I. Introduction

A survey of ocean and coastal law begins with an understanding of national jurisdiction offshore. The extent of a sovereign’s right to assert authority beyond its uplands to the adjacent seas is a matter of public international law and has been heatedly debated for centuries. National positions on the issue are derived from national interests. Maritime powers have traditionally advocated a maximum freedom of the seas, allowing their naval and commercial vessels to ply the oceans with a minimum of interference. Those nations have opposed extended claims of maritime jurisdiction. The maritime interests of other States may be concentrated near their own coasts. These nations have been more likely to make extensive maritime claims—to fisheries resources, for example—in order to protect their own interests from foreign competition.

Throughout history, perceived national interests have resulted in a wide variety of maritime claims, ranging from assertions of sovereignty over vast ocean areas not even adjacent to the claimant’s uplands to contentions that the open seas are never subject to national jurisdiction but always open to the free use of all comers. “The history of the law of the sea has been dominated by a central and persistent theme: the competition between the exercise of governmental authority over the sea and the idea of the freedom of the seas.” See: D.P. O’Connell, The International Law of the Sea, vol. 1, at 2. “The celebrated Bull of Pope Alexander VI, given legal effect in the Treaty of Tordesillas in 1494, was issued as a result of the discoveries of Columbus, which were at that time thought to have encroached on the areas of Portuguese discovery to the east. It drew a line down a meridian of longitude through Brazil. East
of that line would be the area of Portuguese expansion and westward would be that of Spain.” The most notable of these extensive claims was founded on a fifteenth-century papal bull of Alexander VI. The Pope’s purpose was to divide Spanish and Portuguese upland interests in the New World, but his proclamation was later relied upon to support claims to vast areas of the oceans. Portugal, in an effort to monopolize trade in the Far East, cited the bull in support of its claimed authority to prohibit competitors from sailing the waters of the western Pacific.

The Portuguese assertion led to the most well-known chapter in the debate over sovereignty at sea. In 1609 Hugo Grotius published his *Mare Liberum* (“Open Sea”) to refute the Portuguese claim and support the Dutch East India Company’s right to navigate and trade in the Far East. In 1635, John Selden published his equally well-known *Mare Clausum* (“Closed Sea”) in rebuttal. Selden, an Englishman, had no particular interest in the Far East question but felt compelled to respond to Grotius’s premise that the oceans are open to all because, at the time, England was claiming sovereignty over the seas adjacent to its coasts.

Within little more than a century, the Grotius position had prevailed. All major powers recognized that a coastal State’s sovereignty over the adjacent sea, if ever legitimate, was limited to a narrow band of water that has become known as the “territorial sea.” At the time of American independence, there was no international consensus on the width of that band. In 1793, however, diplomatic notes from then-Secretary of State Thomas Jefferson to Britain and France referred to an American territorial sea of three nautical miles. For most of American history, three nautical miles remained the internationally recognized limit of maritime sovereignty.

Today the Grotius-Selden controversy is only of historic interest. But it provides a useful point from which to understand modern ocean and coastal law. In the seventeenth century, national jurisdiction over the seas was seen as an all-or-nothing proposition. If such jurisdiction existed, it was as extensive as a sovereign’s jurisdiction over its uplands, including the right to prohibit transit by foreign vessels. If it did not exist, the oceans lay beyond the protection of any sovereign, an international “common,” and their resources subject to misuse and destruction.

Modern law of the sea is more flexible, no longer limiting its jurisdictional options to total sovereignty or no protection at all. It has evolved to accommodate numerous interests in the use and resources of the seas. Nor is the law of maritime jurisdiction any longer a hodgepodge of competing claims. The twentieth century brought a number of international efforts to codify the law of the sea. Those efforts produced wide consensus on four conventions that clarified maritime law in 1958. Subsequent negotiations produced a single comprehensive codification of principles governing the law of the sea in 1982 in the United Nations Convention on the Law of the Sea (hereinafter Convention or UNCLOS).

UNCLOS provides the international law framework for the domestic ocean and coastal law which is the subject of this volume. This chapter reviews the Convention’s relevant provisions briefly before proceeding to discussions of their application in American practice.
Maritime boundaries today are significant for two primary purposes. First, they define the limits of the coastal sovereign’s right to offshore resources. Second, they define the limits of that sovereign’s right to control activities that may adversely affect its interests. The coast of Massachusetts south of Cape Cod provides examples of such boundaries (see Figure 1.1). The bay on the northeastern coast of Martha’s Vineyard is “inland water,” subject to the complete jurisdiction of the United States and the State of Massachusetts.

Resources within a bay belong to the state. The three-mile belt seaward of the Massachusetts coast is the original territorial sea of the United States and the Massachusetts state boundary. The state may control resource exploitation and generally assert police powers within that line. Activities seaward of the state boundary are subject to federal jurisdiction. These include the exploitation of seabed resources, other seabed activities, the management of living resources, protection of the marine

Figure 1.1
Southeast Portion of Martha’s Vineyard, Massachusetts

environment, and customs, fiscal, and immigration control. But the reach of federal jurisdiction varies depending on the activity in question. A specific federal statute may apply in the inland waters, the three-mile zone, the modern twelve-mile territorial sea, the additional twelve-mile “contiguous zone,” the two-hundred-mile exclusive economic zone or to the limit of the continental shelf. Compliance with state and federal laws, and enforcement of those laws, requires an understanding of the various zones of maritime jurisdiction and an ability to determine their boundaries.

II. The Current State of the Law

A. Zones of Maritime Jurisdiction

International law as codified in UNCLOS recognizes the right of coastal sovereigns to assert jurisdiction in maritime zones adjacent to their coasts. UNCLOS identifies a number of such zones and permits the coastal State to establish such zones and, within each, assert jurisdiction over specific resources and activities. Typically a coastal State’s authority is more comprehensive nearer its uplands and diminishes with the distance offshore.

UNCLOS recognizes seven zones of maritime jurisdiction of interest here—each with its own degree of coastal State jurisdiction. We discuss them in order, proceeding from the coast and moving seaward.

1. Internal Waters

“Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.”

Internal waters, often referred to as “inland waters” in American practice, are waters that lie landward of the coast. For purposes of this discussion of ocean and coastal law, relevant internal waters are rivers that flow into the sea, bays, ports, historic waters, and tidal waters along an open coast at any stage of the tide above mean low water. The mouths of these inland waters form part of the “baseline,” from which more seaward zones of maritime jurisdiction are measured. Otherwise those offshore zones are measured from the low-water tide line, referred to in UNCLOS Article 5 as the “normal” baseline.

Identifying the limits of inland waters is important for at least three reasons. First, they are the only zones of maritime jurisdiction over which the coastal State has complete control. For international purposes, the coastal nation has jurisdiction over its internal waters similar to its jurisdiction over uplands. Most significant for maritime purposes, foreign vessels may not enter internal waters without the coastal State’s permission and pursuant to its conditions for entry. For domestic purposes, laws may apply differently in the inland waters than they do in the adjacent territorial sea, requiring citizens to be aware of which of these zones their activities are taking place in. And finally, without being able to identify the mouths of inland waters, the mariner—whether a citizen or foreigner—may be unable to determine which of the more seaward zones of maritime jurisdiction he is in, since the boundaries of each are measured, in part, from inland-water closing lines.

What then are our inland waters and how do we identify their limits?
**a. Bays**

Indentations into the mainland that meet specific geographic criteria are inland waters. UNCLOS defines a bay as “a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast.”

Chesapeake Bay, Delaware Bay, and San Francisco Bay are good examples of such “juridical” bays. The waters landward of the mouth of each are clearly inland. But many “indentations” into the coast are not so obviously landlocked. The U.S. Supreme Court has adjudicated numerous disputes between the federal and state governments to determine whether a particular indentation meets the international law requirements for inland-water status. Although each case presents novel legal issues, the following basic principles can be identified.

To qualify as inland water, the indentation, in normal circumstances, should be “landlocked” by the mainland, not by adjacent islands. The area of the indentation must, at a minimum, be that of a semicircle whose diameter is the mouth of the bay. The mouth of a bay is a straight line between the headlands that give the indentation its landlocked nature. The termini of that line are the points on each headland at which the coast of the indentation ceases to face the landlocked waters and looks out upon the open sea. If the bay’s mouth is twenty-four nautical miles or less in length, that mouth is the limit of inland waters. If the geographic mouth is more than twenty-four miles wide, a twenty-four-mile line is constructed within the bay to enclose the maximum possible water area, and that line is the limit of inland waters.

**b. Rivers**

Rivers are also inland waters. “If a river flows directly into the sea, the baseline [coastline or limit of inland waters] shall be a straight line across the mouth of the river between points on the low-water line of its banks.” Although many rivers flow directly into the sea, they raise few jurisdictional issues. The inland waters of the river end at its mouth.

However, problems can arise when a river flows into an estuary or a bay. The Geographer of the U.S. Department of State once defined a river, in a Supreme Court proceeding, as a body of freshwater flowing naturally from a region of higher elevation to a region of lower elevation, which is contained between parallel or nearly parallel banks. A river ceases to be a river when it broadens into an estuary or bay. The rules for bay closing lines are separately applied to the estuary to determine whether its water area is inland.

A river may be extended into the sea by artificial works. It is not unusual, for hydrological reasons, to continue the natural riverbanks offshore with parallel jetties. In such cases the limit of inland waters is a line joining the seawardmost points of the jetties.

Unlike its treatment of bays, UNCLOS places no maximum limit on the width of a river’s mouth.

**c. Historic Inland Waters**

We have previously discussed indentations into the mainland which, because of their geographic characteristics, qualify as inland water and whose mouths form part of the
baseline from which more seaward zones of maritime jurisdiction are measured. In limited circumstances, coastal waters that do not meet those geographic requirements may nevertheless be recognized as falling within the jurisdiction of the coastal State and, in some cases, qualifying as baselines for measuring more seaward zones of jurisdiction. These bodies are commonly referred to as historic waters or historic bays.

Coastal State jurisdiction over such waters is not acquired by meeting geographic requirements, as is the case with previously described “juridical” bays, but by meeting long-acknowledged criteria of international acceptance. The Supreme Court has described historic bays as waters over which the “coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations.” It has recognized that a historic claim requires proof of three elements. “The coastal nation must have effectively exercised sovereignty over the area continuously during a time sufficient to create a usage and have done so under the general toleration of the community of States.” If historic inland waters are proven, their seaward limits are part of the coastline of the United States from which more seaward zones of maritime jurisdiction are measured.

The U.S. Supreme Court has found that two of our coastal waterways qualify as historic inland waters. These are Vineyard Sound, off the southwestern coast of Cape Cod in Massachusetts, and Mississippi Sound, off the Gulf coasts of Mississippi and Alabama. In neither case does the seaward limit of those historic waters significantly affect more seaward maritime zones. However, historic inland water claims can substantially expand a coastal nation’s maritime sovereignty.

Libya, for example, has claimed historic title to the entirety of the Gulf of Sidra—an indentation into the mainland of North Africa. The mouth of the gulf is approximately 300 miles across. If that body met the legal requirements for historic inland water status, the Libyan claim would deny traditional rights of navigation and overflight to roughly 14,000 square miles of the southern Mediterranean. A large number of nations, including the United States, have rejected the Libyan claim, pointing out that it does not meet the international criteria for historic inland waters.

d. Ports

Harbors and ports are also inland waters. Article 11 of UNCLOS provides that “[f]or purposes of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast.” The Article does not specifically say that the waters of the port are inland, but the history of the provision, going back to the 1930 Hague Conference for the Codification of International Law, makes clear that they are. The United States has adopted that interpretation.

Delimitation of the limits of inland waters in ports and harbors does not follow the approach taken with bays and rivers. The mouths of bays and rivers are identified through the application of objective mathematical tests to the relevant geography. By contrast, in the only adjudicated example of which we are aware, the limit of inland waters in a port was determined by function. In defining the Port of San Pedro, serving Los Angeles, the Supreme Court’s Special Master declined to apply the objective criteria employed for bays and looked instead for the area that formed a single integrated harbor.
The inland waters of a port must, to some extent, be enclosed by natural or artificial structures. In one sense, roadsteads, where vessels can anchor to load or offload cargo when piers are unnecessary or not available, are often part of a functioning port. Nevertheless, they do not become part of the inland waters of the coastal State.

