

APPENDICES A TO H

Appendix A

Glossary of Terms Used

A

Ambulatory: Not stationary. Baselines from which maritime boundaries are measured ambulate with accretion and erosion causing ambulation of the boundaries themselves.

Ancient Title: A doctrine that may form the basis for the acquisition of territory that is considered, under international law, to be *terra nullius* or having no sovereign but susceptible of sovereignty. Closely related to the doctrine of historic title. Asserted by Massachusetts as an alternative to its historic title claim to Nantucket and Vineyard Sounds.

ANWR: The Arctic National Wildlife Refuge. A large federal wildlife refuge in the northeast corner of Alaska. Its coastal boundaries and the status of waters within those boundaries were among the issues litigated in *United States v. Alaska*, No. 84 Original.

Artificial Headlands: Man-made structures that form the mouths of inland water bodies. Although the Convention on the Territorial Sea and the Contiguous Zone refers to “natural” entrance points, the mouths of bays, rivers, and harbors may be formed by man-made features.

Artificial Islands: Offshore structures or features that do not meet the Convention’s definition of “island” in that they were not “naturally formed.” Mineral production platforms and spoil banks are examples. Artificial islands are not part of the baseline from which maritime zones are measured.

Assimilated to the Mainland: So closely related to the mainland as to be legally considered part of it. The Supreme Court determined in *United States v. Louisiana* that features that meet the Convention’s definition of “island” may nevertheless be treated as part of the mainland. The Court provided criteria for making such determinations.

Assimilated to the Territorial Sea: The consequence of a pre-Convention proposal for dealing with water areas that lie between the mainland and offshore islands but are more than the breadth of the territorial sea from either. The proposal would have included such areas in the territorial sea. Article 4 of the Convention on the Territorial Sea and the Contiguous Zone permits such areas to be claimed as inland water. If straight baselines are not employed, the areas are high seas.

B

Baseline: The line from which maritime zones are measured. The coast line. A combination of the low-water line and closing lines across the mouths of inland water bodies.

Baseline Committee: A Committee of the federal government’s Law of the Sea Task Force made up of representatives from federal agencies responsible for developing American international policy and/or enforcing domestic and international law in our various zones of maritime jurisdiction. The Committee’s primary purpose has been to apply principles of international law to the coastal geography of the United States and produce descriptions of our maritime zones. Lines produced by the Committee are printed on large-scale charts

published by the National Ocean Service. Those lines form the basis for the federal government's litigation position in the tidelands cases. Also known as the "Coastline Committee."

Base Point: A point on the baseline, or coast line, that affects the outer limit of a maritime zone.

Bay: An indentation of water into land that meets the requirements of Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. An inland water body.

Bisector of the Angle Test: One of a number of means for locating the natural entrance points to inland water bodies. Secondary to the 45-degree test. Used when no pronounced headland provides a terminus for the closing line.

Breakwater: A man-made structure extending seaward from the natural coastline which has an apparently continuous low-water line. Often constructed to affect the movement of water. A harborwork. Part of the coast line from which maritime zones are measured. Often contrasted with piers.

C

Cannon Shot Rule: Said to be the original criterion for establishing the breadth of the marginal sea. Advanced by Cornelius Van Bynkershoek in 1702 when cannon were said to have a range of approximately 3 miles.

Chapman Line: A tentative line proposed by the federal government as the "coast line" of the State of Louisiana. Based upon pre-Convention proposals for inland water delimitation that were superceded by the Supreme Court's adoption of the Convention's principles for Submerged Lands Act purposes. Named for Secretary Oscar L. Chapman of the Department of the Interior.

Clear Beyond Doubt: The standard of proof that the Supreme Court has suggested is necessary to prove a historic water claim in the face of a federal disclaimer of historic status.

Closing Line: The line dividing inland waters and the territorial sea at the mouth of a river, bay, or harbor.

