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ERA OF MILITANT FISHING JURISDICTION— A STUDY OF THE FLORIDA TERRITORIAL WATERS ACT OF 1963

DORIAN COWAN*

I. DEVELOPMENT OF LITTORAL JURISDICTION	160
A. <i>Historical Background</i>	160
B. <i>The Climactic California Case of 1947</i>	163
II. FEDERAL SUBMERGED LANDS ACT OF 1953	165
A. <i>Legislative History</i>	165
B. <i>Judicial Review</i>	167
III. FLORIDA TERRITORIAL WATERS ACT OF 1963	169
A. <i>Background of Statute</i>	169
B. <i>Relationship to Federal Submerged Lands Act</i>	171
IV. FEDERAL TERRITORIAL WATERS ACT OF 1964	172
A. <i>Description and Purpose</i>	172
B. <i>Relationship to Florida Fishing Statute</i>	173
C. <i>Federal Extra-Territorial Waters Act of 1966</i>	176
V. RELATIONSHIP OF FEDERAL AND FLORIDA FISHING STATUTES TO GENEVA CONVENTIONS	178
VI. CONCLUSION	179

I. DEVELOPMENT OF LITTORAL JURISDICTION

A. *Historical Background*

It has long been recognized in international law that the boundaries of coastal nations include the adjoining seas. However, despite recent world efforts to reconcile geographical limits in respect to such sea boundaries, the matter remains unsettled.¹ In general, navigable waters are grouped in three basic categories: inland waters, marginal seas, and the high seas. The marginal or territorial sea is along a nation's coast and is sovereign with the exception of the innocent passage of foreign vessels.² The inland waters of a nation are all waters on the landward side of the marginal sea including the waters within the land area such as bays and estuaries.³

The acceptability of prescribed water zones by the world community has an extensive history. Except for the exercise of private law, the Romans, who had great influence on the development of other modern legal systems, evidenced little interest in maritime law and the products of the sea.⁴ Occasional claims of *mare clausum* in surrounding sea areas were primarily military tactics designed to secure for Rome the maritime frontiers of an expanding empire.⁵

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1. E. McDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS* (1962); A. SHALOWITZ, *SHORE AND SEA BOUNDARIES* (1962).

2. *United States v. California*, 332 U.S. 19 (1947); *Cunard S. S. Line v. Mellon*, 262 U.S. 100 (1927).

3. 4 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 44 (1964).

4. D. JOHNSTON, *INTERNATIONAL LAW OF FISHERIES* 158 (1965).

5. *Id.*

The fundamental conflict that now exists between the accepted principle of the freedom of the seas and the expanding claims of coastal states in regard to adjoining waters is a relatively recent one. The concept of *mare adjacens*, the right of littoral nations to exercise control over coastal waters, was first introduced in the Middle Ages. It enabled Nation States with centralized authority, an emerging political phenomenon of the era, to exercise wider control over their subjects.⁶ Generally, the rights asserted in such sea areas were not those of ownership, but of jurisdiction. Exploration and colonization in the 16th and 17th Centuries led to sweeping claims. In 1609 a papal decree allotted to Spain the vast areas of the Pacific, the Caribbean, and the Gulf of Mexico. Portugal was allotted the Indian Ocean and the South Atlantic.⁷

In contrast, *Mare Liberum*, the freedom of the seas doctrine, did not emerge until the 17th Century. It was initiated in 1808 by Hugo Grotius, a brilliant Dutch scholar.⁸ For centuries, because of the vastness of the sea and the limited relationship between States, the use of the sea was not subject to rules.⁹ All property, stated Grotius, is based on possession. Since the open seas cannot be seized or encompassed, they are incapable of true ownership, and hence belong to all mankind. Though unacceptable at the time to powerful maritime powers, such as France and England, the doctrine gradually gained world support.¹⁰

The problem of reconciling the concept of the freedom of the seas with diverse claims of littoral jurisdiction was ultimately resolved by the imprecise "cannon-shot" rule, the range by which coastal waters could be controlled by cannon-shot on shore.¹¹ Discerning the need for more accurate measurement, President Jefferson in 1793 announced that the United States would regard its territorial waters "as restrained for the present to the distance of one sea league or three geographical miles."¹² Although the United States has generally adhered to the three-mile territorial sea policy, its jurisdiction has been extended beyond the three-mile limit for customs control¹³ and defense purposes.¹⁴

Presently, the most consistent supporter of the three-mile rule is Great Britain. In varying degrees of acceptability, many other nations, including France, Germany, Holland, Greece, Turkey and Japan have adhered to the limit, subject in many cases to fishing and other rights. Russia, Italy, Portugal and Spain have traditionally opposed such limit as inimical

6. P. JESSUP, LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION (1927); C. MEYER, THE EXTENT OF JURISDICTION IN COASTAL WATERS (1937).

7. C. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA 46 (1962).

8. H. GROTIUS, MARE LIBERUM (1608).

9. Anglo-Norwegian Fisheries Case [1951], I.C.J. 116.

10. D. Johnston, *supra* note 4 at 166-71.

11. H. Kent, *Historical Origins of the Three-Mile Limit*, 48 AM. J. INT'L L. 537 (1954).

12. *Id.*

13. Anti-Smuggling Act of 1935, 49 STAT. 517 (1935).

14. 62 STAT. 799 (1948).

to their national interests.¹⁵ Norway, because of abnormal coastal configuration and historical use, secured extended jurisdiction in adjoining sea areas by international arbitration.¹⁶ Several South American nations have asserted jurisdiction over exorbitant distances at sea, claiming the areas as a part of the so-called Continental Shelf. The possibility of international settlement of the general issue, however, is seemingly near at hand. At a recent meeting of the Geneva Convention the membership narrowly missed agreement on a six-mile territorial sea limit by a single vote.¹⁷

In September, 1945, President Truman, by proclamation, claimed for the United States jurisdiction and control of the sea-bed resources of the Continental Shelf lying off its shores.¹⁸ In answer to charges of inconsistency, the State Department explained that it did not extend United States sovereignty or affect the nature of the high seas above the shelf, and that it confirmed to all nations the right to free and unimpeded navigation.¹⁹

Thus began a new round of encroachments in traditional high seas areas. Alerted to the economic value of off-shore resources, other nations took similar unilateral action. Individual concepts of the extent and make-up of continental shelf areas were, for the most part, vague and ill-defined. Conflicting viewpoints were finally resolved by the Convention on the Continental Shelf, one of four far-reaching Geneva Conventions on the High Seas.²⁰ In the international agreement the Continental Shelf is broadly defined as the sea-bed and subsoil of the off-shore submarine areas, outside the territorial sea "to a depth of 200 meters, or beyond that limit to where the depth of the superadjacent waters admits the exploitation of natural resources of said areas."²¹

As in the Truman Proclamation, the sovereignty of coastal nations was strictly limited. It could in no way impair the "legal status of the superadjacent waters of the high seas or that of the air space above those waters."²² The exercise of authority must not "impede the laying or maintenance of submarine cables or pipe lines on the Continental Shelf"²³ or involve "unjustifiable interference with navigation, scientific research, fishing or conservation of living resources of the sea."²⁴

Though all four Conventions impinge in one respect or another on exclusive littoral fishing jurisdiction, the restraints may be regarded as

15. *U. N. Doc. A/Conf. 19-4* (1960) (Geneva Conference Records).