As mentioned above, coastal States may impose conditions on entry into their ports. For example the U.S. Coast Guard requires, for port security reasons, that merchant vessels give advance notice of their entry into U.S. ports, and for protection from water pollution, petroleum tankers must have double hulls. The State of California is making an effort to improve its air quality by regulating the sulfur content of the fuel burned by merchant vessels within twenty-four nautical miles of its coasts and bound either to or from its ports.

e. Straight Baselines

The foregoing discussion covers the various baselines employed by the United States as the mouths of inland waters and measuring points for the various seaward zones of maritime jurisdiction. International law does, however, recognize an additional—optional—baseline, which may be employed in limited circumstances.

UNCLOS Article 7(1) provides that “[i]n localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.” In short, where the required conditions exist, a coastal nation may enclose as “inland” waters that do not meet the traditional definitions of bays, rivers, or ports to simplify an otherwise complicated baseline. Although the United States has not elected to employ such a system, parts of its shoreline—such as the Alexander Archipelago of southeastern Alaska and the Gulf coast of Louisiana—would be potential candidates.

We mention “straight baselines” here because they have been widely claimed around the world (often in geographic situations that the United States doesn’t believe qualify for Article 7 treatment), and mariners should be aware that they may have entered inland waters established by Article 7 claims in areas they might not recognize as “deeply indented” or “fringed by islands.” UNCLOS does contain a provision that helps to protect the interests of maritime navigation. Article 8 provides that “[w]here the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.”

The various bodies of inland waters just identified produce what might be described as “artificial” baselines. That is, straight lines that are constructed by man at the mouths of those water bodies. As might be imagined, even experts disagree on the precise location of such baselines. Fortunately, UNCLOS provides help to the mariner. Article 16 of the Convention requires:

1. The baselines for measuring the breadth of the territorial sea determined in accordance with articles 7 [straight baselines], 9 [rivers] and 10 [bays], or the limits derived therefrom . . . shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.
2. The coastal States shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.

In short, the coastal State must make available to mariners charts or lists that either show the baselines of these internal waters or enable the mariner to construct them on his own charts.\(^{32}\)

Note that Article 16 does not specifically apply the charting requirement for ports or historic inland waters. This may be because UNCLOS does not set out precise criteria for identifying the limits of either’s inland waters and/or because ports have been, from time immemorial, recognized as inland waters, and one of the requirements for establishing historic inland water status is the knowledge and acceptance of the claim by the international community.\(^{33}\)

Although the United States is not yet a party to UNCLOS, the National Oceanic and Atmospheric Administration (NOAA) has complied with the requirements of Article 16 by publishing its inland-water closing lines and the seaward limits of the United States’ maritime boundaries on publicly available nautical charts of the entire U.S. coast. They can be viewed at http://www.nauticalcharts.noaa.gov/mcd/OnLineViewer.html.

\(\text{f. The Low-Water Datum}\)

Article 5 of UNCLOS provides that “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” Article 8 provides that “waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.” Taken together these two provisions make clear that inland waters are not just landlocked water bodies protected in some sense by the mainland. They also include that narrow band of open sea that covers the beach at any stage of the tide above mean low water.

One matter must be clarified at this point. The United States, and many other countries, publish official nautical charts of their coastlines. Typically those charts depict a low-water line. Article 5 is sometimes incorrectly read to mean that the baseline, or seaward limit of inland water, is—by operation of law—established by such charts. That is not the intent of the Convention’s provision. The somewhat awkward wording of Article 5 is necessary because there is no single internationally recognized, low-water datum. Hydrographers can identify a number of datums that fit the description. The language of Article 5 was chosen because no single low-water datum had been generally accepted for charting purposes around the world, and charts were being produced using a number of datums.

Article 5 means that the particular low-water line adopted by each coastal State for its charting purposes is to be its “normal baseline.” For the United States, that is a datum generally referred to as “mean low-water.” The critical point for our purposes is that if the chart does not accurately depict the low-water baseline, or seaward limit of inland waters, the legal “baseline” is the actual mean low-water line at the datum identified on the chart, not necessarily the line as it appears on the chart.\(^{34}\)

Over time, nature and human intervention change coastlines, making it impossible to maintain a chart that depicts the location of the mean low-water line exactly
as it is from day to day. The Supreme Court has deferred to NOAA in its choice of
datums to be charted as the United States’ baseline. At the same time the Court
recognized that the charts themselves may not, at any given moment, precisely reflect
that baseline. The official charts are presumed to accurately reflect the present loca-
tion of the low-water line, but that presumption is subject to attack in court.

From the foregoing it is possible to identify inland, or internal, waters. The ques-
tion remains, however, why is such a delineation significant?

Numerous federal and state statutes apply to activities in our internal waters. Those
discussed in following chapters are the most important but are by no means an
exhaustive list. Statutes, however, present a common problem that should be noted
here: rarely do they use the term “internal waters.” More typical are references to
“waters of the United States,” “territorial waters,” or navigable waters.” None of
these terms has a consistent international definition. In American practice “navigable
waters” are those that are subject to the ebb and flow of the tide or are navigable in
fact. “Territorial waters” usually means inland waters together with the territorial
sea. “Waters of the United States” is a term used in recent environmental legislation
and has been interpreted to include waters that are hydrologically tied to naviga-
ble waters although not necessarily navigable themselves. Each of these examples
includes inland waters. The practitioner must be careful when dealing with them in
enforcement situations.

Identifying inland waters may also be important in determining title to submerged
lands. The beds of navigable, inland waters generally belong to the state in which they
lie. Each of the original thirteen states held title to the beds of its navigable water-
ways, and the federal government has been determined, pursuant to the equal footing
doctrine, to have held such beds in territories in trust for future states and transferred
them at statehood. Title to the beds of non-navigable internal waters, on the other
hand, is usually held by the adjacent upland landowner.

Probably most important for our discussion of ocean and coastal law, the sea-
ward limits of internal waters provide part of the baseline from which more seaward
zones of maritime jurisdiction are delimited, as we see in the remaining discussions
in the chapter. That “baseline” can be described as a composite of the low-water line
along an open coast (i.e., where the sea meets the land at the tidal datum adopted for
an officially recognized chart) and the closing lines across the mouths of the qualifying
internal waters described above.

Finally, in discussing these principles, it is likely that we picture the baselines of
a continental landmass. But offshore features may also serve as baselines for zones
of maritime jurisdiction. Article 121(1) of UNCLOS defines an island as “a naturally
formed area of land, surrounded by water, which is above water at high tide.” Article
121(2) states, “Except as provided for in paragraph 3, the territorial sea, the con-
tiguous zone, the exclusive economic zone and the continental shelf of an island are
determined in accordance with the provisions of the Convention applicable to other
land territory.”

Other offshore features are treated differently. Pursuant to Article 13, low-tide
elevations, which are similar to islands but are above water at low tide and submerged
at high tide, have baselines that generate maritime zones only if they are “situated
wholly or partly at a distance not exceeding the breadth of the territorial sea from the
mainland or an island.”
Having discussed the inland waters and low-water line that play a role in creating the “baseline” from which the seaward zones of maritime jurisdiction are measured, we now turn to the identification and description of those offshore zones.

2. Territorial Sea

“The sovereignty of a coastal State extends, beyond its land territory and internal waters . . . to an adjacent belt of sea, described as the territorial sea.”

The territorial sea is a narrow belt of ocean immediately seaward of the coast. Article 2 of UNCLOS provides that “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from [its] baselines.” The outer limit of the territorial sea is a line “every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.”

By definition there is only one possible outer limit of the territorial sea once its breadth is known and the baseline is established. Controversies over the seaward limits of the territorial sea, and most other offshore boundaries, are actually baseline controversies.

Within the territorial sea, the coastal State may exercise jurisdiction that is almost as comprehensive as that asserted over its inland waters. The two significant differences are the internationally recognized right of vessels to transit a foreign State’s territorial sea in what is called “innocent passage,” and the understanding that, as a general principle, the coastal State will not exercise its criminal jurisdiction over activities occurring on a vessel in innocent passage unless those activities affect the coastal State. With these exceptions, the coastal State may extend the reach of its domestic legislation to the limits of its territorial sea and enforce the provisions of that legislation against its own citizens and foreigners.

3. Contiguous Zone

“In a zone contiguous to its territorial sea . . . the coastal State may exercise the control to” prevent and punish violations of its customs, fiscal, immigration, or sanitary laws and regulations within its territorial sea.

The boundaries of the contiguous zone are the seaward limit of the territorial sea (a maximum of twelve nautical miles from the coast), and a line up to twenty-four miles from the coast. The difference between coastal State jurisdiction in the territorial sea and the contiguous zone is best described as follows. The territorial sea is subject to the sovereignty of the upland State. The international community’s sole interest, the right to navigate in innocent passage, is protected through an exception to that sovereign control. In contrast, the coastal State’s jurisdiction in the contiguous zone is limited to specifically identified exceptions to the international community’s primary interests. Foreign vessels need not assert a right of innocent passage and carefully meet the definitions of “innocent” and “passage,” as they must in the territorial sea. Nor are foreign aircraft prohibited from overflying the contiguous zone without the permission of the coastal State.

The contiguous zone concept has carried over from the 1958 Convention on the Territorial Sea and the Contiguous Zone, predecessor to UNCLOS. But protections provided by the contiguous zone may now be less important with the UNCLOS addition of the Exclusive Economic Zone. Nevertheless, the United States presently claims both a contiguous zone and an exclusive economic zone, although the former exists within the latter.
4. Exclusive Economic Zone

“The exclusive economic zone is an area beyond and adjacent to the territorial sea.”

“In the exclusive economic zone the coastal State has sovereign [exclusive] rights for the purpose of exploring and exploiting, conserving and managing the natural resources.”

In addition, the coastal State has jurisdiction with regard to artificial islands, marine scientific research, and protection of the marine environment. The Exclusive Economic Zone (EEZ) is a creature of the 1982 Convention. As Victor Prescott and Clive Schofield explain, the EEZ “represents a compromise between competing coastal state resource interests and interests of those states concerned to preserve freedom of navigation.”

Prior to 1982, some coastal sovereigns interested in protecting offshore resource sought to do so by making extreme territorial sea claims, sometimes extending as much as two hundred nautical miles from their coastlines. As previously discussed, territorial seas are zones of complete sovereignty, subject only to the limited right of innocent passage. Other States, whose primary interest was freedom of navigation for their naval and commercial fleets, felt threatened by such extended claims.

The EEZ concept is an interesting solution. Coastal State control over natural resources is recognized, but navigation and overflight not inconsistent with resource interests are not restricted, if other States’ use is compatible with the Convention and has due regard for coastal State rights and requirements.

The EEZ is defined as a zone lying seaward of the territorial sea to a distance of no more than two hundred nautical miles from the coast. As with the outer limits of the territorial sea and contiguous zone, constructing the outer limit of the EEZ is a relatively simple task (now accomplished by computer programs) once the baseline, or coastline, is determined.

The EEZ compromise does not simply recognize a coastal State’s right to offshore resources, it imposes significant obligations on the claimant State to manage and conserve those resources. For example, the coastal States must “ensure through proper conservation and management measures that maintenance of living resources . . . is not endangered by over-exploitation” and manage species to produce “the maximum sustainable yields.” If the coastal State will not take the total allowable catch, foreign vessels must be permitted to fish the excess, pursuant to regulations of the coastal State.

The United States has claimed an exclusive fisheries zone extending two hundred miles from its coasts since 1976. The congressional Act that implemented that claim was later adopted as United States primary domestic implementing legislation for our EEZ. The Magnuson-Stevens Act focuses on the protection and management of commercial species in the EEZ. Two other federal statutes protect additional interests in the EEZ. The Marine Sanctuaries Act extends federal protection to other living and nonliving objects of national significance in specifically designated portions of the EEZ. The Marine Mammal Protection Act prohibits “taking” marine mammals within two hundred miles of our coast.

5. Continental Shelf

“The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to [the greater of] the outer edge of the continental margin or . . . 200 miles from . . . [its coast].”
As a geologic matter, the continental shelf is that gently sloping, subsea feature which extends the uplands offshore before dropping precipitously to the ocean depths. It may extend a short distance from the coast or hundreds of miles seaward. However, under its UNCLOS definition, the coastal State’s continental shelf rights extend to a minimum of 200, and a maximum of 350, nautical miles from the coast.