Coast Guard Line: Lines constructed by the United States Coast Guard to separate areas of the sea where the Inland Rules of the Road apply from those where the International Rules are in effect. Found by the Supreme Court to have no bearing on the location of the coast line or inland waters as those terms are used in the Convention on the Territorial Sea and the Contiguous Zone.

Coast Line: The term used in the Submerged Lands Act to describe the low-water line and closing lines across the mouths of inland water bodies. The same as "baseline" in the Convention.

Coast Protective Works: Man-made structures erected along the coast, such as jetties and groins. Harborworks. Treated as part of the coast line for purposes of maritime zone delimitation.

Coastline: The water/land interface. The shoreline. A more general term than "coast line."

Coastline Committee: See: *Baseline Committee*.

Contiguous Zone: A zone seaward of the territorial sea in which coastal states may assert jurisdiction short of complete sovereignty. Article 24 of the Convention on the Territorial Sea and the Contiguous Zone authorizes such a zone "to prevent infringement of its customs, fiscal, immigration or sanitary regulations in territory or territorial sea" Under the Convention the contiguous zone may extend no more than 12 miles from the coast line. See also: 1982 Law of the Sea Convention, Article 33.

Convention: Convention on the Territorial Sea and the Contiguous Zone.

Convention on the Continental Shelf: One of the four Conventions on the law of the sea adopted at Geneva in 1958. 15 U.S.T. 471.

Convention on the Territorial Sea and the Contiguous Zone: One of the four Conventions on the law of the sea adopted at Geneva in 1958 which, among other things, sets out principles for establishing the baseline from which maritime zones of jurisdiction will be measured. 15 U.S.T. 1606. Those principles were later adopted by the United States Supreme Court for purposes of implementing the Submerged Lands Act, 43 U.S.C. 1301 *et seq.* Sometimes referred to herein simply as “the Convention.”

County Waters: An English predecessor to the modern concept of inland waters. According to Hale, the doctrine dated back to the early 14th century and provided that if waters were so narrow that the events on one side could be discerned from the opposite shore, the waters were *inter fauces terrae* and within the adjacent county. Massachusetts relied on the concept in its historic and ancient waters claims to Vineyard and Nantucket Sounds.

D

Disclaimer: A publicly stated federal position that the United States does not make a claim to particular waters. Disclaimers have been asserted to all alleged historic water claims in tidelands litigation. Prior to 1971 they were evidenced by federal litigation positions. Subsequent to 1971 they are also reflected in the Coastline Committee’s boundary depictions on official government charts. It is such disclaimers that trigger the “clear beyond doubt” burden of proof in litigation to establish historic title.

Distributaries: Multiple branches of a river. The Mississippi River divides into numerous distributaries as it flows through the delta and enters the Gulf of Mexico through numerous mouths.

Diurnal Tide: A tide with a cycle of approximately one day. Having one high and one low tide per day. The typical tide in the Gulf of Mexico.

Double-Headed Bay: A pair of adjacent bays that share a central headland. If, when considered together, the two indentations meet the requirements of Article 7 of the Convention they may be combined to form a single juridical bay with a closing line joining their non-common headlands.

Dredged Channel: An artificially maintained sea lane extending from an inland water body into the marginal sea to accommodate vessel traffic through coastal shallows. Louisiana contended that such submerged features are “harborworks” and part of the coast line. The Supreme Court held otherwise.

E

English Mile: A measure of distance. 5280 feet. Also known as a statute mile. As contrasted with a nautical or geographic mile of 6080.2 feet.

English Seas: A maritime belt of sovereignty asserted around the British Isles by Charles I (1625-1649). Also called the “narrow seas.”

Entrance Points: The points on the low-water line that are joined to create a closing line marking the seaward limits of inland waters.

Equal Footing Doctrine: The Constitutional doctrine that states admitted to the Union after the adoption of the Constitution enter on an equal footing with the original states. In tidelands litigation this doctrine was the basis for the Supreme Court’s

determination that California did not enter the Union with rights in the marginal sea because the original 13 states held no such rights. On the other hand, subsequently admitted states did acquire sovereignty over lands beneath inland waters because the original states had entered with such rights.