16. *Anglo-Norwegian Fisheries Case* [1951], I.C.J. 116.

17. A. SHALOWITZ; M. McDOUGAL & W. BURKE, *supra* note 1.

18. 28 DEP'T STATE BULL. 718 (1953).

19. *Id.*

20. Geneva Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578 (1964).

21. *Id.*, art. I.

22. *Id.*, art. III.

23. *Id.*, art. IV.

24. *Id.*, art. V.

negligible. To date, the extension of such controls has been effected in most cases by unilateral action. It varies considerably in extent, some States claiming a fishing zone of six miles, a few claiming as much as 200 miles, while the majority claim between ten and fifteen nautical miles.²⁵

The failure of the Geneva Conventions to settle territorial sea boundaries, the open-end delineation of the Continental Shelf and the general vagueness regarding the scope of fishing jurisdiction in high seas areas apparently has little effect upon the assertion of wider fishing controls by coastal states. Of far greater import is world recognition of fisheries as a national resource, the major technological advances in the highly competitive fishing industry, and the urgencies of conservation.²⁶ In fact these protective considerations are spelled out in the Convention on Fisheries and Conservation, and thus may almost be regarded as a mandate.

B. *The Climactic California Case of 1947*

Because of their substantial economic importance, recent developments in off-shore oil and other natural deposits have caused complex questions to be raised with respect to ownership of territorial waters. The litigation which followed from these disputes, though often limited to questions of boundary delineation, has established a framework of general application. The purpose of this study is to make an analysis of these rulings, their historical and legislative origin, and to consider their impact on subsequent state and federal legislation. Involved in this inquiry are recent statutes of Florida and the United States which regulate fishing in territorial waters and adjoining sea areas.

Before 1947, at which time the Supreme Court handed down the landmark decision in *United States v. California*,²⁷ it had been established that state authority existed over inland waters.²⁸ The issue in the *California* case arose from a dispute over proprietary rights to oil-producing lands in the state's territorial waters. The Court in this case, and later in two companion cases²⁹ involving Louisiana and Texas, found that the federal government, not the state, had paramount rights in the submerged lands within the three-mile marginal belt along the nation's coast. The facts in the *Louisiana* case were similar to those in the *California* case in that, like California, the State of Louisiana was admitted into the Union "on an equal footing with the original states in all respects whatsoever."³⁰ Because of its special pre-admission status, the situation in respect to Texas

25. 112 CONG. REC. 22, 972 (1966).

26. W. Chapman, *Bank of the World's Fertility*, COLUM. J. OF WORLD BUS. (Feb. 1967).

27. 332 U.S. 19 (1947).

28. *Pollard v. Hagan*, 44 U.S. 212 (1845). The so-called "Pollard Rule" had used language that indicated that states not only owned tidelands and soil under navigable inland waters, but also owned soils under waters within their territorial jurisdiction, whether inland or not.

29. *United States v. Louisiana*, 339 U.S. 699 (1950); *United States v. Texas*, 339 U.S. 707 (1950).

30. Admitted to Union in 1812.

presented a legal dilemma. Before its annexation by the United States in 1845, it had briefly existed as an independent nation. The Court avoided this difficulty by asserting that "when Texas came into the Union she ceased to be an independent nation; she then became a sister state on equal footing with the other states."³¹

What conclusions can be drawn from the three cases? First, the Court found no previous case considered by it that resolved the federal-state conflict over the ownership of a state's marginal sea.³² The *Pollard* decision³³ applied only to inland waters. Second, the protection and control of the three-mile belt has been and is a function of national external sovereignty and is of vital consequence to the nation in its desire to engage in commerce and to live at peace.³⁴ Finally, the cases spelled out the nature of federal rights in the area and the inseparability of United States *dominium* (jurisdiction) and *imperium* (sovereignty).³⁵

By establishing full federal sovereignty and control over the three-mile territorial waters, the Court foreclosed California's efforts to establish a superior right.³⁶ Had the Court in the *Texas* case based the decision solely on the issue of title, as the term is generally understood, the ruling would be difficult to rationalize. "The crucial question," said the Court "is not merely who owns the bare legal title The United States here asserts rights . . . transcending those of a mere property owner."³⁷

The issue of submerged lands ownership is only one of several considerations that affect federal and state relationships in territorial waters. Following the *California* ruling, the decision in *Toomer v. Witsell* cast considerable light on the broad question of jurisdiction and control of the marginal sea area.³⁸ This decision affirmed state jurisdiction in such waters except where paramount federal rights are involved. It should be emphasized, however, that state fishing regulations in the *Toomer* dispute were nullified on Constitutional grounds. Similarly, in a Louisiana case, assertion of federal authority was upheld with respect to off-shore drilling operations where the central issue was of a civil and political nature.³⁹ As in *Toomer* the ruling was based on Constitutional factors. By contrast, the frequently cited case of *Skiriotes v. Florida*,⁴⁰ where an offender of a state sponging law was apprehended outside territorial waters, is a sound example of permissible state jurisdiction. In upholding Florida's authority

31. *United States v. Texas*, 339 U.S. 707, 717-18 (1950).

32. A. SHALOWITZ, *supra* note 1 at 8, n.9. About 50 cases, all of which were rejected, were cited by California in support of state ownership of submerged lands.

33. *Pollard v. Hagan*, 44 U.S. 212 (1945).

34. *United States v. California*, 332 U.S. 19, 34-35 (1947).

35. *United States v. Texas*, 339 U.S. 707 at 719 (1950).

36. E. BARTLETT, *THE TIDELANDS OIL CONTROVERSY*, 203 (1953).

37. *United States v. California*, 332 U.S. 19 at 29 (1947).

38. 334 U.S. 365 (1948).

39. *Gravois v. Travelers Indem. Co.*, 173 So.2d 500 (La. 1965).

40. 313 U.S. 69 (1941). See also A. Gross, *The Maritime Boundaries of the States*, 64 U. MICH. L. REV. 639 (1966).

the Supreme Court advised that the controlling consideration in the matter was the absence of conflicting federal legislation⁴¹

Aroused by the legal implications in the *California* case, and determined to vest ownership of potentially rich submarine resources in the individual states, Congress moved to reverse the effect of the ruling. The eventual result was the Federal Submerged Lands Act of 1953.⁴² Though the new law granted to coastal states title and ownership of the submerged lands under their marginal sea boundaries, it is necessary to underline the limitations on these grants. These are to be found, not only in the legislative proceedings, but in the statute itself.

