

MORAGNE v STATES MARINE LINES
398 US 375, 26 L Ed 2d 339, 90 S Ct 1772

general maritime law. In contrast, the beneficiary provisions of the Jones Act are applicable only to a specific class of actions—claims by seamen against their employers—based on violations of the special standard of negligence that has been imposed under the Federal Employers' Liability Act. That standard appears to be unlike any imposed by general maritime law. Further, although the Longshoremen's and Harbor Workers' Compensation Act is applicable to longshoremen such as petitioner's late husband, its principles of recovery are wholly foreign to those of general maritime law—like most workmen's compensation laws, it deals only with the responsibilities of employers for death or injury to their employees, and provides standardized amounts of compensation regardless of fault on the part of the employer.

The only one of these statutes that applies not just to a class of workers but to any "person" and that bases liability on conduct violative of general maritime

[398 US 408]

law, is the Death on the High Seas Act.²³ The borrowing of its schedule of beneficiaries, argues the United States, will not only effectuate the expressed congressional preferences in this area but will also promote uniformity by ensuring that the beneficiaries will be the same for identical torts, rather than varying with the employment status of the decedent. There is no occasion, according to this argument, to borrow from the law of the relevant coastal State, since the underlying duties to be effectuated are entirely federal and Congress has expressed its preference of beneficiaries for violations of maritime law.

We do not determine this issue now, for we think its final resolution should await further sifting through the lower courts in future litigation. For present purposes we conclude only that its existence affords no sufficient reason for not coming to grips with *The Harrisburg*. If still other subsidiary issues should require resolution, such as particular questions of the measure of damages, the courts will not be without persuasive analogy for guidance. Both the Death on the High Seas Act and the numerous state wrongful-death acts have been implemented with success for decades. The experience thus built up counsels that a suit for wrongful death raises no problems unlike those that have long been grist for the judicial mill.

In sum, in contrast to the torrent of difficult litigation that has swirled about *The Harrisburg*, *The Tungus*, which followed upon it, and the problems of federal-state accommodation they occasioned, the recognition of a remedy for wrongful death under general maritime law can be expected to bring more placid waters. That prospect indeed makes for, and not against, the discarding of *The Harrisburg*.

[398 US 409]

[19] We accordingly overrule *The Harrisburg*, and hold that an action does lie under general maritime law for death caused by violation of maritime duties. The judgment of the Court of Appeals is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

Mr. Justice Blackmun took no part in the consideration or decision of this case.

23. 46 USC § 761.

[414 US 573]
SEA-LAND SERVICES, Inc., Petitioner,

v
HELEN STEIN GAUDET, Administratrix of the Estate
of Awtrey C. Gaudet, Sr.

414 US 573, 39 L Ed 2d 9, 94 S Ct 806

[No. 72-1019]

Argued November 7, 1973. Decided January 21, 1974.

OPINION OF THE COURT

[414 US 574]

Mr. Justice Brennan delivered the
opinion of the Court.

[1] *Moragne v States Marine Lines*, 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772 (1970), overruling *The Harrisburg*, 119 US 199, 30 L Ed 358, 7 S Ct 140 (1886), held that an action for wrongful death based on unseaworthiness is maintainable under federal maritime law, but left the shaping of the new nonstatutory action to future cases. The question in this case is whether the widow of a longshoreman may maintain such an action for the wrongful death of her husband—alleged to have resulted from injuries suffered by him while aboard a vessel in navigable waters—after the decedent recovered damages in his lifetime for his injuries.

Respondent's husband suffered severe injuries while working as a longshoreman aboard petitioner's vessel, the S.S. Claiborne, in Louisiana navigable waters. He recovered \$140,000 for his permanent disability, physical agony, and loss of earnings in an action based on unseaworthiness, but died shortly after the action was terminated. Respondent brought this wrongful-death action in the District Court for the Eastern District of Louisiana for damages suffered by her. Based on her husband's recovery, the District Court dismissed the widow's suit on grounds of *res judicata* and

failure to state a claim. The Court of Appeals for the Fifth Circuit reversed, holding that *Moragne* gave "Mrs. Gaudet . . . a compensable

[414 US 575]

cause of action for Mr. Gaudet's death wholly apart from and not extinguished by the latter's recovery for his personal injuries . . . " 463 F2d 1331, 1332 (1972). We granted certiorari, 411 US 963, 36 L Ed 2d 683, 93 S Ct 2141 (1973), and now affirm.