Equidistant Line: A line that is at all times equidistant from two adjacent or opposite coast lines. It is, in the absence of special circumstances, the preferred method for constructing lateral offshore boundaries. Used to continue the common boundary between Texas and Louisiana (in the Sabine River) to the limit of their Submerged Lands Act grants. Also known as a “median line.”

Excepted To: The term used to describe a litigant’s request to the Supreme Court that it not adopt a special master’s finding or recommendation in an Original action. Most tidelands cases have been initiated in the Supreme Court pursuant to Article III, Section 2 of the Constitution. They have then been assigned, by the Court, to a special master to take evidence and report his findings and recommendations to the Court. At that stage the parties are invited to “take exception” to the master’s findings and recommendations.

F

Fallback Line: A line of 24 miles length constructed within an overlarge bay to define the limit of inland waters. Article 7 of the Convention provides that the inland waters of a bay will extend to a line between its natural entrance points only if those points are 24 miles or less apart. The inland waters of a bay that meets all requirements of Article 7 except for the 24-mile maximum mouth extend seaward to an arbitrary line of 24 miles constructed within the bay such that the maximum water area is enclosed.

Fictitious Bay: A water area enclosed by the mainland and offshore islands. Some pre-Convention proposals would have treated such areas as inland waters. Others would have treated them as territorial sea, even though farther from land than the claimed breadth of the territorial sea. Under the Convention such areas are territorial seas and high seas unless enclosed by Article 4 straight baselines.

Forty-five Degree Test: The preferred method of locating the proper headlands and entrance points for an inland water body. The test determines whether the coastline between two potential entrance points faces more on the inland water body or the open sea. If the former, the more seaward potential headland is employed; if the latter, it is rejected and the more landward option is similarly evaluated.

Fringing Islands: A series of islands that fringe, or mask, a mainland coast. Often known as barrier islands. Prior to the Convention there was no international agreement on how to treat the waters landward of such islands. The Convention provides two means. The coast line of the mainland and each island may be used separately as baselines for measuring zones of maritime jurisdiction, leaving open the possibility of high seas enclaves or cul-de-sacs in the intervening waters. Article 4 straight baselines may also be adopted, making all intervening waters inland.

G

Garrett-Scudder Line: A series of straight lines drawn along portions of the Alaska coast for fisheries administration purposes and said by Alaska to evidence a claim of inland water sovereignty in support of its historic waters claim to Cook Inlet. The Supreme Court disagreed.

Geographic Mile: A unit of linear measure equal to one minute of latitude at the equator. 6080.2 feet. Also known as a nautical mile. Unless otherwise noted, references to a “mile” in this work are to the geographic or nautical mile.

Groin: An artificial structure, like a small jetty, extending from the shore. Usually for the purpose of preventing beach erosion. Treated as a harborwork. Part of the coast line from which Submerged Lands Act grants and zones of maritime jurisdiction are measured.

H

Harbor: A place where ships may find shelter. A harbor may be natural or artificially constructed. In either case its waters are inland. The limits of its inland waters are determined, at least in part, by their use as a harbor rather than the mere application of delimitation principles to geography, as is the case with bays and rivers.

Harborwork: Artificial structures erected to protect the coast or provide shelter. Treated as part of the coast line pursuant to Article 8 of the Convention.

Headland: A geographic feature that serves to give an inland water body its landlocked nature. A headland may be natural or man-made. It must be above mean low water but not by any significant extent. It will usually provide an appreciable change in the direction of the coast.

High-Seas Enclave: An area of high seas entirely surrounded by territorial seas generated by the mainland and islands that lie more than twice the breadth of the territorial sea offshore.

