JURISDICTION OVER THE SEABED: PERSISTENT FEDERAL-STATE CONFLICTS

Shortages of food, energy and minerals have increased the need for rapid yet orderly exploitation of marine and submarine resources.[1] As these needs continue to grow, pressures will increase on the legal processes which resolve conflicting claims to ocean rights.[2] There exists, however, confusion and conflict between federal and coastal state governments concerning the precise delineation of their rights and powers over the seabed and subsoil. Uncertainty as to ownership and jurisdiction over marine and submarine resources will constrain development of those resources and must be eliminated to allow maximum beneficial development.[3] In *United States v. Maine*[4] the United

1. For estimates of the quantitative economic value of ocean resources see S. REP. NO. 1140, 93d Cong., 2d Sess. (1974); STAFF OF SENATE COMM. ON COMMERCE, 93D CONG., 2D SESS., THE ECONOMIC VALUE OF OCEAN RESOURCES TO THE UNITED STATES (Comm. Print 1974). Measured in terms of gross product, the value of various ocean resources to the United States was over $27 billion in 1972-73. The same resources are potentially capable of producing a value of up to $110 billion in the year 2000. *Id.* at III.

2. These processes have been classified as either adjudication or accommodation. *See generally* Taylor, *The Settlement of Disputes Between Federal and State Governments Concerning Offshore Oil Resources: Accommodation or Adjudication?*, 11 HARV. INT'L L.J. 358, 388 (1970) (arguing that disputes should be settled by the political processes of government (accommodation) because the judicial arm "lacks the requisite attributes for a satisfactory settlement"). For a general discussion of processes of ocean dispute settlement see W. BURKE, OCEAN SCIENCE, TECHNOLOGY, AND THE FUTURE INTERNATIONAL LAW OF THE SEA (1966).

Pressures on conflicting claims to ocean rights have been recognized in international circles as well and have given rise to three United Nations Conferences on the Law of the Sea (1958, 1960, 1973). Basic material on the major issues in debate may be found in *Information Report on the Law of the Sea: Understanding the Debate on the Law of Ocean Space*, 8 INT'L LAW. 688 (1974). The Continental Shelf and the territorial sea have received the most attention because they are presently the most readily exploitable areas of the ocean. This focus has given rise to the Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958, [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter cited as the Convention on the Territorial Sea]; and the Convention on the Continental Shelf, April 29, 1958, [1964] 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter cited as Convention on the Continental Shelf].

3. Because of the magnitude of costs involved in seabed investments, certainty as to legal, political and technological capabilities is required.

State as well as Federal legislators and policy makers must increasingly depend on oceanic science. When the interests of recreation, commercial fishing, sport fishing, oil exploration, and waste disposal compete for use of the same coastal resources,

States Supreme Court moved closer to a final resolution of the issue of national versus state rights in the offshore seabed. Although the decision reaffirmed the primacy of national rights, inherent vagaries remain in determining the extent of those "rights" which may give rise to future conflict and litigation.

The *Maine* case arose out of an action against defendant states[5] for allegedly interfering with the rights of the United States by granting a mining company exclusive exploratory rights for portions of the Atlantic Ocean lying seaward of territorial waters.[6] The federal government sought a decree upholding the sovereign rights of the United States in the seabed beyond the three-mile limit. A Special Master, appointed to hear testimony on the issues,[7] submitted a report to the Court which concluded that a number of earlier cases governed the issues in *Maine* which, unless overruled in all respects, required judgment in favor of the United States.[8] The Court agreed, and in declining to overrule what

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wise decisions that extend beyond preservation of the status quo can only be based on the fullest knowledge of the sea and its coastal areas.

BURKE, *supra* note 2, at 13. The competing interests that must be balanced were set out in the Coastal Zone Management Act of 1972:

> 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 . . . 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 . . . .

16 U.S.C. § 1451(c) (Supp. IV, 1974).

4. 420 U.S. 515 (1975).

5. Defendant states were Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. Connecticut was not made a defendant because Long Island Sound, on which it is situated, is considered inland waters. *Id.* at 517 n.1.

6. The portion of the seabed involved in *Maine* was that area in the Atlantic Ocean lying more than three miles seaward of the ordinary low-water mark or the outer limits of inland waters. *Id.* at 517. For a definition and discussion of "inland waters" and "ordinary low-water mark" see notes 32-37 *infra*. The area in question was limited to *seaward* of the three-mile limit as a result of the Submerged Lands Act of 1953, which relinquished to the coastal states federal title and claim to the seabed within the three-mile limit. 43 U.S.C. § 1311(b) (1970).

