CHAPTER 7

Overall Findings of the Special Master

71. SUMMARY OF FINDINGS

Insofar as the coast of California is concerned, the Special Master's answers to the three questions propounded by the Supreme Court, in its order of December 3, 1951 (*see* 2111), can be summarized as follows:

(1) The channels and other water areas between the California mainland and the offshore islands, within the area referred to as the "overall unit area" (*see* Chap. 5, note 1), are not inland waters. He found them to lie seaward of the baseline of the marginal belt of territorial waters, which should be measured in each instance along the shore of the adjoining mainland or island, each island having its own marginal belt.

(2) No one of the seven particular coastal segments recommended for immediate adjudication (*see* 2111) is a bay constituting inland waters, historically or otherwise.

(3) The ordinary low-water mark on the coast of California is the intersection with the shoreline (as it exists at the time of survey and without regard to natural or artificial changes since 1850) of the plane of the mean of all low waters, to be established, subject to the approval of the Court, by the United States Coast and Geodetic Survey from observations made over a period of 18.6 years (*see* 6421 and 6422).[1]

Additionally, the Special Master found:

(*a*) The extreme seaward limit of a bay is a line 10 nautical miles long (*see* 43 and 441). Whether a bay constitutes inland waters or not is to be determined by an application of the semicircular rule (*see* 421, 441, and 4411).

1. The Special Master noted that in recommending these answers, he had assumed that what was wanted was a judicial determination of applicable principles of law to serve as guides in the physical location of the line of demarcation between the state-owned tidelands and the federally-owned submerged lands, not the determination of what might or might not be a wise policy for the nation to adopt within this field for which the political, not the judicial, agencies of government are responsible. He found no validity in the argument that the Court in referring the questions to the Special Master carried the implication that he was to consider what might be a wise policy for the United States to follow within the limits of international law. In his view, the Court had already decided that the location of the exact coastal line is a justiciable matter. Report of Special Master 7, United States v. California, Sup. Ct., No. 6, Original, Oct. Term, 1952.

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(*b*) In front of harbors the outer limit of inland waters is to embrace an anchorage reasonably related to the physical surroundings and the service requirements of the port, and, absent contrary evidence, may be assumed to be the line of the outermost permanent harborworks (*see* 46).

(*c*) Where rivers empty into the sea, the seaward limit of inland waters is a line following the general direction of the coast drawn across the mouth of the river, whatever its width. If the river flows into an estuary, the rules applicable to bays apply to the estuary (*see* 47).

(*d*) The method proposed by the Government for determining the termini at headlands of tributary waterways, for pronounced or unpronounced headlands, should be adopted (*see* 48).

(*e*) The sandspit at Newport Beach is not the southeastern headland of San Pedro Bay either on geographic or historic grounds (*see* 4542).

711. Exceptions by the United States

The final report of the Special Master was submitted to the Supreme Court on October 14, 1952, and ordered filed on November 10, 1952 (344 U.S. 872), with instructions that exceptions, if any, to the report might be filed by the parties. Both the United States and California filed exceptions to certain of the recommendations and findings.

The primary exceptions raised by the United States related to the recommendations regarding harbors (*see* 71(*b*)), insofar as areas not protected, or partially enclosed, by natural formations be held inland waters as a part of a port or harbor; to the recommendation that the ordinary low-water mark be determined as it exists at the time of the survey (*see* 71(3)), insofar as it makes no exception for artificial changes made after California entered the Union; and to the failure to recommend that manmade changes in the shoreline should not affect rights as between the United States and California.[2]

Other exceptions, relating to boundary problems, were to the finding that the decree of the Court that the United States has paramount rights seaward of "ordinary low-water mark" was not a judicial determination that the area referred to is bounded by a line marking the mean of all low tides; and to the finding that the construction of artificial harborworks increases the area of inland waters outside of the naturally protected areas of ports and harbors, and that anchorages used in connection with such areas are *per se* inland water.

2. Exceptions of the United States to the Report of the Special Master Filed Nov. 10, 1952, 1–2, United States v. California, Sup. Ct., No. 6, Original, Oct. Term, 1952.

