

CHAPTER 2

Outer Continental Shelf Lands Act (Public Law 212)

21. GENERAL STATEMENT

On August 7, 1953, H.R. 5134 of the 83d Congress, 1st session, was signed into law as Public Law 212 and identified as the "Outer Continental Shelf Lands Act."¹ The act provides for the jurisdiction of the United States over the submerged lands of the outer continental shelf, and authorizes the Secretary of the Interior to lease such lands for certain purposes. Thus, Congress for the first time asserted jurisdiction over the vast submarine area that fringes our coasts and over which the high seas flow.²

Public Law 212 asserts federal rights over the continental shelf of an extraterritorial nature and does not operate as an extension of national territorial limits, in the sense that the territorial waters define the national boundaries.

1. 67 Stat. 462 (1953). Although the law as enacted is H.R. 5134, its provisions are those of S. 1901, the latter having been substituted by a Senate amendment. 99 CONG. REC. 7264 (1953). H.R. 5134, as passed by the House, was in reality Title III of H.R. 4198 (Titles I and II applied to lands within state boundaries, and Title III to the outer continental shelf). Provisions for federal control over the continental shelf had been embodied originally as Title III in S.J. Res. 13, which became the Submerged Lands Act (*see* 12 note 6). By the time the resolution reached the Senate floor, Title III had been dropped because no satisfactory legislative solution could be devised for the complex problems posed by the continental shelf. Because of this action by the Senate and in order to expedite passage of a continental shelf lands act, the House separated Title III from its original bill (H.R. 4198) and designated it H.R. 5134. A separate bill (S. 1901) was thereafter passed by the Senate and took the place of everything in H.R. 5134 except the enacting clause. For a more extended treatment of the legislative history of the act, *see* Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 STANFORD LAW REVIEW 23, 28-31 (1953). (For pertinent excerpts from the act, *see* Appendix H.)

2. It has been estimated that the outer continental shelf of conterminous United States covers an area of 261,000 square statute miles, or about one-tenth the land area of the United States. S. Rept. 411, 83d Cong., 1st sess. 5 (1953). From computations made in the Bureau, the total area of the entire U.S. continental shelf (low water to 100 fathoms) is approximately 300,000 square statute miles, of which the Atlantic coast has 140,000; the Gulf coast, 135,000; and the Pacific coast, 25,000. The amount of this area within the 3-nautical mile limit is approximately 23,000 square statute miles, of which the Atlantic coast has 10,000; the Gulf coast, 8,000; and the Pacific coast, 5,000. The continental shelf of Alaska (low water to 100 fathoms) has been computed to be approximately 550,000 square statute miles.

The act asserts jurisdiction for a special purpose. This is evident from Section 3(a) of the act, which states: "It is hereby 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 Act."³ The basis for such assertion, the development of the shelf doctrine, its legal status, and its impact on the freedom of the seas doctrine will be considered before taking up specifically some of the pertinent provisions of the act.

22. DEVELOPMENT OF A CONTINENTAL SHELF DOCTRINE

The development of a continental shelf doctrine in international law is of comparatively recent origin, and may be said to have had its active inception with the realization that the continental shelf holds the key to a vast, new reservoir of natural resources which an ever-increasing world population will have to tap as its land resources are materially reduced or as they become entirely exhausted.⁴ This, together with developments in technology, which made possible the location and actual recovery of offshore petroleum deposits, signalled the need for a legal regime to insure orderly and peaceful exploitation of these resources.

In terms of United States reserves, it has been estimated by geologists and petroleum engineers that the submerged lands of the continental shelf constitute the largest undeveloped source of oil under our control—14 billion barrels for the areas adjacent to California, Texas, and Louisiana.⁵

22.1. WHAT IS THE CONTINENTAL SHELF?

What is the continental shelf and what are some of its physical characteristics? Every continent, and every offshore island, rests on a submarine base

3. Extraterritorial jurisdiction over a land or water area is a well recognized legal concept. The power of Congress to legislate for leased military bases in Bermuda, not under the sovereignty of the United States, was sustained by the Supreme Court in *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 381-385 (1948). The Court referred to other areas of legislative jurisdiction without sovereignty, such as the Canal Zone and Guantanamo Bay, Cuba.

4. It has been stated that the land involved in our ocean resources is probably more important to our future than was the Louisiana Purchase, and that they represent "a great range of mineral wealth and an almost incredible variety of animal and plant life." Statement of Dr. Harold F. Clark in *Hearings before Senate Interior and Insular Affairs Committee on S.J. Res. 13 and other Bills*, 83d Cong., 1st sess. 354, 356 (1953).

5. During the first 2 years of operation of the Submerged Lands Act and the Outer Continental Shelf Lands Act, the Federal Government had received 140 million dollars from leases of submerged lands off the coasts of Texas and Louisiana, and this represented but 3 percent of the area mapped as potentially oil-bearing. Statement by Secretary of the Interior McKay, *Washington Post and Times Herald*, Jan. 2, 1955, p. K-20.

which extends seaward from the shore for a varying distance. To this submerged extension of the visible continent has been given the name "continental shelf." More specifically, it may be defined as the submerged portion of a continent, which slopes gently seaward from the low-water line to a point where a substantial break in grade occurs, at which point the bottom slopes seaward at a considerable increase in slope until the great ocean depths are reached. The point of break defines the "edge" of the shelf, and the steeper sloping bottom the "continental slope."⁶ Actually, there is no sharp break between the shelf and the slope, but a gradual merging of the one into the other, so that the junction of the two is a zone rather than a line. This is the true geologic-geographic concept. Conventionally, however, the edge of the shelf is taken at 100 fathoms (183 meters), but the world average is estimated at 72 fathoms.⁷ In its juridical sense, it is that part of the shelf that lies seaward of the territorial sea and is so used in the Convention on the Continental Shelf adopted at Geneva in 1958 (*see* Part 3, 2221). In the context of the Outer Continental Shelf Lands Act, it is the part that lies seaward of the historic boundaries of the states (*see* 231).⁸

The continental shelf is thus a worldwide geomorphological feature and is not peculiar to any one continent or to one hemisphere, although its distribution over the world is unequal. Thus, along the coast of Chile there is practically no shelf, while along the Siberian coast it extends for hundreds of miles from shore.⁹ The widest shelf in the world (750 miles across) is found in Barents

6. This is substantially the definition adopted in 1952 by the International Committee on the Nomenclature of Ocean Bottom Features (*see* Part 3, 2221 note 89). Although not specified, it is generally understood that the shelf begins at the seaward boundary of inland waters where true bays, ports, and rivers indent the coast. *See* statement of Secretary of the Interior in S. Rept. 411, *supra* note 2, at 4. The average slope on the shelf is less than two-tenths of 1 percent and the average slope of the continental slope increases to between three and a half and 6 percent. Percy, *Geographical Aspects of the Law of the Sea*, 49 ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 11 (Mar. 1959).

7. SHEPARD, *SUBMARINE GEOLOGY* 143 (1948). This work, at pages 105-155, contains a detailed analysis of the topography of the continental shelves in various parts of the world, including their depth and breadth, based on a study of thousands of charts.

