOTORBOATS

The Chrysler Corporation, Marine Division, P.O. Box 1, Marysville, Michigan 48040, Approval No. 162.041/1/0 expired and was terminated effective September 28, 1975.

The Greenwich Marine Engines, Division Hekma Advanced Mach. Company, Palmer Point, Cos Cob, Connecticut 06807, Approval No. 162.041/77/1 expired and was terminated effective August 11, 1976.

The Chrysler Corporation, Marine Division, 841 Huron Boulevard, Marysville, Michigan 48040, Approval No. 162-041/96/0 expired and was terminated effective September 3, 1976.

Dated: October 29, 1976.

H. G. LYONS,  
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc.76-32457 Filed 11-3-76; 8:45 am]

[CGD 76-204]

## NATIONAL OFFSHORE OPERATIONS INDUSTRY ADVISORY SUBCOMMITTEE ON MOBILE OFFSHORE UNITS

## Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the National Offshore Operations Industry Advisory Subcommittee on Mobile Offshore Units to be held November 19, 1976, at 1:30 p.m. in Room 8236 of the Nassif Building, 400 7th Street S.W., Washington, D.C. The agenda for this meeting is as follows: Review of the proposed regulations submitted by the National Offshore Operations Industry Advisory Subcommittee pertaining to the construction and inspection of Mobile Offshore Units.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the hearing. Per-

**Annex 65**

AIDE-MÉMOIRE FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 22 DECEMBER 1976

[See I, p. 429. Attachment only reproduced here]

AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 30 DECEMBER 1976

---

ATTACHMENT TO THE AIDE-MÉMOIRE FROM THE EMBASSY OF CANADA TO THE  
DEPARTMENT OF STATE, DATED 22 DECEMBER 1976

REGULATIONS RESPECTING UNITED STATES FISHING VESSELS IN CERTAIN AREAS OF  
CANADIAN FISHERIES WATERS

*Short Title*

1. These Regulations may be cited as the *Transitional United States Fishing Vessel Licence Exemption Regulations*.

*Interpretation*

2. In these Regulations, "Agreement" means the *Agreement between the Government of Canada and the Government of the United States of America on Reciprocal Fishing Privileges in Certain Areas off their Coasts*, signed at Ottawa on June 15, 1973, as extended from time to time; "crew" has the same meaning as in the *Coastal Fisheries Protection Regulations*; "Fishing Zone 4" or "Fishing Zone 5" means the area of the sea described as Fishing Zone 4 or Fishing Zone 5 in the *Fishing Zones of Canada (Zones 4 and 5) Order*; "licence" has the same meaning as in the *Coastal Fisheries Protection Regulations*; "permit" has the same meaning as in the *Coastal Fisheries Protection Regulations*; "United States fishing vessel" means a fishing vessel that is registered in the United States of America or, in the case of a vessel that is not registered, a fishing vessel that is entitled to fly the flag of the United States of America.

*Authority*

3. (1) A United States fishing vessel may, without the authority of a licence or permit, enter Canadian fisheries waters for the purpose of engaging in all or any of the following activities in any of the areas described in the Schedule:

- (a) commercial fishing or fishing for purposes of scientific research,
- (b) transshipping or taking on board any fish, outfit or supplies,
- (c) processing fish at sea,
- (d) transporting fish from fishing grounds, and
- (e) provisioning, servicing, repairing or maintaining any other United States fishing vessel.

(2) Subject to the *Fisheries Act* and regulations made thereunder and to the Agreement, the crew of a United States fishing vessel may, without the authority of a licence or permit,

- (a) engage in commercial fishing or fishing for purposes of scientific research, and
- (b) tranship any fish, outfit or supplies in any of the areas described in the Schedule.

#### Schedule

1. Fishing Zone 4.
2. Fishing Zone 5.
3. The reciprocal fishing area of Canada as defined in the Agreement, namely:

- “(i) in those “Areas” listed in Order-in-Council P.C. 1967-2025 and Order-in-Council P.C. 1969-1109, issued by the Government of Canada on November 8, 1967, and June 11, 1969, respectively, those waters extending 9 miles seaward of the territorial sea of Canada as it existed in 1966;
- (ii) in those areas not listed in the Orders-in-Council cited above, those waters south of 63° north latitude which are contiguous to and extend from three to twelve miles from the coast of Canada, with the exception of bays where they cease to exceed 24 miles in breadth.”

4. Those portions of Fishing Zones 1, 2 and 3 that are seaward of the reciprocal fishing area of Canada described in item 3.
5. Those areas of Canadian fisheries waters, other than the areas described in items 1, 2 and 4, that are seaward of the reciprocal fishing area of Canada described in item 3.

#### AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA, DATED 30 DECEMBER 1976

The Department of State has studied the Embassy of Canada's aide-mémoire of December 22, 1976, regarding mutual restraint by governments in connection with the implementation of the respective fisheries zones.

The Department is pleased to learn that the Government of Canada is prepared to act with restraint with respect to the application of Canadian law to United States fishermen. In the Department's view, such action on the part of Canadian authorities will help maintain an atmosphere helpful to the ongoing negotiations.

The Department of State wishes to assure the Government of Canada that the Government of the United States has the legal authority and is ready for the time being to exercise forbearance on the basis of reciprocity in the area between the boundary lines published by the two Governments to facilitate fisheries and boundary negotiations between the two countries.

With respect to the area outside those lines that will come under United States fishery jurisdiction on March 1, 1977, the exercise of forbearance by the United States Government involving departures from the Fishery Conservation and Management Act of 1976 would require a treaty or other legislative action.



Absent such Congressional action, as of March 1, 1977, Canadian fishing in the United States fishery conservation zone, except in areas between the lines that have been published by the two Governments, must take place in accordance with United States law. In any event, after March 1, 1977, Canadian fishing in the United States fishery conservation zone needs to be pursuant to an international agreement which recognizes United States jurisdiction south of the equidistance line.

The Department of State appreciates that absent reciprocity by the United States, which would require modification of United States law by treaty or other legislative action, the Government of Canada might require that American fishing within Canada's fisheries jurisdiction outside the area claimed by both countries take place in accordance with Canadian law. The Embassy will appreciate that the United States Government does not recognize the authority of any other government in any part of the fishing conservation zone claimed by the United States.

Department of State,  
Washington, December 30, 1976.

---

## Annex 66

NOTE NO. 626 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 22 DECEMBER 1976

*[See I, pp. 430-433]*

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 16 FEBRUARY 1977

The Department of State refers to Note No. 626 of December 22, 1976, from the Embassy of Canada in Washington to the Department of State.

The Department notes that over the past months, the respective legal advisers of the Department of State and the Ministry of External Affairs have engaged in legal discussions which have clearly set forth the legal positions of the two governments concerning maritime boundaries. The Department is disappointed that Note No. 626 is a further exposition of the Canadian legal position on each maritime boundary, rather than a movement toward negotiations. In light of the statement of position in the referenced Note, the Government of the United States is compelled to respond with a brief legal statement of the position of the Government of the United States on each maritime boundary. This statement is intended to be a general statement of the position of the Government of the United States, and is not intended to address the specific arguments raised in Note No. 626. The Department reserves the right to make further comments at a later time.

The position of the Government of the United States is that under the 1958 Convention on the Continental Shelf, and applicable principles of international law, maritime boundaries are to be determined by agreement and in accordance with equitable principles. The Government of the United States is also of the view that equidistance is an appropriate method for determining a maritime boundary when there are no special circumstances in the area and when equidistance results in a boundary in accordance with equitable principles.

It is the position of the Government of the United States that equidistance is an inappropriate means for determining the maritime boundary in the Gulf of Maine area because it does not accord with equitable principles. Special circumstances plainly exist in the area. In the view of the Government of the United States, an examination of the relevant factors, including coastal proportionality, coastal configuration and the geology and geomorphology of the area, indicates that a maritime boundary in accordance with equitable principles is one which extends through the Northeast Channel. It is also appropriate to note that the Government of the United States continues to maintain that the sovereignty to Machias Seal Island rests with the United States for the reason set forth in the aide-mémoire of September 15, 1976 from the Embassy of the United States to the Ministry of External Affairs.

In the area seaward of the Strait of Juan de Fuca, and the area seaward of Dixon Entrance, the two governments have taken the same basic position that equidistance is an appropriate means for determining a maritime boundary in accordance with equitable principles. *There are no special circumstances in*

those areas. The United States position concerning the maritime boundary inside Dixon Entrance is well known and long-standing.

In the Beaufort Sea, the position of the Government of the United States is that there are no special circumstances in the area and that equidistance produces a maritime boundary in accordance with equitable principles.

The Government of the United States notes that the Government of Canada wishes to reserve its rights to make new claims "in those cases where there exist circumstances comparable to those on which the United States' claim in the Gulf of Maine area is based". The Government of the United States fully agrees with the basic proposition that where special circumstances exist, they are relevant factors to be taken into account in a determination of a maritime boundary in accordance with equitable principles. However, during the course of the aforementioned legal discussions, the Canadian negotiators repeatedly asserted that there were no special circumstances in the maritime boundary areas between Canada and the United States. Of course, the Government of Canada is free to change its position concerning these matters; however, the Government of the United States does not believe that there is any basis in law or fact to support or to justify the positions identified in the charts attached to Note No. 626 which the Government of Canada claims are based on the same principles which the Government of the United States has argued as being relevant in the Gulf of Maine area.

The Government of the United States remains committed to the pursuit of negotiations toward a mutually acceptable settlement of the United States-Canada maritime boundaries and urges an immediate resumption of negotiations.

Department of State,  
Washington, February 16, 1977.

---

**Annex 67**

NOTE NO. 221 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 26 MAY 1977

*[See I, pp. 444-448]*

AIDE-MÉMOIRE FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 26 MAY 1977

*[See I, pp. 442-443]*

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 27 JUNE 1977

AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 7 JULY 1977

---

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 27 JUNE 1977

The Department of State acknowledges receipt of the Embassy of Canada's note number 221 of May 26, 1977. The United States Government will not reply at this time to the legal arguments put forward in that note, but it reserves the right to do so, if necessary, at a later date.