712. Exceptions by California

The primary exceptions raised by California, insofar as boundary questions were concerned, related to the Special Master's recommendations that the channels and other water areas between the mainland and the offshore islands are not inland waters; that no one of the seven coastal segments under consideration is a bay constituting inland waters on geographic or historic grounds; and that the "ordinary low-water mark" is the intersection with the shoreline of the plane of the "mean of all the low waters," rather than the plane of the mean of only the lower low waters.[3]

72. PRESENT STATUS OF SPECIAL MASTER'S REPORT

After the Supreme Court received the exceptions submitted by the United States and by California, the Court took no further action in the case. While the passage of the Submerged Lands Act in 1953 (Public Law 31) rendered moot the question of establishing the "ordinary low-water mark" as the federal-state boundary under the *California* case, the principles developed by the Special Master are equally applicable to the boundary problems raised by the act. The effect of Public Law 31, insofar as the boundary provisions are concerned, is merely to transplant the federal-state boundary from the ordinary low-water line and the seaward limits of inland waters to the seaward boundaries of the states. But the baseline from which these boundaries are to be measured is the same as the federal-state boundary under the *California, Louisiana,* and *Texas* cases.

Although Public Law 31 does not incorporate the recommendations of the Special Master, the boundary problems are similar to those dealt with in the *California* case (*see* Part 2, 1611). And while it is true that a boundary determination may be arrived at by agreement, even this method requires the establishment of certain criteria in order that a uniform and consistent approach may be achieved in the treatment of the entire coastline of the United States under the provisions of Public Law 31. The Special Master's report, and its applicability to specific segments of our coastline, represents the most exhaustive study made thus far looking toward a judicial determination of the inland waters and associated boundary problems.

3. Exceptions to Report of Special Master Dated Oct. 14, 1952, 6–10, United States v. California, Sup. Ct., No. 6, Original, Oct. Term, 1952.

73. APPLICATION TO LOUISIANA COAST

As in the *California* case, the decree entered by the Court in *United States* v. *Louisiana,* 340 U.S. 899 (1950), was couched in the same general terms and described the lands involved as "lying seaward of the ordinary low-water mark on the coast of Louisiana, and outside of the inland waters." But, whereas, in the former, stipulations were entered into between California and the Federal Government as to the exclusion of certain areas from the operative effect of the Supreme Court decision (*see* 211), and other controversial areas were referred to a Special Master (*see* 2111), no such stipulations were entered into in the *Louisiana* case. Instead, the Secretary of the Interior promulgated tentative arrangements, subject to future congressional action, for the continuance of operations under state leases seaward of the low-water line and outside the limits of inland waters.[4] In order that the area subject to federal jurisdiction be known, particularly for some of the complex areas along the Louisiana coast, a jurisdictional line was adopted seaward of which the submerged lands were under the jurisdiction of the Federal Government.[5] Because the line was promulgated during the tenure of Secretary of the Interior Chapman it came to be known as the "Chapman Line."

731. The Chapman Line—Its Technical Basis

The Chapman line was intended to represent graphically the ordinary low-water mark and the seaward limits of inland waters along the Louisiana coast.[6] Its description and plotting on the charts represented an effort to apply, as accurately as possible, the principles of delimitation advocated by the United States in the proceedings before the Special Master.[7] It was not a definitive line because the charts were based for the most part on 1933 surveys. It was

4. 15 Fed. Reg. 8835 (1950). Although the arrangements applied to the submerged lands off Texas and Louisiana, most of the producing wells were off the Louisiana coast.

5. Louisiana officials were advised of this and copies of Coast Survey charts 1115 and 1116 showing the line were furnished the Attorney General of Louisiana by the Solicitor General of the United States.

6. Figure 22 shows the line in the Atchafalaya Bay area, and figure 23 for the delta area, two of the more complex coastal areas of Louisiana.

7. These principles had been developed in international law or had been promulgated by the United States in its international relations. They involved the semicircular rule (*see* 421) and the 10-mile rule (*see* 43) for bays, and the rule for straits leading to inland waters. The latter situation did not arise in the *California* case. Along the Louisiana coast all islands are so situated in relation to the mainland and to each other as to enclose all waters landward of the islands as inland waters with the result that the islands constitute large segments of the coastline. *Mahler* v. *Norwich and New York Transportation Company,* 35 N.Y. 352 (1866). Also *see* Brief for the United States in Support of Motion for Judgment on Amended Complaint 177, United States v. Louisiana et al., Sup. Ct., No. 11, Original, Oct. Term, 1957. The openings between the numerous islands along the Louisiana coast constitute channels leading to inland waters and the rule as to bays becomes applicable (*see* Part 3, 2218(*c*)).