Historic Bay: A water area over which the coastal state has asserted sovereignty, over a long period of time, with the acquiescence of foreign nations. The geographic requirements for a juridical bay, as set out in Article 7 of the Convention, need not be met.

Historic Boundary: As used in this volume, a state's boundary at the time it entered the Union. Congress, through the Submerged Lands Act, permitted states bordering on the Gulf of Mexico to prove historic boundaries of up to 3 marine leagues (9 nautical miles) offshore. Their Submerged Lands Act grants would then extend to the lesser of those lines or lines 3 leagues from the present coast line. Florida and Texas provided such proof and received the extraordinary grant. Louisiana, Mississippi, and Alabama could not.

Historic Inland Waters: Water areas over which inland water jurisdiction has been asserted for a substantial period of time with the acquiescence of foreign states. See: *Historic Bay*.

Historic Territorial Seas: Water areas over which territorial sea jurisdiction has been asserted for a substantial period of time with the acquiescence of foreign states.

I

Inland Water Line: A series of straight lines developed by the Coast Guard to separate areas that are subject to its Inland Rules of the Road from those to which the International Rules apply. The lines have no bearing on inland water determinations for Convention or Submerged Lands Act purposes. See: *Coast Guard Line*.

Inland Waters: Waters landward of the baseline from which the marginal seas are measured and over which complete sovereignty is exercised. Also known as "internal waters."

Innocent Passage: The right of a vessel to navigate through the territorial sea of a foreign state for purposes of traveling from one area of high seas to another or passing between the high seas and the inland waters of the coastal state.

Inter Fauces Terrae: Landlocked. Literally "within the jaws of the land." The initial requirement for juridical bay status under Article 7 of the Convention.

Internal Waters: See: *Inland Waters*.

Intersected Islands: Islands that lie on a direct line between the mainland headlands of an inland water body, thereby forming multiple mouths to that body.

J

Jetty: A substantial, artificial structure erected on the coast for the purpose of extending the flow of a river or protecting a harbor or beach. A harborwork. Part of the coast line for Convention and Submerged Lands Act purposes. See: *Breakwater*.

Juridical Bay: An indentation into the mainland that qualifies for inland water status under the criteria of Article 7 of the Convention. Because the provisions of Article 7 are self-executing, a coastal state need not put foreign nations on notice of the inland water status of juridical bays.

K

King's Chambers: Coastal waters within lines between distant headlands that "squared off" the British Isles. Proclaimed by James I in 1604, the waters constituted a neutral zone within which foreign warships were prohibited from engaging in combat. The Chambers have no continuing significance.

L

Landlocked: Separated from the open sea by mainland headlands. For practical purposes, any indentation into the mainland that meets the requirements of Article 7 of the Convention.

Lateral Offshore Boundary: The offshore extension of land boundaries between adjacent coastal states to the limits of their offshore jurisdiction. In the absence of agreement such boundaries are described as a median or equidistant line. Convention, Article 12. The Texas/Louisiana, South Carolina/Georgia, and Maine/New Hampshire lateral boundaries have been litigated and are discussed in this volume.

Law of the Sea Convention: The United Nations' 1982 Convention that, for most purposes, supercedes the four Geneva Conventions of 1958. The "baseline" provisions of the Law of the Sea Convention do not deviate significantly from those of the Convention on the Territorial Sea and the Contiguous Zone. The Supreme Court's adoption of the 1958 principles for purposes of the Submerged Lands Act is not affected by the new Convention. Entered into force on November 16, 1994. The United States has recognized most provisions of the 1982 Convention as customary international law (including the baseline provisions) but, at the time of this writing, has not ratified the Convention.

Limits of the Tides Test: A proposal that river waters, running upstream to the limit of tidal effect, should be included within the area of the water body into which they flow for purposes of determining whether that body qualifies as inland water (that is, meets the semicircle test of Article 7).

Littoral: Bordering on the sea.