The coastal State has the exclusive right to explore and exploit the natural resources of its continental shelf. No other State may explore for, or exploit, the natural resources of the coastal State’s continental shelf without the latter’s consent. UNCLOS does recognize two important international rights on and above the continental shelf. The first is the right to navigate the waters and airspace above the continental shelf. The second is the right of all States to lay submarine pipelines and cables on the continental shelf of another State.

For at least 60 years, coastal States have asserted special rights over resources of their continental shelves, without necessarily claiming jurisdiction over resources or activities in the water column above. In 1953, Congress enacted two pieces of legislation governing the development of offshore mineral resources. First it granted the individual coastal states the exclusive right to develop seabed resources for specific distances off their shores. Then it set up a comprehensive scheme for the federal development of mineral resources seaward of the state grants to the edge of the continental shelf. Oil and gas production from the continental shelf has been a significant source of energy, as well as income, for both the federal government and the states.

As the continental shelf begins to be used to develop new sources of energy, potential jurisdictional issues are looming, as discussed in Part II.B.

6. High Seas

“All parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State” are high seas.

Waters seaward of the zones of coastal State jurisdiction just discussed are open to the use of all nations. Among the freedoms recognized on the high seas are navigation, overflight, laying submarine cables and pipelines, construction artificial islands and installations, fishing, and scientific research.

However, those who enjoy the high-seas freedoms must keep in mind that they are not beyond the reach of all authority. Every State may control its own nationals, and flag vessels, wherever found. Much federal law extends to Americans and American flag vessels on the high seas. For example, the prohibitions of the Endangered Species Act apply to “any person subject to the jurisdiction of the United States” and prohibit, among other things, “taking” an endangered species on the high seas. Likewise, the Marine Mammal Protection Act makes it illegal for any person or vessel subject to the jurisdiction of the United States to take any marine mammal on the high seas.

Articles 86–1120 of UNCLOS set out specific rights and obligations of individuals and sovereigns on the high seas.

7. The “Area”

The seabed beyond the limits of national jurisdiction is described as the “Area.” The Convention recognizes the Area and its resources as “the common heritage of
mankind.” These resources may be developed under the supervision of the International Seabed Authority, as provided in the Convention.

These Articles establish a scheme for producing the mineral resources of the deep seabed, and dedicating the profits of that production to mankind generally, while protecting the marine environment and retaining the legal status of the superjacent waters as high seas and open to the passage of all vessels and aircraft, all the while protecting the Area from claims of upland sovereigns.

B. Overlapping National Maritime Boundaries

A substantial difficulty in delimiting the boundaries of the previously described zones of maritime jurisdiction occurs in areas of potentially overlapping maritime jurisdiction between adjacent coastal States, such as the United States and Mexico, or opposite States, such as the United States and the Bahamas. UNCLOS does not provide a formula for constructing common boundaries in such circumstances. Its general approach is to encourage agreement between the sovereigns. In the absence of agreement, the Convention’s approach differs slightly depending on the zone of jurisdiction at issue.

When the territorial seas of neighboring sovereigns abut, neither State may unilaterally extend its jurisdiction beyond a median (equidistant) line measured from the coastline of each, unless “historic title or other special circumstances” require a variation. Conflicts over the boundaries of EEZs are to be resolved “on the basis of international law . . . in order to achieve an equitable solution.” If there is no agreement “within a reasonable period,” the matter is to be resolved through procedures set out in the dispute resolution provided in Articles 279–299 of UNCLOS. Overlapping continental-shelf claims are to be resolved in the same way.

Some, but not all, of these international boundaries have been resolved between the United States and its neighbors. For example, the United States and Mexico have negotiated the continuation of their onshore boundaries in the Pacific Ocean and Gulf of Mexico to a distance of two hundred nautical miles offshore. The United States and Cuba have agreed upon their mutual “opposite” boundary in the Straits of Florida. The United States and the Soviet Union have described a line dividing their respective interests in the continental shelf through the Bering Sea and Bering Strait. Canada and the United States put the question of most of their common offshore boundary in the Gulf of Maine before an international tribunal.

However, a number of opposite and adjacent maritime boundaries of the United States remain to be identified. Many of these involve American island territories, but significant continental boundaries with Canada are included. The extension of the U.S./Canada boundary through the Strait of Juan de Fuca—separating Washington State from Vancouver Island—is not agreed upon. Nor are the maritime boundaries in the Pacific between southeastern Alaska and British Columbia through Dixon Entrance or in the Beaufort Sea between Alaska and the Canadian Yukon. Professor Ted L. McDorman explains why boundaries have become less important to resolving maritime controversies between these neighbors, saying, “during the 1960’s, there emerged a policy of reciprocal fishing rights such that fishers from one State could fish unhindered in the newly claimed waters of the other. When Canada expanded its authority over adjacent fisheries in 1964 . . . U.S. fishing activity was exempted from the new law. When the United States followed with similar legislation in 1966, an arrangement exempted Canadian fishers.”
Although the United States has not returned to an international tribunal for assistance in the resolution of its maritime boundaries, a number of States have—resulting in case law that will undoubtedly influence both the process and outcome of future controversies. A generalization as to what might be expected is that the process will usually begin with the construction of an equidistance line—measured from the nearest points on the baselines of the States concerned—and then modifications made in that line to achieve equity between them. Needless to say, an innumerable number of factors may be offered to justify variation from an equidistant line.

C. State Boundaries

State boundaries can also create complications. Our discussion of maritime zones has, to this point, dealt mostly with federal and international law. However, the various states of the union may have concurrent jurisdiction within two of the zones discussed.

Inland waters are entirely within the boundaries of the states. State laws apply in those waters unless preempted by federal law. In addition, the states play a major role in implementing and enforcing some federal legislation in their inland waters. The Clean Water Act is a prime example. It establishes goals for restoring and maintaining the quality of water in the United States. At a national level, water-quality guidelines are set by the Environmental Protection Agency.91 However, authority for implementing programs to achieve those goals can then be delegated to the individual states.92

Inland waters are not limited to those that form part of the coastline. International-boundary lakes and rivers are inland, lie within both state and national boundaries, and are subject to both federal and state jurisdiction.93

State boundaries also extend offshore. In most cases they are described by state constitution or statute as extending three miles from the coast, the limit of the territorial sea of the United States from 1793 until 1988. The states are sovereign within this maritime belt and, as a general proposition, may apply state laws as they do on land.94 It is common, for example, for the states to regulate fisheries in their offshore waters.95 They may also implement federal legislation, such as the just-mentioned Clean Water Act, in state offshore waters.96

Identifying the exact location of a state's offshore boundaries can raise difficult issues. Traditionally, state offshore boundaries have coincided with the federal territorial sea limit. However, when the territorial sea was extended to twelve nautical miles in 1988, state boundaries remained where they were.97 Even more confusing, state offshore boundaries that were typically ambulatory have been fixed for some purposes. Thus, some coastal states now have two offshore boundaries. Which boundary is applicable for which purpose may be a difficult question to answer. A discussion of that point is one of the “unresolved” questions included in Part III.

Wherever a state’s seaward boundary is located, there is always the additional problem of how the upland boundary separating it from a neighboring state is to be extended offshore to divide their areas of maritime jurisdiction, the same problem discussed above with respect to international boundaries. These “lateral” boundaries are typically not set out in technical terms in a state’s boundary description. Nor are there any well-developed principles of domestic law to help resolve the problem.

The preferable solution is agreement between the states. A number of lateral boundaries have been resolved through compacts negotiated by the states involved.98
Three have been litigated. The first, New Hampshire v. Maine, extends the boundary that separates those two states through the Piscataqua River to its mouth.99 The Texas-Louisiana and Georgia-South Carolina lateral offshore boundaries have been contested in Supreme Court Original actions. It happens that each of these lateral boundaries begins at the mouth of an inland water body. In Texas v. Louisiana, the offshore lateral boundary was found to begin at the midpoint of the mouth of the Sabine River and continue offshore on a line that runs at all times equidistant from the coasts of the two states.100 The upland boundary between Georgia and South Carolina lies in the Savannah River. The Supreme Court’s Special Master determined that equity required that a lateral boundary dividing the states’ offshore jurisdiction begin on the mouth of a bay into which the Savannah River flows and continue seaward on a line perpendicular to the bay closing line on which it began. The Supreme Court agreed.101

A few principles come from these litigated cases that may be useful in future controversies between our coastal states. First, international law may be helpful in settling domestic offshore boundary issues. Second, absent agreement, “equity” is the goal to be reached in dividing offshore interests. Third, all else being equal, an equidistant boundary will provide equity. Finally, special circumstances may justify deviations from the equidistance line.

III. Emerging and Unresolved Issues

A number of unresolved issues exist with respect to the just-discussed zones of maritime jurisdiction. First are difficulties in precisely delimiting the boundaries of those zones. Equally important are questions of exactly what jurisdiction the coastal sovereign has purported to assert in each zone and whether those assertions are consistent with international law. We will look at those subjects in turn.

A. Boundaries of the Maritime Zones

Central to delimiting the boundaries of each zone of maritime jurisdiction is accurately locating the baseline, generally referred to as the “coastline” in American practice, from which those zones are measured. As noted above, the “coastline” is a composite of the mean low-water line along the open coast and closing lines across the mouths of inland water bodies that open to the sea.

The line of mean low water is usually depicted as a dotted line enclosing green tint on official National Ocean Service nautical charts. See Figure 1.2.102 Inland-water closing lines are constructed using the UNCLOS legal criteria and are also depicted on official charts as required by Article 16 of UNCLOS. See Figure 1.3. Maritime zones are measured from both.103

What then are the unresolved issues associated with locating the zones of maritime jurisdiction?

1. Baselines Are Ambulatory

The first, and constantly recurring, coastline issue results from the fact that the coastline is ambulatory. The location of the low-water line, which serves as the “normal” coastline but also plays a role in determining the limits of inland waters, is in constant flux resulting from both natural and human forces.
Figure 1.2
Zones of Maritime Jurisdiction

<table>
<thead>
<tr>
<th>Inland Water</th>
<th>Territorial Sea</th>
<th>Contiguous Zone</th>
<th>High Seas</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Exclusive Economic Zone</td>
<td></td>
</tr>
<tr>
<td>Mean Low Water</td>
<td>Seabed</td>
<td>Continental Shelf</td>
<td>The Area</td>
</tr>
</tbody>
</table>

Source: Michael W. Reed

Figure 1.3
South Coast of Cape Cod, Massachusetts

The low-water line depicted on nautical charts accurately reflects the land/water interface at the chart datum as of the time of the survey upon which the chart was based. But accretion and erosion may alter that line, and it is the actual land/water interface at mean low water that is the coastline, not the charted line. Without evidence to the contrary, the official charts are given deference in locating the coastline, but the courts will permit a party, including the federal government, to prove that the legal coastline has moved from its charted position. The best and most recent evidence will be admitted to prove the present location of the coast.

Changes in the low-water line can also affect inland-water closing lines in a number of ways. For example, Kotzebue Sound in Alaska met all of the tests for inland-water status until erosion along one of its headlands caused the mouth to exceed the twenty-four-mile maximum. Thereafter, a twenty-four-mile fallback line was constructed within the sound, as permitted under Article 10(5), but a substantial portion of the sound that had been inland water now lies beyond Alaska’s three-mile boundary. Accretion or erosion within an indentation might also affect its ability to meet the minimum area requirement of Article 10(2).

In short, an interested party may challenge the accuracy of the nautical chart on which the federal government has constructed its zones or maritime jurisdiction.

2. Charts May Not Contain the Information Necessary to Identify the Baseline

Even completely accurate and updated charts may contain insufficient information to make baseline determinations, a fact of life that is not the fault of the charting agency. For example, in three common instances, it is not possible to determine from the chart whether a particular feature qualifies as part of the coastline.

a. Height with Respect to Low-Water Datum

The first such feature is a “rock awash,” shown on NOAA charts as an asterisk or an asterisk surrounded by dots. See Figure 1.4. By definition, the height of a rock awash, with respect to a tidal datum, is unknown. Yet, if the feature is a naturally formed area of land that rises above mean high water, it is an island under international law and is part of the coastline for measuring the territorial sea and contiguous zone. If it is capable of sustaining human habitation or economic life, it will also have an exclusive economic zone and continental shelf.