[1, 5-8] Petitioner, Sea-Land Services, Inc. (Sea-Land), argues that the wrongful-death remedy should recognize no loss independent of the decedent's claim for his personal injuries, and therefore that respondent had a wrongful-death remedy only "in the event Gaudet failed to prosecute [his own claim] during his lifetime." Brief for Petitioner 6. But *Moragne* had already implicitly rejected that argument;

[414 US 578]

for we there recognized that a single tortious act might result in two distinct, though related harms, giving rise to two separate causes of action: "in the case of mere injury, the person physically harmed is made whole for his harm, while in the case of death, those closest to him—usually spouse and children—seek to recover for

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their total loss of one on whom they depended." 398 US, at 382, 26 L Ed 2d 339. Thus, Moragne created a true wrongful-death remedy—founded upon the death itself and independent of any action the decedent may have had for his own personal injuries. Because the respondent's suit involves a different cause of action, it is not precluded by *res judicata*.

[9] To be sure, a majority of courts interpreting state and federal wrongful-death statutes have held that an action for wrongful death is barred by the decedent's recovery for injuries during his lifetime. But the bar does not appear to rest in those cases so much upon principles of *res judicata* or public policy as upon statutory limitations on the wrongful-death action. As one authority has noted, "[t]he fact that all civil remedies for wrongful death derive from statute has important consequences. Since the right was unknown to common law, the legislatures which created the right were free to impose restrictions upon it." 2 F. Harper & F. James, *The Law of Torts* § 24.1, p 1285 (1956). Thus, England's Lord Campbell's Act, the first wrongful-death statute, permits

[414 US 580]
recovery "whenever the Death of a Person shall be caused by [the] wrongful Act . . . [of another] and the Act . . . is such as would (if Death had not ensued) have entitled the Party injured to maintain an Action and recover Damages in respect thereof . . ."
Early English cases interpreting the Act held that this language conditioned wrongful-death recovery upon the existence of an actionable cause of the decedent at his death, if

[414 US 581]

the deceased had reduced his claim to judgment, settled with or released his tortfeasor, and therefore up to the time he died could not have maintained

a further action for his injuries, his dependents could have no cause of action for his wrongful death. Since Lord Campbell's Act became the prototype of American wrongful-death statutes, most state statutes contained nearly identical language and have been similarly interpreted by state

[414 US 582]

courts. Though the federal wrongful-death statutes do not contain the same controversial language, the FELA, at least, has been held to be "essentially identical with" Lord Campbell's Act, *Michigan C. R. Co. v Vreeland*, 227 US 59, 69, 57 L Ed 417, 33 S Ct 192 (1913), and therefore similar restrictions have been placed on FELA wrongful-death recovery. *Mellon v Goodyear*, 277 US 335, 345, 72 L Ed 906, 48 S Ct 541 (1928).

[414 US 583]

[10, 11] Moragne, on the other hand, requires that the shape of the new maritime wrongful-death remedy (not a statutory creation but judge-made, see *The Tungus v Skovgaard*, 358 US 588, 611, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280 (1959) (opinion of Brennan, J.) be guided by the principle of maritime law that "certainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *The Sea Gull*, 21 F Cas 909 (No. 12,578) (CC Md 1865) quoted in *Moragne*, 398 US, at 387, 26 L Ed 2d 339. Since the policy underlying the remedy is to insure compensation of the dependents for their losses resulting from the decedent's death, the remedy should not be precluded merely because the decedent, during his lifetime, is able to obtain a judgment for his own personal injuries. No

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statutory language or "established and inflexible rules" of maritime law require a contrary conclusion.¹⁰

II

[12] Sea-Land argues that, if dependents are not prevented from bringing a separate cause of action for wrongful death in cases where the decedent has already received a judgment for his personal injuries, then necessarily it

[414 US 584]

will be subject to double liability. In order to evaluate this argument it is necessary first to identify the particular harms suffered by the dependents, for which the maritime wrongful-death remedy permits recovery of damages. In identifying these compensable harms, we are not without useful guides; for in *Moragne* we recognized that with respect to "particular questions of the measure of damages, the courts will not be without persuasive analogy for guidance. Both the Death on the High Seas Act and the numerous state wrongful-death acts have been implemented with success for decades. The experience thus built up counsels that a suit for wrongful death raises no

problems unlike those that have long been grist for the judicial mill." 398 US, at 408, 26 L Ed 2d 339. Our review of those authorities, and the policies of maritime law, persuade us that, under the maritime wrongful-death remedy, the decedent's dependents may recover damages for their loss of support, services, and society, as well as funeral expenses.