8. While this is the generally accepted definition of the continental shelf, the idea has been advanced that inasmuch as the bottom slopes seaward from the point of break at a considerable increase in gradient until a depth of 1,000 fathoms is reached, where there is again a fairly gradual slope to the great ocean depths, that broadly speaking the continental shelf could be considered as including both these physiographic concepts. If we approach the matter from seaward rather than from landward it would be the first well-defined rise from the ocean floor, which in the majority of instances would be the 1,000-fathom depth contour—at least insofar as the coastal areas of the United States are concerned (*see* fig. 31). From an oceanographic point of view there is a definite relationship between the two. Statement of Admiral Colbert in *Hearings, Navy Department Appropriation Bill 758-759* (1941). This concept of the continental shelf corresponds to the term "continental terrace" which the International Committee on the Nomenclature of Ocean Bottom Features defined as "The zone around the continents, extending from low-water line to the base of the continental slope." BULLETIN, INTERNATIONAL UNION GEODESY AND GEOPHYSICS 555 (July 1953).

9. *See* world map accompanying Boggs, *National Claims in Adjacent Seas*, 41 THE GEOGRAPHICAL REVIEW 185 (Apr. 1951).

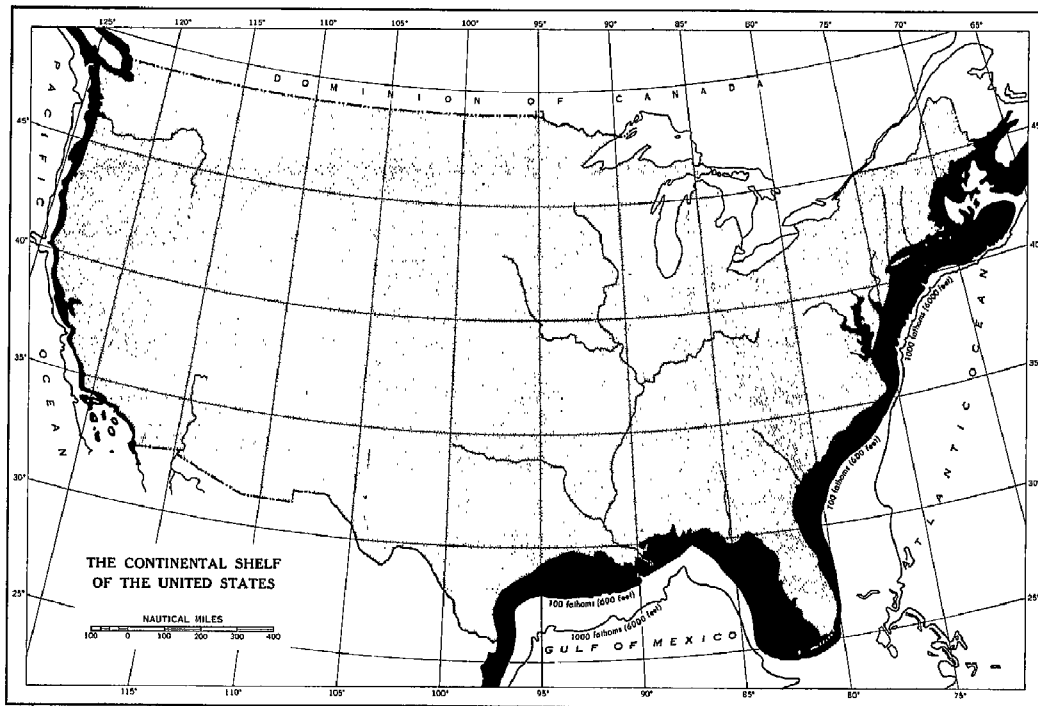


FIGURE 31.—100- and 1,000-fathom depth contours along the coasts of the United States.

Sea, which lies off the Arctic coast of Europe from Norway to Novya Zembla (Novaya Zemlya). The world average is 42 miles.¹⁰

Along the coast of the United States (fig. 31), the continental shelf varies from a width of about 1 nautical mile off parts of California to about 200 miles off Cape Cod. In the Gulf of Mexico, near the Texas-Louisiana boundary, it has a width of 120 miles. Figure 32 shows the bottom configuration of an area north of San Francisco Bay from the shore to oceanic depths. The closeness of the 100-fathom depth contours on the continental slope as compared with the distance from shore of the first 100-fathom contour is clearly discernible. There is actually a 600-foot drop in the first 14 miles from shore and a 10,000-foot drop in the next 21 miles.

The continental shelf should not be confused with the waters overlying it—one is a land mass, submerged it is true, but land nevertheless; the other is a water area, sometimes called the epicontinental sea. Figure 33 shows a profile of the shelf and slope for the area off the California coast shown in figure 32. The inset in the lower right-hand corner illustrates the relationship of the epicontinental sea to the continental shelf.

10. SHEPARD (1948), *op. cit. supra* note 7, at 139, 143.

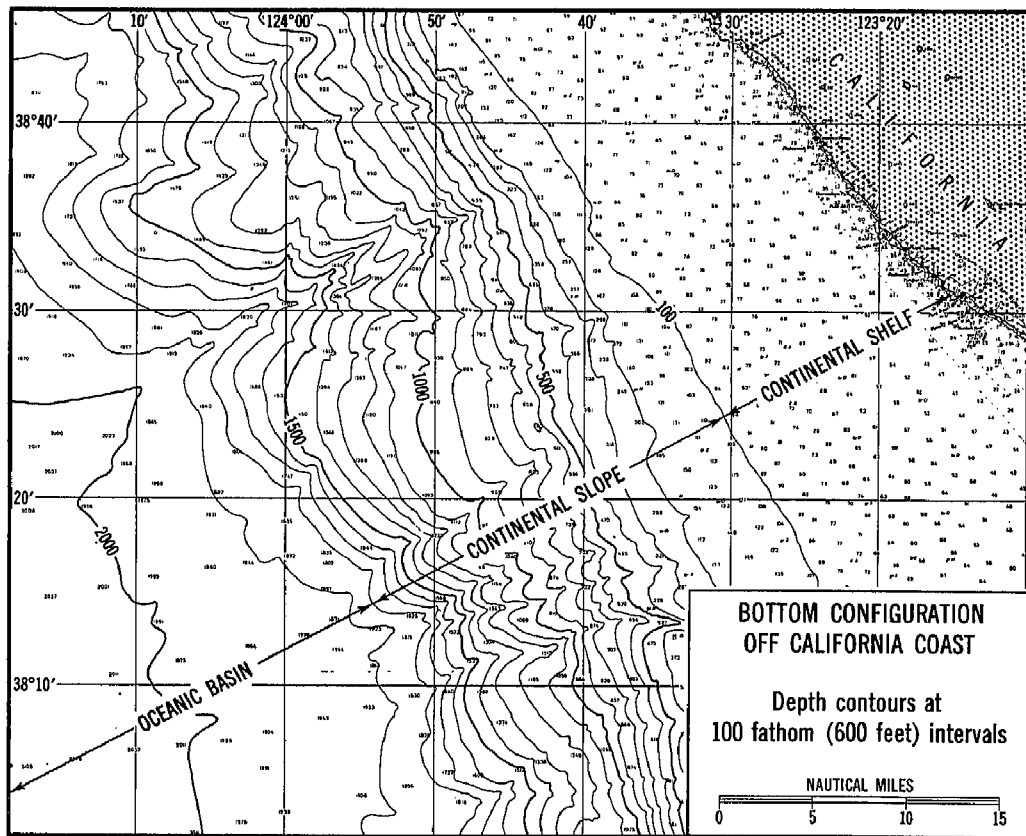


FIGURE 32.—Bottom configuration off California coast north of San Francisco Bay.