The Department of State recalls that the two governments agreed last October that the phase of the talks dedicated to discussions of legal issues should be concluded and that the two governments should move directly to the negotiation of a boundary in the Gulf of Maine area and related resource arrangements. The Department of State considers that the legal discussions which were held in 1976 were constructive and useful. At this stage, however, it is the Department's view that further debate of legal positions will not contribute to a solution of the problem and that these should be set aside for the time being.

The Department of State would wish to concentrate its priorities on efforts to achieve constructive long-term solutions, and believes that this view is shared by the Department of External Affairs as evidenced by the fruitful discussions which took place in Ottawa on June 17, 1977.

Department of State,  
Washington, June 27, 1977.

AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 7 JULY 1977

The Department of State refers to the Embassy of Canada's Aide-Mémoire of May 26, 1977.

The Government of the United States cannot concur in the view expressed in that Aide-Mémoire that in the absence of agreement on maritime boundaries the United States should refrain from authorizing exploration and exploitation of the resources of the continental shelf in all areas where the Government of Canada now states that it reserves rights.

The United States Government agreed on November 4, 1976, that both countries would avoid steps for the time being relating to the development of non-living resources in the boundary areas between the United States and Canada which could prejudice negotiation of a boundary settlement. To implement this decision, the Department of the Interior on December 7, 1976, withdrew 28 tracts in the disputed area of the Gulf of Maine from its proposed 1977 North Atlantic Outer Continental Shelf oil and gas lease sale. All of the remaining sites scheduled for test drilling and the tracts programmed for lease sale in the Gulf of Maine area in the latter part of 1977 are located not in a boundary area, but outside of the area claimed by the Government of Canada which has been the subject of discussions and negotiations between the two governments over the past several years. In the view of the United States Government, its Outer Continental Shelf program is entirely consistent with its stated position on the delimitation of maritime boundaries.

The Government of the United States understands from the Embassy of Canada's Note Number 626 of December 22, 1976, that the Government of Canada now reserves the right to assert a possible interest in other areas under the jurisdiction of the United States of America. The United States Government cannot be expected to lend credence to these "reservations" which in our view have no basis in law or fact, by withholding, as suggested in the Embassy's Aide-Mémoire of May 26, legitimate actions of national importance in these areas of U.S. jurisdiction.

The Government of the United States remains committed to a mutually acceptable settlement of United States-Canada maritime boundaries and believes that both governments should refrain from actions which make settlement more difficult. However, the actions to be taken in connection with the planned lease sale in this area later this year will take place only in areas subject to United States jurisdiction and not affected by a maritime boundary settlement. Accordingly, the Government of the United States believes that these actions will not add to the complexity of continuing negotiations on maritime boundaries.

---

**Annex 68**

"U.S., CANADA TO NEGOTIATE MARITIME ISSUES", 77 *BULLETIN*, THE DEPARTMENT  
OF STATE, NO. 1992, 29 AUGUST 1977, P. 282

*[Not reproduced]*

---

**Annex 69**

NOTE NO. GNT-067 FROM THE DEPARTMENT OF EXTERNAL AFFAIRS TO THE  
EMBASSY OF THE UNITED STATES, DATED 3 NOVEMBER 1977

*[See 1, pp. 452-454]*

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 2 DECEMBER 1977

The Department of State refers to note GNT-067 of the Department of External Affairs delivered in Ottawa on November 3, 1977.

As subsequent conversations with United States officials have confirmed, the Government of the United States cannot accept the contention that the line described in that note and set forth in the attachments to that note would constitute a maritime boundary in accordance with equitable principles. Furthermore, the Government of the United States cannot agree that the award in the Anglo-French Continental Shelf Delimitation Arbitration justifies the expansion of boundary claims by Canada. The Government of the United States is disappointed that the Government of Canada would take this step which is inconsistent with the process the two governments have underway aimed at narrowing differences through negotiations in good faith to reach a comprehensive solution. The Government of the United States cannot be expected to take into account an expanded Canadian claim for purposes of these negotiations.

In this connection, the Government of the United States wishes to reiterate its view, as confirmed by the award in the aforementioned arbitration, that international law requires that maritime boundaries be established in accordance with equitable principles. As noted in earlier discussions, it is the view of the United States that the equidistant line already claimed by Canada is not in conformity with equitable principles because of the special circumstances of the area. Therefore, the Government of the United States can look with no sympathy on any Canadian claim or position that further aggravates that inequity. In the view of the United States Government, a maritime boundary in the Gulf of Maine area that accords with equitable principles is a line which takes into account the coastal configuration of the area, particularly the distorting effect on an equidistant line of the concavity of the U.S. coastline and the protrusion of the peninsula of Nova Scotia. Such a line should produce a delimitation consistent with the principle of natural prolongation and with a reasonable degree of proportionality with the length of the relevant coastlines of the two countries.

The Government of the United States continues to be hopeful that the present maritime boundary and resource negotiations will reach a mutually satisfactory accommodation of the respective maritime interests of the two countries. It reserves the right, if necessary, to make a more detailed response to Note GNT-067 at a later time.

Department of State,  
Washington, December 2, 1977.

---

## Annex 70

NOTE FROM THE DEPARTMENT OF EXTERNAL AFFAIRS TO THE EMBASSY OF THE  
UNITED STATES, DATED 25 JANUARY 1978

[See I, pp. 456-457]

DEPARTMENT OF STATE PRESS RELEASE NO. 53, DATED 27 JANUARY 1978

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 3 FEBRUARY 1978

DEPARTMENT OF STATE PRESS RELEASE NO. 53, DATED 27 JANUARY 1978

January 27, 1978  
No. 53

*Acting Secretary Requests Secretary of the Interior to Withdraw from Sale Certain  
Oil and Gas Leases in Gulf of Maine*

Acting Secretary Warren Christopher on January 27 sent the following letter to Secretary of the Interior Cecil Andrus requesting him to withdraw from sale at this time certain tracts in the Gulf of Maine which the Department of Interior had previously announced would be included in its North Atlantic Outer Continental Shelf Oil and Gas Lease Sale of January 31:

"As you know the United States and Canada are presently engaged in a difficult negotiation regarding maritime boundaries and related resource issues. Ambassador Lloyd Cutler, the President's Special Representative for these negotiations, has been meeting with the Canadians on an intensive schedule in an attempt to conclude these negotiations.

Recently during the course of these negotiations the Government of Canada informed us that it considered that certain tracts offered in the North Atlantic Outer Continental Shelf Oil and Gas Lease Sale No. 42 of January 31, 1978, as announced in the *Federal Register* of December 30, 1977, are within the area claimed by Canada to be subject to negotiation between the two countries. We have ascertained that these consist of the following tracts:

	<i>Tract No.</i>	<i>Block</i>
In Protraction diagram NK 19-9:	42-13	899
	42-14	900
	42-21	942
	"	942-22
	"	943
	42-23	944
	42-29	981
	42-30	982



	42-31	986
	42-32	987
	42-33	988
	42-34	989
In Protraction diagram NK 19-12 :	42-82	13
	42-83	14
	42-84	15
	42-85	19
	42-86	20
	42-87	21
	42-91	58
	42-92	59
	42-93	63
	42-94	64
	42-95	65
	42-100	102
	42-101	103
	42-102	107
	42-103	108
	42-104	109

Although the United States Government does not share the Canadian view that these tracts are within the area under negotiation, Ambassador Cutler believes that their sale at this time would seriously and adversely affect the prospects for a successful conclusion of the negotiations. He has therefore strongly urged that these tracts be withdrawn from the above offer and not offered for sale at the present time in order not to jeopardize the outcome of the negotiations.

Accordingly, in view of the importance to the United States of a successful negotiated settlement of our maritime boundary and resource issues with Canada, I strongly urge that you withdraw the above tracts from sale at this time.

I would appreciate it if you would confirm to me as soon as possible your action on the matter so that we can inform the Canadians."

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 3 FEBRUARY 1978

The Department of State refers the Embassy of Canada to the note of the Department of External Affairs of Canada of January 25, 1978, concerning the North Atlantic Outer Continental Shelf Oil and Gas Lease Sale to have been conducted by the United States Department of the Interior on January 31, 1978.

The Government of Canada was informed by the Department of State's note of December 2, 1977, that the Government of the United States does not accept the contention that the line described in the Department of External Affairs note GNT-067 of November 3, 1977, and referred to in the note of January 25 referenced above, constitutes a maritime boundary in accordance with equitable principles as required by international law. The Department of State had previously notified the Government of Canada on July 7, 1977, that in view of ongoing negotiations between the United States and Canada concerning maritime boundaries and resources, all the tracts within the Gulf of Maine area over which the United States exercises jurisdiction but which had also been claimed

by Canada in Canada Order in Council PC-1977-1 as published in the Canadian Gazette of January 1, 1977, would be removed from the lease sale in order to facilitate the negotiating process. The remaining tracts scheduled in the lease sale were all located outside of areas claimed by Canada in Canadian Order in Council PC-1977-1.

Since that exercise of restraint by the Government of the United States, the Government of Canada has believed it advantageous to notify the United States of a new position as indicated in note GNT-067. Although the Government of the United States can accept that it is the right of the Government of Canada to take whatever position it may wish in any eventual arbitration of these issues, the Government of the United States cannot accept that it must take into account newly adopted Canadian positions enlarging Canadian claims during the course of negotiations. Moreover, the Government of the United States cannot agree to refrain from exercising its jurisdiction at all times and places where Canada may assert an interest.

The Government of Canada may be assured that the Government of the United States will continue to exercise restraint in those areas under the jurisdiction of the United States which Canada claimed by way of the Canadian Order in Council PC-1977-1 as published in the Canada Gazette on January 1, 1977. However, the Government of the United States wishes to advise the Government of Canada that it does not give any credence or recognition to the new Canadian position asserted in note GNT-067.

As the Government of Canada is no doubt already aware, litigation in the United States has postponed indefinitely completion of the North Atlantic Outer Continental Shelf Oil and Gas Lease Sale referred to in the note of the Government of Canada of January 25, 1978. Should the lease sale be recommenced in the future, advance public notice will be given as provided by US law.

The Government of the United States welcomes the renewed commitment of the Government of Canada, expressed in its note of January 25, to a successful conclusion of the current maritime boundary and resource negotiations and wishes to assure the Government of Canada that the United States fully shares this commitment and the strong interest that no future step be taken by either party that could prejudice the outcome of these negotiations.

Department of State,  
Washington, February 3, 1978.