Maine had infringed on United States rights by granting exclusive exploratory rights in 3.3 million acres of off-shore lands to a mining company. The other twelve states were joined as defendants. STAFF OF SENATE COMM. ON COMMERCE, 93D CONG., 2D SESS., OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT AND THE COASTAL ZONE 65 (Comm. Print 1974).

7. 398 U.S. 947 (1970) (mem.).

8. 420 U.S. at 519. The cases included United States v. Texas, 339 U.S. 707 (1950); United States v. Louisiana, 339 U.S. 699 (1950); and United States v. California, 332 U.S. 19 (1947).

it considered controlling case law, found the federal government, to the exclusion of defendant states, entitled to exercise sovereign rights over the seabed beyond the three-mile limit.[9]

United States v. California[10] was the benchmark of the line of cases which the *Maine* Court deemed controlling. There the federal government brought an original action in the United States Supreme Court seeking a declaration that paramount rights in the seabed inhered in the national government rather than the separate states.[11] The area of seabed in dispute was that portion "underlying the Pacific Ocean, lying seaward of the ordinary low-water mark on the coast of California and outside of inland waters of the State, extending seaward three nautical miles . . . ."[12] California admitted the granting of gas and oil leases in the seabed and claimed ownership of this area, asserting that the three-mile belt was within its historical boundaries.[13] California

9. 420 U.S. at 522.

10. 332 U.S. 19 (1947).

11. *Id.* at 22.

12. *Id. California* concerned the seabed and subsoil *within* three miles of the coast because it was decided prior to the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-43 (1970). The Submerged Lands Act relinquished to the coastal states all title and interest in the marginal sea from the outer edge of inland waters to the three-mile limit. The Act, in effect, granted to the states what the *California* decision had denied, although it did not overrule the rationale of *California*.

13. 332 U.S. at 23. California's claim was based on a state constitutional provision which provides for an extension of her boundary three English miles into the Pacific. CAL. CONST. Art. XII. The preamble to the enabling act which admitted California into the Union accepted the California constitution as written. An Act for the Admission of the State of California into the Union, ch. 50, § 1, 9 Stat. 452 (1850). California contended that recognition of ownership then followed from Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845), which held "the shores of navigable waters, and the soils under them, were not granted by the Constitution of the United States, but were reserved to the states respectively." *Id.* at 230. Subsequent cases have followed the *Pollard* rule. *See, e.g.*, The Abby Dodge, 223 U.S. 166 (1912); United States v. Mission Rock Co., 189 U.S. 391 (1903); Manchester v. Massachusetts, 139 U.S. 240 (1891); San Francisco v. LeRoy, 138 U.S. 656 (1891); McCready v. Virginia, 94 U.S. 391 (1876); Weber v. Harbor Commissioners, 85 U.S. (18 Wall.) 57 (1873); Smith v. Maryland, 59 U.S. (18 How.) 71 (1855). The cases following *Pollard*, however, generally referred to navigable waters and the soils under them located within bays, rivers, harbors, lakes, or other inland waters distinguishable from a three-mile territorial sea. The *California* Court distinguished *Pollard*, holding that it should not apply to lands under the ocean. 332 U.S. at 31.

The State also raised the issue of the federal government's long-standing acquiescence in the State's exercise of rights in the three-mile belt. *Id.* at 24. Although the Court rejected acquiescence as an affirmative defense, *id.* at 40, there is ample evidence of federal acceptance of State claims to the seabed prior to *California*. For example in 1933, Secretary of the Interior Ickes rejected an application for a federal license to drill for oil off the California coast because "title to the soil under the ocean within the three-mile limit is in the State of California, and the land may not be appropriated except by authority of the State." Brief for State of California at 289, United States v. California, 332 U.S. 19

reasoned that because it had been admitted to the Union on an "equal-footing" with the original thirteen states,[14] which had acquired title to a three-mile sea belt from the English Crown,[15] title was similarly vested in California.[16] The Court rejected this argument and found that the original colonies *did not* acquire ownership of a three-mile belt as a result of their revolution against the Crown.[17] The Court added that "national interests, responsibilities, and therefore national rights are paramount in waters lying to the seaward [of inland waters] in the three-mile belt,"[18] and must inhere in the federal government as an incident of national external sovereignty. The *California* decision therefore rested on a dual finding: California did not possess ownership of the seabed, and rights in the three-mile belt pertained to national concerns, paramount rights necessarily lying with the national government.