If the feature is above water only at low tide, it is part of the coastline for measuring the territorial sea if, and only if, it is at a distance not exceeding the breadth of the territorial sea from the mainland or an island.

Such offshore features can have significant effects on maritime boundaries, yet it is impossible to tell from the chart whether they are proper base points. The Committee on the Delimitation of the United States Coastline, which constructs U.S. maritime
zones on official charts, often goes to great lengths to determine whether a particular point qualifies as part of the coast. But definitive information may not be available. In those cases, the government may be persuaded to conduct the necessary surveys to make the determination and may accept evidence supplied by state or private parties.

The situation arose recently in Nantucket Sound. Small features are known to lie in the sound approximately two nautical miles south of Cape Cod’s Point Gammon. They are depicted on official charts as rocks awash, warning the mariner of danger even though they might not be visible at all stages of the tide. See Figure 1.2 on page 16. There is no way, however, to determine from the chart whether they are islands, low-tide elevations, or submerged. As a consequence, they were not originally used to delimit the maritime boundaries of Massachusetts south of Cape Cod.

A proposal to conduct activities seaward of the charted state boundary that might violate Massachusetts law brought new interest in the status of these features, and subsequent surveys determined that they do qualify as part of the “coastline” of Massachusetts and base points for delimiting the state boundary and other zones of maritime jurisdiction.109

Features charted as rocks awash appear at many places along the coasts. They often create a potential boundary controversy. Other offshore features may be charted above mean low water yet raise doubt as to whether they are proper baseline points.

b. Naturally Formed or Man-Made

Other offshore features may be charted above mean low water yet raise doubt as to whether they are proper baseline points. International law requires that an island or low-tide elevation be “naturally formed” to constitute part of the coastline.110 That requirement raises two possible points of contention that are, typically, not answered by mere reference to a nautical chart.

The first is whether the feature’s existence is the work of man rather than nature. Examples of features found unqualified on this basis include a navigation beacon built on a permanently submerged reef, an artificial island used for petroleum drilling, and spoil banks resulting from dredging navigation channels. It is not always easy to determine whether a particular feature was created by man or nature. For example, low-tide elevations near the mouth of the Bass River, as seen in Figure 1.2 on page 16, may have been formed through the natural deposit of silt at the river’s mouth or deposited there by man as the channel was dredged. A chart would rarely identify the source of such features. The Coastline Committee has treated similar features as “natural,” and used them as part of the baseline, if there were no reasonable basis for assuming that they were man-made.114

The second issue, raised by the term “naturally formed,” is whether the word “formed” refers to the original source of the feature—as just discussed—or its present outline. If the latter, many of the numerous spoil banks found off the coasts of the United States, and originally created in the process of channel maintenance, might eventually qualify as baseline points as natural forces alter their original outlines.
banks found off the coasts of the United States, and originally created in the process of channel maintenance, might eventually qualify as base points as natural forces alter their original outlines. Although a seemingly arguable interpretation of “naturally formed,” we know of no instance in which it has been made to a court.

c. Composed of Land

Although the mainland baseline may include the mouths of inland-water bodies and man-made structures, islands and low-tide elevations must, by definition, be composed of land to be treated as base points. This requirement has prompted some expert discussion and judicial consideration.

Commentators seem to be in agreement that “land means dirt, rock, sand, gravel, organic matter, or combinations of these materials.” The federal government argued in *United States v. Alaska*, that ice could not be treated as land so as to raise a feature above mean high water when its gravel content alone would be insufficient to do so. Presumably, a court would hear evidence as to whether a given feature was naturally formed and made of land. Official charts do not answer those questions.

d. Which Artificial Structures Attached to the Coast Contribute to the Baseline

Article 11 of UNCLOS provides that “the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast.” The Convention does not define “harbour works,” but American practice provides some help. One commentator, Aaron Shalowitz, has defined them as “structures erected along the seacoast at inlets or rivers for protective purposes, or for enclosing sea areas adjacent to the coast to provide anchorage and shelter.” The Supreme Court has quoted that definition with favor. Examples are solid structures, such as breakwaters that form the Port of San Pedro and the jetties at the mouth of the Sabine River between Texas and Louisiana. Harborworks accepted by the Supreme Court as part of the baseline have provided some coast-protective function and possessed a continuous low-water line that could be treated as the coastline. In contrast, subsurface “harborworks,” such as dredged channels, have been rejected as base points for zones of maritime jurisdiction, as have open pile piers.

The various types of artificial coastline construction often cannot be easily distinguished on nautical charts. For example, jetties (which are usually solid, provide a coast protective function, and are treated as harborworks) may be represented on charts with the same symbol as open pile piers (which do not have a continuous low-water line and have little or no coastal protection capacity). See Figure 1.5.

**Figure 1.5**

*Official Nautical Chart Symbol for “Pier, Jetty”*

![Figure 1.5](source: Chart No. 1, *United States of America Nautical Symbols, Abbreviations and Terms*, 10th Edition, November 1997, page 27.)
e. “Rocks” Distinguished from Islands

UNCLOS has introduced a new and interesting issue to earlier baseline controversies. For the first time, it limits the significance of certain islands’ roles in contributing to maritime zones. Article 121 adopts the traditional definition of islands as “a naturally formed area of land, surrounded by water which is above water at high tide.” The Article then provides, as had prior international law, that an island has a territorial sea and contiguous zone. However, Article 121(3) specifically provides that the more extensive EEZ and continental shelf are not generated by “rocks which cannot sustain human habitation or economic life of their own” even though they otherwise qualify as islands.

The purpose of the provision seems clear. “Article 121(3) was to prevent tiny, insular features called ‘rocks’ from significantly reducing the international areas of seabed and sea that belong to all the states in the world.”125 The point is well made when Victor Prescott and Clive Schofield explain that a de minimus rock could produce an EEZ of 125,600 square nautical miles.126 The provision has prompted substantial scholarly debate, mostly involving the definition of “rock” and the meaning of the phrase “which cannot sustain human habitation or economic of their own.”

The unresolved issues arising from Article 121(3) are numerous and interesting. We can imagine their arising in American practice if a violation is enforced in a portion of the EEZ that is within only two hundred miles of a naturally formed area of land that is above high tide but is arguably just a rock and unable to sustain human habitation or economic life.

3. Closing Inland Waters

Another source of baseline confusion is disagreement over the proper application of international principles for identifying inland waters and their mouths that, as we have discussed, are baselines from which maritime zones of jurisdiction are measured.

a. Juridical Bays

Juridical bays seem to create the greatest difficulty. Juridical bays are those indentations into the mainland that meet the criteria of Article 10 of UNCLOS. Their waters are “inland” and closing lines at their entrances form part of the coastline from which more seaward zones of maritime jurisdiction are measured. Although the Supreme Court and its Special Masters have adjudicated the status of innumerable alleged juridical bays, no two geographic formations are identical. For that reason, today’s juridical bay can always be distinguished, in some way, from yesterday’s.

A recent popular issue has been to what extent an island, or islands, can be said to form a bay. The Supreme Court has recognized that “the general understanding has been—and under the Convention remains—that bays are indentations into the mainland, and that islands off the shore” do not create bays.127 Nevertheless, the Court has said that in unusual circumstances an island may be so closely associated with the mainland that it must be treated as mainland and, as such, becomes available as the potential headland of a bay.

The Court has set out criteria to help determine when an island is legally part of the mainland, including size, distance from the mainland, depth and utility of intervening waters, shape, and the island’s relationship to the configuration or curvature of the coast.128 It has also produced two useful examples. The first found Long...
Island to be assimilated to the mainland of New York, through Manhattan, making Long Island Sound a juridical bay. The second found Kuiu, Kupreanof, and Mitkof Islands in the Alexander Archipelago of southeastern Alaska not to be assimilated to one another and the mainland to create juridical bays to their north and south.

Island assimilation questions may arise in the future. The Court’s opinions in the Louisiana, Long Island, and Alaska cases, along with the extensive report of the Special Master in each, will provide the starting point for the resolution of any future controversy.

UNCLOS Article 10 provides additional criteria for juridical bay status that will undoubtedly raise future controversy. How, exactly, to make the mathematical calculations implicit in it is, to some extent, an unanswered question. Two objective requirements are set out. The first is that a bay’s “penetration [into the mainland] is in such proportion to the width of its mouth as to contain inland water.” Unfortunately, the Article says no more about how the depth measurement is to be made or what ratio of width to depth is required. Geographers have discussed alternatives and offered preferred methods. The federal government has suggested that a closing line constructed across the mouth of an embayment be compared to the longest straight line running from any point on the mouth to the deepest point of penetration in the water body. It then contends that if the width of mouth is no greater than the depth of penetration, the water body is landlocked. The Supreme Court has not yet endorsed this, or any other, specific method for testing the initial requirement of Article 10, and the issue remains open for future litigants.

The second requirement of Article 10 is that an indentation’s area be “as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth the indentation.” The minimum-area requirement is easy enough to calculate once the limits of the indentation to be measured are established. The unresolved issue is how adjacent water bodies, if any exist, are to be dealt with in measuring the area of the indentation in question. The issue was first faced by the Supreme Court in United States v. Louisiana, in which the state took an expansive view, arguing that any connected waterways should be included for semicircle measurement, and the federal government contended that two distinct water bodies should not be treated as one for this purpose. The Court gave some guidance, but much room is left for imaginative counsel in future litigation. In most cases, state interests will be fostered by including the greatest water area for semicircle measurements.

b. Rivers

Rivers are, of course, inland waters. Article 9 of UNCLOS provides that “[i]f a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between the points on the low-water line of its banks” continuing the traditional understanding that river mouths are part of the baseline for measuring the more seaward maritime zones.

The single-baseline issue associated with Article 9 arises because many rivers do not flow “directly into the sea”—rather, they flow into bays or estuaries. American practice is clear—a river’s mouth is the point at which it ceases to be “riverine,” that is to say that it is no longer flowing between parallel banks. That may be where it enters the sea, in which case it is part of the baseline. Or it may empty into an estuary, port or bay, in which case the mouths of those features provided the baseline.
Why then is there any controversy? The answer is that the inland waters of juridical bays have a maximum mouth of twenty-four nautical miles. Article 10(5) of UNCLOS fixes no maximum for the closing lines of rivers. The Rio de la Plata, between Uruguay and Argentina, is well over one hundred miles wide at what could be described as its mouth. The Amazon River of Brazil is a similar width. The jurisdiction of both sovereigns is substantially increased by treating these waters as “rivers” flowing directly into the sea, rather than bays or estuaries with twenty-four-mile closing lines.

The United States has protested the interpretations of Argentina and Uruguay, so this should be seen as an unresolved issue internationally. No American river has a mouth of twenty-four nautical miles, so no domestic issue arises.

c. Ports and Historic Waters

UNCLOS Article 16 raises what might be considered an “unresolved issue.” The purpose of that Article is to put mariners on notice of the closing lines of inland waters, presumably so that they can calculate their locations relative to the various zones of maritime jurisdiction measured from them. It provides that “[t]he baseline for measuring the breadth of the territorial sea determined in accordance with articles 7 [straight baselines], 9 [rivers] and 10 [bays] or the limits derived therefrom . . . shall be shown on charts . . . . Alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substituted.”

Missing is any mention of the two other inland water bodies that may contribute to the baseline and from which offshore zones of maritime jurisdiction are measured—ports and historic waters. If those closing lines are not charted, the purposes of Article 16 are not met and a mariner, for example, entering a port or historic inland water body without having met the coastal State’s entry conditions might find himself involved in a complicated prosecution.

We understand that the computer programs used to produce the materials required by Article 16 probably only work if all inland water closings are depicted. If so, the concern here may be only theoretical. Nevertheless, the omission of reference to these inland water bodies from the specific requirements of Article 16 should be identified as an “unresolved issue.”