Figure 34 shows the remarkable submarine topography of the continental shelf and slope along the northeast coast of the United States. Many submarine canyons penetrate the shelf, the most pronounced being the one which marks the submerged gorge of the ancient Hudson River. The marked difference in the topography of the shelf as compared with the slope is in evidence, as is the drop to oceanic depths in the foreground.¹¹

In considering the legal basis for a continental shelf doctrine, three characteristics of the shelf should therefore be kept in mind: (1) It is a land mass that underlies the marginal sea and the high seas; (2) it is a worldwide feature

11. Figure 34 is a photograph of a plastic relief model based on hydrographic surveys of the Coast and Geodetic Survey and contoured at 5-fathom intervals for the shelf and 25-fathom intervals for the slope. This detailed contouring was part of a special project undertaken cooperatively between the Survey and the Geological Society of America and published by the society in five charts, at scale 1:120,000, and an accompanying volume, as Special Paper No. 7. VEATCH AND SMITH, ATLANTIC SUBMARINE VALLEYS OF THE UNITED STATES AND THE CONGO SUBMARINE VALLEY (1939).

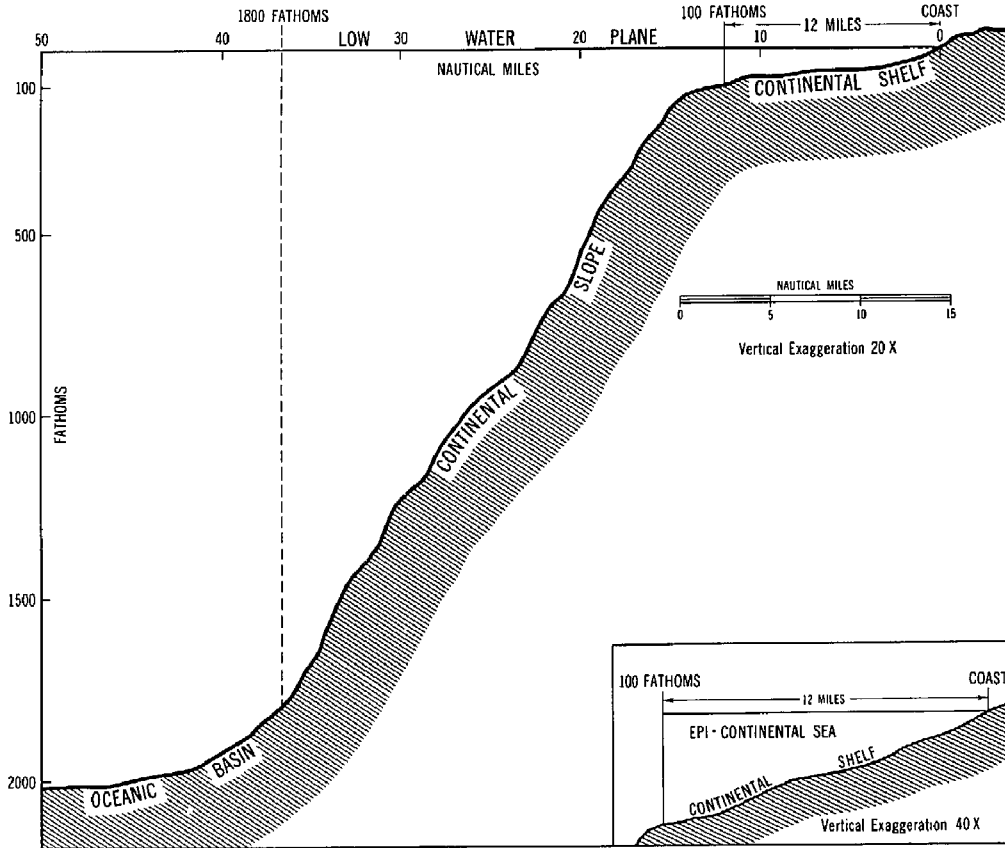


FIGURE 33.—Profile of shelf and slope along California coast at latitude $38^{\circ}35'$. (See fig. 32.)

that varies considerably in extent; and (3) it is the submerged extension of the continents.

222. LEGAL STATUS OF THE CONTINENTAL SHELF

The legal status of the seabed and subsoil of the marginal sea presents no difficulty because the coastal nation has full sovereignty over the superjacent waters. There is therefore no conflict with international law when a coastal nation drills for oil or exploits any other natural resources in or beneath its marginal sea. But beyond the marginal sea are the high seas, which are free to all nations and not within the sovereignty of any single nation. Does this mean that the same legal principle applies, or should apply, to the earth below these free waters? If not, what legal rationale is to be applied? This

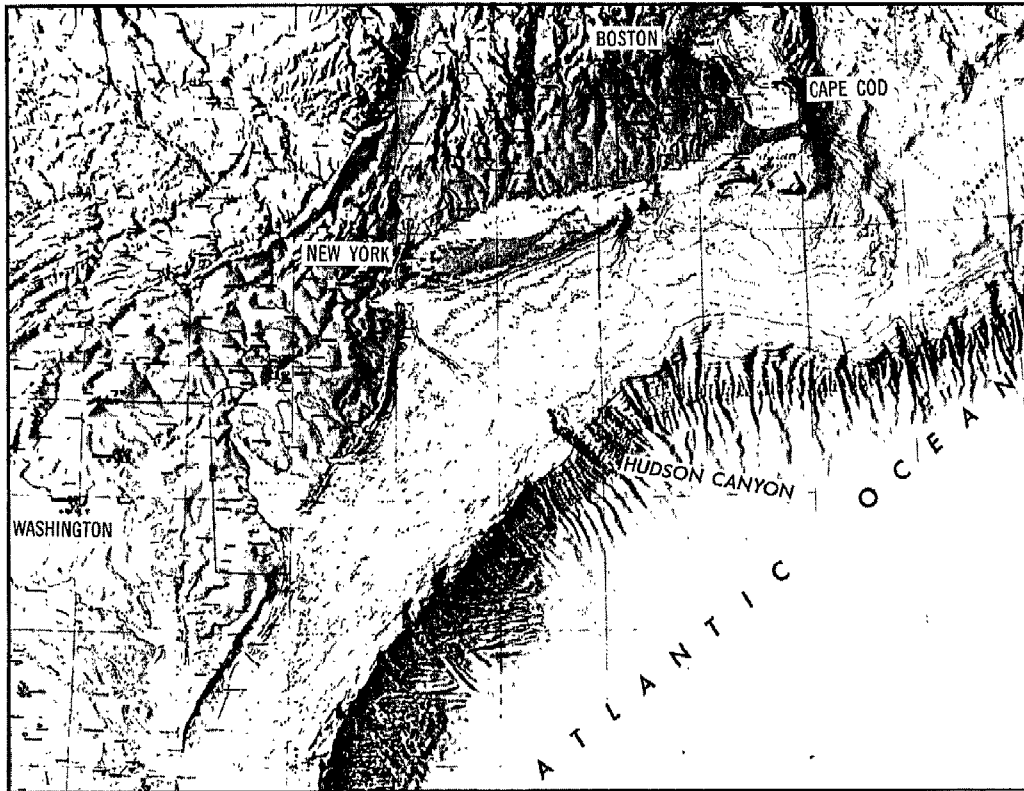


FIGURE 34.—Submarine topography of shelf and slope along northeast coast of the United States. (After Veatch and Smith.)

leads to a consideration of the claims of nations in this field, of the recommendations of the International Law Commission, and of the action of the 1958 Geneva Conference on the Law of the Sea.