II. FEDERAL SUBMERGED LANDS ACT OF 1953

A. Legislative History

While the decision in the *California* case was still pending, the battleground over ownership of submerged lands in territorial waters was shifted to Capitol Hill. Anticipating the outcome of the case, a bill was introduced which would have required the United States to issue a quit claim to at least a part of the marginal sea. After passage by both houses, the law was vetoed by President Truman.⁴³ This was by no means the end of the matter. Scientific advances in off-shore drilling operations presented tempting sources of revenue to purse-poor state governments. Encouraged by a more complacent administration, a new bill worked its way through Congress with little or no active opposition, and in 1953 was promptly signed into law by President Eisenhower.⁴⁴

As stated in the title, the scope of the law was:

To confirm and establish the titles of the states to lands beneath navigable waters within such lands and to natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the U.S. over the natural resources of the seabed of the continental shelf seaward of state boundaries.⁴⁵

According to the Act the seaward boundary of a state is a line three geographical miles distant from its coast line with the proviso that:

nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at such time such State became a member of the Union or if it had been heretofore approved by Congress. . . .

41. *Skiriotes v. Florida*, 313 U.S. 69, 74 (1941).

42. 67 STAT. 29 (1953).

43. 92 CONG. REC. 10660 (1946).

44. 43 U.S.C. § 1301 (1964).

45. 67 STAT. 29 (1953).

In no event may such boundary extend from the coast line "more than three geographical miles into the Atlantic Ocean or more than three marine leagues into the Gulf of Mexico."⁴⁶

Within this area of territorial waters, the United States retained all its "navigational servitude and rights in and powers of regulation and control for the constitutional purposes of commerce, navigation, national defense and international affairs," as well as rights to resources beyond this line seaward within the Continental Shelf.⁴⁷ Thus not only were the seaward boundaries of the States determined and their coastal control in these waters established, but they were also given title and ownership to the subsoil under these waters, and the power over such lands and natural resources in accordance with applicable state law.⁴⁸

In effect Congress enacted a limited extension of the *Pollard* doctrine⁴⁹ (state ownership of inland waters) to include ownership by the states of at least three miles of the marginal sea. As to the method for perfecting claims for extending the seaward boundary of a state, the Act is silent. However, a reading of the legislative proceedings indicates that it could be accomplished by agreement or adjudication.⁵⁰

It is a well established rule of statutory construction that the intent of the legislative body, expressed or implied, governs its interpretation. This intent may be inferred from the legislative history of the Act and from the circumstances attending its enactment. Implicit in the passage of the Submerged Lands Act, as previously mentioned, was a desire by its sponsors to reverse the status of federal ownership in territorial waters. The proponents of the measure, as well as spokesmen for the State Department, took pains to explain that the proposed grants to the states were purely domestic in nature, and not intended to usurp or diminish the government's management of foreign policy.⁵¹ This was emphasized by President Eisenhower two years later when urged by Senators Holland of Florida and Daniel of Texas to issue an Executive Directive establishing full state sovereignty in territorial waters to the coastal states.⁵² In denying the plea, the President declared that the United States would not deviate in any way from maintaining its traditional national policy with respect to territorial waters.⁵³

46. 43 U.S.C. § 1301(a)(2) (1964).

47. 43 U.S.C. § 1314 (1964).

48. Bayitch, *Survey of International Law*, 16 U. OF MIAMI L. REV. 253 (1962).

49. H. Kent, *Historical Origins of the Three-Mile Limit*, 48 AM. J. INT'L L. 537 (1954).

50. A. SHALOWITZ, *supra* note 1, at 124. "It is a matter for the Courts to determine or for the United States through Congress and the legislatures of the several states to reach an agreement upon. The pending bill does not seek to invade either province," 99 CONG. REC. 2620 (1953) (remarks of Sen. Cordon).

51. The Department is concerned with such provisions of proposed legislation as would recognize or permit the extension of the seaward boundaries of certain states beyond the three-mile limit. In international relations the territorial claims of the states and nations are indivisible. The claims of the states cannot exceed those of the nation.

28 DEP'T STATE BULL. 718 (1953).

52. 4 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 48 (1964).

53. *Id.* at note 50.

Part of the difficulty with those who sought to widen state control in marginal sea areas apparently arose from a misunderstanding of concepts of ownership and jurisdiction. According to Professor Hyde, there is in substance a real distinction between a right of sovereignty over a particular area and a right to use a preventative or protective jurisdiction over or within such area.⁵⁴ In order to rationalize properly the varying degrees of authority which a nation and state may exercise over the sea, this basic distinction must not be misunderstood. As a matter of fact, it was emphasized by Congress several months later in the enactment of the Outer Continental Shelf Act.⁵⁵

B. *Judicial Review*

Determination of seaward boundaries under the Submerged Lands Act presented a relatively narrow judicial problem. Most of the states entered the Union with no defined maritime boundary in their acts of admission. Thus they acquired finite authority for the first time by reason of the federal grant under the 1953 statute.⁵⁶ In contrast, there was more complexity in delineating marginal sea boundaries with respect to those few states which entered the Union with congressionally approved boundaries in excess of the three-mile limit. Texas, Louisiana, Alabama, Mississippi and Florida all claimed such boundaries.⁵⁷ The federal government, however, has traditionally resisted state claims beyond three miles on the theory that state boundaries could not exceed the federal limits.

Because of the controversial nature of article 4, it was subjected to Constitutional challenge by Rhode Island and Alabama.⁵⁸ In upholding the Constitutionality of the Act as a valid exercise of congressional authority, the Supreme Court did not pass on the problem of boundary delineation.⁵⁹ This test was to come later. The decision, however, dissipated any doubt in respect to original ownership of the submerged lands. For, if such ownership did not in fact exist, Congress was powerless to convey these marginal sea areas to the littoral states. The ruling also added substance to the federal *paramount rights* doctrine by establishing that, in making direct grants to the individual coastal states, something more than bare property rights was involved.⁶⁰

A second, and more significant judicial test of the Submerged Lands Act, followed several years later. In November, 1957 the United States Solicitor General filed an amended complaint in the Supreme Court against Louisiana, Texas, Mississippi, Alabama and Florida seeking to limit their

54. I. HYDE, *INTERNATIONAL LAW* (1945).

55. 43 U.S.C. § 1331(a) (1964).

56. A. GROSS, *The Maritime Boundaries of the States*, 64 U. MICH. L. REV. 639 (1966).

57. *Id.*

58. A. SHALOWITZ, *supra* note 1 at 126 n.25.

59. *Id.* at 128.