B. Dealing with “Fixed” Boundaries under U.S. Legislation

Yet another area of dispute in defining coastal jurisdiction involves “fixed” boundaries and the unusual issues associated with them. Until now we have discussed maritime zones whose boundaries are ambulatory because they are measured from ambulatory baselines. However, all, or portions of, the seaward boundary of one important maritime zone, each coastal state’s Submerged Lands Act grant, may be fixed—unaffected by the ambulatory low-water line and inland-water closing lines. Submerged Lands Act boundaries may become fixed in three circumstances.

1. Fixed by Congress

The first example was provided by Congress itself in the Submerged Lands Act and applies only to the extraordinary nine-mile grants to Texas and Florida in the Gulf of Mexico.137 These grants do not necessarily extend the full nine miles from the present coastline. Instead, they are measured to a maximum of nine miles from the coastline as it existed at the time of Texas’s admission and Florida’s readmission to the union.
In effect, the grants are the more landward of a line nine miles from the historic coastline and a line nine miles from the present coastline. The actual limit of the states’ Submerged Lands Act grant is, therefore, a composite of those two lines, adopting the segment of each which is closer to the mainland.

2. Fixed by Supreme Court Decree

Any state’s Submerged Lands Act grant may also be fixed by operation of law. As originally enacted the typical Submerged Lands Act grant provided an ambulatory seaward boundary because it was measured from an ambulatory coastline. These ambulatory boundaries created continuous title questions between the federal government and the coastal states and also raised security of interest concerns for their mineral lessees. To ease the administration of offshore leases Congress amended the Act in 1986 to provide that “any boundary between a state and the United States under this subchapter or subchapter II of this chapter which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory.”

A number of federal/state Submerged Lands Act boundaries have been permanently fixed through this process, simplifying lease administration, protecting contract rights, and eliminating the need for litigation with every coastline change. Some of these boundaries have been described for the entire coast of a state by Supreme Court decree. Others deal only with a portion of a state’s coastline.

Unlike the Texas and Florida historic boundaries, boundaries fixed by law subsequent to a Supreme Court decree may work to the advantage of either party. If the coastline from which a fixed boundary is measured moves seaward by accretion, the federal government gains by the fixing. If the coastline moves landward by erosion, the fixed boundary is now more than three miles offshore and the state benefits.

a. Fixing a Submerged Lands Act Boundary

States that do not have fixed Submerged Lands Act boundaries, and are interested in having them, can reach an agreement with the federal government on a precise line and incorporate the line’s description in a proposed decree for the Supreme Court. All coastal states except Washington, Oregon, and Hawaii have been involved in submerged lands litigation with the federal government in which the Supreme Court has retained jurisdiction to enter further decrees. Probably no new litigation would have to be filed in those instances. Presumably, new actions would have to be filed to fix the Washington, Oregon, and Hawaii boundaries, but the Court has been helpful in resolving such matters.

b. An “Unresolved Issue” regarding Fixing Boundaries

As just discussed, Congress amended the Submerged Lands Act to provide that “any boundary between a state and the United States . . . fixed by coordinates, shall remain immobilized . . .” Yet it is not clear what lines are “boundaries” for purposes of that provision.

The Supreme Court’s tidelands decisions—which have produced most of the domestic law with which we are concerned here—involved disputes over the location of the “coastline,” not the Submerged Lands Act “boundary,” which in most cases is three nautical miles seaward of that coastline. The Court’s decisions in those cases typically contain only the answers to the legal and factual issues involved without
defining the coastline or three-mile boundary by coordinates. In those instances, it seems clear that both remain ambulatory.

Subsequent decrees may describe the coastline by coordinates but not its three-mile extension, which divides federal and state offshore rights. These lines do not describe a “boundary” that separates the property interests of the two sovereigns. The coastline separates state inland submerged lands from state offshore submerged lands. The “boundary” separating state and federal offshore interests is, generally, three nautical miles seaward of the “baseline” at issue in litigation.

Parties who seek a fixed offshore boundary between state and federal interests under the Submerged Lands Act should assure that the three-mile offshore line is described by coordinates in a Supreme Court decree.

3. Fixed by State Waiver
State Submerged Lands Act boundaries may also be “fixed” through a third process. As discussed above, the legal coastline includes some artificial structures such as jetties and other harborworks. All else being equal, these structures form part of the baseline for measuring the states’ Submerged Lands Act grants, typically extending state mineral rights farther seaward than would be the case if they were measured from the normal baseline.

The United States argued in United States v. California that such a rule was unfair to the federal government because a state could expand its Submerged Lands Act grant, and cut into federal seabed beyond, by constructing harborworks along its coast and measuring its three-mile grant from the tips of those structures. The Supreme Court showed little sympathy, reminding the federal government that the harborworks of concern would be in the navigable waters of the United States, in which the government “had power to protect its interests from encroachment by unwanted structures, and that the effect of any future changes could thus be the subject of agreement between the parties.”

The government has done just that. Before the U.S. Army Corps of Engineers will issue the permit required to construct harborworks, it will now consider the Submerged Lands Act consequences of the proposed structure. The federal government is then given an opportunity to negotiate a waiver with the state concerned. Typically, the state will waive any claim to a Submerged Lands Act extension from the proposed structure and, if the project otherwise meets Corps requirements, a permit will be issued. Thereafter, the structure will form part of the coastline for all but Submerged Lands Act purposes, and the state’s Submerged Lands Act grant will continue to be measured from the natural coastline.

The Supreme Court has upheld the federal government’s right to condition Corps of Engineers permits on such waivers. But if the United States fails to get the waiver, the structure extends the state’s Submerged Lands Act grant.

4. Submerged Lands Act Boundaries and the Reach of Other Domestic Legislation
Submerged Lands Act boundaries that do not coincide with traditional state maritime limits, measured from ambulatory coastlines, create another unresolved issue worthy of our consideration. That is, “whether state boundaries, and the reach of federal
statutes other than the Submerged Lands Act, are affected by fixing Submerged Lands Act boundaries.”

It could be argued that all state maritime boundaries, which typically run three miles seaward of ambulatory coastlines, automatically become fixed when the state’s Submerged Lands Act boundary is fixed. But that would be an improper conclusion.

Neither the original tidelands decisions nor the Submerged Lands Act that reversed them had anything to do with state offshore boundaries. In the first tidelands case, the Supreme Court recognized the federal government’s paramount right to mineral resources seaward of the California coastline. But at the same time it recognized the existence of state offshore boundaries and the states’ continuing authority within those boundaries. Three years later, in the first Louisiana tidelands decision, it made clear that “the matter of state boundaries has no bearing on the present problem.” The Supreme Court had long recognized the existence of state boundaries offshore, and state jurisdiction within those boundaries, and continued to do so in the tidelands decisions.

Congress did the same. In 1953 it enacted the Submerged Lands Act, granting coastal states the offshore mineral interests that they had been denied in the early tidelands litigation. It defined state boundaries for purpose of the Act, limiting most states to three-mile grants, but specifically provided that “[n]othing in this section is to be construed as questioning or in any manner prejudicing the existence of any State’s seaward boundary beyond three miles.” The 1986 amendment to the Act did not provide that Submerged Lands Act boundaries described in a Supreme Court decree would fix state maritime boundaries for all purposes. The amendment fixed boundaries that had been established under the Act, not state boundaries generally. Only section 2 of the Act, which defines boundaries for purposes of the grant, was amended. Section 4, which disclaims any intent of Congress to alter other state boundaries, was not amended.

In short, the Submerged Lands Act does not limit traditional state boundaries. That is to say, even if a state’s Submerged Lands Act boundaries have been fixed by Supreme Court decree, it does not necessarily follow that a state’s maritime boundaries are thereby fixed for other purposes, such as the assertion of its police power.

However, confusion arises because Congress has referred to Submerged Lands Act boundaries in subsequent legislation, sometimes appearing to adopt the Submerged Lands Act boundaries for other federal purposes. Those statutes prompt a separate question: did Congress intend that their reach would be limited to fixed Submerged Lands Act boundaries? That question has not been considered by the courts. Since we believe that congressional intent is most likely to provide the answer, we look at the affected statutes separately.

a. The Magnuson-Stevens Act

The Magnuson-Stevens Fishery Conservation and Management Act asserts federal fisheries jurisdiction in a maritime zone that begins at the coastal states’ offshore boundary and extends seaward to a line two hundred nautical miles from the coast.

The Act says nothing more about how to determine the location of a state’s offshore boundary. However, the Senate Committee Report explains that “seaward boundaries of the coastal States are defined in section 2 of the Submerged Lands Act.” In 1976, the Submerged Lands Act boundary was ambulatory. Ten years later Congress amended that Act to provide for fixing boundaries by Supreme Court decree.
That amendment raised a question as to whether the landward boundary of our Fishery Conservation Zone (now known as the EEZ) is an ambulatory boundary measured from the coastline employed for international purposes, or, where it is the subject of a Supreme Court decree, it is the fixed boundary used for Submerged Lands Act purposes. The courts have not considered the issue.

Arguments could be made either way, but the better interpretation is most likely that Congress intended the inner limit of the Fishery Conservation Zone to be an ambulatory line.

First, there can be no doubt that to fix the inner boundary of the Fishery Conservation Zone merely by operation of the 1986 amendment to the Submerged Lands Act would be inconsistent with the intent of Congress in 1976 and 1986. When Congress adopted the Submerged Lands Act boundaries for purposes of the original Magnuson Act, those boundaries were ambulatory. The Senate Committee Report consistently uses terms that indicate an intent to employ ambulatory boundaries for the Fishery Conservation Zone. State boundaries were described in the original Magnuson Act as extending three miles from the “coast.” Unless otherwise limited, “coasts” are understood to be ambulatory, as are boundaries measured from them.158

Second, the purposes of the Magnuson Act would have been violated by an interpretation that the inner boundary of the Fishery Conservation Zone had been immobilized by operation of the 1986 amendment to the Submerged Lands Act. Congress adopted the then ambulatory Submerged Lands Act boundary for purposes of the Magnuson Act specifically because it “preserves the domestic breakdown of management authority between States and the Federal Government which has prevailed since the founding of the republic.”159 That authority was based upon ambulatory boundaries, measured from ambulatory baselines. Supreme Court decisions from early in U.S. history through and following the tidelands controversies recognize traditional state jurisdiction over fisheries off their coasts.160 This traditional authority included the measurement of maritime zones from ambulatory boundaries.

Finally, Congress itself has clearly indicated that Submerged Lands Act and Magnuson Act boundaries need not be identical. The Magnuson Act, as amended, extends state fisheries management authority “to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea.”161 Areas of Nantucket Sound Massachusetts and the Alexander Archipelago of southeastern Alaska were specifically made subject to state fishery jurisdiction.162 The Supreme Court has found that the center of Nantucket Sound is not within Massachusetts’s Submerged Lands Act boundaries.163 Nor are all of the waters of the Alexander Archipelago within Alaska’s Submerged Lands Act grant.164 Clearly Congress does not believe that Submerged Lands Act and Magnuson Act boundaries must coincide.

b. The Coastal Zone Management Act
The Coastal Zone Management Act of 1972165 raises a related question. It describes the coastal zone, an area of state jurisdiction, as extending “seaward to the outer limit of State title and ownership under the Submerged Lands Act.”166 Like the Magnuson Act, the Coastal Zone Management Act became law prior to the Submerged Lands Act amendment, which provides for fixed boundaries. Nevertheless, the two laws do not raise the same question. The seaward reach of the Coastal Zone legislation is
not to an offshore “boundary,” a term whose definition has changed in subsequent years, but to “title” to seabed resources. Congressional intent is clear: the coastal zone extends to the limit of state submerged lands rights. In most cases those rights will extend three miles seaward of an ambulatory coastline. However, where the Supreme Court has entered a final decree describing the seaward limit of a state’s Submerged Lands Act, that line will be fixed. In the former case, the seaward limit of the state’s coastal zone will be ambulatory. In the latter it will be fixed. The coastal zone ends where the state’s title to submerged lands ends.

This conclusion is consistent with the jurisdictional scheme adopted by Congress in the Coastal Zone Management Act. By statutory definition, the “coastal zone” includes all area between its landward and seaward boundaries except “lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.” That provision includes the submerged lands of the outer continental shelf, which are managed by the federal government.

Congressional intent and logic support the conclusion that the coastal zone ends where state title to submerged lands ends.