2221. *The Presidential Proclamation of September 28, 1945*

Historically, the first step taken by coastal nations to appropriate the mineral resources beyond territorial waters was the Anglo-Venezuelan Treaty of February 26, 1942, relating to the submarine areas outside territorial waters in the Gulf of Paria, which separates the British Island of Trinidad from the mainland of Venezuela. The treaty was not an assertion of jurisdiction by either party over the continental shelf but rather an agreement by each party not to claim rights in the submarine areas on the other side of a dividing line between the two countries. It was merely a bilateral arrangement and no claims to

sovereignty were made against other nations, nor was the status of the superjacent waters in any way affected.¹²

The real impetus to present-day developments in the legal status of the continental shelf was the historic proclamation issued by President Truman on September 28, 1945, in which he announced to the world that "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."¹³ The preamble to the proclamation states that it is the view of the United States that such exercise of jurisdiction by the contiguous nation is reasonable and just, "since the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it." The proclamation concludes with the statement that "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."¹⁴ (*See Appendix F.*)

Now when the United States lays claim to the natural resources of an area almost three times the size of France, as it did under the Truman proclamation, it is indeed a major development in international affairs.¹⁵ But it was a reasonable assertion of rights based on the geologic unity of the shelf with the adjacent land, and was calculated to protect the mineral resources contiguous to our coast against appropriation by foreign countries. The proclamation was designed to initiate a change in international law by establishing a precedent which other nations could emulate. The difficulty was not with the proclamation but with the extravagant claims that followed in its wake.

Early suggestions that the proclamation violated international law were largely discounted by the chain reaction of claims which it precipitated among

12. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* (4th ed.) 62 (1959). Although the term "continental shelf" was not used in the treaty, the term "submarine area" evidently was intended to refer to the continental shelf, since the whole of the area constitutes continental shelf in the geologic sense. Earlier isolated references to the continental shelf go back to the first part of the century—in a 1910 decree by Portugal regulating fishing vessels which were "coming to deplete the resources of . . . [the] narrow continental shelf," and in a 1916 assertion by Russia to ownership of certain uninhabited islands off the coast of Siberia because they formed "the northern continuation of the Siberian continental shelf." Hounshell and Kemp, *The Continental Shelf: A Study in National Interest and International Law*, 5 *JOURNAL OF PUBLIC LAW* 345 (Spring 1956), and Young, *Recent Developments with Respect to the Continental Shelf*, 42 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 849 (1948).

13. Executive Proclamation No. 2667, 59 Stat. 884 (1945). It has been stated by Professors Clark and Renner of Columbia University that the proclamation constitutes "one of the decisive acts in history, ranking with the discoveries of Columbus as a turning point in human destiny." Clark and Renner, *We Should Annex 50,000,000 Square Miles of Ocean*, *SATURDAY EVENING POST* 16 (May 4, 1946).

14. Although the proclamation did not define the continental shelf, an accompanying press release described it as "submerged lands which is contiguous to the continent and which is covered by no more than 100 fathoms (600 feet) of water." 13 *DEPT. STATE BULLETIN* 484 (1945).

15. By this proclamation 760,000 square miles of underwater land (including the continental shelf of Alaska) was acquired by the United States. Ann. Rept. Dept. Interior VI, IX (1945).

other nations, particularly those of Latin America, many of the claims going far beyond the United States declaration in both purpose and scope. In a number of cases, the claim had been converted into one of actual sovereignty over the shelf, and at least five nations framed their claims to include the water areas above the shelf. Four nations established zones of resources control 200 miles wide, irrespective of the width of the shelf, and one declared such zone to be part of its national territory.¹⁶ A substantial majority of the claims provided that there be no diminution of the traditional right of free navigation over the superjacent waters.¹⁷

These claims, including the United States claim, were all unilateral in nature and had no binding force on the international community other than the voluntary respect that nations chose to accord them, or as the nations involved were able to enforce. It was in this explosive situation that the United Nations, through its International Law Commission (*see* Part 3, 11), sought to bring order out of the existing chaotic condition.

2222. Consideration by the International Law Commission

The work of the International Law Commission (ILC) will be considered briefly here and will be limited to its development of the legal basis for a continental shelf doctrine which it set forth in its 1953 draft articles. The rest of its work on the law of the sea, as embodied in its final report, is dealt with in Part 3, chapter 1. The relationship of its recommendations to the conventions adopted at Geneva in 1958 are treated in Part 3, chapter 2.

After 3 years of detailed study and prolonged discussion, the Commission adopted draft articles in 1953 on the regime of the continental shelf.¹⁸ It spelled out that a coastal nation exercises sovereign rights over the shelf for the purpose of exploring and exploiting its natural resources. It defined the shelf as "the seabed and subsoil of the submarine areas contiguous to the coast, but outside

16. In their joint Declaration on Maritime Zones of 1952, Chile, Ecuador, and Peru claimed 200 miles of exclusive fishing jurisdiction off their coasts; and the El Salvador Constitution of 1950 states that the territory of the Republic includes the sea within a distance of 200 miles, the airspace above, the subsoil, and the corresponding continental shelf. Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AMERICAN JOURNAL OF INTERNATIONAL LAW 763 (1960).

17. For a detailed statement on the various claims of the American States, *see* Young, *The Continental Shelf in the Practice of American States*, INTER-AMERICAN JURIDICAL YEARBOOK 27 (1950-1951). For an exhaustive treatment of the continental shelf including documents and a full bibliography, *see* MOUTON, THE CONTINENTAL SHELF (The Hague 1952).

18. Report of the International Law Commission, 5th Sess. 12 *et seq.* (1953) (cited hereinafter as Report of the ILC and recorded in Official Records, U.N. General Assembly, 8th Sess., Supp. No. 9 (1953) (U.N. Doc. A/2456).

the area of the territorial sea, to a depth of two hundred metres [109 fathoms or 654 feet].”¹⁹

In considering a legal basis for the rights of a coastal nation over the continental shelf, the Commission rejected the doctrine of *res communis* (the property of all nations) and the doctrine of *res nullius* (the property of no one and therefore capable of being appropriated by the first occupier) as impractical, once the continental shelf has become an object of active interest to coastal nations. It adopted instead the principle of *ipso jure* (by the law itself) and considerations of general utility as the bases for a coastal nation's rights. And these it considered to be independent of occupation, actual or fictional, and of any formal assertion of such rights. But the rationale on which the holding was based was the geographical unity of the submerged areas with the non-submerged contiguous land. The Commission thus adopted, to an extent, the geographical and geological test for the continental shelf as the basis for the juridical concept of the term, but it did not hold that the existence of a continental shelf in its geographical sense was essential to the exercise of the rights of a coastal nation.²⁰ Nor did it rule out the possibility of equitable adjustments of the general rule being made in certain geographic situations.²¹

19. The Commission had considered the adoption of a term other than “continental shelf,” inasmuch as it departed from the strict geological connotation of the term, but because of its wide acceptance in the literature it seemed wise to retain it. Report of the ILC (1953), *supra* note 18, at 12, 13. The adoption of the 200-meter depth contour instead of the 100-fathom contour was due to the use of meters as a depth unit for nautical charts by the great majority of maritime nations. BOWDITCH, *AMERICAN PRACTICAL NAVIGATOR* 999 (1958). See also *The Metric System*, *INTERNATIONAL HYDROGRAPHIC REVIEW* 45 (Nov. 1925). As a practical matter the use of 200 meters in place of 100 fathoms will result in only a slight difference horizontally, inasmuch as this depth in general will fall on the continental slope.