[13, 14] Recovery for loss of support has been universally recognized, and includes all the financial contributions

[414 US 585]

that the decedent would have made to his dependents had he lived. Similarly, the overwhelming majority of state wrongful-death acts and courts interpreting the Death on the High Seas Act have permitted recovery for the monetary value of services the decedent provided and would have continued to provide but for his wrongful death. Such services include, for example, the nurture, training, education, and guidance that a child would have received had not the parent been wrongfully killed. Services the decedent performed at home or for his spouse are also compensable.

10. Significantly, the Death on the High Seas Act, 46 USC § 761 [46 USCS § 761], the only federal statute "that deals specifically and exclusively with actions for wrongful death . . . for breaches of the duties imposed by general maritime law," *Moragne v States Marine Lines*, 398 US

395, at 407, 26 L Ed 2d 339 (1970), has not been interpreted, as the FELA has been, to bar wrongful-death recovery in cases where the decedent has already recovered during his lifetime for his personal injuries.

[15] Compensation for loss of society, however, presents a closer question. The term "society" embraces a broad range of mutual benefits each family member receives from the others' continued existence, including love, affection, care, attention, companionship, comfort, and protection.¹⁷ Unquestionably, the deprivation of these

[414 US 586]

benefits by wrongful death is a grave loss to the decedent's dependents. Despite this fact, a number of early wrongful-death statutes were interpreted by courts to preclude recovery for these losses on the ground that the statutes were intended to provide compensation only for "pecuniary loss," and that the loss of society is not such an economic loss.¹⁸ Other wrongful-death statutes contain express language limiting recovery to pecuniary losses; for example, the Death on the High

[15] 17. Loss of society must not be confused with mental anguish or grief, which are not compensable under the maritime wrongful-death remedy. The former entails the loss of positive benefits, while the latter represents an emotional response to the wrongful death. The difference between the two is well expressed as follows:

"When we speak of recovery for the beneficiaries' mental anguish, we are primarily concerned, not with the benefits they have lost, but with the issue of compensating them for their harrowing experience resulting from the death of a loved one. This requires a somewhat negative approach. The fundamental question in this area of damages is what deleterious effect has the death, as such, had upon the claimants? In other areas of damage, we focus on more positive aspects of the injury such as what would the decedent, had he lived, have contributed in terms of support, assistance, training, comfort,

[414 US 587]

Seas Act limits recovery to "a fair and just compensation for the *pecuniary* loss sustained by the persons for whose benefit the suit is brought . . .," 46 USC § 762. [46 USCS § 762] (emphasis added), and consequently has been construed to exclude recovery for the loss of society.

[16] A clear majority of States, on the other hand, have rejected such a narrow view of damages, and, either by express statutory provision or by judicial construction, permit recovery for loss of society. This expansion of damages recoverable under wrongful-death statutes to include loss of society has led one commentator to observe that "[w]hether such damages are classified as 'pecuniary,' or recognized and allowed as nonpecuniary, the recent trend is unmistakably in favor of permitting such recovery." S. Speiser, Recovery for Wrongful

consortium, etc. . . .

"The great majority of jurisdictions, including several which do allow damages for other types of nonpecuniary loss, hold that the grief, bereavement, anxiety, distress, or mental pain and suffering of the beneficiaries may not be regarded as elements of damage in a wrongful death action." Speiser § 3.45, p 223 (emphasis in original) (footnotes omitted).

18. Lord Campbell's Act, which, by its terms, allows the jury to award "such damages as they may think proportional to the injury," was interpreted to permit recovery only for "pecuniary losses," *Blake v Midland R. Co.*, 18 QB (Ad & E, NS)* 98, 118 Eng Rep 35 (1852). Most American courts, interpreting similar wrongful-death statutes, followed suit, see e. g., *Michigan C. R. Co. v Vreeland*, *supra*, at 70, 57 L Ed 417. See also Speiser § 3.1.

Death 218 (1966). Thus, our decision to permit recovery for loss of society aligns the maritime wrongful-death remedy with a majority of state

[414 US 588]

wrongful-death statutes.²²

But in any event, our decision is compelled if we are to shape the remedy to comport with the humanitarian policy of the maritime law to show "special solicitude" for those who are injured within its jurisdiction.

