

**SHORE AND SEA BOUNDARIES**

**Volume Three**



National Oceanic and Atmospheric Administration Ship *Rainier*

# SHORE AND SEA BOUNDARIES

BY

MICHAEL W. REED

Volume Three



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**U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 2000**

**U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Coastal Services Center  
Office of Coast Survey**

**U.S. DEPARTMENT OF THE INTERIOR  
Minerals Management Service**

**NOAA/CSC/20007-PUB**

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**For Sale by the Government Printing Office**

**ISBN: 0-16-059062-0**

**Volume Three**

**THE DEVELOPMENT  
OF  
INTERNATIONAL MARITIME BOUNDARY PRINCIPLES  
THROUGH  
UNITED STATES PRACTICE**

In memory of  
Millington Lockwood  
1943–1999

This book is dedicated to the memory of Millington Lockwood for the outstanding role he played in the development of the field of marine and coastal geographic information systems.

Lockwood was born in San Francisco, California, in 1943. He earned a B.S. degree in Meteorology and Oceanography from the State University of New York Maritime College and a M.S. degree in Environmental Systems Management–Ocean Affairs from American University.

For 29 years he held a variety of positions within the National Oceanic and Atmospheric Administration and was actively involved in U.S. national policy with respect to the implementation of the National Spatial Data Infrastructure.

People who knew Millington Lockwood would variously describe him as professional, energetic, genuine, persistent, mercurial, humorous, and altruistic. Lockwood loved his work, influenced national policy and research perspectives for spatial data, and mentored a generation of scientists, technologists, and policy makers who are now advocates for his vision and teachings.

Millington Lockwood lost a courageous fight against cancer on July 22, 1999. He is survived by his wife Susan, and children Lisa and Billy.

# Acknowledgments

Thanks alone are inadequate to express my appreciation to the many colleagues whose contributions have made this volume a reality. First mentioned must be Millington Lockwood and Lee Thormahlen whose vision and enthusiasm got the project underway and sustained it to the end.

Equally important was the team assembled for its production. Cindy Fowler coordinated and oversaw the entire endeavor; Donna McCaskill supervised production and printing; Lauren Parker edited textual material; Frank Ruopoli produced all graphics in addition to the book jacket and layout; Nancy Cofer-Shabica edited graphics and—through her knowledge of the subject matter—melded graphics and text; Chuck Baxley kept the computers running throughout; and Gerald Esch, an incomparable editor, turned these combined efforts into a finished work.

Thanks also to the experts who graciously reviewed the manuscript and contributed invaluable suggestions. They include Ashley Roach, Bob Smith, Jeff Minear, Lee Thormahlen, Richard Naito, Michael Vertress, Cindy Fowler, Curt Loy, Dennis Romesburg, Jim Dailey, Doug Martin, and Steve Gill. They did their best to keep me on the straight and narrow. Any remaining errors, and all personal opinions, are mine alone.

Recognition is also due the attorneys with whom I have had the pleasure of litigating most of the tidelands cases discussed in the succeeding pages: George Swarth, Louis Claiborne, Jeff Minear, Spinner Findlay, Peggy Strand, Don Carr, John Briscoe, Tom Koester, and Bruce Flushman to name but a few. And to the Supreme Court's special masters before whom we have been privileged to practice our trade: Retired Justice Tom Clark, Judges Albert Maris, Robert Van Pelt, Walter Hoffman and Alfred Arraj, and Messrs. William Davis, Walter Armstrong, and J. Keith Mann. These individuals have not only contributed substantially to the development of maritime boundary law—they have also made its practice most enjoyable. Whether ally, adversary, or judge, I count them all as personal friends.

Experts both within and without federal agencies, who have worked tirelessly to resolve maritime boundary problems, are too numerous to identify separately. The former are ably represented by Tom Warren and Stan Ashmore of the Department of the Interior and all members of the Coastline Committee. The latter include Judge Philip Jessup, Lou DeVorse, Clive Symmons, Victor Prescott, and Elihu Lauterpacht, internationally recognized experts who have dedicated their lives to the subject and have participated in the tidelands litigation. Each of these, and their many

unnamed colleagues, has contributed substantially to the body of law that is discussed here and its application to real-life controversies.

Finally, I must acknowledge the collaboration of my wife Donna Reed who has lent her energy and expertise throughout, translating authorities from the original French, editing drafts, providing photographic illustrations, offering sage advice, and doing everything possible to keep me on an even keel.

To all I owe an immeasurable debt. My heartfelt thanks.

*Mike Reed*



# Preface

## In Recognition of Aaron Shalowitz

Aaron Shalowitz, who served as special assistant to the director of the U.S. Coast and Geodetic Survey, produced his historic two-volume *Shore and Sea Boundaries* in the early 1960s. At the time they were considered to be the largest collection of background on the subject of maritime boundary delimitation. The concepts which he developed and explained led to a deeper understanding of the issues in the multibillion dollar tidelands battles. His treatise represented the culmination of the first phase of the Coast Survey's involvement in providing federal and state agencies, industry, engineers, and attorneys with authoritative guidance in the clarification and application of the technical and legal-technical provisions in international law, Supreme Court decisions, and Acts of Congress. Volumes One and Two continue to be relied upon by numerous users—including the United States Supreme Court.