---

## Annex 71

NOTE NO. FLP-130 FROM MARCEL CADIEUX, SPECIAL NEGOTIATOR OF CANADA,  
TO LLOYD CUTLER, SPECIAL NEGOTIATOR OF THE UNITED STATES,  
DATED 10 APRIL 1978

LETTER FROM LLOYD CUTLER TO MARCEL CADIEUX, DATED 11 APRIL 1978

---

NOTE NO. FLP-130 FROM MARCEL CADIEUX, SPECIAL NEGOTIATOR OF CANADA,  
TO LLOYD CUTLER, SPECIAL NEGOTIATOR OF THE UNITED STATES,  
DATED 10 APRIL 1978

Department of External Affairs    Ministère des Affaires extérieures  
Canada

Brussels, April 10, 1978

No. FLP-130

Sir,

I have the honour to refer to the discussions which have taken place between representatives of our governments concerning a long-term agreement on maritime boundaries and related marine resources. I have the honour also to refer to the Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of Canada (The 1977 Reciprocal Agreement) signed in Washington, D.C., February 24, 1977.

While significant progress has been achieved toward conclusion of a long-term agreement, a number of issues remain to be resolved. As you are aware, the 1977 Reciprocal Agreement expired December 31, 1977. Pending conclusion of the long-term agreement, it is necessary to establish further agreed interim measures.

I therefore propose that each party continue on a reciprocal basis to observe the terms and conditions of the 1977 Reciprocal Agreement, as amended by the understandings set forth in the Annex to this Note. These understandings are designed to maintain existing fishing patterns with no initiation of new fisheries and no expansion of effort, and reflect experience gained under the 1977 Reciprocal Agreement and the mutual expectation of an early conclusion of a long-term agreement.

If this proposal is acceptable to the Government of the United States, I have the honour to propose that this Note and its Annex, which are authentic in English and French, together with your reply to that effect, shall constitute an agreement between our governments which shall enter into force following the completion of internal procedures by each government in accordance with its domestic laws and notification thereof to the other. I propose that the present Agreement enter into force on the date of the later of the two notifications. It is further proposed that the understandings contained in the Annex shall be regarded as constituting an integral part of the 1977 Reciprocal Agreement.

Unless the two governments agree on a further extension, this Agreement shall terminate on December 31, 1978, or forty-five (45) days following notice

by either party that it intends to withdraw from the Agreement, or upon the entry into force of a comprehensive long-term agreement between the parties on boundaries and marine resources, whichever occurs first.

Accept, Sir, the renewed assurances of my highest consideration.

/s/ M. CADIEUX

Ambassador M. Cadieux  
Special Negotiator for  
Maritime Boundaries (Canada/USA)

Special Negotiator Lloyd N. Cutler,  
U.S.A. Department of State,  
Washington, D.C.

*Annex*

1. The terms and conditions of Article V of the 1977 Reciprocal Agreement are replaced by the following:

- (a) On the Pacific Coast, there shall be no fishing for salmon by nationals and vessels of either Party in the zone of the other, except salmon taken by trolling beyond 12 nautical miles of the coast and salmon taken by trolling between 3 and 12 nautical miles in the area west of a line joining Bonilla Point and Tatoosh Island; north of a line projected due west on 47 degrees 6 minutes North latitude, and south of a line projected from Bonilla Point to latitude 48 degrees 29.7 minutes North, longitude 125 degrees 00.7 minutes West.
- (b) Each Party shall have the right to limit such fishing for salmon in its zone by nationals and vessels of the other to the same time periods as its nationals and vessels are permitted such fishing for salmon in the zone of the other.
- (c) In light of the number of immature salmon originating in the rivers of the United States found in the Swiftsure Bank area of British Columbia Statistical Area 21, Canada agrees to consult with the United States about the conservation need to close this area to all salmon fishing from April 15, 1978 through June 14, 1978. If the United States concludes that there is a conservation need to close the fishery during such period but Canada does not do so, the United States shall have no obligation to permit salmon fishing in its Pacific Coast waters by nationals and vessels of Canada on more favorable terms than the terms of the 1977 Reciprocal Agreement.
- (d) In light of the fact that U.S. and Canadian regulations differ as to the chinook salmon size limit, the United States agrees that Canadian salmon troll vessels, in the U.S. fishery conservation zone off the coast of the State of Washington, north of a line drawn due west from La Push (47 degrees 55 minutes North latitude) may have chinook salmon between 26 and 28 inches on board, subject to the following conditions:
  - (i) All such fish must be caught in the Canadian zone;
  - (ii) Upon entering the U.S. fishery conservation zone, all vessels shall report by radio to U.S. authorities on designated frequencies the number of chinook salmon on board the vessel between 26 and 28 inches in length, and shall notify the same authorities upon leaving the zone. The two Parties recognize that in certain areas, salmon fishermen traditionally troll back and forth between the zones of the two countries,

and that certain problems could arise with regard to the reporting requirements outlined in this paragraph when vessels are conducting continuous fishing operations in these areas. It is agreed that the appropriate enforcement authorities of the two Governments shall establish uniform procedures which recognize this particular situation and minimize disruption of fishing;

- (iii) Such fish shall be segregated or grouped for identification on board the vessel and the location and number of such fish recorded by the Master in order to facilitate inspection and enforcement. U.S. and Canadian enforcement authorities shall make periodic inspections to enforce this provision.

2. The two Parties note that negotiations are continuing toward an agreement on interceptions of Pacific salmon and that both Governments are committed to an intensive effort to conclude these negotiations in 1978. Such an agreement would provide a framework for improved management, development, and utilization of these salmon stocks. In the context of such an agreement, the Canadian authorities would be prepared to work with the U.S. authorities in developing coordinated regulations for the ocean troll fishery, including increased minimum size limits, such as 28 inches for chinook salmon, and other measures, off the Pacific coasts of Canada and the U.S.

3. The Parties note that paragraph 1 of this Annex provides for Canadian salmon troll fishing in a larger area in the U.S. fishery conservation zone than that provided for originally in the 1977 Reciprocal Agreement. The two Parties agree that this expansion of area shall not provide for an increase in the total Canadian salmon troll fishing effort in the U.S. fishery conservation zone over the existing level as intended in Article II, paragraph 3 of the 1977 Reciprocal Agreement. In accordance with paragraph 5 of this Annex, the two Parties shall consult to ensure that procedures are developed to monitor Canadian effort in the U.S. zone and to exchange information regarding that effort.

4. The United States recognizes that Canadian salmon troll vessels that might lawfully possess chinook salmon between 26 and 28 inches periodically lay-to at night in areas north of La Push, and that because of existing strong southerly currents, they may, while laying-to at night, drift south of 47 degrees 55 minutes North. The U.S. undertakes to assure that U.S. enforcement authorities will take this factor into account, but notes that no Canadian troll vessels with 26-28 inch fish aboard shall be permitted to conduct fishing operations south of La Push, nor drift further south than 47 degrees 46 minutes North latitude.

5. The two Parties recognize that the 1977 Reciprocal Agreement deals principally with the subject of reciprocal fishing privileges in their respective zones and that the rational management of fisheries subject to reciprocal fishing privileges is necessary in order to ensure their effective conservation. The two Parties recognize that their domestic management decisions regarding stocks of mutual interest may have conservation impacts of joint concern and therefore agree to consult quarterly, and at such other times as either may request, regarding appropriate action each may take to limit catches from these stocks. With this in mind, and in order to facilitate the harmonious implementation of this Agreement, the Parties agree that the following consultative mechanisms and procedures shall be established:

- (a) There shall be established two Consultative Committees, one for the Atlantic Coast and one for the Pacific Coast (hereinafter referred to as the Committees).

- (b) Each Committee shall be composed of members appointed by each Party who may be accompanied by advisors.
- (c) The Committees shall serve as fora for consultation on matters concerning the implementation of this Agreement. Unless otherwise agreed between the Parties, all questions shall be referred in the first instance to the appropriate Committee for its consideration. Each Committee shall meet at the request of either Party and at least quarterly.
- (d) Each Party agrees to notify the other of proposed regulatory measures affecting fisheries subject to reciprocal fishing privileges and to consult with the other Party on such measures within the Committees referred to above. Such consultations shall take place prior to the implementation of the regulatory measures concerned. Where one Party believes that urgent conservation concerns require immediate action, the Committee shall consider the matter within 48 hours of notification to the other Party during which time the proposed regulatory measure shall not be implemented.
- (e) Matters which have not been successfully resolved by a Committee, and matters of general concern which do not pertain solely to either the Atlantic or to the Pacific Coasts, shall be referred to the Special Negotiators of the long-term agreement without delay. In the absence of either Special Negotiator the matter shall be referred to an appropriately designated alternate.

6. In the event that a Party takes any action which, in the view of the other Party, adversely affects its fisheries in the zone of the Party taking action or in the boundary regions in a manner substantially incompatible with this Agreement, the consultative process described in paragraph 5 above shall be utilized. In the event that a matter is not thereby resolved within 14 days of referral to the Special Negotiators or designated alternates, either Party may take reciprocal action with regard to the activities of the fishing vessels of the other Party to an extent sufficient to re-establish the balance of fisheries interests between the two Parties.

7. The two Parties note the importance of exchanging catch and effort statistics on a regular and timely basis and monitoring the fishing activities of the vessels of one country fishing in the zone of the other. The Parties also note the need for vessels to be more conspicuously marked so as to provide for more effective enforcement surveillance. It is agreed that the two Parties will consult, in accordance with paragraph 5 of this Annex, on these matters in order to establish more effective procedures. In particular, each Party recognizes the reciprocal procedures for reporting by vessels of the other country of entry and departure into its zone and of catches taken in its zone, and agrees to consult in this regard.

8. Noting Article IX of the 1977 Reciprocal Agreement, the two Parties agree that in order to ensure the full and effective enforcement of this Agreement in the boundary region on the Atlantic coast, the enforcement authorities of each will closely co-ordinate their inspection and enforcement activities, including appropriate steps to facilitate the exchange of observers on the vessels of each Party.

LETTER FROM LLOYD CUTLER TO MARCEL CADIEUX, DATED 11 APRIL 1978

Excellency:

I have the honor to refer to your note of April 10, 1978, in which you noted that while negotiations are continuing toward a long-term agreement on mari-

time boundaries and related marine resources, agreed interim measures must be established.