[17] Objection to permitting recovery for loss of society often centers upon the fear that such damages are somewhat speculative and that factfinders will return

[414 US 589]

excessive verdicts. We were not unaware of this objection in *Moragne*, where we said,

[16] 22. We recognize, of course, that our decision permits recovery of damages not generally available under the Death on the High Seas Act. Traditionally, however, "Congress has largely left to this Court the responsibility for fashioning the controlling rules of admiralty law," *Fitzgerald v United States Lines Co.*, 374 US 16, 20, 10 L Ed 2d 720, 83 S Ct 1646 (1963). The scope and content of the general maritime remedy for wrongful death established in *Moragne* is no exception. After combing the legislative history of the Death on the High Seas Act, we concluded on *Moragne* that Congress expressed "no intention . . . of foreclosing any non-statutory federal remedies that might be found appropriate to effectuate the policies of general maritime law." 398 US, at 400, 26 L Ed 2d 339. Nothing in the legislative history of the Act suggests that

"[O]ther courts have recognized that calculation of the loss sustained by dependents or by the estate of the deceased, which is required under most present wrongful-death statutes does not present difficulties more insurmountable than assessment of damages for many nonfatal personal injuries." 398 US, at 385, 26 L Ed 2d 339.

For example, juries are often called upon to measure damages for pain and suffering, mental anguish in disfigurement cases, or intentional infliction of emotional harm. In fact, since the 17th century, juries have assessed damages for loss of consortium—which encompasses loss of society—in civil actions brought by husbands whose wives have been negligently injured.

Congress intended the Act's statutory measure of damages to pre-empt any additional elements of damage for a maritime wrongful-death remedy which this Court might deem "appropriate to effectuate the policies of general maritime law." To the contrary, Congress' insistence that the Act not extend to territorial waters, see S Rep No. 216, 66th Cong, 1st Sess, 3 (1919); HR Rep No. 674, 66th Cong, 2d Sess, 3 (1920); 59 Cong Rec 4482-4486 (1920), indicates that Congress was not concerned that there be a uniform measure of damages for wrongful deaths occurring within admiralty's jurisdiction, for in many instances state wrongful-death statutes extending to territorial waters provided a more liberal measure of damages than the Death on the High Seas Act. See *Greene v Vantage S. S. Corp.*, 466 F2d 159 (CA4 1972).

[414 US 590]

More recently, juries have been asked to measure loss of consortium suffered by wives whose husbands have been negligently harmed. Relying on this history, the Florida Supreme Court recognized as early as 1899 that the damages for loss of society recovered by a wife for the wrongful death of her husband were "no more fanciful or speculative than the frugality, industry, usefulness, attention and tender solicitude of a wife [all of which a husband might recover at common law in an action for consortium], and the one can be compensated [as easily] by that simple standard of pecuniary loss . . . as the other." *Florida C. & P. R. Co. v Foxworth*, 41 Fla 1, 73, 25 So 338, 348.

[18] We are confident that the measure of damages for loss of society in a maritime wrongful-death action can "be left to turn mainly upon the good sense and deliberate judgment of the tribunal assigned by law to ascertain what is a just compensation for the injuries inflicted." *The "City of Panama"*, 101 US 453, 464, 25 L Ed 1061 (1880). As in all damages awards for tortious injury, "[i]nsistence on mathematical precision would be illusory and the judge or juror must be allowed a fair latitude to make reasonable approximations guided by judgment and practical experience." *Whitaker v Blidberg Rothchild Co.* 296 F2d 554, 555 (CA4 1961). Moreover, appellate tribunals have amply demonstrated their ability to control excessive awards, see, e.g., *Moore-McCormack Lines, Inc. v Richardson*, 295 F2d 583 (CA2 1961); *Dugas v National Aircraft Corp.* 438 F2d 1386 (CA3 1971).

[414 US 591]

[12] Finally, in addition to recovery for loss of support, services, and society, damages for funeral expenses may be awarded under the maritime wrongful-death remedy in circumstances where the decedent's dependents have either paid for the funeral or are liable for its payment.

Turning now to Sea-Land's double-liability argument, we note that, in contrast to the elements of damages which we today hold may be recovered in a maritime wrongful-death action, the decedent recovered damages only for his loss of past and future wages, pain and suffering, and medical and incidental expenses. Obviously, the decedent's recovery did not include damages for the dependents' loss of services, society, and funeral expenses. Indeed, these losses—unique to the decedent's dependents—

[414 US 592]

could not accrue until the decedent's death. Thus, recovery of damages for these losses in the maritime wrongful-death action will not subject Sea-Land to double liability or provide the dependents with a windfall.

