

Law of the Sea - Shipping - State Regulation of Bays - Rhode Island's Statute Regulating Pilotage of Block Island Sound is Within 46 U.S.C. §211 (1970) Warner v. Dunlap

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**LAW OF THE SEA — SHIPPING — STATE REGULATION
OF BAYS — RHODE ISLAND'S STATUTE REGULATING
PILOTAGE OF BLOCK ISLAND SOUND IS WITHIN
46 U.S.C. § 211 (1970).**

Warner v. Dunlap, 532 F.2d 767 (1st Cir. 1976)

The state of Rhode Island passed a statute¹ requiring foreign and American vessels engaged in international trade to utilize ships' pilots licensed by the state Pilotage Commission when traversing Block Island Sound. Plaintiffs, Connecticut-licensed ships' pilots, who passed through the Sound when guiding ships into Connecticut ports, challenged the state law as beyond the scope of 46 U.S.C. § 211 (1970). This statute authorizes the states to regulate the use of pilots "in the bays, inlets, rivers, harbors, and ports of the United States . . ."²

The plaintiffs contended that Block Island Sound was not a "bay" within the meaning of the federal statute. As the statute failed to define the term "bay," the parties relied on the definition set forth in the Convention on the Territorial Sea and the Contiguous Zone,³ an international treaty ratified by the United States' Senate in 1961. This definition of the word "bay" had been accepted by the United States Supreme Court in *United States v. California*.⁴

The treaty stated that a bay "is 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."⁵ The treaty applied a "semi-circle test" for determining the sufficiency of the water area enclosed. Under this test in order for a body of water to qualify as a bay, it must have at least as much surface area within its natural boundaries and a closing line drawn across its mouth as within a semi-circle having a diameter equal to the length of the closing line.⁶ The treaty also stated that if a coastline indentation had more than one mouth due to the presence of islands, "the semi-circle test

1. R.I. GEN. LAWS, § 46-9.1-1 *et seq.* (Supp. 1974).

2. 46 U.S.C. § 211 (1970).

3. Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958 [1961] 15 U.S.T. 1606, T.I.A.S. No. 5639.

4. 381 U.S. 139 (1965).

5. Convention, *supra* n.3, art. 7, § 3.

6. *Id.*

shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths.”⁷

The Rhode Island statute did not define the western boundary of Block Island Sound. Consequently, whether or not that body of water was a “bay” or part of a “bay” under the semi-circle test was dependent upon where the court established the western boundary. The plaintiffs suggested two different boundaries which the Rhode Island legislature might have intended to describe the western limits of Block Island Sound. When the area within each western boundary and the eastern and southern boundaries established by the Rhode Island statute was calculated, neither configuration showed Block Island Sound to be a “bay” under the semi-circle test.

The district court had found that it was consonant with the terms of the treaty to treat Block Island Sound as part of a larger body of inland water which included Long Island Sound. The court established the western boundary for this body of water at the East River, between Manhattan and Long Island. Applying the semi-circle test to the area enclosed by this boundary and the boundaries established by the state statute, the court found that the Long Island — Block Island Sound combination constituted a “bay” within the meaning of the treaty. It therefore held that Block Island Sound, as part of the larger body of water, was a “bay,” and that Rhode Island was authorized by 46 U.S.C. § 211 (1970) to regulate ships’ pilots in these waters. Alternatively, the district court found that Block Island Sound was a “historic bay” which was subject to state regulation without applying the treaty’s tests.

The United States Court of Appeals for the First Circuit upheld the district court’s application of the semi-circle test to the Long Island Sound — Block Island Sound combination. The court rejected plaintiffs’ argument that Block Island Sound was not a well-defined indentation and not a “bay.” The court cited Supreme Court dicta in *United States v. Maine*,⁸ describing Long Island Sound as inland water, rather than open sea. The court declined to rule on the historic bay question.

The court of appeals further found that it was not necessary for ships to enter or leave Rhode Island ports in order for the state to regulate their pilots; mere passage through Rhode Island

7. *Id.*

8. 420 U.S. 515, 517 n.1 (1975).

waters was sufficient. The court noted that the state had an interest in promoting navigational safety and protecting the environmental quality of its coastline. These objectives could be achieved by regulating pilotage of vessels through its waters. Finally, the court rejected plaintiffs' argument that under the Submerged Lands Act of 1953⁹ Rhode Island's jurisdiction did not extend beyond the waters within three miles of its coastline. The court pointed out that a state could regulate pilotage and other activities in areas beyond the three mile limit since the extent of state regulations and state territorial boundaries were separate issues.

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9. 43 U.S.C. § 1301 *et seq.* (1970).