You have proposed that each party continue on a reciprocal basis to observe the terms and conditions of the 1977 Reciprocal Fisheries Agreement between our two Governments signed on February 24, 1977, as amended by the understanding set forth in the annex to your note, with a view to maintaining existing fishing patterns.

I have the honor to inform you that the proposals contained in your note are acceptable to the Government of the United States of America and to confirm that your note and the annex thereto, which are authentic in English and French, together with this reply shall constitute an Agreement between our two Governments. As you proposed, this Agreement shall enter into force when each of our Governments has notified the other of the completion of its internal procedures in accordance with its domestic laws, on the date of the later of the two notifications. It is further understood that, unless the two Governments agree on a further extension, this Agreement shall terminate on December 31, 1978, or forty-five (45) days following notice by either party that it intends to withdraw from the Agreement, or upon the entry into force of a comprehensive long-term agreement, whichever occurs first.

Accept, Excellency, the renewed assurances of my highest consideration.

Lloyd N. CUTLER  
Special Maritime Negotiator

His Excellency Marcel Cadieux,  
Special Negotiator for Maritime Boundaries (Canada/USA),  
Brussels.

---

**Annex 72**

LETTER FROM MARCEL CADIEUX TO LLOYD CUTLER, DATED 2 JUNE 1978

*[See I, p. 465]*

NOTE NO. FLM-0092 FROM THE DEPARTMENT OF EXTERNAL AFFAIRS TO THE  
EMBASSY OF THE UNITED STATES, DATED 2 JUNE 1978

*[See I, p. 463]*

NOTE FROM THE EMBASSY OF THE UNITED STATES TO THE DEPARTMENT OF  
EXTERNAL AFFAIRS, DATED 2 JUNE 1978

DEPARTMENT OF STATE PRESS RELEASE NO. 237, DATED 2 JUNE 1978

---

NOTE FROM THE EMBASSY OF THE UNITED STATES TO THE DEPARTMENT OF EXTERNAL  
AFFAIRS, DATED 2 JUNE 1978

The Embassy of the United States of America presents its compliments to the Department of External Affairs and has the honor to refer to the Department's Note No. FLM 0092, of June 2, 1978, expressing the Government of Canada's intention to cease implementation on a provisional basis of the 1978 Interim Reciprocal Fisheries Agreement.

The Government of the United States regrets this decision by the Canadian authorities and has no alternative but to take corresponding action. Accordingly, Canadian fishing vessels will not be permitted to continue fishing in the United States Fishery Conservation Zone after noon, local time, June 4, 1978, except those vessels fishing for halibut pursuant to the Convention for the Preservation of the Halibut Fishery in the Northern Pacific Ocean and the Bering Sea of March 2, 1953, and those vessels fishing for highly migratory species of tuna, since these tuna species are exempted by the United States Fishery Conservation and Management Act of 1976 and by United States policy from coastal state control. The Government of the United States assumes that United States vessels will be granted a corresponding exception to fish for such highly migratory species of tuna in Canadian waters.

The Government of the United States welcomes the expressed intention of the Government of Canada to pursue reciprocal measures to avoid confrontation in the boundary regions, and in this connection wishes to state its intention to conform to the Canadian proposal to adopt flag-state enforcement procedures in the boundary regions along the lines of the 1977 Reciprocal Fisheries Agreement.

The Government of the United States welcomes and shares the commitment of the Government of Canada to pursue negotiations on maritime boundaries and related resource arrangements, as well as a long-term salmon interception agreement in an effort to conclude mutually acceptable agreements as soon as possible. In addition, the Government of the United States intends to proceed



with legislation approving the 1978 Interim Reciprocal Fisheries Agreement in hope that bilateral agreement to ratify its provisions will be attained in due course.

The Embassy of the United States of America takes the occasion to renew to the Department of External Affairs the assurances of its highest consideration.

DEPARTMENT OF STATE PRESS RELEASE NO. 237, DATED 2 JUNE 1978

June 2, 1978  
No. 237

*Statement on United States and Canadian Fisheries Zones*

The Department of State regrets the decision by the Government of Canada no longer to give provisional effect to the 1978 interim fisheries agreement, which provides for reciprocal fishing in the United States and Canadian 200 mile fisheries zones. Since this decision closes Canadian waters to United States fishermen, the United States has no option but to close its waters to fishermen from Canada during any periods when Canadian waters are not available to United States fishermen. We do not believe the Canadian action was warranted by any action taken by the United States Government.

The differences between Canada and the United States center on issues involving West Coast salmon and certain East Coast fish stocks. With respect to the issue of West Coast salmon fisheries, the 1978 interim agreement provided for access by Canadian fishermen to new areas in the United States salmon fishery on condition that, at the request of the United States, the Government of Canada close its Swiftsure Bank area salmon fishery from April 15 through June 14. The United States, on two occasions, requested for conservation reasons that this closure be instituted, but Canada, disagreeing on the need for conservation measures in the area, where most of the salmon present during that period are of United States origin, declined to institute full closure of the Swiftsure Bank area until May 15. In these circumstances, the United States was under no obligation under the terms of the agreement to grant extended access by Canadian fishermen to United States salmon fisheries. Nevertheless, the United States offered what it considered to be proportionately improved terms for Canadian salmon trollers.

On the East Coast, Canada called on the United States to take action to restrict efforts by United States fishermen to increase their take of certain fish stocks in the United States fishery zone. The United States pointed out that the 1978 interim agreement imposed no such obligation on the United States and that the United States had no legal basis for taking such action within the period of time contemplated by Canada. In light of the substantial differences which remained, the two governments were unable to find a solution to the problem.

The United States intends to proceed with legislation approving the 1978 interim agreement in hope that bilateral agreement to ratify its provisions will be attained in due course. In the meanwhile, the United States will cooperate with Canada to moderate actions on both sides in order to provide the best possible atmosphere for eventual resumption of reciprocal fishing arrangements.

The United States believes that the current situation illustrates the weakness of interim reciprocal fisheries agreements as compared with a long-term arrangement including mechanisms for settlement of differences. The issues brought to light in the current instance represent the kind of problem that would

be susceptible of solution in the context of a long-term agreement on fisheries and boundaries and a mutually agreed regime for limits on salmon interception. Both Canada and the United States, in light of recent events, have agreed to redouble their efforts to conclude a long-term agreement; and the special negotiators, Ambassador Marcel Cadieux of Canada and Lloyd Cutler of the United States, have agreed to meet in mid-June and again shortly thereafter to pursue the negotiations intensively.

---

**Annex 73**

TERRITORIAL SEA AND FISHING ZONES ACT, PROPOSED AMENDMENT TO THE FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, 112 *CANADA GAZETTE* (EXTRA), No. 79, 15 SEPTEMBER 1978, PP. 1-4

TERRITORIAL SEA AND FISHING ZONES ACT, FISHING ZONES OF CANADA (ZONES 4 AND 5) ORDER, AMENDMENT, 113 *CANADA GAZETTE*, No. 3, 26 JANUARY 1979, PP. 482-483

*[Not reproduced]*

---

## Annex 74

AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 14 SEPTEMBER 1978

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 20 SEPTEMBER 1978

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 15 FEBRUARY 1979

---

AIDE-MÉMOIRE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 14 SEPTEMBER 1978

The United States Government has noted the Government of Canada's decision to publish in the *Canada Gazette* an expanded claim in the Gulf of Maine area.

The United States Government will issue a statement rejecting that claim.

The United States Government will continue to exercise fisheries jurisdiction in that area and should Canadian fishing vessels attempt to fish within that area, the United States Government would have no choice but to enforce against them.

If, in response to US enforcement in the area, the Canadian Government should attempt to exercise jurisdiction not recognized by the United States Government, by seizing a US vessel, the Secretary of State would be required by Section 205 of the Fishery a [*sic*] Conservation and Management Act of 1976 to certify that fact to the Secretary of the Treasury, who would then be required to embargo Canadian fish products from the fishery or fisheries involved.

The United States Government is concerned about the possible confrontational situation which could arise from publication of the expanded Canadian claim, a situation which could damage the prospects for a resolution of the fisheries and boundaries dispute between us and could have unpredictable and possibly serious impact on the broader relationship between us. The United States Government would prefer, if a long term settlement is not possible, to arbitrate the boundary and to set up interim fishery arrangements acceptable to both sides to last until and beyond the completion of the arbitration. Lloyd Cutler, the US negotiator, is prepared at any time to resume talks to that end.

Department of State,  
Washington, September 14, 1978.

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 20 SEPTEMBER 1978

The Department of State refers the Embassy of Canada to the proposed Order in Council published in the *Canada Gazette* of September 15, 1978, extending Canada's claim of jurisdiction over the continental shelf and fisheries in the Gulf of Maine area.

The United States Government considers the new Canadian claim to be without merit. The United States believes that Georges Bank is a natural prolongation of United States territory and that, in view of the special circumstances existing in the Gulf of Maine area, the maritime boundary published by Canada on November 1, 1976, based on the principle of equidistance, is not in accord with equitable principles. *A fortiori*, a delimitation allocating an even larger area of the United States continental shelf to Canada is not in accord with equitable principles.

In the view of the United States, there is no justification in international law for discounting the effect to be given Cape Cod and Nantucket Island in determining the maritime boundary in the Gulf of Maine area. Cape Cod and Nantucket Island, areas closely linked to Georges Bank and of great historical, political and economic importance to the United States, do not constitute distorting projections.

Neither the claim published by Canada on November 1, 1976, nor the expanded Canadian claim can be justified by reference to the judgment of the Court of Arbitration concerning the delimitation of the Continental Shelf between the United Kingdom and the French Republic. In that case the Court rejected the equidistance theory Canada espoused in asserting its original claim and adopted the position which the United States maintains with respect to the relation of the concepts of "equidistance", "special circumstances" and "equitable principles". Nothing in that judgment lends credence to the expanded Canadian claim, which gives no effect to Cape Cod and Nantucket Island.

Further, the United States considers that expansion of the Canadian claim in the midst of negotiations is not in keeping with the obligation of States under the Convention on the Continental Shelf, done at Geneva April 27, 1958, and applicable principles of international law, to negotiate with a view to arriving at an agreement on the delimitation of maritime boundaries. The United States, although convinced that its boundary position would be upheld in any third party adjudication, has consistently indicated its readiness to arrive at a negotiated resolution of the boundary in the Gulf of Maine area. Unfortunately, Canada's action expands rather than narrows the differences between the two governments.