[19] There is, however, an apparent overlap between the decedent's recovery for loss of future wages and the dependents' subsequent claim for support. In most instances, the dependents' support will derive, at least in part, from the decedent's wages. But, when a tortfeasor has already fully compensated the decedent, during his lifetime, for his loss of future wages, the tortfeasor should not be required to make further compensation in a subsequent wrongful-death suit for any

portion of previously paid wages. Any potential for such double liability can be eliminated by the application of familiar principles of collateral estoppel to preclude a decedent's dependents from attempting to relitigate the issue of the support due from decedent's future wages.³⁰ And while the general rule is that nonparties to the first action are not bound by a judgment or resulting determination of issues, see *Blonder-Tongue v University Foundation*, 402 US 313, 320-327, 28 L Ed 2d 788, 91 S Ct 1434 (1971), several exceptions exist. The pertinent exception here is that nonparties may be collaterally estopped from relitigating issues necessarily decided in a suit brought by a party who acts as a fiduciary representative for the beneficial interest of the nonparties.

[12] Under the prevailing American rule, a tort victim suing for damages for permanent injuries is permitted to base his recovery "on his prospective earnings for the balance of his life expectancy at the time of his injury *undiminished by any*

shortening of that expectancy as a result of the injury," 2 F. Harper & F. James, *The Law of Torts* § 24.6, pp 1293-1294 (1956) (emphasis in original). Thus, when a decedent brings his own personal-injury action during his lifetime and recovers damages for his lost wages he acts in a fiduciary capacity to the extent that he represents his dependents' interest in that portion of his prospective earnings which, but for his wrongful death, they had a reasonable expectation of his providing for their support. Since the decedent's recovery of any future wages will normally be dependent upon his fully litigating that issue, we need not fear that

[414 US 595]

applying principles of collateral estoppel to preclude the decedent's dependents' claim for a portion of those future wages will deprive the dependents of their day in court.

The judgment of the Court of Appeals is

Affirmed.

STOP

30. If the dependents' total support received from the decedent exceeds the future wages paid to the decedent by the tortfeasor, the dependents will have an actionable cause for support against the tortfeasor for the difference. In that circumstance, if a special verdict was not rendered in the decedent's action specifying the amount of damages awarded for future wages, it may become necessary in

the dependents' action to determine what portion of the decedent's lump-sum recovery for his injuries was attributable to future wages. This in no way conflicts with our holding that the dependents will be estopped from relitigating the amount of future wages; it is merely an acknowledgment that the amount of the wage recovery in the first action may have to be clarified in the second.

MOBIL OIL CORPORATION, Petitioner,

v

FRANCES NELL HIGGINBOTHAM, Administratrix of the Estate of
Marshall K. Higginbotham, et al.

436 US 618, 56 L Ed 2d 581, 98 S Ct 2010, reh den (US) 58 L Ed 2d 200, 99 S
Ct 232

[No. 76-1726]

Argued January 10-11, 1978. Decided June 5, 1978.

OPINION OF THE COURT

Mr. Justice Stevens delivered the opinion of the Court.

[1a] This case involves death on the high seas. The question is whether, in addition to the damages authorized by federal statute, a decedent's survivors may also recover damages under general maritime law. The United States Court of Appeals for the Fifth Circuit, disagreeing with the First Circuit, held

[436 US 619]

that survivors may recover for their "loss of society," as well as for their pecuniary loss.¹ We reverse.

Petitioner used a helicopter in connection with its oil drilling operations in the Gulf of Mexico about 100 miles from the Louisiana shore. On August 15, 1967, the helicopter

crashed outside Louisiana's territorial waters, killing the pilot and three passengers. In a suit brought by the passengers' widows, in their representative capacities, the District Court accepted admiralty jurisdiction² and found that the deaths were caused by petitioner's negligence. The court awarded damages equal to the pecuniary losses suffered by the families of two passengers.³ Although the court valued the two families' loss of society at \$100,000 and \$155,000, it held that the law did not authorize recovery for this loss.⁴ The Court of Appeals reversed, holding that the plaintiffs were entitled to claim

[436 US 620]

damages for loss of society. We granted certiorari limited to this issue. 434 US 816,

1. Compare *Barbe v Drummond*, 507 F2d 794, 800-802 (CA1 1974), with *Higginbotham v Mobil Oil Corp.*, 545 F2d 422 (CA5 1977). The members of the Higginbotham panel expressed their agreement with *Barbe*, supra, but considered the issue foreclosed in their Circuit by *Law v Sea Drilling Corp.*, 510 F2d 242, on rehearing, 523 F2d 793 (CA5 1975). In that case, another Fifth Circuit panel stated that the statutory remedy provided by the Death on the High Seas Act was no longer needed. *Id.*, at 798. See also n 16, infra.

