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Legislation Defining Louisiana's Coastal Boundaries

Victor A. Sachse*

When the State of Louisiana was admitted into the Union by the Act of Congress approved April 8, 1812, its southern boundary was said to be the Gulf of Mexico, "including all islands within three leagues of the coast."¹

In 1938 the Louisiana legislature declared that "according to the ancient principles of international law it was generally recognized by the nations of the world that the boundary of each sovereign State along the seacoast was located three marine miles distant in the sea, from low water mark along its coast on the open sea; . . . because at the time it became so fixed, three marine miles was the distance of a cannon shot and was considered the distance at which a State could make its authority effective on the sea by the use of artillery located on the shore. . . ." The legislature further declared that the "gulfward boundary of Louisiana is already located in the Gulf of Mexico three leagues distant from the shore, a width of marginal area made greater" by the act leading to the admission of Louisiana than the "inherent, three mile limit," that "a State can define its limits on the sea"; and the legislature fixed the gulfward boundary of the state as "a line located in the Gulf of Mexico parallel to the three-mile limit as determined according to said ancient principles of international law, which gulfward boundary is located twenty-four marine miles further out in the Gulf of Mexico than the said three-mile limit."²

This act was not directly tested until 1947, in the so-called "tidelands" litigation. "Tidelands" are usually described as "lands that are alternately covered and uncovered by the flow and ebb of the tide."³ This litigation began with a suit by the United

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1. 2 STAT. 701, 702 (1812). See also 2 STAT. 708 (1812) adding the Florida Parishes to Louisiana. For the treaty of 1803 by which Louisiana was acquired from France, see 8 STAT. 200.

2. La. Acts 1938, No. 55, § 1, p. 169, LA. R.S. 49:1 (1950), as amended, La. Acts 1954, No. 33.

3. *Submerged Lands Act, Minority Views*, SEN. REP. No. 133, pt. 2, 83d Cong., 1st Sess., p. 15 (1953).

States against the State of California. It did not really concern the tidelands, normally known as "shore" or "beach" but concerned the lands under the marginal or three-mile belt. This belt begins at the ordinary low water mark, where the "tidelands" end.⁴ The Court denied California's proprietary rights to this area without holding that the United States had proprietary rights to it but by saying that the United States had "paramount right and power to determine in the first instance when, how, and by what agencies foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited."⁵

Louisiana's attempt in the Court to save Louisiana from the effect of this decision failed. In *United States v. Louisiana*⁶ the 1938 act was mentioned and discarded by the United States Supreme Court on the authority of the *California* case.

Louisiana fared better before Congress, and the Submerged Lands Act of 1953 recognized the title of the states to submerged lands within their boundaries, which were limited to three miles from the "coast line." This limit could be extended to "three marine leagues into the Gulf of Mexico" when such boundary "existed at the time such State became a member of the Union" or had been approved by Congress prior to the passage of that act.⁷

It is in the light of the foregoing that the Louisiana legislature enacted Act 33 of 1954 fixing the gulfward boundary of the state and Act 32 of 1954 extending the lateral boundaries of the coastal parishes to this state boundary.

The line fixed by Act 33 starts from Ship Island Lighthouse and, in the main, follows a line of buoys to the lighted whistle buoy 1 at Sabine Pass. This is designated as the "coast line." The boundary is parallel to and three marine leagues seaward from it.

The preamble of the act recites the authority upon which the legislature relied in passing it. It refers to the admission of Louisiana into the Union and declares that its gulfward boundary

4. For the general background of the problems involved, see BARTLEY, *THE TIDELANDS OIL CONTROVERSY—A LEGAL AND HISTORICAL ANALYSIS* (1953); Illig, *Offshore Lands and Paramount Rights*, 14 U. OF PITT. L. REV. 10 (1952); Holland, *The Juridical Status of the Continental Shelf*, 30 TEXAS L. REV. 586 (1952).

5. *United States v. California*, 332 U.S. 19, 29 (1947). There are strong dissents by Mr. Justice Frankfurter and Mr. Justice Reed.

6. 339 U.S. 699 (1950).