20. This refers to areas such as the Persian Gulf where the submerged lands never reach a depth of 200 meters (the greatest depth in the gulf proper is 102 meters). This is often spoken of in the literature as not having a continental shelf in the true geologic sense, but rather as an inner shelf comprising shallow terraces which belong, geologically speaking, to the continental masses proper rather than to the part which geologists call the continental shelf. For a discussion of this aspect of the continental shelf, see MOUTON (1952), *supra* note 17, at 6-12. But the continental shelf begins geologically at the low-water line and is defined by the International Committee on the Nomenclature of Ocean Bottom Features as extending seaward to the depths at which there is a marked increase of slope to greater depths (see text at note 6 *supra*). All of the submerged area is thus part of the broad continental shelf which extends in the case of the Persian Gulf beyond the gulf for a distance of 60 nautical miles into the Gulf of Oman. Simply because the submerged area within certain geographical confines (to wit, the area constituting the Persian Gulf) never reaches the maximum limit of 200 meters does not mean there is no continental shelf there. Whatever the distinction geologically between inner shelves and the normal continental shelf, in the interest of avoiding confusion such distinction should not be carried over into the law. To apply a criterion based on the method of formation or origin would be an unwarranted limitation on the continental shelf doctrine.

21. This refers to submerged areas where the depth is less than 200 meters situated near the coast but separated by a narrow channel deeper than 200 meters from the part of the continental shelf adjacent to the coast. Such shallow areas would be considered as contiguous to that part of the shelf. Report of the ILC (1953), *supra* note 18, at 13. The 1953 draft articles differed in two important respects from the articles provisionally adopted by the Commission in 1951. “Sovereign rights” of the coastal nation was substituted for “jurisdiction and control,” and the criterion of exploitability abandoned as a test of jurisdiction in favor of a fixed legal edge because of the belief that the exploitability rule did not satisfy the requirement of certainty which the Commission felt was essential in any legal concept. *Ibid.* In the final report of the International Law Commission, submitted to the United Nations in 1956, the exploitability rule was reinstated (see Part 3, 1312).

2223. *Convention Adopted at 1958 Geneva Conference*

The first United Nations Conference on the Law of the Sea, held at Geneva in 1958, adopted a Convention on the Continental Shelf in which the definition of the shelf and the rights exercised over it by the coastal nation are substantially the same as recommended by the International Law Commission in its final report (*see note 21 supra*). There is, however, one important difference. The convention specifically extends the term continental shelf to include the seabed and subsoil of submarine areas adjacent to the coasts of islands. Thus, a nation which is composed of one or more islands can claim exclusive rights to exploit the seabed and subsoil of its insular shelf or shelves. This concept was absent from the draft articles, but was covered in commentary (10) to Article 67 of the final report of the ILC.²²

The Convention on the Continental Shelf was approved by the Conference by a vote of 57 in favor, 3 opposed, and 8 abstentions.²³ Although as of March 27, 1962, there were only 14 ratifications of the convention (*see Part 3, 2272*), there is little doubt that it will in the future have considerable influence on the developing international law in this field. Ratified or unratified, the legal status of the doctrine of the continental shelf seems assured in international law.

223. THE CONTINENTAL SHELF DOCTRINE AND FREEDOM OF THE HIGH SEAS

The question might be asked, Does the new continental shelf doctrine represent a recession from the principle of freedom of the high seas? Theoretically, any restriction on the use of the high seas, no matter how slight, would be a recession from the principle. But practically, it becomes a matter of balancing interests. The "free seas" developed when navigation and fisheries were the primary economic interests associated with the open sea. The paramount consideration was the need of the international community. New interests have now arisen that are equally important to the community of nations. What yardstick is then to be applied in assessing the relative importance of the interests involved?

22. Except for the fact that the convention applies only to that part of the shelf which is outside the territorial sea, this corresponds to the term "island shelf" which the International Committee on the Nomenclature of Ocean Bottom Features in 1952 defined as "The zone around an island or island group, extending from the low-water line to the depths at which there is a marked increase of slope to greater depths. Conventionally its edge is taken at 100 fathoms (or 200 metres)." BULLETIN, INTERNATIONAL UNION GEODESY AND GEOPHYSICS 555 (July 1953).

23. Whiteman, *Conference on the Law of the Sea: Convention on the Continental Shelf*, 52 AMERICAN JOURNAL OF INTERNATIONAL LAW 659 (1958).

The International Law Commission, while holding that the continental shelf doctrine is subject to, and within the orbit of, the paramount principle of freedom of the seas, nevertheless pointed out that "the progressive development of international law, which takes place against the background of established rules, must often result in the modification of those rules by reference to new interests or needs." It therefore formulated the general test of "unjustifiable interference" as the basis for invoking the full rigidity of the freedom of the seas principle. Under this test, the construction of installations on the continental shelf would be sanctioned in the interest of mankind, as long as the interference with free navigation can be justified. But such construction in narrow channels or in recognized sea lanes essential to international navigation is expressly prohibited.²⁴

This then was the international situation regarding the continental shelf when Congress passed the Outer Continental Shelf Lands Act (Public Law 212) in 1953.

23. PERTINENT PROVISIONS OF THE ACT

Public Law 212 sets up a new federal policy for the development of the mineral resources of the outer continental shelf and fixes authority for administration and leasing of the submerged lands in such areas in the Secretary of the Interior. Although the act deals primarily with administration, and these will be touched on tangentially only, it nevertheless raises certain boundary problems that will have to be resolved before the administration of the submerged lands in the outer shelf can proceed in orderly fashion. These problems are linked to the Submerged Lands Act (*see* 11) by virtue of Section 9 of that act which confirms jurisdiction and control by the United States in that portion of the subsoil and seabed of the continental shelf lying seaward of the seaward boundaries of the several states as defined in Section 2. There is thus a continuous federal-state seaward boundary, and Public Law 212 will be considered in that context.

24. Report of the ILC (1953), *supra* note 18, at 12, 13, and 15. The Commission believed that the extent of modification of established rules must be determined by the relative importance of the interests involved. To adopt a rule that exploration of the continental shelf must never result in any interference with navigation and fishing might defeat the very purpose for which the continental shelf doctrine was adopted. Interference, even if substantial, might in some cases be justified, whereas interference even on an insignificant scale would be unjustified if unrelated to reasonably conceived requirements of exploration of the shelf. What is reasonable must in the first instance be determined by the coastal State. *Id.* at 15.

231. OUTER CONTINENTAL SHELF

Section 2(a) of Public Law 212 defines the term "outer continental shelf" to mean "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control."

The first important point to be considered, insofar as this section is concerned, is that the act does not apply to the continental shelf as a whole but only to the outer portion, that is, seaward of the historic boundaries of the states.²⁵ In this respect, the act differs from the Truman proclamation in that the latter extended jurisdiction and control by the United States over the continental shelf seaward of the marginal sea, which is 3 miles. (Over the continental shelf under the marginal sea the United States already had full sovereignty.) But the proclamation was against the world, whereas Public Law 212 was between the coastal states of the Union and the Federal Government.

The precise seaward limit of the outer continental shelf is not defined by the act but merely identifies it with the subsoil and seabed that appertain to the United States. However, in the Senate report on the measure, it is made clear that the committee had in mind that the outer edge of the shelf is the point where the continental slope leading to the true ocean bottom begins and that this point is generally regarded as the depth of approximately 100 fathoms.²⁶ (See fig. 35.)