United States v. Louisiana[19] and *United States v. Texas*,[20] two subse-

(1947), *cited in* 35 CALIF. L. REV. 605, 606 n.5 (1947). *See* United States v. California, 381 U.S. 139, 180 (1965) (Black, J., dissenting). *See generally* 56 YALE L.J. 356, 357-62 (1947).

14. An Act for the Admission of the State of California into the Union, ch. 50, § 1, 9 Stat. 452 (1850).

15. New York claimed rights as a successor to the Crown of Holland. United States v. Maine, 420 U.S. 515, 518 (1975).

16. 332 U.S. at 23.

17. *Id.* at 31-33. The Court found that at the time of "independence from England there was no settled international custom or understanding among nations that each owned a three-mile water belt along its borders." *Id.* at 32. *See* Morris, *Forging of the Union Reconsidered: An Historical Refutation of State Sovereignty Over Seabeds*, 74 COLUM. L. REV. 1056 (1974); 56 YALE L.J. 356, 362-67 (1947). *But see* Brief for the Common Counsel States at 7-372, United States v. Maine, 420 U.S. 515 (1975); Daniel, *Texas' Title to Submerged Lands*, 1 BAYLOR L. REV. 237 (1949); Flaherty, *Virginia and the Marginal Sea: An Example of History in the Law*, 58 VA. L. REV. 694 (1972); Massachusetts Bar Association, *The Muniments of Title of Massachusetts to Her Submerged Sea Lands*, 35 MASS. L.Q. 1 (1950); Patterson, *State Sovereignty v. National Sovereignty Prior to 1789*, 24 N.Y.U.L. REV. 535 (1949). It is interesting that the Court found "no settled international custom" on a three-mile territorial sea at the time of independence as precluding ownership; there is no settled international custom as to the width of the territorial sea even today. 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW § 2, at 21-33 (1965); *see* Note, *Territorial Seas—3000-Year Old Question*, 36 J. AIR L. & COM. 73 (1970).

18. 332 U.S. at 36. The Court summarized these "rights and responsibilities": "The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace." *Id.* at 35. *But see id.* at 42-43 (Reed, J., dissenting): "This ownership in California would not interfere in any way with the needs or rights of the United States in war or peace. The power of the United States is plenary over these undersea lands precisely as it is over every river, farm, mine, and factory of the nation." Charney, *Judicial Deference in the Submerged Land Cases*, 7 VAND. J. TRANS. L. 383 (1974) (maintaining that the decisions in the submerged land cases were primarily based on the Court's desire to comply with the wishes of the Executive Branch in matters affecting foreign relations).

19. 339 U.S. 699 (1950).

20. 339 U.S. 707 (1950).

quent companion cases, reaffirmed the holding and rationale of *California* by upholding national sovereignty over the seabed adjacent to those states' coasts. *Louisiana* extended *California* by determining that since the three-mile belt was within the domain of the nation rather than the separate states, it followed a fortiori that the ocean beyond that limit was also within the national domain.[21] In *Texas*, the state claim of ownership of the seabed was stronger than that of Louisiana, California or the original states because, prior to admission to the Union, Texas *did* possess national sovereign rights over the seabed.[22] The Court, however, asserted that Texas' admission to the Union "entailed a relinquishment of some of her sovereignty . . ." and held "that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States."[23] These decisions reaffirmed the principle that the Constitution allotted jurisdiction to the federal government over foreign commerce, foreign affairs and national defense, and thus "it necessarily follows, as a matter of constitutional law, that as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea."[24]

In *Maine* the Court agreed with the Special Master that the *California*, *Louisiana* and *Texas* cases were controlling.[25] In particular, the Court stated it would not retrace the Special Master's analysis of historical evidence, being firmly convinced that it should not undertake to reexamine the constitutional underpinnings of the *California* case and those cases which followed.[26] The holding reasserted the view that the doctrine of stare decisis carries "particular force where the effect of reexamination of a prior rule would be to overturn long-accepted commercial practice."[27]

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21. 339 U.S. at 705. Louisiana sought sovereign rights over a twenty-seven mile boundary into the Gulf of Mexico. *Id.* at 703.