60. *Id.* at 128 n.31.

territorial waters to three geographical miles seaward from the ordinary low water mark to the Continental Shelf.⁶¹

The claims of Mississippi and Alabama were predicated on clauses in their acts of admission which stated that their coastal boundaries included all islands within six leagues of the shore. A somewhat similar rationale was employed by Louisiana.⁶² The Court rejected this viewpoint, holding that although the islands were a part of the state, the only water areas similarly included were the various three-mile belts around such islands.⁶³ The Court further found no true conflict between these states and the Federal government, since the acts of admission evinced no attempt by the Federal government to claim any more of the marginal sea than that sanctioned by its national policy.⁶⁴

In the issues involving Texas and Florida, however, a conflict between state and federal policy was squarely presented. The opinion with respect to Florida was handed down separately.⁶⁵ Both states had entered the Union with congressionally approved boundaries in the Gulf of Mexico three leagues from the shore. The Court, however, reconciled the dispute by indicating the inherent power of the Executive branch to control the exercise of certain activities within these congressionally approved boundaries.

The power to admit new states resides in Congress. The President, on the other hand, is the constitutional representative of the United States in its dealings with foreign nations. From the former springs the power to establish state boundaries; from the latter comes the power to determine how far this country will claim territorial rights in the marginal sea as against other nations.⁶⁶

It further stated

It may indeed be that the Executive, in the exercise of its power, can limit the enjoyment of certain incidents of a congressionally conferred boundary, but it does not fix that boundary.⁶⁷

From the foregoing it is clear that the United States foreign policy in this regard does not involve matters of purely domestic concern. In establishing the sea boundaries of coastal states under federal grant, the Submerged Lands Act itself affirmed this principle. Moreover, it was further supported by specific statements by proponents of the measure.⁶⁸

Thus the Supreme Court confirmed that Florida and Texas were en-

61. *United States v. Louisiana*, 363 U.S. 1 (1960).

62. *Id.* at 66, 82.

63. *Id.* at 83.

64. *Id.* at 33.

65. *United States v. Florida*, 363 U.S. 121 (1961).

66. *United States v. Louisiana*, 363 U.S. 1, 35 (1960).

67. *Id.* at 51 (emphasis added).

68. 4 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW*, 43-50 (1964).

titled to the marginal sea boundaries previously approved by Congress at the time of their admission. It is quite clear, however, regardless of whether these rights are truncated by paramount federal authority, both states are free to exercise appropriate jurisdiction and control in these extended territorial water areas.⁶⁹

III. FLORIDA TERRITORIAL WATERS ACT OF 1963

A. *Background of Statute*

As previously mentioned, the Truman Fisheries Proclamation of 1945⁷⁰ was the first of a number of actions, both federal and state, designed to exploit adjacent waters and to extend wider jurisdiction over them. These moves were prompted in some measure by the failure of the Geneva Conventions on the High Seas in 1958 to reconcile differences with respect to the width of a state's territorial waters and the exclusiveness of adjacent sea areas for fishing use.⁷¹ As previously mentioned, however, more important considerations were involved. Though the right of all nations to engage in fishing outside the territorial waters of a coastal state has been a recognized principle of international law for many years, maritime nations began to regard unlimited fishing as a serious threat to their economy and food supply.⁷² Consequently, many states entered into bilateral and multilateral treaties for the conservation of fishing resources.⁷³

In 1963, after consultation with Washington, Canada unilaterally expanded her coastal jurisdiction over fishing to a distance of twelve miles.⁷⁴ Within a period of three years both the State of Florida and the United States passed laws requiring fishing licenses for foreign vessels in territorial and adjacent waters.⁷⁵

In substance the Florida Territorial Waters Act of 1963 was enacted to protect state resources,⁷⁶ to secure them for the citizens of Florida, and to deny to "nationals of alien, neutral or hostile powers to draw upon the resources of water long considered by the immemorial usages of all civilized peoples a part of our state and nation."⁷⁷

Relying on Florida's right to "exercise full sovereignty and control of the territorial waters of the State of Florida" the Act provides that no fishing licenses shall be issued in the following cases:

69. A. Gross, *The Maritime Boundaries of the States*, 64 U. MICH. L. REV. 639 (1966).

70. 10 FED. REG. 12304 (1945).

71. See note 1 *supra*.

72. See note 26, *supra*.

73. D. Johnston, *supra* note 4.

74. 48 DEP'T STATE BULL. 518 (1963).

75. Discussed *infra*, Parts III and IV.

76. FLA. STAT. § 370.21 (1967).

77. The presence of soviet fishing trawlers in territorial waters of United States, especially along the Florida coast was discussed before a special investigative committee of the House of Representatives in July 1963. *Hearings Pursuant to H. Res. 84 before the Subcomm. for Special Investigations of the House Armed Services Comm.*, 88th Cong., 1st Sess. (1963).

- (1) to vessels 'owned in whole or in part by an alien power which subscribes to the doctrine of international communism' or which 'shall have signed a treaty of trade friendship or alliance or non-aggression pact with any communist power.'⁷⁸
- (2) to any subject or national of a power which 'subscribes to the doctrine of international communism.'
- (3) generally to 'any individual who subscribes to the doctrine of international communism' regardless of nationality.⁷⁹

With regard to alien vessels, the Board of Conservation is instructed to

grant or withhold such licenses on the basis of reciprocity and retortion unless the nation concerned is designated as a friendly ally or neutral by a formal suggestion transmitted to the governor of the State of Florida by the Secretary of State of the U.S. In the case of a formal suggestion the Board is instructed to grant a license without regard to reciprocity to vessels of such nation.⁸⁰

In general terms the Act also provides that it is unlawful for

any unlicensed alien vessel to take by any means whatsoever, or having taken possess any natural resource of the State's territorial waters, as such waters are described by Article 1 of the Constitution of Florida.⁸¹

Prescribed penalties are imposed on violators 'provided that nothing therein shall authorize the repurchase of property for a nominal sum by the owner upon proof of lack of complicity in the violation or undertaking.'⁸² Finally, the Act provides that 'no crew member or master seeking bona fide asylum shall be fined or imprisoned thereunder.'⁸³

The new law was employed for the first time in February, 1964 against Cuban fishermen. They were arrested by federal authorities while fishing in Florida territorial waters off the Dry Tortugas.⁸⁴ At the time federal law would not support prosecution. The State Department filed protests with Cuba and the United Nations, and turned the men over to state authorities.⁸⁵ In a Key West court the officers were convicted and fined. The crew members were released.⁸⁶

At first glance the Florida Fishing Act appears to present a few problems. It remains to be seen, for example, in what respect it conflicts with current federal fishing legislation and international commitments, and, finally, to what extent it may fail to meet Constitutional standards.

78. FLA. STAT. § 370.21(2) (1967).

79. FLA. STAT. § 370.21(3) (1967).

80. *Id.*

81. FLA. STAT. § 370.21(4) (1967).

82. FLA. STAT. § 370.21(8) (1967).

83. FLA. STAT. § 370.21(9) (1967).

84. See Miami Herald, Feb. 6, 1964, § A at 2, col. 6.

85. 50 DEP'T STATE BULL. 276 (1964).