232. JURISDICTION OVER THE OUTER CONTINENTAL SHELF

Section 3(a) is a declaration of policy with regard to United States jurisdiction over the outer continental shelf. It provides that "the subsoil and

25. The historic boundary of a state as understood in the Submerged Lands Act is the boundary that existed at the time the state became a member of the Union, or as heretofore approved by Congress. For states bordering the Atlantic and Pacific Oceans these boundaries extend 3 geographic miles seaward (see 122); for states bordering the Gulf of Mexico, the Supreme Court has held that the boundary of Texas and Florida extends 9 geographic miles into the Gulf, while for Alabama, Louisiana, and Mississippi they extend only 3 geographic miles (see 1547). Federal jurisdiction under Public Law 212 would therefore not begin at a uniform distance from the coastline in the Gulf of Mexico.

26. S. Rept. 411, *supra* note 2, at 4. This follows generally the definition adopted in 1952 by the International Committee on the Nomenclature of Ocean Bottom Features (see note 6 *supra*) and is somewhat broader in scope than the Truman proclamation which set a definite limit of 100 fathoms (see note 14 *supra*). Under Public Law 212, United States' authority could be interpreted to include depths beyond 100 fathoms if that is where the shelf edge actually is. And where the actual shelf edge lies in depths less than 100 fathoms, the legislative intent could be interpreted to mean a minimum of 100 fathoms. When the Geneva Convention on the Continental Shelf becomes operative the matter of the outer boundary under Public Law 212 will become academic inasmuch as the convention adopted the 100-fathom depth curve as a minimum limit and beyond that if exploitation is feasible (see note 21 *supra*).

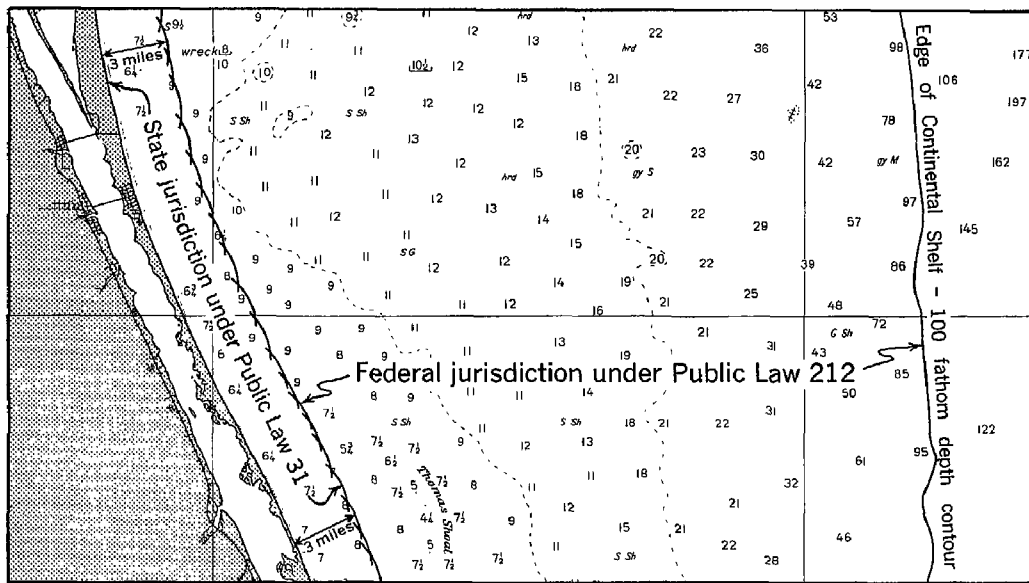


FIGURE 35.—Offshore federal and state jurisdiction under the submerged lands acts. State jurisdiction extends to 3 nautical miles from the coastline except for Texas and the west coast of Florida where it is 9 miles.

seabed . . . appertain to the United States and are subject to its jurisdiction, control, and power of disposition.”

The subsection thus broadened the subject matter of the claim under the Presidential proclamation (*see* 2221) and under section 9 of the Submerged Lands Act (*see* 13) to include the “seabed and subsoil” of the continental shelf and not merely the “natural resources” therein. But the character of the rights claimed remain the same, that is, they are limited to “jurisdiction and control.”²⁷ In the final report of the International Law Commission and in the Convention on the Continental Shelf adopted at Geneva in 1958, it is provided that the coastal State exercises “sovereign rights” over the continental shelf for the purpose of exploring and exploiting its natural resources (*see* Part 3, 2222).²⁸

27. As originally introduced in the Senate, S. 1901 was also limited to “natural resources,” but the broader language was substituted by the committee as a necessary step forward. *Id.* at 7.

28. In the hearings on the Outer Continental Shelf Lands Act, it was stated by the deputy legal adviser of the State Department that an assertion of exclusive jurisdiction and control over the natural resources is “for all practical purposes” tantamount to an assertion of exclusive jurisdiction over the seabed and subsoil and would give everything that was encompassed in the word “sovereignty” as long as it did not refer to the waters above. *Hearings before Committee on Interior and Insular Affairs on S. 1901, 83d Cong., 1st sess. 585–586 (1953).*

Section 3(b) expresses the unequivocal legislative intent to adhere to the traditional United States policy of freedom of the high seas, and provides that the "Act 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." This makes it clear that the jurisdiction asserted is a "horizontal jurisdiction" extending only to the seabed and subsoil, and in nowise affects the status of the superjacent waters.²⁹

An aspect of this section that requires some clarification is the fishing rights that are preserved, particularly as read in the light of Sections 2(e) and 3(a) of the Submerged Lands Act. Section 2(e) of that act defines "natural resources" as including fish and other marine animal life, and Section 3(a) recognizes rights of the several states in the submerged lands within their historic boundaries and the natural resources in the waters above (*see* 121). Under the Supreme Court's interpretation of the act, the seaward boundaries of Texas and Florida extend for a distance of 9 nautical miles (3 marine leagues) in the Gulf of Mexico (*see* 1547). This is 6 miles seaward of the 3-mile belt of territorial waters which the United States adheres to in its international relations. There is thus an apparent contradiction between the preservation of free fishing rights in the waters above the outer continental shelf, as expressed in Public Law 212, and state control of fishing in the zone between 3 and 9 miles in the Gulf of Mexico, as expressed in the Submerged Lands Act. But the key to an explanation of this seeming contradiction is to be found in the holding of the Court in *United States v. Louisiana et al.*, 363 U.S. 1 (1960), that the purposes of the act are domestic in nature and not violative of the country's consistent foreign policy with respect to the 3-mile limit of territorial waters (*see* 1541(b)).

Public Law 212 gives legislative expression to the Presidential Proclamation of September 28, 1945 (*see* 2221),³⁰ and insofar as Section 3(b) is concerned it is a declaration to the world that the right of free fishing by foreign vessels in the outer continental shelf will not be impaired.³¹ If this be so, then it could not

29. S. Rept. 411, *supra* note 2, at 2, 7. The use of the term "horizontal jurisdiction" in the committee report is not to suggest that the jurisdiction does not extend downward from the seabed.

30. *Executive Hearings before Senate Interior and Insular Affairs Committee on S. J. Res. 13 and Other Bills*, 83d Cong., 1st sess. 1416-1419 (1953).