For these reasons, the United States rejects the expanded claim of Canadian jurisdiction. The United States will continue to exercise fisheries jurisdiction in the area of the expanded claim in accordance with United States law.

The United States is nonetheless prepared to continue negotiations toward a settlement of maritime boundary issues, or an agreement to submit unresolved maritime boundary issues to international adjudication.

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 15 FEBRUARY 1979

The Department of State refers to the Order in Council of January 24, 1979, announced in the *Canada Gazette* of September 15, 1978, and published in the *Canada Gazette* on February 14, 1979, asserting an expansion of Canada's claim to jurisdiction over the continental shelf and fisheries in the Gulf of Maine area.

The Government of the United States of America believes that the Canadian claim is without merit, and regrets that the Government of Canada has taken the decision to enlarge the differences between our two governments during the

course of active negotiations to resolve these differences. The Government of the United States of America set forth its views on this matter in the Department of State's notes of December 2, 1977, and September 20, 1978. The Government of the United States of America reaffirms the positions taken in those notes, and again rejects the expanded claim of Canadian jurisdiction. As stated in the Department's aide-mémoire of September 14, 1978, and its note of September 20, 1978, the Government of the United States of America will continue to exercise fisheries jurisdiction in the area of the expanded claim in accordance with the United States law.

The Department of State wishes to note, however, that notwithstanding this action by the Government of Canada, the Government of the United States of America is willing to work with the Government of Canada to complete the drafting of a treaty concerning fisheries of mutual interest to the United States and Canada in the Atlantic Ocean and a separate treaty, to be brought into force simultaneously with the treaty on fisheries, providing for binding third party settlement of the maritime boundary dispute in the Gulf of Maine area.

The Government of the United States of America looks forward to an amicable solution of this matter consistent with the strong ties of friendship and common concern that bind our two nations.

Department of State,  
Washington, February 15, 1979.

NBI # 33 (82C) 8/17/82

---

**Annex 75**

NOTE NO. 160 FROM THE EMBASSY OF CANADA TO THE DEPARTMENT OF STATE,  
DATED 29 MARCH 1979

*[See I, p. 477]*

NOTE FROM THE DEPARTMENT OF STATE TO THE EMBASSY OF CANADA,  
DATED 2 APRIL 1979

The Department of State presents its compliments to the Embassy of Canada and acknowledges receipt of the Embassy's note of March 29, 1979, concerning the Canadian claim in the Gulf of Maine area.

The Government of the United States of America reaffirms the positions set forth in the Department of State's note of February 15, 1979.

The Government of the United States of America shares the pleasure expressed by the Government of Canada that agreement has been reached between the two governments to submit the issue of delimitation of the maritime boundary in the Gulf of Maine area to binding dispute settlement. The Government of the United States shares the view expressed by the Government of Canada that in these circumstances further exchanges of diplomatic correspondence regarding the legal merits of the respective claims will not be necessary.

Department of State,  
Washington, April 2, 1979.

---

## Annex 76

LETTER FROM RONALD REAGAN, PRESIDENT OF THE UNITED STATES, TO SENATOR CHARLES PERCY, CHAIRMAN, COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, DATED 6 MARCH 1981

THE WHITE HOUSE  
WASHINGTON

March 6, 1981

Dear Mr. Chairman:

You and I have both been concerned about the treaties with Canada, signed March 29, 1979, dealing with East Coast fishery and maritime boundary matters, which have been before the Committee for two years.

At the heart of our concern, and the concern of your colleagues, has been a shared desire to solve the fishery problem and, at the same time, build a strong and close relationship with Canada, based upon good will and mutual respect, recognizing that both countries have independent national interests to pursue.

After examining the matter, it is clear to me that the fishery treaty cannot be ratified in a form that would be acceptable to Canada. There seems to be no controversy in relation to the boundary settlement treaty. Therefore, I believe that it would be best to uncouple the two treaties and proceed with the ratification of the boundary settlement treaty.

I request that the Committee meet on an urgent basis to recommend Senate advice and consent to ratification of the Treaty Between the Government of the United States of America and the Government of Canada to Submit to Binding Dispute Settlement and Delimitation of the Maritime Boundary in the Gulf of Maine Area, signed at Washington, March 29, 1979, subject to an amendment which would allow that treaty to be brought into force without the entry into force of the accompanying fishery agreement.

This course of action will ensure the settlement of the maritime boundary by an impartial and binding third party dispute settlement procedure. It will allow a future fisheries relationship between the United States and Canada to be built upon known facts and circumstances. I ask that the Senate return to me without further action the Agreement Between the Government of the United States of America and the Government of Canada on East Coast Fishery Resources, signed at Washington, March 29, 1979.

In connection with the exchange of instruments of ratification of the boundary settlement treaty it is my intention to take two other actions. The first would be to order the Coast Guard to forbear from the enforcement of US laws against Canadian fishing vessels in all maritime areas now claimed by Canada. While I firmly believe that there is no basis in international law for the claims that Canada has made, I also believe that if there is to be a peaceful resolution of the maritime boundary dispute, I must exercise this discretion in law enforcement. I also intend to suggest that the Secretary of Commerce work closely with the New England Regional Fishery Management Council to institute as soon as possible a fishery management plan for scallops on Georges Bank. I know the Secretary also intends to continue the fine technical cooperation we have had with Canada in the field of fisheries.



I believe that the course of action outlined above is in the best interest of the United States and will contribute to the close and cooperative relationship with Canada that we seek.

Sincerely,

/s/ Ronald REAGAN

The Honorable Charles Percy  
United States Senate  
Washington, D.C. 20510

---

**Annex 77**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, SERIES A, *LIMITS IN THE SEAS*, No. 2, CONTINENTAL  
SHELF BOUNDARY: NORWAY-SWEDEN

*[Not reproduced]*

---

**Annex 78**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 83, CONTINENTAL SHELF  
BOUNDARY: BAY OF BISCAY, FRANCE-SPAIN

*[Not reproduced]*

---

**Annex 79**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 86, CONTINENTAL SHELF  
BOUNDARY: CHILE-PERU

*[Not reproduced]*

---

**Annex 80**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 88, CONTINENTAL SHELF  
BOUNDARY: PERU-ECUADOR

*[Not reproduced]*

---

**Annex 81**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 69, CONTINENTAL SHELF  
BOUNDARY: COLOMBIA-ECUADOR

*[Not reproduced]*

---

**Annex 82**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 79, CONTINENTAL SHELF  
BOUNDARY: COLOMBIA-PANAMA

*[Not reproduced]*

---

**Annex 83**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 73, CONTINENTAL SHELF  
BOUNDARY: BRAZIL-URUGUAY

*[Not reproduced]*

---

**Annex 84**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 64, CONTINENTAL SHELF  
BOUNDARY: ARGENTINA-URUGUAY

*[Not reproduced]*

---

**Annex 85**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 85, CONTINENTAL SHELF  
BOUNDARY: THE GAMBIA-SENEGAL

*[Not reproduced]*

---

**Annex 86**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 68, CONTINENTAL SHELF  
BOUNDARY: GUINEA-BISSAU - SENEGAL

*[Not reproduced]*

---

**Annex 87**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH,  
OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 92, CONTINENTAL SHELF  
BOUNDARY: KENYA-TANZANIA

*[Not reproduced]*

---

**Annex 88**

TREATY ON DEMARCATION OF MARINE AREAS AND MARITIME COOPERATION  
BETWEEN THE REPUBLIC OF COSTA RICA AND THE REPUBLIC OF PANAMA,  
SIGNED 2 FEBRUARY 1980, ENTERED INTO FORCE 11 FEBRUARY 1982

A MAP OF THE MARITIME BOUNDARIES BETWEEN COSTA RICA AND PANAMA

*[Not reproduced]*

---

**Annex 89**

TREATY OF DELIMITATION BETWEEN THE REPUBLIC OF VENEZUELA AND THE KINGDOM OF THE NETHERLANDS, SIGNED ON 31 MARCH 1978, ENTERED INTO FORCE 15 DECEMBER 1978

*[Not reproduced]*

---

**Annex 90**

UNITED STATES DEPARTMENT OF STATE, BUREAU OF INTELLIGENCE AND RESEARCH, OFFICE OF THE GEOGRAPHER, *LIMITS IN THE SEAS*, No. 96, CONTINENTAL SHELF BOUNDARY: GREECE-ITALY

*[Not reproduced]*

---

**Annex 91**

WORKING PAPER SUBMITTED BY THE DELEGATIONS OF ARGENTINA AND CANADA,  
"THE SPECIAL CASE OF FISH STOCKS WHICH OCCUR BOTH WITHIN THE EXCLUSIVE  
ECONOMIC ZONE AND IN AN AREA BEYOND AND IMMEDIATELY ADJACENT TO IT";  
SUBMITTED AT THE SECOND PART OF THE NINTH SESSION OF UNCLOS III,  
GENEVA, 1980

WORKING PAPER ON MANAGEMENT OF THE LIVING RESOURCES OF THE SEA,  
SUBMITTED BY CANADA, REPORT OF THE COMMITTEE ON THE PEACEFUL USES OF THE  
SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION,  
PP. 164-174, UN Doc. A/AC.138/SC.II/L.8

---

WORKING PAPER SUBMITTED BY THE  
DELEGATIONS OF ARGENTINA AND CANADA

THE SPECIAL CASE OF FISH STOCKS WHICH OCCUR BOTH WITHIN THE EXCLUSIVE  
ECONOMIC ZONE AND IN AN AREA BEYOND AND IMMEDIATELY ADJACENT TO IT

This paper summarizes the special conservation and management problems relating to fish stocks which occur both within the Exclusive Economic Zone of a coastal state and the high seas and immediately adjacent to this zone of national jurisdiction. It is submitted to provide factual information concerning these stocks so that the Conference can review the existing draft LOS article on the subject with a view to determining whether or not the unique and valuable fisheries resources that they represent will be adequately managed and conserved pursuant to the proposed article.