understood at the time that in general the line was being promulgated as the most landward line that the Government would claim for the federal-state boundary, but subject to modification, landward or seaward, in areas where the lack of up-to-date surveys prevented an accurate map delineation, and subject also to interpretive criteria to be developed in the *California* case.[8]

The delta area and the Atchafalaya Bay area were two segments of the coast where changes were suspected. The situation in Atchafalaya Bay was complicated by the existence of a shell reef in the entrance. For about 8 nautical miles to the northwestward of Point au Fer at the eastern end of the bay, the existing surveys showed the reef as awash to bare one-half to 1 foot at low water. For the rest of the reef (extending for about 14 miles to the northwestward) the surveys showed the reef as mostly submerged with 1 foot or less of water at low water, but with isolated spots awash or bare at low water. Without knowing the exact condition of the reef, in relation to both high and low water, at the time the Chapman line was drawn, the boundary line in the bay was drawn without regard to the existence of the reef (*see* Part 2, 1723 note 163). (*See* fig. 22.)

In the vicinity of Breton Sound (*see* fig. 23), the line was drawn from Bird Island near the delta to Breton Island, on the assumption that the water opening between was the true entrance to the sound. The northern part of the delta from Bird Island westward to Quarantine Bay forms the southern boundary of Breton Sound. The axis of the Chandeleur Islands merges smoothly into this southern boundary to make the two a geographic entity and to form a natural boundary for Breton and Chandeleur Sounds, thus making the line Bird Island—Breton Island the logical entrance to Breton Sound.[9]

7311. *Modifications Resulting From Special Master's Findings*

As noted above (*see* 731), the Chapman line is subject to modifications resulting from subsequent changes in the low-water line and in other physical

8. This is based on personal knowledge of the author who assisted the Department of Justice throughout the pendency of the boundary phases of the submerged lands cases. The Chapman line was first devised as a written description prepared by the Department of Justice with technical assistance from the State Department, the Bureau of Land Management, and the Coast and Geodetic Survey. Later, the line was drawn in the Survey on the 1200-series charts 1267, 1270, 1272–1279, at scale 1: 80,000 and from these as a base the line was transferred to the 1100-series charts 1115 and 1116, at scale 1: 450,000 (approximate). The line was not described by "metes and bounds" but rather as "along the ordinary low-water mark." This general type of description is usually considered sufficient for waterfront boundaries determined by tidal definition where the boundary shifts with changes in the low-water line. *Cf. New Jersey* v. *Delaware*, 295 U.S. 694, 696 (1935).

9. This is also borne out by the hydrographic survey (Register No. H–1000 (1869)), which is designated as "Hydrography of Southeastern Part of Isle Au Breton Sound" and extends to the line Bird Island—Breton Island. The survey to the south of this line (Register No. H–999), made in the same year, is designated as "Isle Au Breton Bay," indicating a differentiation from the waters of the sound.