2. 357 F Supp 1164, 1167 (WD La 1973). The District Court bottomed admiralty jurisdiction on a finding that the helicopter was the functional equivalent of a crewboat. The ruling has not been challenged in this Court. Cf.

Executive Jet Aviation, Inc. v Cleveland, 409 US 249, 271-272, 34 L Ed 2d 454, 93 S Ct 493.

3. 360 F Supp 1140 (WD La 1973). One family received \$362,297, the other \$163,400. The District Court held that the third passenger's family could claim benefits only under the Longshoremen's and Harbor Workers' Compensation Act. 33 USC §§ 901 et seq. [33 USCS §§ 901 et seq.]. The Court of Appeals reversed this ruling. 545 F2d, at 431-433.

4. The former figure included \$50,000 for one widow and \$50,000 for her only daughter. The latter figure included \$25,000 for the second widow and for each of two minor children, as well as \$20,000 for each of four older children. 360 F Supp, at 1144-1148.

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In *Moragne* the Court left various subsidiary questions concerning the nonstatutory death remedy—such as the schedule of beneficiaries and the limitations period—for “further sifting through the lower courts in future litigation.” *Id.*, at 408, 26 L Ed 2d 339, 90 S Ct 1772. A few years later, in *Sea-Land Services, Inc. v Gaudet*, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806, the Court confronted some of these questions. Among the issues addressed in *Gaudet* was the measure of survivors’ damages. The Court held that awards could include compensation for loss of support and services, for funeral expenses, and for loss of society, but not for mental anguish or grief. *Id.*, at 583–591, 39 L Ed 2d 9, 94 S Ct 806. The Court recognized that DOHSA, which compensates only for pecuniary losses, did not allow awards for loss of society. But the accident in *Gaudet*, like that in *Moragne*, took place in territorial waters, where DOHSA does not apply. The Court chose not to adopt DOHSA’s pecuniary-loss standard; instead it followed the “clear majority of States” and “the humanitarian policy of the maritime law,” both of which favored recovery for loss of society. 414 US, at 587–588, 39 L Ed 2d 9, 94 S Ct 806. In sum, the Court made a policy determination in *Gaudet* which differed from the choice made by Congress when it enacted the Death on the High Seas Act.

II

[1b] The *Gaudet* opinion was broadly written. It did not state that the place where death occurred had an influence on its

16. As Chief Judge Brown put it in *Law v Sea Drilling Corp.* 523 F2d 793 (CA5 1975), “It is time that the dead hand of *The Harrisburg*—whether in the courts or on the elbow of the congressional draftsmen of DOHSA—follow the rest of the hulk to an honorable rest

[436 US 623]

analysis. *Gaudet* may be read, as it has been, to replace entirely the Death on the High Seas Act.¹⁶ Its holding, however, applies only to coastal waters. We therefore must now decide which measure of damages to apply in a death action arising on the high seas—the rule chosen by Congress in 1920 or the rule chosen by this Court in *Gaudet*.

As the divergence of views among the States discloses, there are valid arguments both for and against allowing recovery for loss of society. Courts denying recovery cite two reasons: (1) that the loss is “not capable of measurement by any material or pecuniary standard,” and (2) that an award for the loss “would obviously include elements of passion, sympathy and similar matters of improper character.” 1 S. Speiser, *Recovery for Wrongful Death* § 3:49 (2d ed 1975). Courts allowing the award counter: (1) that the loss is real, however intangible it may be, and (2) that problems of measurement should not justify denying all relief. See generally *Sea-Land Services, Inc. v Gaudet*, *supra*, at 588–590, 39 L Ed 2d 9, 94 S Ct 806.

In this case, however, we need not pause to evaluate the opposing policy arguments. Congress has struck the balance for us. It has limited survivors to recovery of their pecuniary losses. Respondents argue that Congress does not have the

[436 US 624]

last word on this issue—that admiralty courts have traditionally undertaken to

in the briny deep. . . . No longer does one need . . . DOHSA as a remedy. There is a federal maritime cause of action for death on navigable waters—any navigable waters—and it can be enforced in any court.” *Id.*, at 798.

supplement maritime statutes and that such a step is necessary in this case to preserve the uniformity of maritime law. Neither argument is decisive.