*Fish stocks are single biological units and must be managed as such.*

Fish stocks which occur both within the coastal state's Exclusive Economic Zone and the sea beyond and immediately adjacent to it present a unique fisheries conservation and management challenge to the international community as a whole and in particular to coastal states, within whose zones such stocks occur. The fundamental point is that the fish stock which occurs both within the EEZ of a coastal state and the high seas beyond and immediately adjacent to it is a single biological unit. Experience off the coasts of countries where these fish stocks occur had demonstrated that overfishing of such resources in the seas beyond the economic zone will result in drastic reductions of the biomass of the stocks, and, accordingly, of the yield both within the coastal state's EEZ and in the high seas adjacent to this zone. Such high seas fishing activities have demonstrated that overfishing beyond the 200 mile limit invalidates coastal state efforts to adequately manage and conserve these stocks through conservation measures within the 200 mile limit.

*Overfishing outside 200 miles on straddling stocks erodes the rights of the coastal state inside 200 miles and the international community beyond.*

The special problem that results from any inadequate conservation and management regime in the seas beyond and immediately adjacent to the 200

mile Exclusive Economic Zone has two component parts. Overfishing of such straddling stocks beyond 200 miles, in that it invalidates coastal state management and conservation measures within the EEZ, can result in the loss or reduction of coastal state benefits intended to be derived from existing provisions in the ICNT. While a basic element of the EEZ concept is the recognition of the coastal state sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources within this zone, it is now being demonstrated that inadequately controlled fishing activities outside the zone on a stock occurring both within and beyond the EEZ may severely reduce that single stock unit. (See attached case studies.) The international community as a whole also suffers from the resultant depletion of valuable protein rich resources and lost fishing opportunities in the area both within and beyond the EEZ.

*Application of different management regimes inside and outside 200 miles to a single stock inevitably results in depletion.*

In order to ensure that no such mismanagement and concomitant loss of valuable fisheries rights and resources occurs it is imperative to ensure that the productivity of these straddling stocks is maintained and improved. Recognizing on the one hand that fish are not constrained by limits of national jurisdiction and, on the other hand, that such jurisdictional limits cannot be adjusted to accommodate the variations in the exact location of fish concentrations that result from environmental conditions, adherence to the functional and scientific concept of managing these fish stocks as a single biological unit appear to provide the only sound and practical solution. The application of different management philosophies to a single stock inevitably results in a level of harvesting from the whole stock approaching the less conservative management level. If catch quotas are also divided, control on a continuous basis becomes almost impossible, particularly when the area of fishing is close to the limits of national fisheries jurisdiction. While for a limited time period the less conservative regime may benefit from the measures implemented under the more conservative approach, eventually not even this sounder conservation and management scheme will be able to prevent a serious and continually worsening decline in the total fish stock.

*Speedy and effective action by international tribunals may provide the necessary assurance of control.*

Experience has shown that even where control measures exist pursuant to a regional fisheries organization for that portion of a straddling stock extending beyond 200 miles, these measures are frequently inadequate to prevent overfishing of quotas, unreported by-catches and inadequate biological sampling. The situation is worsened by the entry of fleets belonging to countries which are not members of the organization concerned, and whose catches are, therefore, overruns of the total allowable catch limits established by the organization. Again one of the results is the erosion of the benefits of sound management and stricter controls applied by the coastal state to that same stock occurring within its zone.

Conservation considerations alone then make it imperative that stocks occurring both within the Exclusive Economic Zone and in the seas beyond and immediately adjacent to it be treated as a single management unit and, through ensuring consistency of sound conservation measures for the stock throughout its entire range, guarantee the existence of a stable productive resource. The

existing ICNT article dealing with this subject already recognizes that the coastal state concerned and the states fishing for such stocks in the adjacent area are to consult with a view to agreeing upon the measures necessary for the conservation of these straddling stocks in the adjacent area. However, given the serious conservation problems which have already begun to emerge, as a result of either nonexistent or ineffective management controls, it is necessary to review the adequacy of this approach. In particular, it is important to consider the possible case in which no adequate conservation measures for the straddling or adjacent area stock have been agreed to by those states concerned. In order to prevent the degeneration of the stock it should be ensured that conservation measures are established which take into account the international community's general interest in the conservation of the resources of the high seas and the coastal state's particular interest in maintaining the productivity of the stock as a whole so as to ensure that its sovereign rights over that portion of the stock found within its zone are not vitiated.

### *Annex I. Case Study: Northwest Atlantic*

Fishing fleets in the Northwest Atlantic over the past 30 years developed enormous effort on groundfish species, predominantly cod, and redirected this effort to other species as catches of groundfish dwindled. The international fisheries commission established for the area, ICNAF (International Commission for the Northwest Atlantic Fisheries), adopted catch regulations relatively late in the period and most cod stocks did not come under regulation until the 1974 fishery year. It is well known that this quota regulation proved inadequate, largely because the scientific advice aimed at maintaining the status of the stocks was based on data from two years prior to the year in which the measures were applied, during which time the stocks had declined substantially. The scientific information itself was not complete since many catches were not reported, and the management decisions taken within ICNAF were more often based on political factors than biological ones.

The situation changed with the developing momentum towards and final establishment of 200 mile limits. In waters under coastal state control the stocks are recovering, while for stocks in waters which straddle the 200 mile limit and stock entirely beyond, the recovery is not taking place. The table provides information on three cod stocks: one entirely inside the Canadian Zone, one which straddles the 200 mile limit and one stock entirely beyond the Canadian Zone.

The changes in the population status of the stocks may not be apparent fully in the table and the following comments are noted:

1. Labrador-Newfoundland Stock

The biomass is increasing rapidly and it is projected that the spawning component will quadruple between 1978 and 1982.

2. Grand Banks Cod

This stock is in a very depressed condition, the sustainable catch being estimated to be only 16 percent of the maximum sustainable yield, and no recovery has been noted.



Comparison of cod stocks TACs (and catches) 000 mt

Stock Year	Labrador-Newfoundland (stock is inside 200 miles)	Grand Banks (straddling 200 mile limit)	Flemish Cap (entirely beyond 200 mile limit)
Maximum Catch	807 (Year-1968)	227 (Year-1967)	60 (Year-1965)
1974 TAC	657	100	40
Catch	373	73	25
1975 TAC	554	88	40
Catch	287	44	22
1976 TAC	300	43	40
Catch	214	24	22
1977	160	30	25
Catch	172	18	27
1978 TAC	135	15	40
Catch	145	15	31
1979 TAC	180	25	40
Catch	N/A as yet	—	—
1980 TAC	180	0	10 (4 months)

*Annex II. Case Study: Southwest Atlantic Depletion of the *Micromesistius Australis* (Polaca) by Distant Fishing Vessels*

This species, which is found in the cold waters of the Malvinas Current, has been studied by the Japanese ship *Kaiyo Maru* during fishing research fieldwork undertaken in December, 1969 and in January, 1970 and by the fieldwork carried out by the research vessel *Walter Herwig* in January and February, 1971.

From the analysis of the information gathered as a result of the fieldwork carried out in 1969/70 and 1971 it has been possible to determine that the biomass of *micromesistius australis (polaca)* was 2,095,742 tons and the maximum allowable catch was 523,000 tons. (The above figures derive from the processing of data undertaken by ictiologists from the Argentine Museo de Ciencias Naturales "Bernardino Rivadavia" (Argentine Museum of Natural Sciences).)

Subsequently more fishing research fieldwork was carried out by the *Shinkaimaru* and again by the *Walter Herwig* in 1978/79. This information was processed by the Instituto Nacional de Investigacion y Desarrollo Pesquero (National Institute of Fisheries Research Development).

In this way the Argentine fishing authorities had available scientific information relating to two periods — 1969/70 and 1971 on the one hand and 1978/79 on the other — separated by 7/8 years during which fishing fleets under several flags fished in an intensive way in the areas of the southwest Atlantic over which this species extends. From the fieldwork carried out in 1978/79 it was possible to determine the presence of a biomass of *micromesistius australis (polaca)* of 435,747 tons in winter and a biomass of 627,625 tons in summer. It is

evident that even considering the highest figure, a drastic reduction of the species has taken place in a lapse of 7/8 years given that the biomass of 2,095,742 tons has been reduced to 627,625, i.e. to only a third of the original biomass.

Even though no reliable information on the size of the catch *australis (polaca)* by foreign vessels is available, there is concrete evidence of the presence of large fleets fishing this species. The fact that one of the countries that fishes frequently in the area is not a member of the FAO means that the data published by that organization on catches between 1971 and 1978 do not reflect the real magnitude of fishing undertaken by that country in the area.

6. WORKING PAPER ON MANAGEMENT OF THE LIVING RESOURCES OF THE SEA,  
SUBMITTED BY CANADA\*

### I. Introduction

This working paper is submitted by the delegation of Canada for discussion purposes, and does not necessarily reflect the final definitive views of the Canadian Government.

In the view of the delegation of Canada the functional approach provides the soundest basis for a rational system of management of the living resources of the sea. On this basis it would be recognized that different management regimes may be required for different species groups. However, there are certain basic principles which should form the foundation of any management regime for marine living resources. The purpose of this working paper is to outline the essential elements of this functional approach to management of marine living resources, and to further amplify the principles underlying this approach in relation to their possible reflection in future treaty articles.

### II. The Functional Approach to Management of Living Resources of the Sea

#### *Relationship to Management of Marine Environment as a Whole*

The functional approach to fisheries management views such management as forming part of the broader concept of management of the marine environment as a whole. The importance of that broader concept, and its relationship to fisheries management, was stressed at the second session of the Intergovernmental Working Group on Marine Pollution which was held in Ottawa in November, 1971. The statement of objectives adopted in the report of that Working Group has since been adopted by the Stockholm Conference on the Human Environment and may be regarded as the foundation for sound principles of fisheries management. It reads as follows:

*"The marine environment and all the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired. This applies especially to coastal nations, which have a particular interest in the management of coastal area resources. The capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited. Proper management is required and measures to prevent and control marine pollution must be regarded as an essential element in this management of the oceans and seas and their natural resources."*

#### *Differentiation of Species*

In further developing the functional approach to fisheries management, it is necessary to differentiate between various groups of species with a view to identifying the types of regimes that may be most appropriate in each case. Thus, marine living resources can be conveniently classified into four broad ecological groups on the basis of their distribution and migratory behaviour, namely (a) sedentary species, (b) coastal species, (c) anadromous species, and (d) wide-ranging species.

---

\* Originally issued as document A/AC.138/SC.II/L.8.

