NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* ALASKA

ON BILL OF COMPLAINT

No. 118, Orig. Argued February 24, 1992—Decided April 21, 1992

Pursuant to, *inter alia,* §10 of the Rivers and Harbors Appropriation Act of 1899 (RHA), the Secretary of the Army, through the Army Corps of Engineers, granted Nome, Alaska, a federal permit to build port facilities extending into Norton Sound. The permit's issuance was conditioned on the submission by Alaska of a disclaimer of rights to additional submerged lands that it could claim within its boundary if the facilities' construction moved the coastline seaward. However, the disclaimer also provided that Alaska reserved its right to the accreted submerged lands pending a decision by a court of competent jurisdiction that federal officials lacked the authority to compel a disclaimer of sovereignty as a condition of permit issuance. After the facilities were constructed, the United States Department of the Interior proposed a lease sale for minerals in Norton Sound. Alleging that the proposal involved lands subject to its disclaimer, Alaska announced its intention to file suit challenging the Corps' authority to require the disclaimer. The United States was granted leave of this Court to commence this action, and both parties have filed motions for summary judgment.

Held: The Secretary of the Army acted within his discretion in conditioning approval of the Nome port facilities on a disclaimer by Alaska of a change in the federal-state boundary that the project might cause. Pp.5–23.

(a)This Court's review of the Corps' construction of a statute that it administers involves an examination of §10's language, this Court's decisions interpreting §10, and the Corps' longstanding construction in fulfilling Congress' mandate. On its face, §10—which prohibits the building of any structure in navigable waters of the United States ``except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army''—appears to give the Secretary

unlimited discretion to grant or deny a permit for construction of a structure such as the one at issue. While both the RHA's legislative history and §10's statutory antecedents offer little insight into Congress' intent, the idea of delegating authority to the Secretary was well established in the immediate precursors to the RHA. This Court's decisions also support the view that §10 should be construed broadly, see, *e. g., United States ex rel. Greathouse* v. *Dern,* 289 U.S. 352, to authorize consideration of factors other than navigation during the permit review process, cf. *United States* v. *Pennsylvania Industrial Chemical Corp.,* 411 U.S. 655. In addition, since the late 1960's, the regulations adopted by the Corps have interpreted its statutory authority as empowering it to take into account several ``public interest'' factors—including a full range of economic, social, and environmental factors—in addition to navigation in deciding whether to issue a §10 permit. See, *e. g.,* 33 CFR §320.4(a)(1). Pp.5–12.

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(b)There is no merit to Alaska's argument that any statutory mandate authorizing the Secretary to consider factors in addition to navigation is exceeded by 33 CFR §320.4(f), which authorizes consideration of a project's consequences on the federal-state boundary. Contrary to Alaska's position, the Corps' practice does not conflict with the Submerged Lands Act of 1953 (SLA), which provides that a coastal State's boundary extends three miles from its coastline. Although coastlines are subject to change from natural or artificial alterations, see, *e. g., United States* v. *California,* 381 U.S. 139, 176–177 *(California II)*, the Secretary is making no effort to alter a State's existing rights to sovereignty over submerged lands within three miles of the coastline. Rather the Corps is, in a reasonable exercise of its authority, determining whether an artificial addition to the coastline will increase the State's control over submerged lands to the detriment of the United States' legitimate interests. Neither the SLA nor its legislative history addresses the effect of artificial additions to the coastline, and this Court sanctioned, in *California II, supra,* at 177, the mechanism exercised by the Secretary in this case. Nor do this Court's decisions prohibit the Secretary from considering in the permit review process changes in federal-state boundaries that will result in the establishment of one boundary for international purposes—since artificial additions always affect such boundaries—and a different one for domestic purposes. Specifically, the Secretary's action does not conflict with *California II,* because that case did not specify a goal of achieving a single domestic and international coastline. Pp.12–20.

(c)There is also no merit to Alaska's argument that, even if the regulations are valid, they do not authorize the Corps to force a coastal State to abdicate rights to submerged lands as a condition to a permit's issuance. It is untenable to say that the United States' legitimate property interests fall outside the relevant criteria for a decision that requires the Secretary to determine whether a permit's issuance would affect the ``public interest.'' And it would make little sense, and be inconsistent with Congress' intent, to hold that the Corps legitimately may prohibit construction of a port facility, and yet to deny it the authority to seek the less drastic alternative of conditioning the permit's issuance on the State's disclaimer of rights to accreted submerged lands. The Corps' failure to identify in the regulations the option of conditioning disclaimers does not render the policy contrary to law. See *United States* v. *Gaubert,* 499 U.S. ___, ___. The Corps cannot be said to have acted in an arbitrary and capricious manner, since it notified

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state officials promptly of the objection to the project, specified a curative option, and afforded Alaska ample time to consider the disclaimer, consult with federal officials, and then draft the disclaimer. Nor can Alaska contend that it lacked notice, since the disclaimer is similar to those Alaska has filed in past §10 proceedings. Pp.20–22.

United States' motion for summary judgment granted; Alaska's motion for summary judgment denied.

WHITE, J., delivered the opinion for a unanimous Court.