31. While Sec. 3(b) refers to the "outer" shelf which, under Sec. 2(a) of Public Law 212 and Sec. 2(a) of the Submerged Lands Act, would be considered outside of state boundaries, the import of the section must be intended to preserve the right of free fishing and navigation outside of the territorial waters of the United States. If an exception should be read into the act, in this respect, with regard to the Gulf states it would be in derogation of what we have considered through the years a reciprocal right of American vessels to fish within 3 miles of a foreign coast. Note, for example, the protest lodged with the Mexican Government regarding interference with American shrimp fishers operating within 9 miles of the Mexican coast in the Gulf of Mexico but outside the 3-mile line. *Hearings, supra* note 4, at 1061.

have been the intent of Congress to curtail freedom of foreign fishing and navigation in the area between 3 and 9 miles in the Gulf, even though the committee report refers to "the waters seaward of State boundaries" as those whose character as high seas will not be changed by the act.³² The term "outer" shelf, as used in Section 3(b) of Public Law 212 must therefore be construed internationally to mean that portion of the continental shelf which lies outside the territorial waters of the United States, that is, outside the 3-mile limit.³³

233. GOVERNING LAWS

The question of what laws should be applied to the outer shelf did not present any easy solution. The United States, for the first time, was to establish a body of law for the protection, development, and administration of an area over which it was to have control of the seabed and subsoil but not of the superjacent water and airspace. The laws adopted are a combination of federal and state laws.³⁴ This body of law consists of (1) the Constitution and laws of the United States, and (2) the laws of the adjacent states.

Under Section 4(a)(1), the Constitution and federal laws are extended to the subsoil and seabed of the outer shelf and to all artificial islands and fixed structures erected thereon used in the exploration of the resources of the shelf to the same extent as if the outer shelf were an area of exclusive federal jurisdiction located within a state.³⁵

By adoption, the state laws, other than taxation laws, in effect on the date of the act, are made part of the law of the United States under Section 4(a)(2), to the extent that they are applicable and not inconsistent with the act or with other federal laws and regulations of the Secretary of the Interior. Such laws are to be administered by federal officers and Federal courts, and to this extent

32. S. Rept. 411, *supra* note 2, at 7.

33. Insofar as concerns state control over fisheries in the waters of the Gulf between 3 and 9 miles, under the doctrine of *United States v. Louisiana et al.*, *supra*, the provision in Secs. 2(e) and 3(a) of the Submerged Lands Act can only apply domestically. Therefore, state control in such area falls within the well-recognized doctrine that in the absence of conflicting federal legislation, the regulation of coastal fisheries within state boundaries is under the control of the individual state. For a fuller discussion of the subject of coastal fisheries in its regulatory aspects, see Part 3, 2241 note 124.

34. For a discussion of the various proposals, see Christopher, *supra* note 1, at 37-41.

35. The one exception to the applicability of federal laws seems to be the Mineral Leasing Act of 1920, as amended (41 Stat. 437), and any other prior mineral leasing laws. The proviso in Sec. 4(a)(1) requires mineral leases on the outer shelf to be issued only under the provisions of Public Law 212. This follows the opinion of the Attorney General of the United States and the Solicitor of the Interior Department that the Mineral Leasing Act does not encompass the submerged coastal areas below low tide. *Hearings*, *supra* note 28, at 579-581 (1953).

original jurisdiction is conferred on United States district courts to deal with cases and controversies arising out of operations on the outer shelf (Sec. 4(b)). The respective state laws apply to the portion of the outer shelf (including artificial islands and structures erected thereon) that would lie within the area of the state if its boundaries were extended seaward to the outer margin of the shelf. The President is authorized to determine such projected state lines and to have them published in the Federal Register and to define each such area.³⁶

It is important to point out in connection with the adoption of state laws for the area, that Section 4(a)(3) provides that such adoption "shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State" in the outer shelf.³⁷

234. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS

Section 11 deals with geological and geophysical explorations on the outer continental shelf, and provides as follows: "Any agency of the United States and any person³⁸ authorized by the Secretary [of the Interior] 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 Act, and which are not unduly harmful to aquatic life in such area."

This section has had a long legislative history, certain aspects of which are essential to an understanding of the purpose and meaning of its provisions. Primarily, two questions are involved: (1) the meaning of the term "geological and geophysical explorations," and (2) the scope of the authorization provided.

(a) *Geological and Geophysical Explorations.*—Section 11, or the substance thereof, was inserted in the various House bills and in most of the Senate bills and had for its primary purpose a recognition of the right of any person to conduct geophysical explorations, preparatory to drilling for oil, without limitation as to area of exploration. The intent was to encourage exploration for locating mineral resources, and was the type of exploration that would lead to reasonable deductions as to the presence or absence of mineral deposits. In

36. These jurisdictional lines are an extension of the lateral boundaries of the states which are delimited in accordance with the principle of equidistance (*see* 1622). This principle should be followed in extending the lines to the outer shelf (*see* fig. 50).

37. This emphasizes the exclusive nature of the Federal Government's control over the outer shelf. A necessary consequence of this would seem to be that any extension of state control over any part of such shelf would have to be acquired by a specific grant from Congress.

38. The term "person" as used in the act includes "a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation." (*See* Sec. 2(d) of the act.)

other words, exploration in the substructure of the earth using seismic or other methods. This is implicit in the legislative history of the act.³⁹

Hydrographic surveying and its broader aspects oceanography would not fall within the purview of the act since they do not normally have for their purpose the location of mineral resources. The inclusion of the clause "and which are not unduly harmful to aquatic life in such area" would seem to bear out this interpretation of the legislative intent. Section 11 cannot therefore be considered as granting blanket authority to any federal agency to conduct such operations on the outer shelf.

(b) *Authorization.*—In H.R. 5134, the right of any person and any agency of the United States to conduct geological and geophysical explorations in the outer shelf was recognized without any prior authorization being required. In its comments on S. 1901, the Department of Justice noted the absence of a corresponding provision, and recommended its inclusion as a desirable provision, but with the further recommendation that H.R. 5134 be modified to the extent that the explorations conducted by a private person "be conditioned on securing a permit from the Secretary."⁴⁰

It is reasonable therefore to conclude from this legislative history that any federal agency may conduct geological and geophysical explorations in the outer shelf without prior authorization from the Secretary of the Interior, but any "person" (as defined in the act) desiring to carry on such operations would first have to obtain authorization.⁴¹

39. In the House Judiciary Committee report on the original Submerged Lands Act (H.R. 4198), Title III of which related to the outer continental shelf (*see note 1 supra*), it was stated that "it is impractical and too expensive to develop and utilize specially trained exploration crews and special equipment . . . for work in the open sea unless relatively large areas are open for exploration" and that "any method of fencing off areas for exploration would retard competition and development." H. Rept. 215, 83d Cong., 1st sess. 19 (1953). S. 1901, which finally became Public Law 212 (*see note 1 supra*), originally had no corresponding provision. In the hearings on the bill it was recommended that a new section be added identical with Sec. 17 of H. R. 5134 (*see also 234(b)*). The explanation for the recommendation was that "Geological and geophysical explorations must be conducted before the prospective bidders know what areas they are interested in and the amount to offer for leases. If adopted, this amendment will result in the Government obtaining the maximum prices for the areas it decides to lease." *Hearings, supra* note 28, at 551.

40. S. Rept. 411, *supra* note 2, at 39. The full comment of the Department of Justice on this section was as follows: "The House bill (sec. 17) recognizes the right of any person, subject to applicable provisions of law, and of Federal agencies, to conduct geological and geophysical explorations that do not interfere with or endanger actual operations under any lease issued pursuant to the act. Such provision may be desirable, but might well be conditioned on securing a permit from the Secretary (in the case of private persons), rather than leaving it to the individual, as this seems to do, to decide what will interfere with or endanger operations. S. 1901 has no corresponding provision."