The foregoing are examples of emerging and unresolved issues associated with the location of various zones of maritime jurisdiction. Additional unresolved issues exist concerning the jurisdiction presently claimed, or not claimed, in those zones.

C. Unresolved Domestic Issues involving Jurisdiction in Each Zone of Maritime Jurisdiction

1. Within the Territorial Sea

Confusion may arise concerning the scope of authority asserted by the United States over its original territorial sea—the three-mile belt lying immediately seaward of our coastline. This confusion occurs because domestic legislation is not consistent in its choice of terms to describe the territorial sea. Nevertheless, any such issue should be easily resolved.

A number of terms have been used to include the territorial sea. A statute that applies within the “navigable waters,” “navigable waters of the United States,” “seaward boundary of a state,” “territorial limits of the United States,” “territorial sea,” “territorial waters,” “territory and waters,” “United States,” “waters of the United States,” or “waters subject to the jurisdiction of the United States,” can be presumed to apply within three nautical miles of the coast.

The more difficult question is which of those statutes extends farther offshore, to the limit of our modern twelve-mile territorial sea. President Reagan extended the territorial sea to twelve nautical miles on December 27, 1988. He did so pursuant to the constitutional authority of the President over international affairs. He did not, however, believe that he had authority to unilaterally extend the reach of existing federal legislation and specifically provided that “[n]othing in this Proclamation: (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom.” So the extension of domestic legislation, to the full distance permitted by international law, awaited congressional action. Congress has since extended a few of the federal statutes that govern offshore activities. Many others have not been extended.
Legal practitioners must be especially careful when dealing with any federal assertion of maritime jurisdiction to ascertain whether the reach of the statute in question has been extended to twelve miles offshore. The numerous statutory terms that, until 1988, were understood to include the territorial sea, no longer answer the question. It is now necessary to look further and determine whether Congress has expanded the reach of each statute to twelve miles from the coast.

2. On the Continental Shelf

Two questions have recently arisen over the extent of federal jurisdiction on the outer continental shelf—the submerged lands seaward of the states’ Submerged Lands Act jurisdiction. Those issues involve the U.S. Army Corps of Engineers’ assertion of authority to regulate the placement of structures and laying cables on the seabed.\textsuperscript{172}

The first unresolved issue concerns the extent of the Corps’ authority to prevent obstructions to navigation by artificial islands and fixed structures on the outer continental shelf. International law clearly provides such authority to the coastal sovereign.\textsuperscript{173} So did federal law until 1978.\textsuperscript{174} But in that year the Outer Continental Shelf Lands Act\textsuperscript{175} was amended and Corps’ authority has, thereafter, been described as extending only to “installations . . . which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom.”\textsuperscript{176}

That change might seem, on its face, to limit the Corps’ traditional authority. However, one federal court of appeals has ruled that that was not the congressional intent. The litigation was a challenge to a Corps permit for the construction of a data tower preliminary to a proposed wind project for the production of electricity in the middle of Nantucket Sound. Finding the amendment itself ambiguous, the U.S. Court of Appeals for the First Circuit looked to its legislative history. The House Conference Report on the bill declares that “all artificial islands and fixed structures on the [Outer Continental Shelf], whether or not they are erected for the purpose of exploring for, developing, removing and transporting resources therefrom,” are subject to Corps authority,\textsuperscript{177} and the Court adopted that reading.\textsuperscript{178}

Under the circumstances, this might be considered an unresolved issue. The statute, it seems, may be considered clear on its face, limiting Corps jurisdiction to installations to be used in resource exploration, development, or production. In that circumstance, many jurists would refuse to look beyond the statute itself, reasoning that Congress knows how to delegate the necessary authority to the Corps if that is its intent.

The data tower litigation raises a second question that should also be considered unresolved: what is the authority of the Corps to grant interests in federal property on the outer continental shelf? The court of appeals recognized that although the Corps can prevent construction on the outer continental shelf, it does not follow that the Corps alone may authorize such construction.\textsuperscript{179} The right to occupy land is a property interest.\textsuperscript{180} Congress is the custodian of federal lands.\textsuperscript{181} The Supreme Court does not easily recognize authority in the executive branch to surrender federal property interests on offshore submerged lands without clear congressional delegation.\textsuperscript{182}

In the data tower case, the Corps relied upon authority found in the Outer Continental Shelf Lands Act\textsuperscript{183} to grant the right to occupy federal lands. Yet the Act specifically provides a means for acquiring property interests on the outer continental
shelf. Such grants are to be made by the U.S. Department of the Interior, not the U.S. Army.\textsuperscript{184}

Corps regulations governing permit issuance require the applicant to affirm that he has, or will acquire, the necessary property interest to occupy the land involved.\textsuperscript{185} The applicant here made that affirmation, yet all agree that he had no such interest at the time and would not be able to acquire it because no authority existed for the federal government to convey an interest for such purpose.\textsuperscript{186} As the Corps is aware, the United States holds title to the bed of Nantucket Sound more than three miles from the coast.\textsuperscript{187}

As a result of the Energy Policy Act of 2005,\textsuperscript{188} this question has been at least partially resolved. In provisions of that law amending the Outer Continental Shelf Lands Act, Congress expressly granted to the Secretary of the Interior the authority to convey interests in the federal lands on the outer continental shelf for alternative-energy purposes. There remain, however, other potential uses of such areas (large-scale aquaculture, floating casinos, etc.) that do not have an express source of authorization and raise the same question presented by the data power case.

Corps of Engineers authority over laying cables on the outer continental shelf also raises unresolved issues. In recent years the demand for international telecommunication capacity has mushroomed. A substantial portion of that demand is met with the use of transoceanic submarine cables. The extent to which a coastal sovereign may regulate the placement of such cables on its continental shelf is a matter of some dispute between the cable industry and the Corps.

International law has a long history in dealing with this issue. Transoceanic cables have existed for almost 150 years. The first international agreement governing submarine cables was negotiated more than 125 years ago.\textsuperscript{189} UNCLOS continues to recognize the international right to lay cable on the continental shelves, and within the EEZ, of other sovereigns.\textsuperscript{190} When Presidents Reagan and Clinton established the EEZ and modern contiguous zone, they specifically recognized the continuing international right to lay and repair submarine cables in those zones.\textsuperscript{191}

Although the Corps of Engineers issues permits for laying cables on the continental shelf, that permit program raises a number of unresolved issues.

First, it is not clear where the Corps finds the statutory authority for its assertions of this jurisdiction. Various Corps of Engineers districts seem to take different approaches. Some cite section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act as authority,\textsuperscript{192} but Corps jurisdiction under those statutes applies only in the navigable waters of the United States, which are limited by those acts to three miles from the coast.\textsuperscript{193} Other Corps districts cite the Outer Continental Shelf Lands Act.\textsuperscript{194} As noted above, questions remain regarding that statute’s use to regulate non-extractive activities on the continental shelf.

The U.S. Court of Appeals for the First Circuit recognized Corps authority over the data tower in Nantucket Sound because it is an “artificial island” and the legislative history of 43 U.S.C. § 1333(e) indicates congressional intent to retain Corps authority over such structures.\textsuperscript{195} Seabed cables are not artificial islands or structures. The two categories are clearly distinguished in international law.\textsuperscript{196} What is more, international law recognizes coastal State authority over cable installation only as necessary to protect the exploration and exploitation of natural resources from its
There is no indication that the Corps of Engineers limits its asserted control of subsea cables to the protection of those interests.

President Reagan’s EEZ proclamation made clear that the United States would not infringe on the internationally recognized freedom to lay and repair cables. Nor can that policy be surprising. The commercial and security interests of the United States weigh heavily in favor of preserving the international right to lay and repair cables on continental shelves worldwide.

Giving the Corps every benefit of the doubt, it still must be said that there are unresolved issues associated with its regulation of cables on the outer continental shelf.

D. Emerging International Issues involving Maritime Jurisdiction and Boundaries

A number of highly respected authorities have begun to discuss two potential changes to existing law of the sea that should be identified. Each would, if adopted, substantially alter international law regarding the baselines from which zones of maritime jurisdiction are measured and even the existence of such zones.

1. Shore-Fast Ice as a Baseline

Article 5 of UNCLOS provides that “the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast.” That “coast” is universally understood to be the juncture of land and sea. However, particularly in the Antarctic, it can be extremely difficult to identify that “normal coast” because it may lie beneath—and significantly inland of—deep and, for practical purposes, permanent shore-fast ice.

Antarctica is, of course, a land mass whose upland claimants arguably may be entitled to claim the previously discussed zones of maritime jurisdiction. Yet experts point out that in these circumstances it is difficult, or maybe impossible, to chart the land/water interface beneath permanent shelf ice. It is, therefore, equally difficult to chart offshore boundaries that are measured from that “coast.”

A proposed solution may be that in such circumstances the seaward limits of shore-fast ice may be treated as the baseline for measuring zones of maritime jurisdiction.

2. Disappearing Low-Water Lines

As discussed in Part III.A.1, baselines, and offshore boundaries measured from them, are ambulatory. Along high-energy coasts, they may be subject to constant flux. Other than providing a headache for cartographers, this often has little practical consequence for the coastal sovereign or those who navigate in the various maritime zones.

In most cases, if the consequences become a concern, artificial coastal protective works or man-made extensions to the coastline, such as those successfully constructed by the Netherlands and other coastal States, may be used to maintain a coastline. International law permits both solutions.

However, experts are becoming concerned that a change in international law may be required to maintain not just existing baselines but existing maritime zones themselves. The threat is created by global warming, the resulting sea-level rise, and its effect on low-lying island nations in the Pacific. The legitimate fear is that individual low-lying islands and whole island nations composed of them may, in the foreseeable future, disappear below the sea. If that occurs, the application of present international
law would erase existing territorial seas, exclusive economic zones, and continental shelves, depriving the present sovereigns, or their concessionaires, of valuable rights to natural resources.

Authoritative opinion seems to be that in these cases, where the existing sovereignty does not include any uplands of sufficient height to survive rising waters, the traditional man-made coast protective systems will be useless.

This prospect raises legal issues that go well beyond rights to natural resources of the sea. Questions as to how the international community will respond to the disappearance of one of its States and how its present citizenry will be transplanted, and with what rights, are probably of greater significance—and the flight from these island nations has already begun.

This particular international threat goes well beyond law of the sea issues, but they cannot be ignored in the process. It has been suggested that the solution might be to revise international law to provide States that find themselves in this situation to retain their original maritime zones despite the loss of baselines, or that maritime boundaries around the world be permanently “fixed.”

E. Potential Resolutions to Unresolved Issues

A number of potential solutions come to mind for some of the unresolved issues identified above. They include the following:

1. Coastal states of the United States and the federal government should strongly consider fixing their mutual Submerged Lands Act / Outer Continental Shelf Lands Act maritime boundaries.

2. Congress should consider clarifying the Magnuson-Stevens and Coastal Zone Management Acts to make clear whether the seaward reach of either is intended to be fixed when a state’s Submerged Lands Act boundary becomes fixed.

3. If the Magnuson-Stevens and Coastal Zone Management Act are not amended to establish the status or their boundaries—whether fixed or ambulatory—future Supreme Court decrees in Submerged Lands Act cases might incorporate the parties’ understanding as to the effect of their proposed decree on non—Submerged Lands Act boundaries.

4. The United States should accede to UNCLOS.

5. The 1982 Convention sets out rights and obligations of sovereigns and individuals. A comprehensive survey should be made to ensure that federal law takes advantage of all rights provided by the Convention and meets all obligations.

6. A separate survey should be conducted to determine which federal laws presently apply in which zones of maritime jurisdiction.

7. Following the survey just proposed, Congress should, with respect to each such statute, determine whether it is in the best interest of the United States to extend its reach to the greatest extent permitted by international law.

8. Following the determination just proposed, Congress should amend each statute that involves maritime jurisdiction to make clear its intended geographic reach.

9. Congress should clarify agency authority over activities on the outer continental shelf, assuring that federal agency actions are consistent with clearly stated congressional intent and international law.
Many of the issues discussed above could be resolved through these recommendations. Others, mostly arising by the nature of ambulatory coastlines, would not. The latter will have to be resolved case by case as they have been in the past.209

IV. Conclusion

The United States has been in the forefront of the development of the international law of the sea from Secretary of State Jefferson’s announcement of its claim to a three-mile territorial sea in 1872,210 through the negotiations leading to UNCLOS in 1982.