22. 339 U.S. at 712. Prior to its admission into the Union, the State had been the Republic of Texas and as such had "not only full sovereignty over the marginal sea but ownership of it, of the land underlying it and of all the riches which it held." *Id.* at 717. Apparently by the time the Republic of Texas was proclaimed (March 2, 1836), an "international custom" was deemed to exist regarding marginal sea ownership. *See* note 17 *supra*.

23. 339 U.S. at 718.

24. Report of the Special Master, at 23, *quoted in* United States v. Maine, 420 U.S. 515, 522-23 (1975). For an explanation of the rights involved see note 18 *supra*.

25. 420 U.S. at 519.

26. *Id.* at 524.

27. The "long accepted commercial practice" involves several billion dollars of

By its heavy reliance on stare decisis in deciding *Maine*, the Court attempted finally to dispose of the interminable litigation between the states and the federal government over seabed rights.[28] *Maine* puts the states on notice of the Court's view that the weight of authority is itself controlling without reaching a re-examination of the merits.[29] The holding clearly establishes that the United States, to the exclusion of the individual states, has sovereign rights over the seabed lying more than three miles seaward[30] of the ordinary low-water mark[31] or the outer limits of inland waters[32] to the outer edge of the Continental Shelf.[33] Some of the definitions and presumptions that the *Maine* Court relied on, however, may give rise to continued federal-state conflicts. The general

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federal revenue and years of reliance on federal ownership. Total cumulative outer Continental Shelf revenue to the United States Treasury from bonuses, royalties and lease rentals grew from over $2 million in 1953 to $3.5 billion in 1973. STAFF OF SENATE COMM. ON COMMERCE, 93D CONG., 2D SESS., OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT AND THE COASTAL ZONE 67 (Comm. Print 1974). In addition to the public and private business transacted in reliance upon the *California* holding, the Court noted that major federal legislation concerning the Continental Shelf had also relied upon the previous decisions. 420 U.S. at 528.

The Court cited Rock Spring Distilling Co. v. W.A. Gaines & Co., 246 U.S. 312 (1918), for the view that stare decisis carries particular force where commercial property rights are concerned: "Uniformity and certainty in rules of property are often more important than technical correctness." *Id.* at 528. *But see* New York v. United States, 326 U.S. 572, 590-91 (1946) (Douglas, J., dissenting); Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-11 (1932) (Brandeis, J., dissenting) (important decisions of constitutional law are not subject to the same command of stare decisis as are cases involving statutory construction or interpretation). In following the earlier cases and placing great weight on commercial practice and reliance, the Court avoided the problem of whether the historical basis of the *California* line of cases is accurate or "correct" constitutionally.

28. 420 U.S. at 528.

29. *Id.*

30. State claims to the seabed lying within three miles have been accepted as valid pursuant to the Submerged Lands Act of 1953. 43 U.S.C. §§ 1301-43 (1970).

31. In a later case involving the determination of California's boundary, United States v. California, 382 U.S. 448 (1966), the Court established:

> 2. As used herein, "coast line" means—
> (a) The line of mean lower low water on the mainland, on islands, and on low tide elevations lying wholly or partly within three geographical miles from the line of mean lower low water on the mainland or on an island; and
> (b) The line marking the seaward limit of inland waters. . . .
> 3. . . . (c) "Mean lower low water" means the average elevation of all the daily lower low tides occurring over a period of 18.6 years.

Id. at 449-50. See notes 36-38 *infra* for a discussion of problems associated with these definitions.

32. "As used herein, 'inland waters' means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. . . ." United States v.

proposition of national jurisdiction is clear, but the specific rights incident to that concept remain uncertain.[34]

One weakness underlying the *Maine* decision is that the means of determining the outer geographical limit of state jurisdiction is uncertain. The three-mile limit demarcating state from federal jurisdiction must be measured from a baseline, which is determined by the ordinary low-water mark or the outer edge of inland waters.[35] The establishment of baselines is subject to dispute since the federal government and the states disagree on the delineation of inland waters[36] and since coastlines

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California, 382 U.S. 448, 450 (1966). International recognition of "inland waters" has not been established, primarily because Article 7(6) of the Convention on the Territorial Sea, *supra* note 2, includes "historic" bays as inland waters. *See, e.g.*, United States v. Florida, 420 U.S. 531 (1975); United States v. Alaska, 352 F. Supp. 815 (D. Alas. 1972).