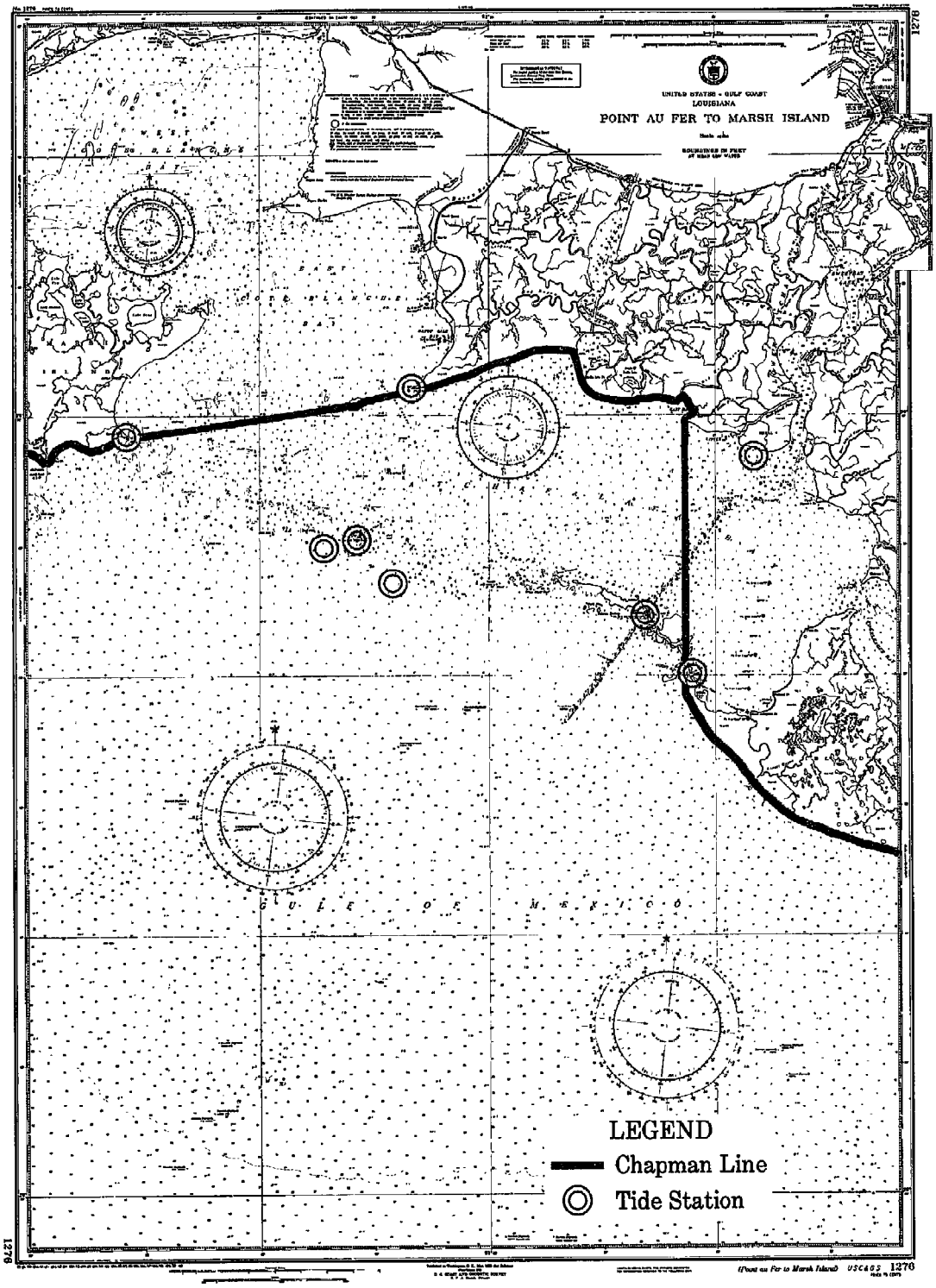

FIGURE 22.—The Chapman line in Atchafalaya Bay. The tide stations were established as part of the low-water line survey of the Louisiana coast (*see* Part 2, 1723).