As a seagoing country, United States ocean policy has tended to weigh in on the side of maximizing freedoms of the seas and minimizing expansive maritime claims. Nevertheless, as the international law of the sea has developed, the United States has accepted its changes and sought to protect its navigational interests by insisting that foreign sovereigns comply with that law in asserting their maritime claims.

This has been done through two means. The first is to keep up to date on foreign maritime claims and submit diplomatic notes when such claims are inconsistent with international law. The second is known as the Freedom of Navigation Program under which United States naval and air forces assert their navigational rights within excessive maritime claims, leaving no doubt that the United States does not accede to those claims.211

Finally, the United States should ratify the United Nations Convention on the Law of the Sea. Our government played an important role in the negotiation of UNCLOS and considers itself bound by UNCLOS as customary international law. Nothing is gained by failing to ratify.

Notes

1. The term “State,” when it appears in this chapter, is used in the international sense, referring to a nation-state, unless the context indicates that one of the political subdivisions of the United States is intended. The term “state” refers to one of the fifty states.
2. A bull is an edict of the Pope, issued in this instance to resolve conflicting jurisdictional claims by Portugal and Spain in the New World. 1 DANIEL PATRICK O’CONNELL, THE INTERNATIONAL LAW OF THE SEA 2 (Ivan Anthony Shearer ed., 1982).
3. That claim was not only minuscule in comparison to that being made by Portugal, but it was also short lived. PHILIP C. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 4 (1927).
6. For an interesting discussion of the threat to commonly held resources, see Garrett Hardin, *The Tragedy of the Commons*, 162 Sci. 1243 (1968).


8. UNCLOS art. 8(1).

9. As will be discussed in Section II.A.1, that “coast” is also known as the “baseline” of the upland State.

10. UNCLOS recognizes another category of inland waters that may be claimed within a “deeply indented” coast or one “fringed by islands.” UNCLOS art. 7. In such cases the upland sovereign may simplify its coastline by constructing a series of straight lines connecting points on the mainland or fringing islands. Although a few stretches of the United States coast may qualify for Article 7 straight baselines, the government has not opted to employ this method of baseline delimitation. United States v. Louisiana, 394 U.S. 11, 67 (1969).

11. Art. 10(2). A “mere curvature” is a stretch of coast that, although concave, is not sufficiently enclosed to be considered landlocked. That is to say, it does not meet the geometric requirements of the Article. Centerville Harbor, on the south coast of Cape Cod, is a good example. See Figure 1.2.

12. These disputes have generally arisen in controversies over the application of the Submerged Lands Act, 43 U.S.C. §§ 1301 et seq., federal legislation granting the coastal states mineral rights to submerged lands within, generally, three nautical miles of their coasts. For purposes of defining the coasts, the Supreme Court has adopted the definitions of the 1958 Convention on the Territorial Sea and the Contiguous Zone, United States v. California, 381 U.S. 139, 165 (1965), but the relevant coastline provisions of that convention are identical to those of UNCLOS.


14. Although islands intersected by, or in the vicinity of, that line may dictate the construction of multiple mouths to the bay using headlands on the islands as well as the mainland. United States v. Louisiana, 394 U.S. at 56.

15. The preferred method for determining these entrance points is a geometric analysis developed by Robert Hodgson and Lewis Alexander and described by them as “the 45 degree test.” The method was discussed by the Supreme Court, with approval, in *United States v. Maine*, (New York / Rhode Island), 469 U.S. at 522.

16. UNCLOS art. 10(5). Cook Inlet Alaska is a good example. See Chart 16662, Off. Coast Surv., http://www.charts.noaa.gov/OnLineViewer/16662.shtml (last visited Aug. 1, 2014), depicting a twenty-four-nautical-mile line that represents the northern limits of Cook Inlet’s inland waters.

17. UNCLOS art. 9.


19. For example, jetties extend the Sabine River, between Louisiana and Texas, more than two miles offshore. Texas v. Louisiana, 426 U.S. 465, 468–70 (1976).


22. Not all historic waters qualify as “inland.” They may be inland, territorial, or, presumably, historic contiguous zones or exclusive fisheries zones depending on the type of jurisdiction asserted and accepted by the international community. “If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the


27. A substantial roadstead lies seaward of, and adjacent to, the breakwater that forms the Port of San Pedro, but it was not included within that port’s inland waters by the Supreme Court. United States v. California, 449 U.S. 408 (1981). That treatment is consistent with international law on the question. UNCLOS Article 12 provides that roadsteads are part of the territorial sea, not inland waters.


30. CAL. CODE REGS. tit. 13, § 2299.2(a), (e)(1). The merchant vessel industry challenged California’s authority to compel such activity beyond its three nautical mile offshore boundary. The Ninth Circuit Court of Appeals upheld the state regulation and the Pacific Merchant Shipping Association petitioned the U.S. Supreme Court for certiorari. The solicitor general of the United States, at the request of the Court, filed an amicus brief (which supported California’s contention that the Court should not hear the case). Certiorari has been denied.

31. See Roach & Smith, supra note 24, at 18, where the authors report: “More than 60 countries have delimited straight baselines along portions of their coast. . . . Many of these baselines have been inconsistent with international law.”

32. The ellipsis at line 3 of the quote contains similar requirements for identifying the seaward limits of roadsteads that extend seaward of the normal territorial sea, dealt with in Article 12, and lines delimiting the common maritime boundaries of adjacent and opposite coastal States, from Article 15.

33. For a more thorough discussion of this omission in Article 16, see Clive R. Symmons & Michael W. Reed, Baseline Publicity and Charting Requirements: An Overlooked Issue in the UN Convention on the Law of the Sea, 41 OCEAN DEV. & INT’L L.J. 77, 93–95 (2010).

34. In fact, some charts will not show a low-water line at all because, at the scale of the chart, the low- and high-water lines will merge—or because that portion of the coastline is not surveyed. See NOAA Chart 1, Nautical Chart Symbols, Abbreviations and Terms 14 (10th ed. 1977).


39. Article 121(3) provides that “[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

40. UNCLOS art. 2(1).

41. UNCLOS art. 4.
43. Definitions of "innocent" and "passage," along with associated rights and obligations of the coastal State and foreign vessels engaged in such passage, are set out in Articles 17–32 of UNCLOS. Two provisions worth noting here are that submarines are required to transit a foreign territorial sea on the surface and fly their flags (Article 20), and only ships, not aircraft, enjoy the right of innocent passage (Article 17).

44. UNCLOS art. 27. Civil jurisdiction over a foreign vessel is also limited. Art. 28.

45. UNCLOS art. 33(1).

46. UNCLOS art. 58(1).


49. UNCLOS art. 55.

50. UNCLOS art. 56.

51. UNCLOS art. 60.


54. This conflict created a major international problem for the United States through the latter half of the twentieth century. Id. at 36.

55. UNCLOS art. 58.

56. UNCLOS art. 57. The EEZ is often referred to, in shorthand, as a two-hundred-mile zone. In fact it is only 188 miles wide when the coastal State claims the maximum twelve-mile territorial sea.

57. UNCLOS art. 61(1).

58. UNCLOS art. 62.


60. A stated purpose of the Act is to “conserve and manage the fishery resources found off the coasts of the United States . . . by exercising: (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983.” That proclamation can be found at 48 Fed. Reg. 10,605 (1983).

61. The Act also protects anadromous species and living resources of the continental shelf beyond the two-hundred-mile EEZ. 16 U.S.C. § 1801(b)(1).

62. 16 U.S.C. §§ 1431 et seq., particularly 1432(3) and 1437(k).

63. 16 U.S.C. §§ 1362 et seq., particularly 1372(a)(2) and 1362(15)(B).

64. UNCLOS art. 76(1).

65. Continental shelves may extend significant distances offshore, as do the United States’ shelves in the Gulf of Mexico and Bering Sea, or they may be narrow, as is the shelf off the California coast.

66. UNCLOS art. 76(6).

67. UNCLOS art. 77(1). These resources include not only minerals and other nonliving resources, which may be on or beneath the seabed, but also “living organisms . . . which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.” UNCLOS art. 77(4).

68. UNCLOS art. 77(2).

69. UNCLOS art. 78.

70. UNCLOS art. 79. Article 79 provides, by way of limitation, that the coastal State may impose “reasonable measures” for the exploration of its shelf resources and to control pollution from pipelines. The coastal State may also dictate the route of a pipeline on its continental shelf and impose conditions for the cables and pipelines “entering its territory or territorial sea.”
71. The first such formal claim was made by President Truman. Proclamation No. 2267, 10 Fed. Reg. 12,303 (1945). The right to make such claims was later recognized by the international community. Convention on the Continental Shelf, Apr. 23, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578.

72. Submerged Lands Act, 43 U.S.C. §§ 1301 et seq. Those grants generally extend three nautical miles from the coast. States bordering on the Gulf of Mexico, however, were given an opportunity to prove that they entered the Union with more extensive boundaries and, if able to do so, were granted up to nine miles of submerged lands within those boundaries. Texas and Florida (on their Gulf coasts), have established such boundaries. United States v. Louisiana, 363 U.S. 1, 29 (1960).

73. UNCLOS art. 86; Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq.

74. An “archipelagic State” is a State composed entirely of a group or groups of islands. Articles 46-54. The United States is not an archipelagic State and the Convention’s special treatment of such States is not covered in this discussion.

75. Subject to conservation and management obligations imposed on flag States by UNCLOS, and other treaties, and implemented through flag State legislation. UNCLOS arts. 116–120.

76. UNCLOS art. 87.


78. Id. § 1538(a)(1)(C).

79. Id. § 1372(a). The statute provides for limited exceptions to the takings prohibition.

80. UNCLOS art. 136.

81. UNCLOS arts. 133–191.

82. UNCLOS art. 15.

83. UNCLOS art. 74(1).

84. UNCLOS art. 74(2).

85. UNCLOS art. 83.

86. 28 U.S.T. 5256, T.I.A.S. No. 8625; later extended beyond two hundred miles, id. at 2143.

87. 17 I.L.M. 110–12.

88. 29 I.L.M. 941–45.


92. Id. § 1342(b).

93. Boundary rivers include the Rio Grande and a short stretch of the Saint Lawrence. The four Great Lakes that are shared with Canada are boundary lakes. In each case the international boundary has been established by treaty and all waters on the American side of the boundary are inland and within the boundary of a state. For a thorough description of all state boundaries, see Franklin K. Van Zandt, Boundaries of the United States and the Several States 909 (Geological Survey Professional Paper, 1976).

94. Because the territorial sea is part of the “navigable waters of the United States,” it is also subject to federal jurisdiction. Conflicts may result in a preemption of state law.

95. Toomer v. Witsell, 334 U.S. 385, 393 (1948).

96. Interesting questions arise regarding the extent of state jurisdiction offshore under particular federal statutes, a subject broached in Part III below.

97. Presidential Proclamation 5928 provides, in relevant part, that “[n]othing in this Proclamation (a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom.” Proclamation No. 5928, 54 Fed. Reg. 777 (1988).

98. See, for example, the compact resolving Florida and Georgia’s mutual offshore boundary. Pub. L. No. 91-498, 84 Stat. 1094 (1970).