33. Article 1, Convention on the Continental Shelf, *supra* note 2, provides that the term "continental shelf" refers "to the seabed and subsoil of the submarine areas adjacent to the coast but outside the areas of the territorial sea, 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 said areas. . . .*" (Emphasis added). Because technology now makes possible exploitation of resources even in the deep ocean, there may be confusion and conflict as to the accepted extent of the Continental Shelf under the above definition. Though nations have not as yet claimed deep ocean as being "continental shelf" within the Article's definition, it is clear that technology has outstripped the definition's scope. *See, e.g., Status Report on Law of the Sea Conference Before the Subcomm. on Minerals, Materials and Fuels of the Senate Comm. on Interior and Insular Affairs*, 94th Cong., 1st Sess., pt. 3, at 1232 (1975).

34. *See* Note, *Right, Title and Interest in the Territorial Sea: Federal and State Claims in the United States*, 4 GA. J. INT'L & COMP. L. 463, 479 (1974).

35. *See* Articles 4-10, Convention on the Territorial Sea, *supra* note 2.

36. No state has yet had the boundary between state and federal interests completely delimited. Wulf, *Freezing the Boundry* [sic] *Dividing Federal and State Interests in Offshore Submerged Lands*, 8 SAN DIEGO L. REV. 584 (1971). But in United States v. California, 381 U.S. 139 (1965), the Court rejected the State's argument that the definition of "inland waters" should have an ambulatory quality so as to encompass future changes in international law or practice:

> Expectations will be established and reliance placed on the line we define. Allowing future shifts of international understanding respecting inland waters to alter the extent of the Submerged Lands Act grant would substantially undercut the definiteness of expectation which should attend it. . . . "Freezing" the meaning of "inland waters" in terms of the Convention definition largely avoids this, and also serves to fulfill the requirements of definiteness and stability which should attend any congressional grant of property rights. . . .

Id. at 166-67. *But see* the Louisiana Boundary Case, 394 U.S. 11, 84 (1969) (Black, J., dissenting): "Today's holding does not grant Louisiana the 'definiteness and stability' promised to California [381 U.S. 139 (1965)]. A company holding an oil lease now under waters of Louisiana gets no more than an ambulatory title: here today and gone tomorrow." Justice Black felt that the Court should not undertake a determination of specific coastal boundary lines. He favored acceptance of the Coast Guard's historical determination of the inland water mark in order to stop the eternal boundary litigation, relieve the heavy burden on the Court, and provide for "the certainty and stability which are absolutely essential for useful development of our offshore oil resources." 394 U.S. at 88.

may shift due to geological changes.[37] For example, a recent controversy over some five hundred acres of seabed in Santa Barbara Channel centered on some submerged rocks previously thought to be a low-tide elevation. Whether or not the rocks are above water or submerged at low tide determines whether the State or the nation has rights to the underlying soil.[38] Unless a settlement is reached neither the State nor national government is likely to gain permanent control, for the rocks may shift again, and with such a shift, title to the subsoil will likewise change.[39] This particular problem arose because the area in dispute contained oil lands. As the seabed is exploited more intensively and site-specific economic values become more apparent, problems of this nature will occur more frequently.

Jurisdictional conflicts could also arise in response to developments not contemplated during the evolution of the *California* rule, resulting from new ocean uses made possible by advancements in technology[40] and new legislation affecting offshore rights.[41] In *United States v.*

37. Beach erosion and accretion can dramatically change the location of a coastline over time, and tidal effects have a more immediate impact on offshore low-tide elevations such as reefs and sandbars. The definition of "coastline" "is to be taken as heretofore and hereafter modified by natural *or artifical* means. . . ." (Emphasis added). United States v. California, 382 U.S. 448, 449 (1966). In addition to the shifting nature of the coast due to natural causes, man-made impacts such as jettees and dredge and fill operations contribute to the ambulant nature of the coast line. But a state's power to unilaterally extend its coast line out into the sea, the national domain, is vitiated by such federal legislation as the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 407-14 (1970); the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251-1376 (Supp. III, 1973); and the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401-44 (Supp. III, 1973) (all require Army Corps of Engineers permits for ocean construction operations).

38. Hortig, *Report on the Jurisdictional, Administrative and Technical Problems Related to the Establishment of California and Other State Coastal and Offshore Boundaries*, THIRD ANNUAL LAW OF THE SEA INST. 294, 296 (1969). Low-tide elevations are significant because the baseline from which the territorial sea is measured is drawn along such elevations. Article 11, Convention on the Territorial Sea, *supra* note 2.