86. Miami Herald, Feb. 20, 1964, § A at 1.

B. *Relationship of Florida Territorial Waters Act
to Federal Submerged Lands Act*

Senator Holland of Florida, a major sponsor of the Submerged Lands Act, stated that its principal purpose was to "preserve in status quo the exact rights, whatever they may be, of the State of Florida—or any other state (in any forum where a state may be heard) upon the question."⁸⁷ Similar expressions as to the limited scope of the grant were made by other proponents of the bill.⁸⁸ In short the Act was primarily directed toward establishing sea boundaries of submerged lands ceded to coastal states under a federal grant. Further, in confirming Florida's sea boundary claim, the Court took special pains to explain that the ruling was domestic in nature and that the cession should in no manner be construed as a departure from the traditional three-mile water zone espoused by the United States in pursuance of its national policy.⁸⁹

We now turn to a consideration of the question of domestic jurisdiction in marginal waters, a topic superficially touched upon earlier. Under the Commerce Clause of the Federal Constitution it has been long established, provided there is no conflict with federal law, that the regulation of fishing in territorial waters is within the police power of the individual states. A leading case to this effect is *Corsa v. Tawes*,⁹⁰ in which a Maryland fishing statute was attacked on the ground that it constituted undue interference with fishing vessels engaged in interstate commerce. In upholding the statute, the Court stated that it did not represent an unreasonable use of the state's police power, and hence was applicable to residents and nonresidents alike.

A number of Supreme Court decisions have had the effect of formulating basic rules for the enactment of coastal fishing regulation. In particular it would appear that the cases of *Skiriotes v. Florida*⁹¹ and *Toomer v. Witsell*,⁹² though producing opposite results, provide a framework of general application. Recall that in the former case, Florida's arrest of an offender outside its territorial waters was found to be a valid exercise of state authority. The state, advised the Court, has a legitimate interest in the protection of its sponge fisheries, and the statute so far as it applied to

87. 99 CONG. REC. 2622 (1953).

88. "It [determination of the boundaries] is a matter for the courts to determine or for the U.S. through the Congress and legislatures of the several states to agree upon. The pending bill does not seek to invade either province." 99 CONG. REC. 2620 (1953) (remarks of Sen. Cordon).

89. *United States v. Florida*, 363 U.S. 121 (1961).

90. 149 F. Supp. 771, 773 (D. Md. 1957): "Since the decision in *Manchester v. Commonwealth of Massachusetts* (1890), 139 U.S. 240, 11 S. Ct. 559, 351 L. Ed. 159, it has been beyond dispute that in the absence of conflicting Congressional legislation under the commerce clause, regulation of coastal fisheries is within the police power of the individual states under the doctrine of *Cooley v. Board of Wardens of Port of Philadelphia*, 53 U.S. (12 How.) 299, 13 L. Ed. 996.

91. *Skiriotes v. Florida*, 313 U.S. 69 (1941).

92. *Toomer v. Witsell*, 334 U.S. 365 (1948).

conduct within the territorial waters of Florida, *in the absence of conflicting Federal legislation*, is within the police power of the state.⁹³

It is now beyond dispute that the right of a state to regulate fishing in its coastal waters is subject to superior federal authority. This, it appears, is not the sole limitation. A review of *Toomer* and like cases indicates that state controls must also meet Constitutional standards. In *Toomer* a South Carolina fishing law required nonresidents to pay a license fee of \$2,500. The fee for residents was only \$25. The Court found the statute to discriminate against nonresidents as it was virtually exclusionary. In the opinion of the Court such discrimination was a violation of the Privileges and Immunities Clause of the Constitution.⁹⁴

The previous discussion should not be construed as inhibiting the right of coastal states to take necessary legislative measures for the protection and conservation of natural resources. Encouragement for this view appears in the Federal Submerged Lands Act and in the litigation that followed. Thus, there can be no doubt that both Congress and the Supreme Court intended to leave the matter of domestic jurisdiction over marginal sea areas to the individual states, indicating it to be in the public interest for the states to manage and conserve their natural resources.⁹⁵

Interpretation of the Florida fishing statute as essentially domestic in character and geographically limited in scope, demonstrates that it is not in basic conflict with the Federal Submerged Lands Act. Other considerations, however, appear to be involved. Leaving aside for a moment the Constitutionality of the Florida law, it remains to be determined in what respect, if any, it contravenes the 1964 and 1966 federal fishing statutes, and the Geneva Conventions.

IV. FEDERAL TERRITORIAL WATERS ACT OF 1964

A. *Description and Purpose*

At the lengthy congressional hearings dealing with activities of foreign vessels in United States coastal waters, a need to regulate and control such vessels was deemed necessary.⁹⁶ Recent increase in fishing violations by foreign vessels revealed the inadequacy of current United States legislation. Federal laws did not adequately set forth what constituted illegal acts by alien vessels, nor were there any provisions for seizure and forfeiture of ships and cargo, or penalties against officers and crew members for illegally fishing in United States waters. Under existing law the only recourse was the expulsion of the offending ship and crew.⁹⁷

93. See *Cook v. Tait*, 265 U.S. 47 (1924), where federal jurisdiction was upheld over a United States citizen residing in a foreign country.

94. U.S. CONST. art. IV, § 2.

95. Term "natural resources" in sec. 2(e) of the Submerged Lands Act is defined as including "oil, gas and other minerals, and fish, shrimps, oysters, clams, crabs, lobsters, sponges, kelp and other marine and plant life but does not include water power or the use of water power for the production of power."

96. 109 CONG. REC. (1963); 110 CONG. REC. (1964).

97. *Id.*

Senator Bartlett pointed to illegal fishing activity in Alaska's territorial waters, with as many as 300 foreign vessels engaged in coastal fishing in this area during a brief period.⁹⁸ Also reported was the illegal presence of Cuban fishing vessels in Florida's territorial waters.⁹⁹ Specially noted was an alarming increase of Soviet and Japanese fishing fleets off the coast of Massachusetts. Testimony was also submitted as to the hostile presence of Russian fishing trawlers off Florida's east coast, presumably engaged in the monitoring of United States outer space exploration at Cape Kennedy.¹⁰⁰

In general, the new law makes it unlawful for a foreign vessel, and any person in charge of such vessel, to engage in fishing in the territorial waters of the United States or to take any Continental Shelf fishery resource which appertains to the United States, except as provided by an international agreement, or by authorization issued by the Secretary of the Treasury.¹⁰¹ The bill also establishes penalties for violators, and provides for seizure and forfeiture of any violating vessel and its catch. Enforcement regulations are prescribed under the joint responsibility of the Secretaries of the Treasury and the Interior.¹⁰²

The federal statute contains two important exceptions to the general prohibition against foreign fishing vessels. The first exception recognizes that the United States may find it desirable to permit such activity through international agreements.¹⁰³ The second provides for the taking of designated species of fish subject to specific conditions and approval by authorized officials.¹⁰⁴

Finally, provision was made for the Secretary of State, with concurrence of the Secretaries of the Treasury and Interior, to permit research vessels to fish in United States territorial waters where the research vessel is owned and operated by an international organization of which the United States is a member.¹⁰⁵

B. *Relationship to Florida Fishing Statute*

A number of provisions in Florida's current fishing law indicate far-reaching efforts to deny fishing privileges in coastal waters to the Communist community. Since it is the responsibility of the state to identify the ideological nature of the offending ship and crew members, the enforcement of the statute appears to be fraught with political consequences. Aside from moot questions of Constitutionality and conflict with federal fishing regulation, this raises the interesting question of whether the

98. *Id.*

99. *Hearings Pursuant to H. Res. 84*, supra note 77.