7. 67 STAT. 29 (1953), 43 U.S.C.A. § 1301 *et seq.* (Supp. 1953).

was then fixed at three leagues from the coast, which is a conclusion most helpful to Louisiana. However, at the time this is written, it seems certain the federal government will challenge this boundary. The preamble refers also to the Acts of Congress of February 10, 1807,⁸ and of February 19, 1895,⁹ as providing for the official designation of the coast line by "bearings, light-houses, buoys and coast objects" and asserts that "the United States Supreme Court has held that the waters inside of the coast line designated and defined under said Act of February 19, 1895 are 'as much a part of the inland waters of the United States within the meaning of this Act as the harbor within the entrance.'" It is on this basis that the coast line is drawn in the water, not where the water meets the land, but in the water itself where sufficient depth is found for navigation of all kinds.

A map is made a part of Act 33. This is the same map which had been presented to the State Mineral Board at its meeting March 18, 1954, by Mr. L. H. Perez, of Plaquemines Parish, who had taken prominent part in the Louisiana litigation previously mentioned. In his statement to the Mineral Board Mr. Perez emphasized that when Louisiana was admitted to the Union its coast, not its shore, was mentioned, that the "coast line" was ordered surveyed by Congress,¹⁰ that a later survey had been ordered to divide the "high seas from rivers, harbors and inland waters,"¹¹ and that the map which he presented showed the determination of the coast by the United States Coast Guard.

On this map the coast line is dotted and a heavy line parallel to it and three leagues seaward from it is fixed as the boundary.

There are three maps which lend some support to the map now under consideration. One is a map entitled "*Les Costes aux Environs de la Rivière de Misisipi*" dated 1705. It shows a dotted line bearing a legend which freely translated seems to the writer to mean that large battleships are warned from approaching the coast, the Gulf not having sufficient depth within these points ("*ne ayant de fond que, Jusqua ces points*").¹² This map does not seem to have been intended to establish a jurisdictional or proprietary line but rather as a guide to navigators and travelers.

8. 2 STAT. 413 (1807).

9. 28 STAT. 672 (1895), 33 U.S.C. § 151 (1952).

10. 2 STAT. 413 (1807).

11. 28 STAT. 672 (1895), 33 U.S.C. § 151 (1952).

12. See memorandum submitted by L. H. Perez in *Hearings Before the Committee on Interim and Insular Affairs United States Senate on Sen. J. Res. 15, Sen. 294, Sen. 107, Sen. 107 Amendment, Sen. J. Res. 18, 83d Cong., 1st Sess. 289 (1953).*

It should be remembered, however, that it does indicate the line of shallow water somewhat as the Coast Guard later did and also that when it was drawn many nations insisted upon the doctrine of "closed sea."

The other two maps are reproduced in the report of the decision by the United States Supreme Court in a boundary dispute between the States of Louisiana and Mississippi.¹³ The dispute in that case arose because Louisiana claimed "all islands within three leagues or nine miles of her *coast*" and Mississippi claimed "all islands within six leagues or eighteen miles of her *shore*, and that some islands within nine miles of the Louisiana *coast* were also within eighteen miles of the Mississippi *shore*."¹⁴ (Italics supplied.) The italicized words are used interchangeably in the decision. The maps then presented are quite similar to the map attached to Act 33 in the area east of the Mississippi River. They show the boundary to be at some greater distance from the mouth of the river than does the map of Act 33; and, while they tend in a general way to follow the sinuosities of the shore west of the Mississippi River to a point about opposite Calcasieu Lake in Cameron Parish, nevertheless the red line which marks the boundary on these maps seems to be at least as far from the shore as is the line on the map attached to Act 33. Since only the boundary between the two states was at issue, the red lines mentioned very obviously were drawn free-hand on the maps, and the decision does not purport to fix definitely the gulfward boundary of the state. The Court expressly stated:

"Questions as to the breadth of the maritime belt or the extent of the sway of the riparian States require no special consideration here. The facts render such discussion unnecessary."¹⁵

Act 33 of 1954 presents several issues: Is "coast line" something different from "shore line"? If so, is "coast line" where shallow water and deep water meet the base for measurement? Does the mention of "islands within three leagues of the coast" have the effect of extending the Louisiana boundary to a line which would encompass all such islands?

"Coast line" as used in the Submerged Lands Act "means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking

13. *Louisiana v. Mississippi*, 202 U.S. 1 (1906).

14. *Id.* at 35.