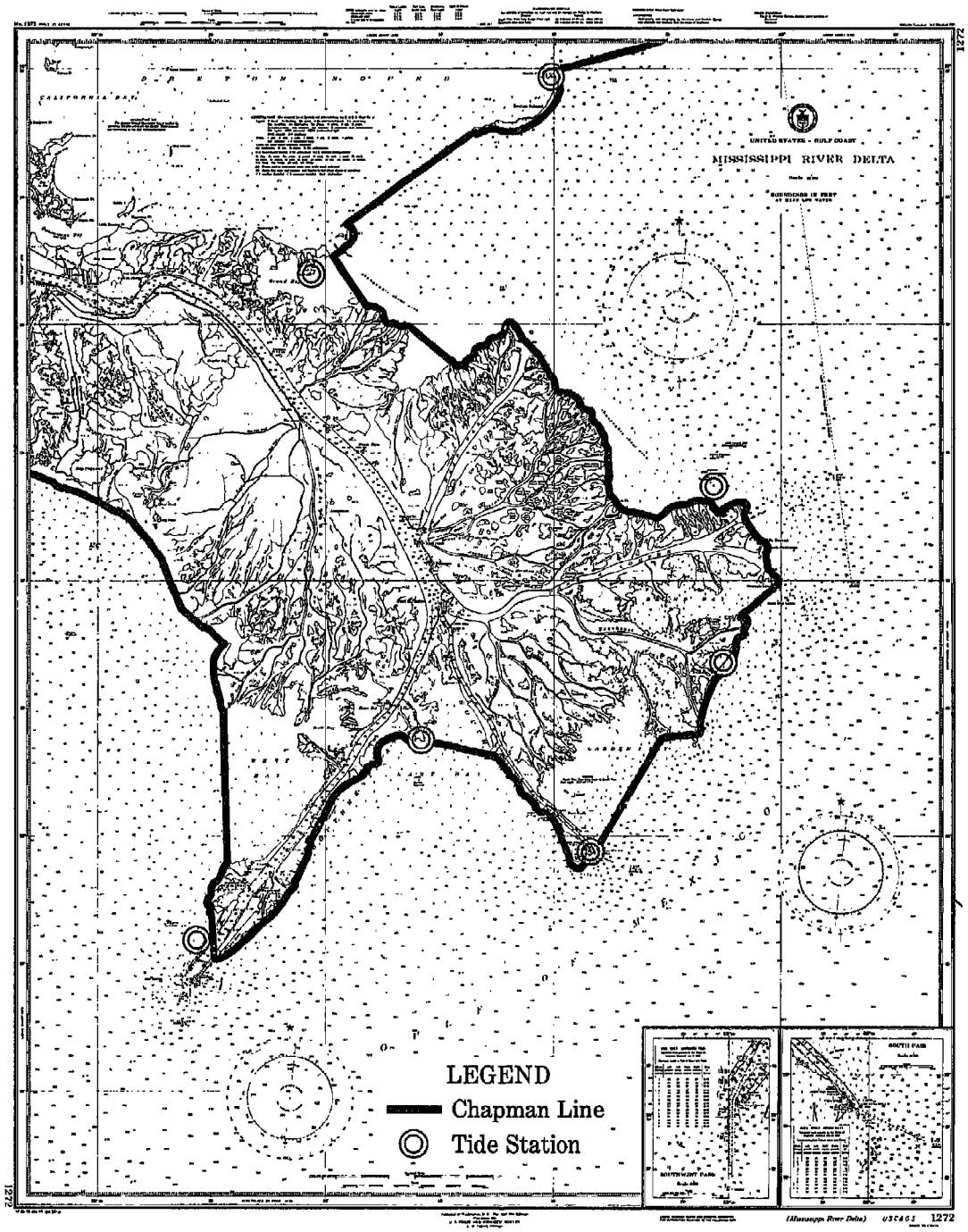

FIGURE 23.—The Chapman line in the Mississippi delta area. The tide stations (one station is just off the western limits of the chart) were established as part of the low-water line survey of the Louisiana coast (*see* Part 2, 1722).

features.[10] It is also subject to alteration if the Special Master's recommendations are applied. As previously indicated (*see* 711), the Master did not accept the Government's view that changes in the shoreline resulting from the erection of harborworks or the extension of artificially filled areas into the open sea did not alter the location of the boundary line. The Special Master concluded that in either case the boundary should be drawn on the seaward side of such structures.[11]

74. APPLICATION TO TEXAS COAST

The geography of the Texas coast was such that no problems arose regarding the delineation of the seaward limits of inland waters, at least insofar as defining a tentative jurisdictional line was concerned. Therefore, no line comparable to the Chapman line was drawn for Texas. Where applicable, the principles recommended by the Special Master for ascertaining the seaward limits of inland waters can be readily adapted to the Texas coast, in addition to the rule for straits leading to inland waters, which did not arise along the California coast (*see* note 7 *supra*).[12]

10. A low-water line, photogrammetric survey of the Louisiana coast was completed in October 1961 as a cooperative undertaking between the State of Louisiana, the Bureau of Land Management, and the Coast and Geodetic Survey (*see* Part 2, 17).

11. Southwest Pass (*see* fig. 23) is one of the areas where modifications in the Chapman line would be required as a result of the Master's recommendations. The line as drawn was based on the natural land formation (as near as could be determined) disregarding the jetties.

12. As along the Louisiana coast all the islands along the Texas coast are so situated in relation to the mainland as to enclose all waters landward of the islands as inland waters (*see* Coast Survey chart 1117). All the openings leading to such waterways are less than 10 nautical miles across and would be treated the same as openings to bays (*see* Part 3, 2218 (*b*) and (*c*)).