100. *Id.*

101. 78 STAT. 194 (1964).

102. *Id.* § 2.

103. *Id.* § 1.

104. *Id.*

105. *Id.* § 3.

Florida law represents in any way a challenge to the government's management of foreign affairs.

It is quite easy to understand the exasperation of Florida's law-makers with regard to the proximity of the Communist-dominated island of Cuba, the foraging activities of its fishing vessels in local waters, and the unwelcome and seemingly hostile presence of Soviet trawlers off Cape Kennedy. Perhaps we should also estimate in what measure their action was motivated by the Supreme Court decision of 1961, which confirmed Florida's sea boundary under the Submerged Lands Act.¹⁰⁶ If so, it is rather difficult to rationalize the Act on this basis. The ruling, as previously mentioned, has only limited domestic significance.

It is true, of course, that at the time the Florida fishing statute was enacted, there existed no effective sanctions against the use of territorial waters by foreign fishing craft. Recall that in the 1964 incident, in which a United States ship intercepted Cuban trawlers in Florida's territorial waters, the crew members were turned over to state officials for prosecution. Applying the broad principle of the *Skiriotas* case, this evidently was tacit recognition by federal authorities of state police power.

In retrospect it is interesting to speculate what action United States officials would have taken had the seized vessels carried the flag of a friendly nation, such as Mexico or Panama. It would probably have been nothing more than expulsion of the ship and crew. Taking the matter one step further, assume that the incident took place under similar circumstances one year later. Further assume that the offending vessel was not one of the Communist bloc nations, but one of Communist ideological affiliation, such as the United Arab Republic. Completing our hypothesis, suppose that the arrest was made by state rather than federal officers. Would this not, in at least a theoretical sense, represent a direct conflict with federal fishing regulation as well as an encroachment on national policy?

There can be no doubt that under the Constitution, the federal government and the individual states share concurrent jurisdiction over coastal waters.¹⁰⁷ It is equally established that the coastal states may take appropriate action for the protection of natural resources in such areas. Even so, it is unrealistic to ignore the fact that federal and state interests are not co-equal. In testing the viability of state fishing regulation, not only are superior federal rights involved, but it is clear that such legislation must meet Constitutional standards.¹⁰⁸

With the foregoing in mind, we shall now consider in what respect the Florida fishing law is in conflict with the Federal Territorial Waters Act of 1964. First, it should be noted that the latter makes no ideological

106. *United States v. Florida*, 363 U.S. 121 (1961).

107. *Corsa v. Tawes*, 149 F. Supp. 771 (D. Md. 1957).

108. *Toomer v. Witsell*, 334 U.S. 385 (1947). See also *Organized Village of Kake v. Egan*, 174 F. Supp. 500 (D. Alaska 1959); *United States v. Borja*, 191 F. Supp. 563 (D. Guam 1961).

distinction in the licensing of foreign fishing vessels.¹⁰⁹ The state law, on the other hand, not only bars the use of Florida's coastal waters to vessels of Communist nations, but to all states which "have signed a treaty of trade, friendship, alliance, etc.,"¹¹⁰ with any Communist power. The exclusion is further extended to crew members of such ships, as well as individuals of all nations who "subscribe to the doctrine of international Communism."¹¹¹ In the case of "friendly and neutral nations . . ." fishing licenses are restricted "on the basis of reciprocity and retortion."¹¹²

Second, although the federal law states that the right of foreign fishing vessels is subject to existing treaties,¹¹³ in this respect the Florida law is silent. For all practical purposes, however, this omission is meaningless. There is well-established case authority that state law must yield when it is inconsistent with or impairs the provisions of a treaty or international agreement.¹¹⁴ This is not to say that the Florida Territorial Waters Act is in violation of existing United States treaties, but merely that it is subordinate to any international agreement to which the United States is a signatory.¹¹⁵

Third, as previously noted, fishing licenses under the Florida statute, with specific exceptions, will be issued to foreign fishing vessels only on the basis of reciprocity. Although the language is rather vague, this section, which provides that the State Department may intervene on behalf of nations not offering reciprocity to United States fishing vessels, appears to be restricted to "friendly or neutral nations."¹¹⁶ Even though the state law appears in some measure to defer to federal executive authority, the phraseology is rather curious. Is it permissible, for example, for the State Department to intercede on behalf of fishing vessels owned by a Communist Block nation and others closely affiliated with it? Conceivably the state law in such cases could be in direct conflict with United States foreign policy.

What of the procedure specified in the Florida law for executive intercession? The statute provides that in certain cases the Board of Conservation will be instructed to "grant or withhold said licenses . . . by a formal suggestion transmitted to the governor of Florida by the Secretary

109. 78 STAT. 194 § 1 (1964).

110. FLA. STAT. § 370.21(2) (1967).

111. FLA. STAT. § 370.21(3) (1967).

112. FLA. STAT. § 370.21(3) (1967).

113. 78 STAT. 194 § 1 (1964):

"It is unlawful for any vessel except a vessel of the United States to engage in the fisheries within the territorial waters of the United States . . . or to engage in taking any continental shelf resource . . . except as provided by an international agreement to which the United States is a party."

114. *United States v. Pink*, 315 U.S. 203 (1942); *United States v. Belmont*, 301 U.S. 324 (1937); *Missouri v. Holland*, 252 U.S. 416 (1920).

115. See art. I of The Geneva Convention on Conservation and Fishing, 17 U.S.T. 138, T.I.A.S. No. 5969 (1966): "All states have the right for their nationals to engage in fishing on the high seas subject (a) to their treaty obligations and (b) to the interest and rights of coastal states as provided for in this convention."

116. FLA. STAT. § 370.21(3) (1967).

of State of The United States."¹¹⁷ This raises the question of whether a state may prescribe the method by which the State Department may intervene when United States policy conflicts with state jurisdiction. Granting that the United States Government would in most cases observe the amenities of federal-state intercourse, would state law prevail in the face of an executive order or directive contrary to the procedure specified in the Florida statute? Apparently it would not.