We recognize today, as we did in *Moragne*, the value of uniformity, but a ruling that DOHSA governs wrongful-death recoveries on the high seas poses only a minor threat to the uniformity of maritime law. Damages aside, none of the issues on which DOHSA is explicit have been settled to the contrary by this Court in either *Moragne* or *Gaudet*. Nor are other disparities likely to develop. As *Moragne* itself implied,¹⁹ DOHSA should be the courts' primary guide as they refine the non-statutory death remedy, both because of the interest in uniformity and because Congress' considered judgment has great force in its own right. It is true that the measure of damages in coastal waters will differ from that on the high-seas, but even if this difference proves significant,²⁰ a desire for uniformity cannot override the statute.

[436 US 625]

[2] We realize that, because Congress has never enacted a comprehensive maritime code, admiralty courts have often been called upon

19. *Moragne* recognized that the courts would need to devise a limitations period and a schedule of beneficiaries for the new death remedy. The Court considered several alternative solutions to these problems. Only DOHSA, however, figured prominently in the discussion of both issues. 398 US, at 405-408, 26 L Ed 2d 339, 90 S Ct 1772.

20. It remains to be seen whether the difference between awarding loss-of-society damages under *Gaudet* and denying them under DOHSA has a great practical significance. It may be argued that the competing views on awards for loss of society, see *supra*, at 623, 56 L Ed 2d, at 586, can best be reconciled by allowing an award that is primarily symbolic, rather than a substantial portion of the survi-

to supplement maritime statutes. The Death on the High Seas Act, however, announces Congress' considered judgment on such issues as the beneficiaries, the limitations period, contributory negligence, survival, and damages. See nn 6-10, *supra*. The Act does not address every issue of wrongful-death law, see, e.g., n 15, *supra*, but when it does speak directly to a question, the courts are not free to "supplement" Congress' answer so thoroughly that the Act becomes meaningless.

In *Moragne*, the Court recognized a wrongful-death remedy that supplements federal statutory remedies. But that holding depended on our conclusion that Congress withheld a statutory remedy in coastal waters in order to encourage and preserve supplemental remedies. 398 US, at 397-398, 26 L Ed 2d 339, 90 S Ct 1772. Congress did not limit DOHSA beneficiaries to recovery of their pecuniary losses in order to encourage the creation of nonpecuniary supplements. See generally *Barbe v Drummond*, 507 F2d 794, 801 n 10 (CA1 1974); *Wilson v Transocean Airlines*, 121 F Supp 85 (ND Cal 1954). There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically en-

vors' recovery. We have not been asked to rule on the propriety of the large sums that the District Court would have awarded for loss of society in this case. See n 4, *supra*.

Similarly, there may be no great disparity between DOHSA and *Gaudet* on the issue of funeral expenses. *Gaudet* awards damages to dependents who have paid, or will pay, for the decedent's funeral, evidently on the theory that, but for the wrongful death, the decedent would have accumulated an estate large enough to pay for his own funeral. 414 US, at 591, 39 L Ed 2d 9, 94 S Ct 806. On that theory, the cost of the funeral could also be considered a pecuniary loss suffered by the dependent as a result of the death.

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acted. In the area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries. Perhaps the wisdom we possess

[436 US 626]

today would enable us to do a better job of repudiating *The Harrisburg* than Congress did in 1920, but even if that be true, we have no authority to substitute our views for those expressed by Con-

gress in a duly enacted statute.

Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Mr. Justice Brennan took no part in the consideration or decision of this case.

SEPARATE OPINION

Mr. Justice Marshall, with whom Mr. Justice Blackmun joins, dissenting.

Just a few years ago, in *Sea-Land Services, Inc. v Gaudet*, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806 (1974), this Court held that, "under the maritime wrongful-death remedy, [a] decedent's dependents may recover damages for their loss of . . . society . . ." *Id.*, at 584, 39 L Ed 2d 9, 94 S Ct 806. The fact that the injury there occurred within three miles of shore, in the territorial waters of a State, had no bearing on the decision at the time it was rendered, as the majority today recognizes, ante, at 622-623, 56 L Ed 2d, at 585. Nor did we place any emphasis on the situs of injury when we first upheld the maritime wrongful-death remedy, as a matter of "general maritime law," in *Moragne v States Marine Lines, Inc.*, 398 US 375, 409, 26 L Ed 2d 339, 90 S Ct 1772 (1970). Today the Court takes a narrow and unwarranted view of these cases, limiting them to their facts and making the availability of recovery for loss of society turn solely on a ship's distance from shore at the time of the injury causing death.