Shalowitz brought to the preparation of these documents a keen awareness of engineering, legal, and Coast and Geodetic Survey experience as a commissioned officer in the field, a cartographic engineer, and as the technical advisor to the Department of Justice in the California “tidelands” litigation.

It is a source of personal pride to realize that these volumes prepared by Aaron Shalowitz, which bore the stamp of many hours of dedication, continue to be recognized by the federal government, and are being expanded with the publication of a Volume Three.

The Shalowitz family

# Foreword

More than two decades ago, I was a green law student working with a team of private and government lawyers, law professors, and law clerks engaged in a lengthy disagreement between the State of Louisiana and the U.S. Department of Interior. At issue were the differing interpretations of the state/federal boundary off the coast of Louisiana. This boundary was important because of the extensive petroleum reserves that lay off that state's coast. At stake was each party's proportionate share of these reserves, which would be based on where the state's legal shoreline was determined to be, and the extent of the state's seaward jurisdiction.

For those of us embroiled in the infinite details of the case, there was a guiding light—*Shore and Sea Boundaries* by Aaron L. Shalowitz. This richly informative manuscript provided an important foundation for the case as presented by the State of Louisiana. As witness to this legal clash of titans, the law clerks spoke reverently of the scope and details of this text, which we read and reread until it seemed as though we could recite it word for word.

Since that time, there have been more than a dozen tidelands cases that have found their way to the U.S. Supreme Court. I feel confident that in each and every one of those instances, there were lawyers and law clerks who pursued *Shore and Sea Boundaries* with the same fervor that we did searching for illumination and controlling authority.

Mike Reed has done a superb job of updating this luminous manuscript. I feel confident that this will be a landmark publication used not only by legal staffs, but coastal resource managers, state and local governments, and universities.

I am delighted that my organization could help support such a noteworthy effort. For me, it is a personal honor to tag along behind the vision of Millington Lockwood, which drove this revision, and provide a foreword to such an important work.

Margaret A. Davidson  
Director,  
NOAA Coastal Services Center

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# Introduction to Volume Three

In 1962 and 1964 Volumes One and Two of *Shore and Sea Boundaries* were published. Since that time they have provided an invaluable resource to attorneys and judges engaged in defining the maritime boundaries of the United States. But much has happened in the subsequent 35 years. The Supreme Court and its special masters have resolved at least 16 maritime boundary cases in that period. The time has come to update Aaron Shalowitz' epic effort.

My purpose in Volume Three is to organize and preserve the legal principles that have been applied by the Supreme Court to define our coast line and the numerous maritime boundaries which are measured from it. That undertaking seems particularly important where, as here, much of the law and legal reasoning is contained not in readily available judicial opinions but in the Reports of the Supreme Court's special masters. That is so because the cases with which we are concerned do not reach the Supreme Court in the usual manner. They are known as "Original actions," cases which are initiated in the Supreme Court rather than arriving there following a course through the Federal District and Circuit Courts. When the resolution of Original actions requires factual findings they are typically assigned to a special master who is delegated the responsibility of conducting hearings, receiving evidence, and making findings and recommendations in a Report to the Court. Although the Reports are public, there is no system for their publication, and they are not easily available to practitioners. Despite the fact that the Supreme Court often writes a substantial decision following its receipt of the Report, more often than not it is the Report that contains the more extensive explanation of how issues were resolved.

Three sources are emphasized in Volume Three. The Supreme Court decisions in the tidelands cases provide the primary authority. Next come its Masters' Reports which almost always contain a greater depth of analysis than is practical for the Court. Finally, the positions of international authorities on the law of the sea, many of whom have served as witnesses in the tidelands cases, are reviewed to indicate how their interpretations either support or conflict with the Court's conclusions.

The volume is divided into three parts.

Part I follows the history of the tidelands litigation from its pre-Submerged Lands Act infancy, through that Act and the various

decisions interpreting its provisions, and finally to the application of the baseline provisions of the Convention on the Territorial Sea and the Contiguous Zone to the coastal geography of the United States to precisely define the limits of each state's Submerged Lands Act grant.

Part II emphasizes the legal principles for coast line delimitation that are derived from the numerous tidelands decisions. This part is organized by issue in hopes that it will provide the practitioner with a useful resource in future litigation.

Part III offers the gratuitous insights of a single practitioner regarding the trial of a tidelands case or other complex federal litigation. I hope that it will prove of interest or value to those who follow.

There are many excellent works on the law of the sea which include chapters on maritime boundary delimitation. Some have been cited extensively in these tidelands cases. The authors of some have participated as witnesses in the tidelands cases. This volume does not attempt to replace those authoritative works. Rather its purpose is to focus on the American experience. The United States Supreme Court and its masters have dealt with each of the Convention's provisions for coast line delimitation. Few other courts worldwide have had that opportunity. These Supreme Court precedents will not only be applicable to future tidelands litigation but to any controversy that requires a determination of the limits of our inland waters, navigable waters, territorial sea, or other maritime zones.