Finally, the state fishing law denies licenses to all individuals regardless of nationality who subscribe to international Communism.¹¹⁸ Without attempting to pass on the Constitutionality of this prohibition, it raises a rather complex problem of identification. What, for example, are recognized criteria for determining such ineligible persons? Is the classification based on subjective factors, or is it limited to membership in avowed subversive organizations? If the latter, the Supreme Court has recently ruled that a federal law requiring members of the United States Communist Party to register is a violation of one's constitutional rights under the fifth amendment.¹¹⁹ Admission would subject the registrant to prosecution under the membership clause in the Smith Act,¹²⁰ as well as the Subversive Activities Control Act.¹²¹

Although a state clearly possesses the police power to restrain illegal or hostile persons from fishing in its territorial waters, the underlying Constitutional question is whether the exercise of this power is unreasonable and discriminatory.¹²²

C. *Federal Extra-Territorial Waters Act of 1966*

One of the *four freedoms*, outlined in article 2 of the Geneva Convention on the High Seas, is the "Freedom of Fishing."¹²³ Oddly enough, of the four Geneva Conventions, the one dealing with Conservation and Fishing has the least to do with the establishment of boundaries. This agreement, along with the Convention of the Continental Shelf, deals with the subject only in a peripheral sense.¹²⁴

Since the end of World War II, the operation of foreign vessels, and particularly those of Japan and Russia, has increased in number and intensity off both coasts of the United States. The adverse effects of such activity aroused national concern, and eventually sparked congressional action.¹²⁵ It was increasingly apparent that the 1964 law was ineffective,

117. *Id.*

118. *Id.*

119. *Albertson v. Subversive Activities Control Bd.*, 382 U.S. 70 (1965).

120. 18 U.S.C. § 2385 (1964).

121. 50 U.S.C. § 783 (1964).

122. *Toomer v. Witsell*, 334 U.S. 385 (1947).

123. A. SHALOWITZ, *supra* note 1 at 259.

124. *Id.*

125. S. REP. No. 500, 88th Cong., 1st Sess. (1963); H.R. REP. No. 1356, 88th Cong., 2d Sess. (1964).

and that more extensive measures were needed.¹²⁶ In 1966 President Johnson signed into law the Federal Extra-Territorial Waters Act, which established a coastal fishing zone loosely identified as a twelve-mile limit, nine nautical miles beyond and adjacent to present territorial waters of the United States.¹²⁷ The new law emphasized that there was no intent to extend United States sovereignty into the high seas or widen its territorial waters.¹²⁸

The 1958 Geneva Conventions not only confirmed traditional encroachments on high seas areas, but created new ones. In addition to affirming older rights of hot pursuit,¹²⁹ the prevention of piracy,¹³⁰ and the transportation of slaves,¹³¹ the treaties established the need to prevent pollution,¹³² the right to lay and protect cables and pipelines on the sea-bed,¹³³ to explore and exploit the natural resources of the Continental Shelf,¹³⁴ and finally the right and duty to adopt conservation measures for the protection of living resources.¹³⁵

Almost all littoral nations by unilateral action have now extended fishing control into open sea areas. In one respect the federal Act differs from that of other members of the world community. By extending the width of the new fishing zone from the outer limits of the territorial sea, instead of its baseline,¹³⁶ it permits a future widening of its control in the event an international agreement is reached with respect to the width of territorial waters.

Though several members of Congress evinced concern that foreign fishing vessels were often equipped with electronic gear, which inferentially could be put to intelligence use,¹³⁷ the main thrust of the new law was directed to the conservation of off-shore fisheries and the protection of the United States fishing industry.¹³⁸ Whether the new legislation is capable of accomplishing this purpose is open to conjecture. It is the considered opinion of many that the root of the trouble with the United States fishing industry is inefficiency and its failure to keep pace with technological advances.¹³⁹ Others wryly point to the fact that fish are notoriously unconcerned with boundary lines.

126. S. REP. No. 1280, 89th Cong., 2d Sess. (1966); H.R. REP. No. 2086, 89th Cong., 2d Sess. (1966).

127. 80 STAT. 908 § 2 (1966).

128. *Id.*

129. Geneva Conventions on the High Seas, 13 U.S.T. 2312, T.I.A.S. No. 5200 (1962).

130. *Id.*, arts. 14-22.

131. *Id.*, art. 13.

132. *Id.* arts. 24-25.

133. *Id.*, arts. 26-29.

134. Geneva Convention on the Continental Shelf, 15 U.S.T. 471, T.I.A.S. No. 5578 (1964).

135. Geneva Convention on Fishing and Conservation, 17 U.S.T. 138, T.I.A.S. No. 5969 (1966).

136. 80 STAT. 908 § 2 (1966).

137. 112 CONG. REC. 23885 (1966) (remarks of Rep. Cramer).

138. 112 CONG. REC. 12977 (1966) (remarks of Sen. Edward Kennedy).

139. 112 CONG. REC. 12978 (1966) (remarks of Sen. Gruening).

The final section of the 1966 Act states that it is not designed to extend or diminish in any way the domestic jurisdiction of individual states with respect to territorial waters.¹⁴⁰ In a sense this is tacit recognition by the United States of the complexity and lack of uniformity of coastal fishing jurisdiction. Any attempt by the United States to establish uniformity would, of course, be resisted by the states as a violation of powers vested in them under the Constitution. Thus it would seem possible for a domestic vessel proceeding from New Jersey to Maryland's territorial waters, and fishing en route, to be subject to separate and distinct fishing laws of three states. Further, it is conceivable that choice-of-law rules might be applicable to such vessel, regardless of specific location of the infractions, to selected penalties by all three jurisdictions.¹⁴¹

As stated, the primary purpose of the Extra-Territorial Waters Act is the conservation of United States fisheries in areas contiguous to the territorial sea of the United States.¹⁴² It is evident that the extension of federal jurisdiction was not intended to change the status quo, or infringe in any way on the domestic jurisdiction of individual states in territorial waters. The Act itself makes this perfectly clear.¹⁴³

V. RELATIONSHIP OF FEDERAL AND FLORIDA FISHING STATUTES TO GENEVA CONVENTIONS

The Geneva Conventions sought to establish a new framework of international cooperation. It was generally recognized that old concepts of freedom of the seas must be subordinated to the more realistic concerns of littoral nations. Actually this development had been in process for some time. It had become widely accepted that various zones in the high seas should be under the control of coastal states for certain limited and mutually advantageous purposes including customs, safety, sanitation and fishing, without otherwise infringing on the common use of the high seas by all nations.¹⁴⁴

Encroachments on high seas areas were not only authorized by the Geneva Conventions, but encouraged. This is particularly true with regard to the treaty on Fishing and Conservation and the Convention on the Continental Shelf. Although a complicated procedure was established for scientific study of fisheries and the settlement of fishing disputes under the aegis of the United Nations,¹⁴⁵ no effort was made to establish sea

140. 80 STAT. 908 § 4 (1966).