102. The low-water line of the mainland or an island, defined as “a naturally formed area of land which extends above high-water,” UNCLOS art. 121(1), serves as a baseline. A “low-tide elevation” (defined as “a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide”) is also part of the coastline if, and only if, it lies within the territorial sea of the mainland or and island. UNCLOS art. 13. A low-tide elevation is shown at the mouth of the Bass River on Figure 1.2.
103. The inland-water closing lines and offshore boundaries are constructed on official NOAA charts by a federal interagency group known as the Committee on the Delimitation of the United States Coastline. United States v. Maine (New York / Rhode Island), 469 U.S. 504, 522 (1985). Those closing lines and boundaries represent the federal position on the limits of the zones depicted but are subject to correction with changes in the coastline. The committee’s charter is reproduced at 3 Michael W. Reed, SHORE AND SEA BOUNDARIES 415–18 (2000).
104. Report of the Special Master of July 31, 1974, at 25; United States v. Louisiana, 394 U.S. 11, 40–41 n.48 (1969). Although this is clearly the rule in the United States, and most other coastal States, it is not unanimously accepted. Article 5 describes the “normal” baseline as “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” Some have read that language to indicate that it is the line depicted on an official nautical chart that is the “legal” baseline and despite changes in that line—by accretion and erosion, for example—maritime zones are to be measured from that charted line until the chart is corrected. The legislative history of Article 5, going back to 1929, makes clear that the term “as marked on large-scale charts” was adopted because no single low-water datum is consistently employed for charting around the world and, rather than adopting a single datum—and compelling the expensive modification of charting practices—the “baseline” along any given coast was to be that produced from the datum employed for the officially accepted chart of that stretch of coast. That, of course, is not the same as saying that an outdated chart nevertheless depicts the legal coastline.
105. International tribunals have recently admitted similar evidence to correct outdated nautical charts in maritime boundary disputes, indicating that they do not read Article 5 to suggest that a low-water line indicated on a chart is the legal baseline until that chart is corrected. See, e.g., Award of the Arbitral Tribunal in re an Arbitration Between Guyana and Suriname (Guyana v. Suriname), 47 I.L.M. 166 (2008) (Sept. 17, 2007).
106. This discussion should not be read as a criticism of charts or charting practices. Nautical charts are produced for the primary purpose of safe navigation. In some instances charting to maximize safety may not resolve questions necessary for boundary determination. Navigational safety must remain the paramount concern.
107. UNCLOS art. 121(3).
108. UNCLOS art. 13. This conditional significance of a mere low-tide elevation is carried over from Article 11 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. It reflects a compromise in the definition of “island” in that convention and the weight to be given various offshore features for boundary delimitation purposes.
110. UNCLOS arts. 121(1), 13(1).
115. Such as those enclosed by “straight baselines” (Article 7), the mouths of rivers (Article 9), bays (Article 10), ports (Articles 11 and 50), and certain historic inland waters (customary international law).
116. UNCLOS art. 11.

118. As it turned out, the Court resolved the island question in the federal government’s favor without having to determine whether ice qualified as land. United States v. Alaska, 521 U.S. 1, 22–32 (1997).

119. Shalowitz, supra note 25, at 292.


124. United States v. California, 447 U.S. 1, 4–6 (1980). The Supreme Court’s determination that open pile piers do not qualify as harborworks because they provide no coast protective function is not universally followed. Great Britain, for example, measures its territorial sea from such structures.

125. Prescott & Schofield, supra note 52, at 81–82.

126. id. at 82.

127. United States v. Louisiana, 394 U.S. at 62. References in Supreme Court decisions are to the 1958 Convention on the Territorial Sea and the Contiguous Zone because that is the convention specifically adopted by the Court to provide principles for interpreting the Submerged Lands Act. However, the relevant provisions of the 1958 convention and UNCLOS are identical. For an apparent contrary contention, that is to say that juridical bays need not be indentations into the mainland but can be formed by islands alone, see Gayl Westerman, The Juridical Bay 146–47 (1987).


131. UNCLOS art. 10(2).

132. Reed, supra note 103, at 223–36.

133. Using Figure 1.3 as an example, the gray line between East Chop and Cape Poge is the mouth of a juridical bay to its southwest. The maximum depth of that bay’s penetration can be measured on a line from a point on the mouth near its northwestern terminus to a point on the western shore of Chappaquiddick Island three-quarters of a mile southwest of the entrance to Cape Poge Bay. The depth of penetration exceeds the width of the mouth, meeting the primary requirement of Article 10.

134. The Court has said that this primary test must be met before the more objective semicircle test is made, the latter being a minimum requirement. United States v. Louisiana, 394 U.S. 11, 54 (1969). For more thorough discussions of alternative proposals for calculating a width-to-depth ration, see Report of the Special Master of March 1996 at 182–226, United States v. Alaska; Report of the Special Master of March 2004 at 201–26, id.

135. Figure 1.3 provides an example. Swinging an arc from the midpoint of the gray closing line in that figure, we find that the water area of the enclosed indentation meets the semicircle test without including the adjacent, but distinctly separate, Sengekontacket Pond, Katama Bay, or Cape Poge Bay. Interestingly, the British government successfully argued the opposite position in another application of the semicircle test to determine whether the Thames Estuary qualified as a juridical bay. Its court agreed, concluding that adjacent water bodies were to be included, ruling that “one has to go up every river and creek...
which has got a low-water line to it, to the limit, and difficult as it may be to produce the resultant calculation, that is the right way to do it.” Post Office v. Estuary Radio, Ltd., (1967) 3 All E.R. 663 at 674.

136. The Supreme Court has decreed that the international rules for closing bays are to be applied to estuaries. United States v. California, 382 U.S. 448, 451 (1965); see also 3 Reed, supra note 103, at 310–18.

137. Florida and Texas qualified for these nine-mile grants because their historic boundaries extended nine miles into the Gulf of Mexico and were approved by Congress at Texas’s original admission to the union in 1845 and Florida’s readmission in 1868. 43 U.S.C. § 1301(b); United States v. Louisiana, 363 U.S. 1, 64 (1960); United States v. Florida, 363 U.S. 121, 129 (1960).


143. The jetties at the mouth of the Sabine River, for example, extend Louisiana’s Submerged Lands Act rights by almost three nautical miles.


145. Corps of Engineers regulations now provide that “[s]tructures or work affecting coastal waters may modify the coast line or base line from which the territorial sea is measured for purposes of the Submerged Lands Act and international law. Application for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken.” 33 C.F.R. § 320.4.

146. The Supreme Court has described the Corps’ authority under section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, as apparent “unlimited discretion to grant or deny a permit for construction of a structure such as the one at issue in this case.” United States v. Alaska, 503 U.S. 567, 576 (1992).


152. 43 U.S.C. § 1301.

153. Id. § 1312.

154. 16 U.S.C. §§ 1801 et seq.


162. Id. § 1856(a)(2)(B), (C).


166. Id. § 1453(1).
171. Examples include statutes concerning ocean dumping, 33 U.S.C. §§ 1401(b), 1902(a)(2); and clean water, 33 U.S.C. § 1311(f), 1362(8).
173. Article 60(1) of UNCLOS provides that “[i]n the exclusive economic zone, the coastal State shall have the exclusive right to construct and authorize and regulate the construction, operation and use of: (a) artificial islands; (b) installations and structures for the purposes provided for in article 56 and other economic purposes; (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.” Apropos of the point to be made here, Article 56(1)(a) includes “the production of energy from the water, currents and winds” among its purposes.
174. Until the Outer Continental Shelf Lands Act was amended in 1978, it expressly provided the Corps of Engineers with jurisdiction over “all artificial islands and fixed structures” erected on the outer continental shelf.
175. 43 U.S.C. §§ 1331 et seq.
176. Id. § 1333(c), (a)(1).
178. Alliance to Protect Nantucket Sound, Inc. v. U.S. Dep’t of the Army, 398 F.3d 105 (1st Cir. 2005).
179. “Whether, and under what circumstances, additional authorization is necessary before a developer infringes on the federal government’s rights in the [outer continental shelf] is a thorny issue.” Id. at 114.
180. “Present estates in land carry with them, as their single most salient characteristic, the present right to exclusive possession.” WILLIAM B. STOEBUCK & DALE A. WHITMAN, THE LAW OF PROPERTY 25 (3d ed. 2000). “In the main . . . it is true that the right physically to exclude others is the most nearly absolute of the many property rights that flow from the ownership and rightful possession of land. A recent decision of the Supreme Court reminds us anew that the owner may generally insist strictly upon excluding others, without their competing claims being balanced in, as is often done with other property rights. Id. at 411 (citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)).
183. 43 U.S.C. §§ 1331 et seq.
184. Id. § 1334.
185. 33 C.F.R. § 320.4(g)(6) provides that a Corps permit “does not convey any property rights . . . or exclusive privileges . . . [nor does it] authorize any injury to property or
invasion of rights or any infringement of Federal, state or local laws or regulations. The applicant’s signature application is an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application.”

186. The U.S. Court of Appeals gave no substantive significance to this misstatement, apparently holding that the property owner’s permission is not required because the construction of a tower constitutes “no real infringement on federal interests” in the lands involved. Alliance to Protect Nantucket Sound, Inc. v. U.S. Dep’t of the Army, 398 F.3d 105, 114 (1st Cir. 2005).


190. With respect to the continental shelf, UNCLOS provides, in relevant part, that “[a]ll States are entitled to lay submarine cables and pipelines on the continental shelf.” Article 79(1). With respect to the EEZ, the Convention provides, in relevant part, that “all States . . . enjoy . . . freedoms . . . of laying of submarine cables . . . and other internationally lawful uses of the sea related to those freedoms.” Article 58(1).


193. Id. § 1362(7)–(8).

194. 43 U.S.C. § 1333(e).


196. Compare UNCLOS Articles 60 and 80, which recognizes the coastal State’s “exclusive right to authorize and regulate” artificial islands, with Article 79, which recognizes the right of the international community to lay submarine cables, with minimal coastal State regulation.

197. UNCLOS art. 79(2).

198. Presidential Proclamation No. 5030, 48 Fed. Reg. 10,605 (1983), which reads in part: “the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.”

199. The conclusion is supported by numerous articles of UNCLOS, international authorities and State practice.

200. I do not hereby mean to weigh in on any continuing controversy on sovereign rights in the Antarctic.

201. For a thorough discussion of these issues, see generally The Law of the Sea and Polar Maritime Delimitation and Jurisdiction (A. Oude Elferink & D. Rotherwell eds., 2001).


204. Fixing Submerged Lands Act boundaries creates a minor problem in interpreting the Magnuson-Stevens Act and Coastal Zone Management Act boundaries, but that concern can be resolved and, in any case, is outweighed by the value of a fixed line for administration of offshore mineral leases, whether issued by the state or federal governments. The federal/state boundaries can be fixed by agreeing on a line and incorporating its description in a Supreme Court decree. Most coastal states have been parties to original actions over
which the Court has retained jurisdiction to enter further decrees. New actions might be filed for the remaining states.

205. State boundaries remain ambulatory for most other purposes, including fisheries jurisdiction, and it would make sense not to fix the Magnuson-Stevens Act boundary. In contrast, because the reach of the Coastal Zone Management Act is specifically tied to seabed ownership, and because the Coastal Zone Management Act specifically excludes federal lands from the coastal zone in any case, it makes sense to fix the limits of the coastal zone when Submerged Lands Act boundaries are fixed. Those suggestions maximize state jurisdiction and are consistent with congressional intent.

206. The United States was actively involved in the negotiations that resulted in UNCLOS. On balance, the U.S. delegation did an extraordinary job of protecting America’s critical interests. A vast majority, if not all, of the Convention’s provisions must now be acknowledged to reflect customary international law. We believe that the time has come for the United States to ratify the Convention.

207. When presidential proclamations extended the three-mile territorial sea to twelve nautical miles and the seaward boundary of the contiguous zone from twelve to twenty-four miles, the actions had only international consequences. The reach of domestic legislation was not affected. Since that time Congress has approached the matter piecemeal. Some statutes were amended to apply to the new zones. Others were amended to make clear that they apply only where they always did. And most have not been dealt with at all. A systematic review should be made of all legislation that applies to “navigable waters of the United States,” “territorial waters,” “territorial sea,” “territory and waters of the United States,” and similar terms—and a determination made as to the geographic reach of each within our modern zones of maritime jurisdiction.

208. Here we think it particularly important that a federal agency be given congressional direction and authority to grant rights to occupy federal submerged lands of the outer continental shelf for purposes not envisioned in existing legislation. There is also an apparent need for separate legislation governing federal jurisdiction over undersea cables on the outer continental shelf. For an extensive collection of material regarding the executive branch’s steps to clarify its responsibilities for overseeing nonpetroleum, offshore, energy sources see Renewables Fact Sheet, Bureau Ocean Energy Mgmt., www.boem.gov/uploadedFiles/FAC%20SHEET%20BOEM.pdf (last visited Aug. 4, 2014).

209. That is inevitable. Coastlines, by their nature, are ambulatory, as are the boundaries measured from them. International law on the point is not likely to change.

210. Notes to British and French Prime Ministers, supra note 5.

211. Roach & Smith, supra note 24, at 4–5.