39. In such a case the "ambulant title" possibility which Justice Black speculated about in the Louisiana Boundary Case could occur. 394 U.S. 11, 84 (1969). *See* note 36 *supra.*

40. Some areas where technological advancements have enabled potential exploitation of ocean resources are: fish farming, mariculture, energy production by wave action and temperature differentials, undersea telechiric vehicles and communications systems, deep ocean mining, and even floating islands. *See generally* BURKE, *supra* note 2, at 15-39; Smith & Marshall, *Mariculture: A New Ocean Use*, 4 GA. J. INT'L & COMP. L. 307 (1970). Technological breakthroughs have also given rise to a whole new field in ocean *protection*, pollution control.

41. A question exists regarding the authority the federal government and states may exercise in the territorial sea. The debate over state authority has concerned the regulation of fisheries, international shipping traffic, oil well land leasing and pollution control. Note, *Right, Title and Interest in the Territorial Sea: Federal and State Claims in the United*

Ray[42] developers attempted to create a sovereign nation on submerged reefs located about four miles southeast of Miami in international waters. The plan was to create an island through the use of extensive hydraulic dredge and fill operations, on which casinos and a resort complex would be built. The Court held the coral reefs were a natural resource of the seabed appurtenant to the United States and that the prospective developers' dredge and fill operations would infringe upon national rights.[43] The *Ray* holding could lead to a finding that the entire seabed is an "exploitable resource" subject to national sovereign rights.[44] Any attempt at such an extension of national jurisdiction might trigger challenges on the grounds that certain rights to various *uses* of the seabed are independent of and beyond the scope of the nation's *physical* jurisdiction.

Maine appears to settle the issue of federal versus state jurisdiction over the Continental Shelf. It is clear, however, that despite its forceful holding, *Maine* does not eliminate the possibility of long and protracted litigation concerning seabed conflict.[45] Disagreement may occur over geographical, technological and political limits of jurisdiction. In the thirty years since *California* was decided, the adjudicatory process has

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States, 4 GA. J. INT'L & COMP. L. 463, 479 (1974). The Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (Supp. III, 1973), the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. §§ 1401-44 (Supp. III, 1973), and the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. §§ 1451-64 (Supp. III, 1973), all affect offshore rights and powers, but none of these Acts preempt state rights to legislate in this area. Note, *Right Title and Interest in the Territorial Sea*, *supra*, at 479. Great national influence is exerted through these Acts, particularly the CZMA, which uses matching development and research grants to assure state compliance with federal standards. For a comprehensive review of the CZMA see Mandelker & Sherry, *The National Coastal Zone Management Act of 1972*, 7 URBAN L. ANN. 119 (1974). For a discussion of how public interests in navigable waters can be protected against unchecked federal infringement see Note, *The Public Trust in Public Waterways*, 7 URBAN L. ANN. 219 (1974).

42. 294 F. Supp. 532 (S.D. Fla. 1969). *See also* Atlantis Dev. Corp. v. United States, 379 F.2d 818 (5th Cir. 1967); Stang, *Wet Land: The Unavailable Resource*, 2 J. LAW & ECON. DEV. 153 (1968).

43. 294 F. Supp. 532 (S.D. Fla. 1969). The definition of "natural resources" as it pertains to the exploitation of the Continental Shelf is evolving, albeit slowly. In 1973, after great debate, the American lobster was declared to be a resource of the seabed rather than a creature of the water column, which will be protected by the United States. *See* Offshore Shrimp Fisheries Act, § 15(a), 16 U.S.C. § 1085 (Supp. IV, 1974).

44. Although the entire seabed beyond the continental slope could technically fall under the definition of the Convention on the Continental Shelf, *see* note 33 *supra*, a new understanding will probably be developed by the United Nations Conferences on the Law of the Sea.

45. The litigation may arise not so much as a result of *Maine*'s inadequacies, but due to systemic inadequacies inherent in the area of law concerned with seabed rights and boundary determinations.

been hard-pressed to expeditiously resolve such conflicts. As the rapid advancement of marine technology coupled with the traditionally slow pace of legal development leaves a gap between the law which governs the Continental Shelf and efforts to discover and utilize its resources, accommodation through political processes may become an increasingly attractive alternative.

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