(a) Under the terms of the 1958 Convention on the Continental Shelf, the coastal state exercises exclusive sovereign rights over living organisms which are defined as *sedentary species*, i.e. those organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil. In the Canadian view this approach to the management of sedentary species is appropriate and adequate in that it recognizes the interrelationship between the management of living and mineral resources and assigns to the coastal state unitary and full authority over all the resources appertaining to its continental shelf.

(b) The next broad category of marine living resources relates to the *coastal species*. These are the non-sedentary, free-swimming species which inhabit nutrient-rich areas adjacent to the coast. Some fish and shellfish species live in close association, but not, at the harvestable stage, in constant physical contact with the seabed. Other species inhabit the waters immediately above the seabed; others are truly pelagic in that they inhabit surface or mid-water areas; yet others are pelagic through most of their lives but return to the seabed or shallow coastal areas to reproduce. Since, in general, the productivity of these species is dependent in large part on land-related factors, the coastal state has a special responsibility as well as a special interest in the maintenance of their productivity which, in the Canadian views, should be duly reflected by assigning to the coastal state the authority to manage these species as well as a preferential position in their utilization.

(c) The *anadromous species* represent a special component of the coastal species. They are bred and spend their early life in the rivers of the state of origin. Even though they may travel far to sea away from their rivers of origin, they return to these rivers to reproduce. If the state of origin did not take special measures to maintain these rivers in fit condition, the most important stocks of anadromous species would soon disappear. Maintenance of the rivers is a costly undertaking for which the state of origin bears sole responsibility. In recent years, many nations have spent increasing sums to enhance the production of anadromous species by artificial means, adding to the costs of maintaining the runs. Management of the runs on a stock basis is best achieved when the fish are approaching their home rivers, when they have achieved their maximum poundage and are in prime condition in their home waters.

In the case of anadromous species, therefore, more so than any other species, the state of origin has virtually sole responsibility for the continued existence of the stocks and must make major expenditures to assure continuation of the runs. These heavy and unique responsibilities and the high cost of exercising them, in the view of the Delegation of Canada, can be justified only if management authority is vested in the state of origin and if that state, in principle, has the sole right to harvest the anadromous species bred in its own rivers. As a step in this direction, the Canadian authorities have proposed that fisheries for these species should not be conducted on the high seas.

(d) Finally, there is a group of *wide-ranging species*, including most of the large pelagic fish such as tunas and most of the marine mammals. It might also be envisaged that fish which inhabit waters over the deeper parts of the oceans, the "bathypelagic" species, could also be considered with the wide-ranging species for purposes of formulating a common management regime. By virtue of their distribution over wide oceanic areas, as well as their temporary presence in certain seasons in coastal waters of various states, an international authority composed of interested states would appear to be the most appropriate mechanism for management of these species. Taking into account the degree of dependence of individual species on coastal waters, consideration should be

given to the provision that might be made to accommodate coastal state interests in these species during the period in which they inhabit coastal waters.

### III. Special Interest of the Coastal State

*The coastal state has a special interest in and responsibility for the conservation of the living resources of the sea adjacent to its coast and should have the authority required to manage those resources in a manner consistent with its special interest and responsibility, as well as preferential rights in the harvest of such resources.*

This principle has particular application to the management of the *coastal* and *anadromous* species (having already been given maximum application in respect of the *sedentary* species). The limited recognition of the special interest of the coastal state in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas is not sufficient to enable a coastal state to implement an effective system of management of coastal fishery resources. This special interest derives from the responsibility of the coastal state with respect to productivity of living resources adjacent to its coast, as well as from the longstanding socio-economic dependence of coastal communities on nearby fish stocks.

The relationship between land and sea in coastal areas imposes certain responsibilities upon the coastal state. It must protect the coastal environment where living resources are concentrated, and which for many species is vital to reproduction, early development or feeding. The waters bordering the continents are far more productive than the open oceans. This productivity is subject to decline through the adverse effects on the marine environment caused by entry of river-borne and air-borne pollutants, dumping of refuse and industrial wastes, and shoreline alterations such as land fill projects. The responsibilities which the coastal state must assume in maintaining resource productivity and quality, and the costs it bears in meeting this responsibility, must be balanced by the *authority to manage* and the *preferential right to utilize* adjacent living marine resources, subject to *internationally agreed principles* (discussed below).

Coastal populations in areas remote from industrialized locations are usually dependent on some form of primary industry for their continued wellbeing. In many cases fisheries are the only form of employment available to most of the population. The population tends to be scattered over a number of small communities, each maintaining a balance, sometimes precarious, between the size of the community and the abundance of the fish species on which it depends. Each community tends to exploit fishery resources in its immediate vicinity. Such coastal populations are often not capable of wide-ranging fishing operations. Over-exploitation of coastal living resources has serious socio-economic consequences for the coastal state, whose dependence on coastal resources must be taken into account. For some species the coastal state could have exclusive exploitation rights; for others a preferential share in the harvest could be adequate. It could also be envisaged that the coastal state could share in the benefits from coastal resources without actually fishing, for example, through a leasing arrangement with other states.

As regards the *limits* of the area under the management authority of the coastal state, these could be biological or geographical in nature. If biological, the functional authority of the coastal state could be exercised in accordance with the known distribution and zoogeographical limits of the stocks being managed, excepting the territorial or jurisdictional waters of another state. It may be, however, that some form of geographic delimitation of authority, related to the relevant biological limits, will be considered desirable or necessary for practical administrative purposes.

#### IV. Basic Principles for Coastal State Management

The following principles would be applicable to any system for the rational management of the living resources of the sea. They are elaborated here, however, with particular reference to the management of coastal species by the coastal state, whose authority and preferential rights would be governed by these principles, as would also the participation of other states in particular fisheries under management by the coastal state.

It must be recognized that the special interest of the coastal state in the fisheries resources adjacent to its coast, is an overriding principle in the sense that particular social and economic circumstances of the coastal state may necessitate modification of these principles in particular fisheries. What is essential is that the use of coastal fisheries resources should be of maximum benefit to the people of the coastal state in terms of economic efficiency, contribution to the economy and improvement of social conditions.

*(1) Yield from a fishery should be allocated among participants, on the basis of some appropriate formula, so that each participant may obtain his share on the most advantageous basis.*

Stocks may be protected from overfishing, and yields maximized in the long term, by regulating fisheries to take appropriate annual catches. If such regulation does not also include a scheme of allocation to participants the resultant competition for the available catch will inevitably result in wasteful inputs of capital and manpower. Under such circumstances, some participants will be able to compete more effectively than others and in extreme situations one or two participants may be able to appropriate most of the catch to themselves, though at costs which may be greater than the yield value. In fairness to all participants, yields should be allocated in a way that does not discriminate between their fishing capacities. To date, such allocation is rare in international fisheries, and in fact was achieved for the first time earlier this year with respect to allocation of herring and groundfish catches within the International Commission for the Northwest Atlantic Fisheries. (Questions relating to the method of allocating shares are discussed in connexion with the immediately following principle.)

*(2) Access to a fishery should be controlled, on the basis of some appropriate formula, to ensure that no more than the maximum biological yield is taken, and that it is taken without unnecessary investments of capital and manpower.*

Controlled access is, of course, an obvious consequence of any system of share allocation. The objective of rational fishery management should be to constrain the productive capacity in a fishery, by controlling access, so that the yield is taken with no greater effort than necessary, taking into account, however, relevant social factors. This concept may be extended, and it could be envisaged that economic rationalization of fisheries would include the objective of obtaining maximum economic yield from the resource. This would mean that fisheries would be exploited so that the difference between value of the yield and cost of obtaining the yield is at a maximum. This objective can usually be attained by fishing at a point slightly below the maximum sustainable yield. Indeed there are some situations where the fishing effort required to reach the maximum sustainable yield may be out of all proportion to the increase in catch so attained.

While the application of a policy of this kind is especially difficult in the case of fish stocks exploited by fleets of different nations, a reasonably satisfactory solution would be to establish an overall catch limit, with shares allocated to

participants. With assurance of a pre-determined share in the catch, each country is in a position to utilize that share to the best advantage in terms of its particular social goals. In the view of the Delegation of Canada, the coastal state should have the authority to determine the allowable yield for the various stocks of coastal species falling under its management, in accordance with the principles herein outlined and in consultation with regional advisory commissions. It is because international experience has demonstrated the difficulty of reaching consensus on particular measures needed on the basis of scientific data that it is proposed that the coastal state should have authority to impose a decision where consensus is not possible.

As to the formula which would be used to determine the share of other States participating in a fishery subject to management by a coastal state, the essential factor would be to provide for recognition of the principle that the coastal state could reserve for itself a share proportionate to its needs and its capacity to exploit the stock in question within the limits of agreed conservation criteria. With this principle established, the question of allocation of shares among other participants would, of course, be greatly simplified and could be left for determination by regional advisory commissions (which could draw upon the developing experience of such bodies as ICNAF in this field). The same situation could also prevail with respect to the entry of new participants into a particular fishery.

*(3) Management must be carried out on the basis of widely recognized and internationally acceptable scientific and socio-economic criteria.*

This is essential for both effectiveness and equity. Without agreement on such criteria there would be no objective guidelines for the exercise of management authority or to help avoid or resolve disputes which might arise. Hence internationally agreed criteria are essential to any management regime, including coastal state management.

*(4) Management should provide for control of the rate of expansion of fisheries.*

Many of the current problems in international fisheries management are the result of rapid and uncontrolled increases in fishing; the consequences of such increases are often not apparent until the damage has been done. There are many examples where declining yields from fisheries are thought to be at least partly caused by sudden and opportunistic increases in fishing giving temporary yields which the stocks cannot maintain in the long term and which in extreme situations may seriously impair the capacity of the stocks to reproduce. Recovery of stocks under these conditions may be very slow, resulting in negligible yields over a long period of years and possible long-term imbalances in marine biological communities with consequences that are at present unforeseeable.

*(5) All fish caught should be reported and utilized.*

Fisheries should not be conducted so that significant amounts of the species sought, or species taken incidentally to the species sought, are discarded at sea. This practice, unfortunately, is now far too prevalent in fisheries for highly-valued species where substantial quantities of other species are caught and discarded despite the fact that these other species are valuable to other participants and may themselves be subject to conservation regulations.