141. L. Moreau, *Restriction of Freedom of the High Seas*, 44 HARV. INT'L L. REV. 167 (1967).

142. 80 STAT. 908 § 1 (1966).

143. "Nothing in this Act shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this Act or in diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States." 80 STAT. 908 § 4 (1966).

144. H. SHALOWITZ, *supra* note 1.

145. U.N. CHARTER arts. 8-12.

boundaries of littoral jurisdiction. Thus, the Federal Acts of 1964 and 1966 represent contemporary concepts of international law which appear to be in general accord with the Geneva Conventions.¹⁴⁶ It is questionable, however, whether the loose framework of the Conventions is a compelling factor in the current expansion of sea frontiers and the widening of permissible fishing jurisdiction. This development is evidently prompted by substantial economic considerations and world concern regarding conservation of natural resources.¹⁴⁷

Because of its evident political coloration, can it validly be stated that the Florida fishing statute is in contravention of the Geneva treaties? Apparently not in any practical sense, and possibly not even in any theoretical sense. Long before the so-called "cannon-shot" rule, it had become universally established that with the exception of the innocent passage of foreign vessels, a littoral nation possesses sovereign and unfettered control of its territorial waters.¹⁴⁸ Under the Constitution this sovereign jurisdiction is, of course, shared by the individual coastal states. A nation's sovereignty has even been extended to its ships on the high sea.¹⁴⁹ In general these principles of national sovereignty are incorporated into the Geneva Convention on the Territorial Sea and the Contiguous Zone.¹⁵⁰

Further, the Florida statute, as is the case of all coastal state fishing regulations, is essentially domestic in scope. Though sharing joint jurisdiction with the United States in marginal waters, the role of the state is obviously subject to superior federal authority. Hence we are forced to conclude that the Florida law cannot in any sense be deemed as inimical to existing United States treaties. Such matters lie exclusively and unreservedly in the federal domain. We are also reminded that in all instances where state and federal legislation appear to be in direct conflict, federal, not state authority will prevail.¹⁵¹

VI. CONCLUSION

Even a superficial study of the Florida Territorial Waters Act of 1963 clearly indicates that it is at odds with its counterpart, the federal Act of 1964. We can dismiss from consideration the federal Act of 1966, as it is applicable to areas beyond the sea boundaries of individual coastal states. The Florida law, which strictly limits the issuance of permits to foreign fishing vessels, appears chiefly concerned with their political alignment and affiliation. In this connection we need to speculate under what

146. H.R. REP. No. 2086, 89th Cong., 2d Sess. (1966). Note letter of D. McArthur II, Assistant Secretary of State to E. Garmatz, Chairman of Merchant Marine and Fisheries Committee, May 20, 1966.

147. "The coastal State exercises over the Continental Shelf sovereign rights for the purposes of exploring it and exploiting the natural resources," art. II, Geneva Convention on Fishing and Conservation, 17 U.S.T. 138, T.I.A.S. No. 5969 (1966).

148. P. JESSUP, TERRITORIAL WATERS (1962).

149. Case of the S.S. "Lotus," (1927), P.C.I.J., ser. A, No. 9.

150. 15 U.S.T. 1606, T.I.A.S., No. 5639 (1964).

151. Cases cited note 114 *supra*.

circumstances the State of Florida would feel compelled to enforce its fishing statute. Unquestionably, since national policy would prevail under any circumstance, such possibilities must be regarded as extremely remote.

Another questionable provision in the state law is the requirement that licenses be issued to vessels of "friendly and neutral nations" on the basis of "reciprocity and retortion." In keeping with existing United States treaties, this limitation is absent from the federal statute. Again we are obliged to conclude that the likelihood of enforcing this provision is virtually nonexistent. Here, as in the previous instance, federal authority would be paramount.

In all fairness it should be mentioned that the Florida statute contains a procedure, though somewhat complicated, for federal intercession. Its effect, however, should be viewed as persuasive rather than binding. We find it difficult to rationalize any situation that would compel United States compliance. There are too many avenues available to Washington, traditional and otherwise, for indicating its political intent.

In establishing that a state fishing law is generally foreclosed by contradictory federal authority, perhaps we should take into account one possible exception. What if the United States, for whatever political purpose is deemed necessary, declines to exercise its authority? Recalling the Cuban episode, it seems not at all unlikely that, under similar circumstances, state fishing jurisdiction would be permitted to govern. In essence the matter would thus be relegated to one of domestic concern. The implications of such event are clear and unmistakable. Admitting that the Florida fishing statute controverts the federal Act in a number of important aspects, the state law must be regarded as collateral rather than antithetical to its federal counterpart.

In comparing the two fishing statutes, not to be overlooked is that, except for scientific study and State Department intervention, the federal Act of 1964 similarly excludes foreign fishing vessels from United States territorial waters.¹⁵² The significant difference, of course, is Florida's determination to deny such areas to ships, crews and individuals tainted with Communist dogma. In summary, it seems safe to conclude that the Florida Territorial Waters Act of 1963 is in no way a challenge to United States treaty obligations and the management of its national affairs, and, further, that it bears only an innocuous relationship to the Federal Territorial Waters Act of 1964.

Our inquiry must therefore turn to the question of Constitutionality. A study of the legislative proceedings indicates that the enactment of the state law was prompted in large measure by the presence of Soviet and Cuban trawlers in Florida's territorial waters.¹⁵³ In an effort to make the

152. 78 STAT. 194 § 1.

153. *Statement of the Subcomm. for Special Investigations of the House Comm. on Armed Services, 88th Cong., 1st Sess., Report on Russian Trawler Traffic in U.S. Territorial Waters* (Comm. Print 1963).

exclusion more embracing, possibly for the purpose of making it less discriminatory, the Act evidently goes much further. Besides withholding licenses for foreign fishing craft, directly or indirectly affiliated with Communist powers, the prohibition is extended to crew members and individuals, regardless of nationality, who subscribe to the doctrine of international Communism.¹⁵⁴

There can be no dispute that Florida's sovereign jurisdiction in respect to its territorial waters includes the right to enact legislation for the protection of its natural resources. Whether such enactment conforms with Constitutional requirements is, of course, another matter. In this connection we have had prior occasion to mention the restrictive effect of the Privileges and Immunities Clause.¹⁵⁵ Also possibly involved is the applicability of the fifth amendment against self-incrimination.¹⁵⁶ In efforts to implement the statute it is difficult to see how these questions can practically be avoided.

In objectively reviewing the matter of joint jurisdiction, the possibilities for employing the Florida fishing statute would appear to be rather negligible. Its enforcement is too well circumscribed by superior federal legislation and perhaps, more importantly, by the exigencies of national policy.

154. FLA. STAT. § 370.21(3) (1967).

155. U.S. CONST., art. IV § 2.

156. 18 U.S.C. § 2385 (1964); 50 U.S.C. § 783 (1964).