41. The question of authorization to private institutions, for conducting oceanographic research on the continental shelf, was raised at a special meeting on Aug. 29, 1959 (at which the author was present), sponsored by the Committee on Oceanography of the National Academy of Sciences (*see Part 3, 2223 note 107*). Two conflicting viewpoints were developed regarding the import of Sec. 11: (1) that Congress had no more in mind than exploration for mineral deposits and that Public Law 212 changed nothing with respect to oceanographic research on the shelf and what was permissible before enactment was permissible today; and (2) that the section was broad enough to apply to any operations on the shelf, whether it led to mineral exploration or not. No administrative or judicial interpretation has thus far (Aug. 1961) been given to the application of this section.

24. OTHER PROVISIONS

Other provisions of Public Law 212, while not directly associated with boundary problems, have a collateral interest from the point of view of the light they shed on the purpose and scope of the act.

Section 4(e) authorizes the U.S. Coast Guard to issue and enforce regulations with respect to lights, warning devices, and safety equipment for the promotion of safety of life and property on the structures erected on the outer shelf and in the adjacent waters; Section 4(f) extends the authority of the Secretary of the Army to prevent obstructions in the navigable waters of the United States to artificial islands and fixed structures on the outer shelf; and Section 5 places the administration of the shelf areas under the Secretary of the Interior with authority to prescribe rules and regulations to carry out the provisions of the act.

Section 7 anticipates that disputes are likely to arise as to whether certain areas are within the jurisdiction of a coastal state under the Submerged Lands Act or under the jurisdiction of the Federal Government under the Outer Continental Shelf Lands Act (*see note 25 supra* and accompanying text). The section provides for a temporary resolution of such controversies by authorizing the Secretary, with the approval of the Attorney General, to enter into agreements with a state to permit continued development of mineral resources in such areas, impounding the revenues until an ultimate determination is reached.⁴² (*See fig. 36.*)

Section 9 controls the disposition of revenues received from leases on the outer continental shelf for the period from June 5, 1950 (the date of the Supreme Court decisions in *United States v. Louisiana* and *United States v. Texas* (*see Part I, 12*)) to the date of enactment of Public Law 212, and thereafter, and provides for their deposit in the Treasury of the United States and credited to the United States as miscellaneous receipts. The committee report spells out that no part of such revenues are to be earmarked for any coastal state nor for any specific purpose.⁴³

Finally, there is a "saving clause," which protects any rights in the outer shelf that may have been acquired under any law of the United States prior to the effective date of the act (Sec. 14); and the usual separability clause which leaves unaffected the remainder of the act, in the event that any section, sentence, clause, phrase, or individual word is held invalid (Sec. 17).

42. Such an agreement was entered into between the United States and the State of Louisiana on Oct. 12, 1956 (*see* 153, text at notes 35 and 36).

43. S. Rept. 411, *supra* note 2, at 13-14. The committee considered but did not adopt proposed amendments to dedicate the revenues to national security purposes first and then as grants-in-aid to education. *Id.* at 2-3. This, however, was approved by the Senate, but failed to win approval of the Senate-House Conference Committee. The conference report was ultimately accepted by the Senate. 99 CONG. REC. 10500 (1953). A minority report to S. 1901 was filed by Senator Long of Louisiana, one of the grounds of his objection being the denial to the states of any portion of the revenues which might be derived from the outer shelf. S. Rept. 411, *supra* note 2, at 65.

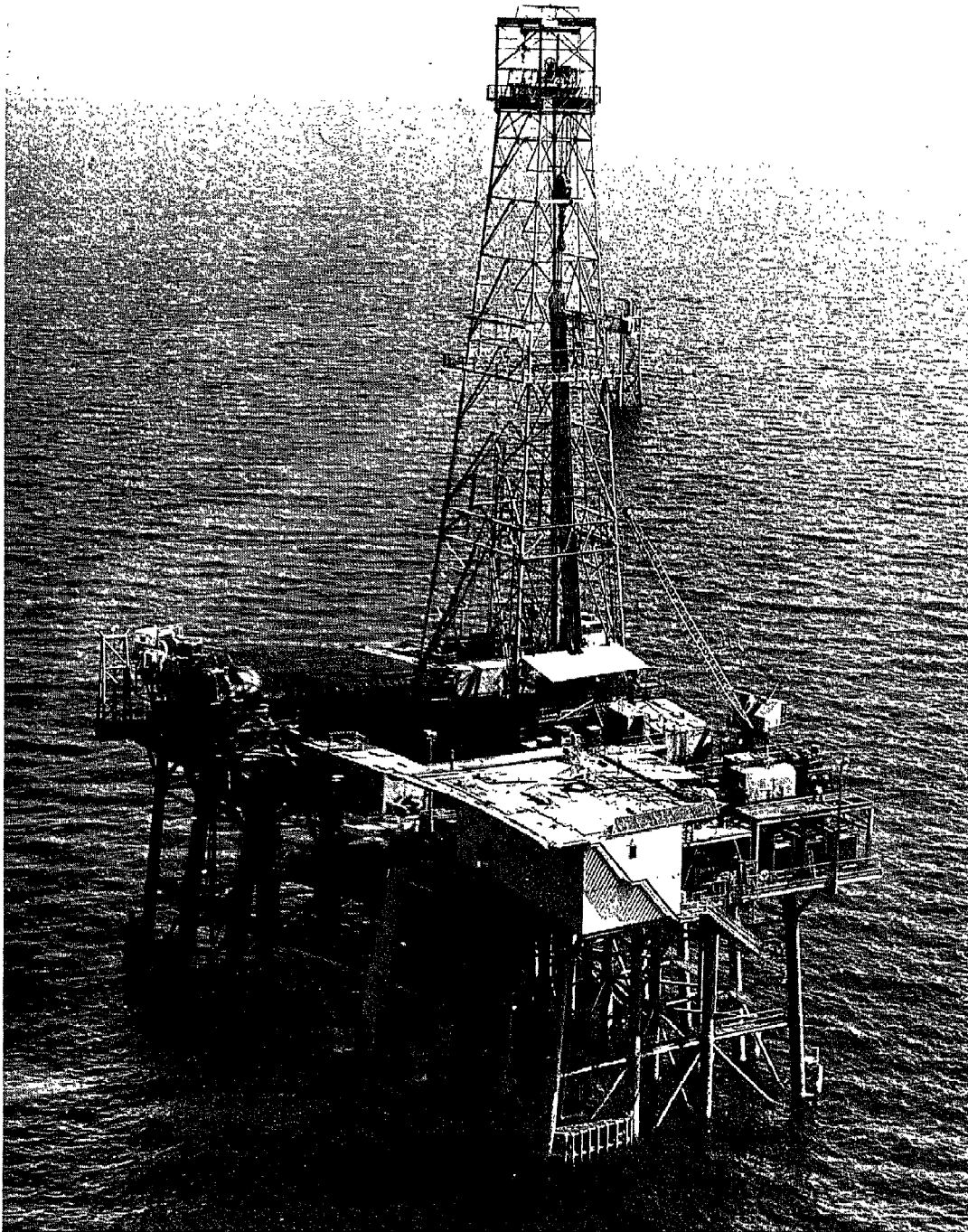


FIGURE 36.—Self-contained combination drilling and production platform on the outer continental shelf in the Gulf of Mexico, approximately 20 miles from shore in 100 feet of water. (Courtesy, *J. Ray McDermott & Co., Inc.*)