*(6) Fisheries for human consumption should in principle take priority over competing fisheries for reduction to fish meal.*

The oceans are gaining in importance as a source of protein. The most effi-

cient way to use this protein is to make it available directly as food, rather than use it in animal feeds to produce less protein. Wherever the possibility exists to use species directly for human consumption, fisheries for such purposes should receive priority. Special circumstances, such as traditional fishing patterns and socio-economic needs of states conducting the fisheries will have to be taken into account. Processing of fish waste and of species not directly marketable for human consumption, to produce acceptable protein concentrates which may be used as food additives for human consumption, may eventually achieve greater importance relative to fish meal.

*(7) Any management regime for an internationally-exploited fishery must be prepared to report to the international community on the exercise of its management authority; appropriate dispute-settlement procedures should be provided for.*

Responsibility for resource management must carry sufficient authority to fulfil that responsibility. While the exercise of authority should be subject to review, the authority itself should not be open to challenge. The concept of coastal state management of coastal species as "custodian" for the international community would not imply some form of close supervision over the exercise of powers and the discharge of responsibilities by a coastal state, but rather that the exercise of powers in accordance with internationally agreed criteria would be subject to appropriate dispute-settlement procedures.

As to whether the coastal state would be required to submit to dispute-settlement procedures where it reserved an entire stock to meet its special needs, the view of the Canadian delegation is that dispute-settlement procedures should apply in such event only if the dispute concerned the achievement of full utilization of that stock, or of a dependent stock of another species, within the limits of agreed conservation requirements.

As to whether the coastal state would be accountable for the exercise of its authority over the whole of a stock's range including the territorial sea and the exclusive fishing zone, it might be considered inappropriate to seek any diminution of the coastal state's rights in respect of fisheries within the territorial sea and exclusive fishing zone. It must be recognized, however, that it would be anomalous for any sound system of fisheries management to apply one set of conservation principles within the territorial sea and exclusive fishing zone and a conflicting set in areas immediately adjacent thereto.

*(8) All countries participating in an internationally-exploited fishery should cooperate with the designated management authority.*

Participants should contribute a fair share of the costs of managing the resource proportionate to their returns from that resource, and should provide the information needed for management purposes (catch, effort and biological statistics, etc.). Contributions by participants might be in the form of research programmes, for instance. It should not be expected that a few participants should bear this burden on behalf of all participants, although the primary responsibility would be that of the coastal state.

*(9) The quality of ocean waters must be maintained.*

As discussed in Section II, it has been accepted that management of fishery resources cannot be divorced from management of the marine environment as a whole. Maintenance of environmental quality is necessary on two counts; first, to ensure that the reproductive capacity and other life processes of the species are not impaired through environmental degradation, and secondly to ensure that contaminants dangerous to human life and health are not concentrated in marine food chains to the point where species become unusable for human con-



sumption. Here also the coastal state has a special interest and responsibility, as recognized by the Stockholm Conference.

### V. Scientific Principles

As noted above (Section IV, Principle 3), all fisheries management systems must be founded upon certain basic scientific principles if they are to maintain the productivity of the resource and the value of its yield. Examples of such principles are mentioned below. They are not intended to be exhaustive nor comprehensive, but to illustrate the relevance of scientific factors to sound management. The dynamic state of fisheries science requires its frequent review on a world-wide basis. Such review and further elaboration of scientific principles can most appropriately be carried out through specialized technical agencies.

#### (1) *Stocks should be managed as individual units.*

Few species form homogeneous mixtures of individuals throughout the species' range. Rather these individuals tend to be grouped into separate populations or stocks, often associated with particular oceanographic features, such as current systems or distinct shelf areas, with little interchange between the separate groups. Each group will have its own particular set of biological characteristics such as growth rate or mortality rate, dependent on its genetic makeup and the environment which it inhabits. Each will respond to fishing pressure in a different way, depending on the size of the particular stock and its unique characteristics. Management procedures should be designed to take account of the varying characteristics of each stock.

The areas inhabited by such stocks will vary in size, but for coastal species are usually well-defined. For some stocks, the distribution may extend to coastal waters of several adjacent states; for others the distribution will be confined to the adjacent waters of a single state. In any case, the stock must be managed as a whole if management is to be effective. This is not to say that stocks should be managed in isolation from other stocks of the same species, or in isolation from other species. The management system must be effective for exploited species over broad coastal areas; otherwise fishing effort is simply diverted to species or stocks not under regulation.

#### (2) *Exploitation of unit stocks should be controlled so that production of new age groups or "recruits" is at a maximum.*

Under conditions of very low exploitation the full potential productivity of the stock may not be realized, and annual yields are less than they could be. The same situation may apply under conditions of very high exploitation in that stock size may be reduced to the point where annual production of new individuals is below that which the species is capable of maintaining. Under extreme conditions of over-fishing the stock may be reduced to the point where commercial fisheries can no longer be carried out. Thus enough fish must be allowed to escape the fisherman to ensure the continued presence of an adequate spawning stock.

#### (3) *Each age group of a species, as it becomes available to fishing, should be fished at the point when its contribution to catches can be greatest.*

As an age group becomes older it gains in weight as a whole owing to the growth of the individuals, and loses weight owing to natural mortality. In early life, growth is rapid and the gains outweigh the losses. At the point where these gains and losses are in balance, the age group will have attained its maximum

weight, and it is at this point that its maximum contribution to catches can be made, *taking into account, however, relevant economic and social considerations*. Under conditions of heavy exploitation, fish tend to be caught at too small a size and catches are lower than they could be if the individuals were allowed to grow.

Abundance of individual age groups is often variable from year to year, but can usually be predicted in advance, sometimes several years in advance, of the time when the greatest yield from the age group can be taken. This allows time to plan fishing operations to make best use of the stocks.

#### VI. Role of International Commissions

*In the view of the Canadian Delegation, only the coastal state can effectively implement the above-noted principles for the management of coastal species. The coastal state has the most to lose if adjacent stocks are not soundly managed. Only the coastal state is in a position to take prompt action in response to urgent conservation needs. By reason of geography the coastal state is in the best position to assume and exercise authority. Such authority would be the natural consequence of the responsibilities which the coastal state must already meet with respect to coastal species.*

However, the system of coastal state management for coastal species envisaged by the Canadian Delegation would not preclude a role for international fishery commissions within the context of that system. In the view of the Canadian Delegation such commissions could have an important advisory role vis-à-vis the coastal state in its discharge of its management functions. Certain specific elements of that advisory role have already been discussed in connexion with some of the principles outlined above. In more general terms, international fishery commissions, established on a regional basis and comprising both coastal and distant-water fishing states, could provide a forum for co-operation and consultation and, in particular, a most useful mechanism for the collection, presentation and analysis of the statistical and biological data required for management purposes. Similarly, particular forms of consultation and cooperation might be instituted, with or without the establishment of a *formal commission, in cases where particular stocks of coastal species fall under the management authority of two or more neighbouring coastal states*. As regards cases where wide-ranging migratory species temporarily inhabit waters where a coastal state has management authority, that state should be a member of the appropriate commission responsible for the management of the migratory species in question.

---

Volume V  
Documentary Annexes, Nos. 92 to 99

**Annex 92**

C. H. M. WALDOCK, "THE INTERNATIONAL COURT AND THE LAW OF THE SEA", THE FIRST CORNELIS VAN VOLLENHOVEN MEMORIAL LECTURE, 22 MAY 1979, CORNELIS VAN VOLLENHOVEN FOUNDATION, T.M.C. ASSER INSTITUTE, 1979, PP. 1-17

C. H. M. WALDOCK, "THE LEGAL BASIS OF CLAIMS TO THE CONTINENTAL SHELF, THE GROTIUS SOCIETY, *TRANSACTIONS*, 1950, VOL. 36, PP. 115-148

*[Not reproduced]*

---

**Annex 93**

A. GROS, "LA CONVENTION SUR LA PÊCHE ET LA CONSERVATION DES RESSOURCES BIOLOGIQUES DE LA HAUTE MER", *RECUEIL DES COURS*, TOME 97, 1959, PP. 1-89

*[Not reproduced]*

---

**Annex 94**

T. W. FULTON, *THE SOVEREIGNTY OF THE SEA*, EDINBURGH, WILLIAM BLACKWOOD AND SONS, 1911, PP. 581, 609-610, 612, 616-617, 630-640, 701-711

*[Not reproduced]*

---

**Annex 95**

D. J. DRISCOLL AND N. MCKELLAR, "THE CHANGING REGIME OF NORTH SEA FISHERIES", IN *THE EFFECTIVE MANAGEMENT OF RESOURCES: THE INTERNATIONAL POLITICS OF THE NORTH SEA*, C. M. MASON, ED., LONDON/NEW YORK, 1979, PP. 125, 128-139

A. UNDERDAL, *THE POLITICS OF INTERNATIONAL FISHERIES MANAGEMENT: THE CASE OF THE NORTHEAST ATLANTIC*, OSLO, UNIVERSITETSFORLAGET, 1980, PP. 61-99

*[Not reproduced]*

---

**Annex 96**

S. ODA, "PROPOSALS FOR REVISING THE CONVENTION ON THE CONTINENTAL SHELF", *COLUMBIA JOURNAL OF TRANSNATIONAL LAW*, VOL. 7, SPRING 1968, NO. 1, PP. 1-31

*[Not reproduced]*

---

**Annex 97**

S. RHEE, "SEA BOUNDARY DELIMITATION BETWEEN STATES BEFORE WORLD WAR II", *AMERICAN JOURNAL OF INTERNATIONAL LAW*, VOL. 76, NO. 3, 1982, 555, PP. 556-558

*[Not reproduced]*

---

**Annex 98**

*KNIGHT V. WILDER*, 56 MASS. (2 CUSH.) 199 (1948)

*WONSON V. WONSON*, 96 MASS. (7 ALLEN) 71 (1867)

*SPATH V. LARSEN*, 20 WASH. 2D 500, 148 P.2D 834 (1944)

*DRIESBACH V. LYNCH*, 71 IDAHO 501, 234 P.2D 446 (1951)

*[Not reproduced]*

---

**Annex 99**

- ④ CHART OF PROPORTIONALITY TEST APPLIED TO AN EQUIDISTANT LINE: AREA DETERMINED BY REFERENCE TO THE BASE POINTS WHICH DETERMINE THAT LINE
-