15. *Id.* at 52.

the seaward limit of the inland waters."¹⁶ "Shore line" is not defined in that act, but is the line of contact between the land and a body of water. On Coast and Geodetic Survey nautical charts and surveys the "shore line" approximates the mean high-water line.

The "coast line" as used in the Submerged Lands Act is therefore somewhat further out than the shore line.

Inland waters have been defined by the Coast Guard as including those landward of the low water mark (and which therefore cover and uncover the so-called "tidelands"), which seems consistent with the quoted federal statutory definition of "coast line" and would seem to make the base line intended by the Submerged Lands Act the seaward limit of the land covered and uncovered by the flow and ebb of the tides.

If this is the ultimate decision, the base line would have to be one which has regard to the sinuosities of the line on the land where it meets the water or, as the Submerged Lands Act has it, where the coast "is in direct contact with the open sea."

Along a part of the Louisiana coast there are a number of islands and it may well be that it is the seaward side of such islands, and not the land behind such islands, which "is in direct contact with the open sea." Such an interpretation would advance the Louisiana base line somewhat as was done in the *Anglo-Norwegian Fisheries* case.¹⁷ In that case, the United Kingdom contested Norway's method of drawing its base line along the seaward projection of the very many rocks and islands called the "rock rampart" of the Norwegian coast extending in places as far as forty-four miles from the mainland. The International Court of Justice at The Hague ruled in favor of Norway. That case was not accepted as authority by the Master appointed by the United States Supreme Court in the *California* case to determine the California boundary, but he did not then have the definition in the Submerged Lands Act as a guide.

It is that federal act and not Louisiana Act 33 of 1954 which must ultimately be decisive in the federal courts for in the *Louisiana* case, though Mr. Justice Douglas said, "We intimate no opinion on the power of a State to extend, define, or establish its external territorial limits or on the consequences of any such extension *vis à vis* persons other than the United States or those

16. 67 STAT. 29 (1953), 43 U.S.C.A. § 1301(c) (Supp. 1953).

17. Fisheries Case (United Kingdom v. Norway), 1951 I.C.J. Rep. 116.

acting on behalf of or pursuant to its authority,"¹⁸ the Court did not respect the boundary claims of Louisiana as set forth in the 1938 act.

Whatever the base line may be, there remains the question of measure: three miles or three leagues?

Neither measure is specifically set up by the act admitting Louisiana to the Union, but *islands* within three *leagues* are included by the terms of that act. Such a description was not unusual for that period. Indeed, at the conclusion of the American Revolution, Great Britain recognized the territory of the United States as including "all islands within twenty leagues of any part of the shores of the United States."¹⁹

The question is whether the boundary of Louisiana must lie to the seaward side of any islands within three leagues of its coast or at any rate must be three leagues from the coast so as to embrace such islands if they existed, or whether there could lie between the mainland of Louisiana and an island part of Louisiana a strip of land under the sea belonging to another sovereignty or to none.

It may well be argued that if the claim of the federal government was limited to the three-mile marginal sea, it did not own and therefore could not convey to Louisiana an island more distant, that by its conveyance as a part of the state all islands within three leagues, it signified federal dominion to that distance. This area is now of great concern to the national government not alone because of military and international affairs but because of the immense wealth which all believe it will produce. However, there is scant reason to believe that the Congress in the opening of the nineteenth century had any purpose to serve in retaining as a part of the federal domain the bed of the sea between the Louisiana mainland and such islands. The writer has been unable to find any decision definitely disposing of this question.

If this problem is not settled by administrative agencies of the state and of the nation and the Supreme Court will have to consider it, the Court will have to consider a factor not present in the *California* case or in the *Louisiana* case. The paramount rights of the United States to the lands underlying the marginal

18. *United States v. Louisiana*, 339 U.S. 699, 705 (1950).

19. *Treaty of Peace Between Great Britain and the United States*, Sept. 3, 1783, 8 STAT. 80.

sea were made in large part to depend upon the paramount right to control the sea. Since then, Congress has passed the Outer Continental Shelf Lands Act²⁰ wherein the subsoil and seabed is said to appertain to the United States not so much because covered by the sea but because it is a continuation of the land recognized as belonging to our country.

20. 67 STAT. 462 (1953), 43 U.S.C.A. § 1331 *et seq.* (Supp. 1953).