Low-Tide Elevation: A naturally formed area of land that is surrounded by and above water at low tide but below water at high tide. Low-tide elevations serve as part of the coast line when they are within the breadth of the territorial sea of the mainland (either uplands or inland waters) or an island. Convention, Article 11.

M

Marginal Sea: The maritime belt over which a coastal state asserts sovereignty. See: *Territorial Sea*.

Marine League: Three nautical, or geographic, miles.

Median Line: See: *Equidistant Line*.

Mixed Tides: Two high and two low tides per day. Typical of the Pacific coast of the United States.

Mouth: Entrance to an inland water body. The line that divides inland waters from the territorial sea.

Mudlumps: Small islands found near the various mouths of the Mississippi River.

Multiple Mouths: More than one entrance to an inland water body. The result of islands either intersected by or in the vicinity of, and screening a large proportion of, the closing line between mainland-to-mainland headlands.

N

Narrow Seas: See: *English Seas*.

NPR-A: National Petroleum Reserve–Alaska. A federal reservation along the central Arctic coast of Alaska. The United States and Alaska disputed the location of its coastal boundary and title to certain submerged lands within that boundary in *United States v. Alaska*, No. 84 Original.

Natural Entrance Points: Points on the headlands of an inland water body that serve as the termini of its closing line.

Naturally Formed: Composed of natural substance which has been naturally placed. One of the requirements for island and low-tide elevation status under Articles 10 and 11 of the Convention.

Nautical Mile: See: *Geographic Mile*.

Navigable Waters: Waters that are either tidally influenced or navigable in fact.

Normal Baseline: The low-water line as adopted for large-scale charts by the official government charting agency.

O

Original Action: A legal action initiated in the Supreme Court, rather than a lower federal court, as provided in Article III, Section 2 of the Constitution. All but one of the tidelands cases discussed herein were filed as Original actions in the Supreme Court.

OCSLA: The Outer Continental Shelf Lands Act. 43 U.S.C. 1331 *et seq.* Federal legislation which, for the first time, provided a mechanism for the administration of mineral resources seaward of the territorial sea. Enacted shortly after passage of the Submerged Lands Act in 1953.

Overall-Unit-Area: The area along the southern California coast between the mainland and a line running from Point Conception to Point Loma around the seaward side of all islands. Unsuccessfully claimed by California as part of its inland waters.

Overlarge Bay: An indentation into the mainland that meets all requirements of Article 7 for inland water status except that its entrance is more than 24 miles across. Cook Inlet, Alaska, is an example. Article 7 provides that in such circumstances a “fallback line” of 24 miles shall be drawn within the indentation to enclose the maximum possible water area.

P

Paramount Rights: The term used by the Supreme Court to describe the federal interest in offshore submerged lands prior to passage of the Submerged Lands Act.

Pier: An artificial structure erected on the coast and extending into the sea. Distinguished from jetties and breakwaters in that its platform is generally supported by pilings that do not produce a continuous low-water line and are not intended to affect the movement of water or provide a coast protective function.

Pollard Rule: The proposition that subsequently admitted states entered the Union on an equal footing with the original 13 states, thereby acquiring title to submerged lands beneath the inland navigable waters within their boundaries.

Port: A protected place along the coast in which ships may take refuge from storms or transfer cargo. A harbor. Protection may be provided by natural or artificial features. The waters of a port are inland.

Q

Quitclaim: A release or relinquishment of all of the grantor's interest without a warranty of title.

R

Roadstead: An area of the sea used for the anchorage of vessels and transshipment of cargo, usually without the protection from weather associated with ports and harbors. Roadsteads are part of the territorial sea but are not inland waters.

S

Screening Islands: Islands that lie on or near the mainland-to-mainland closing line across the mouth of an inland water body and form multiple mouths to that body.

Self-Executing: Occurring by operation of law. Needing no further act for implementation.

Semicircle Test: The requirement of Article 7 that to qualify as a juridical bay an indentation in the coast must, at a minimum, contain a water area equivalent to that of a semicircle whose diameter is that of the indentation's mouth.

Shortest Distance Test: The method for locating the entrance point of an inland water body when only one distinct headland exists. In such cases the shortest possible line is drawn from that headland to the opposite coast.

Solicitor General: The official in the United States Department of Justice who is responsible for all federal litigation in the United States Supreme Court.

Special Circumstances: Considerations that might justify adopting something other than an equidistant line as a lateral boundary dividing the offshore jurisdiction of adjacent states. Examples include historic assertions of jurisdiction, navigation channels, offshore islands, or any other physical or geographic feature that might result in an inequitable division of the seabed.

Special Master: An individual appointed by a court to conduct evidentiary proceedings, hear arguments, and report his findings and recommendations. The Supreme Court used special masters for each of the tidelands' Original actions that included the need for significant factual findings. (Those upon which the parties could agree to all relevant facts, or which involved only legal determinations, have been resolved by the Court without the help of masters.) As a matter of law the Supreme Court reviews the entire record of an Original action. As a factual matter the Court almost always agrees with its masters' conclusions. Special masters have been highly respected senior federal judges, academics, and private practitioners.

Spoil Bank: An artificial formation created by the deposit of dredged materials on the seabed. Spoil banks that are connected to the natural coastline are part of the baseline from which maritime zones are measured. Those that are unattached are artificial islands and are not part of the baseline.

Statute Mile: 5280 feet. Also known as a "land mile" or "English mile."

Straight Baselines: An artificial coast line from which maritime zones are measured. Appropriate for coastlines that are deeply indented or masked by a fringe of islands. Article 4 of the Convention provides the rules for straight baselines. The United States has never adopted such baselines.

Submerged Lands Act: Federal legislation that granted to the coastal states federal rights to natural resources within 3 nautical miles (up to 9 miles for Texas and the Gulf coast of Florida) of the coast line. 43 U.S.C. 1301 *et seq.*

Subsidiary Water Body: A river that empties into, or bay that opens onto, another water body. Numerous questions have arisen in the tidelands litigation as to whether or when the area of subsidiary water bodies may be included for purposes of applying the semicircle test to a primary indentation under consideration for inland water status.

T

Ten-Mile Rule: A pre-Convention proposal for coast line delimitation that would have included as inland any waters lying between the mainland and offshore islands that were so closely grouped that no entrance to the intervening waters exceeded 10 nautical miles. Under the Convention such areas can, in most cases, be enclosed with Article 4 straight baselines.

Territorial Sea: The offshore belt in which a coastal state has exclusive jurisdiction. The territorial sea may not extend more than 12 nautical miles from the coast line. See: *Marginal Sea*.

Territorial Waters: The territorial sea and inland waters of a state.

Thalweg: The middle of the main navigation channel of a river. Often serving as the boundary between two states. As opposed to the geographic middle of the river, which may also be used as a boundary.

Three-League Boundary: The historic offshore boundaries of Texas and of Florida in the Gulf of Mexico. The seawardmost extent of Texas's and Florida's Submerged Lands Act grant in the Gulf.

Tidelands: The zone between the mean high-water line and the mean low-water line, commonly referred to as the "beach." Waters above the tidelands are inland, being landward of the coast line. Despite the traditional reference to "tidelands litigation," the United States never questioned state jurisdiction over these lands. The "tidelands cases" involved only submerged lands seaward of the low-water line.

Tidelands Cases: That body of litigation between the federal government and the coastal states that has determined ownership over submerged lands and resources seaward of the coast line and defined that coast line through the application of international law.

Truman Proclamation: A proclamation through which the United States unilaterally claimed exclusive jurisdiction over the resources of its continental shelf beyond the marginal sea. Presidential Proclamation No. 2667 of September 28, 1945, 59 Stat. 884.

W

Well-Marked Indentation: An indentation of water into the mainland that is more than a mere curvature of the coast. The first requirement for juridical bay status under Article 7 of the Convention.