A unanimous Court concluded in *Moragne* that the distance of a ship from shore is a fortuity unrelated to the reasons for allowing a seaman's family to recover damages upon his death. See *id.*, at 395-396, 405, 26 L Ed 2d 339, 90 S Ct 1772. These reasons are rooted in the traditions of maritime law, which has always shown "a special solicitude for the welfare of those men who undertake] to

[436 US 627]

venture upon hazardous and unpredictable sea voyages." *Id.*, at 387, 26 L Ed 2d 339, 90 S Ct 1772. See also *Gaudet*, supra, at 588, 39 L Ed 2d 9, 94 S Ct 806 ("humanitarian policy of the maritime law"). In light of this "special solicitude," Mr. Justice Harlan examined in *Moragne* a number of "anomalies," 398 US, at 395-396, 26 L Ed 2d 339, 90 S Ct 1772, that had resulted from the earlier rule of *The Harrisburg*, 119 US 199, 30 L Ed 358, 7 S Ct 140 (1886), under which the availability of a cause of action for wrongful death at sea depended entirely on the existence of a statutory remedy.

The "anomaly" most relevant for present purposes was that "identical

breaches of the duty to provide a seaworthy ship, resulting in death, produce[d] liability outside the three-mile limit—since a claim under the Death on the High Seas Act may be founded on unseaworthiness . . . but not within the territorial waters of a State whose local statute exclude[d] unseaworthiness claims.” 398 US, at 395, 26 L Ed 2d 339, 90 S Ct 1772. The Moragne Court found “much force” in the argument of the United States (appearing as *amicus curiae*) that this difference in treatment based on location of the injury could not be supported by any “rational policy,” especially since the underlying duty to furnish a seaworthy vessel is a federal one. *Id.*, at 395–396, 26 L Ed 2d 339, 90 S Ct 1772. Accordingly, because of this anomaly and others, the Court in Moragne declined to adhere any longer to “a rule unjustified in reason, which produces different results for breaches of duty in situations that cannot be differentiated in policy.” *Id.*, at 405, 26 L Ed 2d 339, 90 S Ct 1772.

The Court today establishes a rule that, like the pre-Moragne rule, “produces different results . . . in situations that cannot be differentiated in policy.” When death arises from injuries occurring within a State’s territorial waters, dependents will be able to recover for loss of society under the “humanitarian” rule of Gaudet. 414 US, at 588, 39 L Ed 2d 9, 94 S Ct 806. But once a vessel crosses the imaginary three-mile line, the seaman’s dependents no longer have a remedy for an identical loss, occasioned by an identical breach of duty. Instead, they may recover only pecuniary losses, which are allowed them by the Death on the High Seas Act (DOHSA), 46 USC § 762 [46 USCS § 762].

[436 US 628]

The irony implicit in the Court’s result is readily apparent. As in the pre-Moragne situation, the benefits available to a seaman’s dependents will once again vary depending on whether the injury causing death occurs in state territorial waters or on the high seas. Now, however, more generous benefits will be available if the injury occurs in state waters. We have thus come full circle from Moragne, which was designed to eliminate reliance on an artificial three-mile line as the basis for disparate treatment of dependents of similarly situated seamen. There is undoubtedly a certain symmetry in the Court’s return to the pre-Moragne anomalies, but it is a symmetry that is both patently unfair to a seaman’s dependents and flatly inconsistent with the spirit of Moragne and Gaudet.

[477 US 207]
OFFSHORE LOGISTICS, INC., et al., Petitioners

v
BETH A. TALLENTIRE et al.

477 US 207, 91 L Ed 2d 174, 106 S Ct 2485

[No. 85-202]

Argued February 24, 1986. Decided June 23, 1986.

[477 US 209]

Justice O'Connor delivered the opinion of the Court.

[1a, 2a, 3a] Respondents' husbands were killed when petitioner Air Logistic's helicopter, in which the decedents were traveling, crashed into the high seas. The issue presented is whether the Death on the High Seas Act (DOHSA), 41 Stat 537, 46 USC § 761 et seq. [46 USCS §§ 761 et seq.], provides the exclusive remedy by which respondents may recover against petitioner for the wrongful death of their husbands, or whether they may also recover the measure of damages provided by the Louisiana wrongful death statute, La Civ Code Ann, Art 2315 (West Supp 1986), applying either of its own force or as surrogate federal law under the Outer Continental Shelf Lands Act (OCSLA), 67 Stat 462, as amended, 43 USC § 1331 et seq. [43 USCS §§ 1331 et seq.].

I

The husbands of respondents Corrine Taylor and Beth Tallentire worked on drilling platforms in the Gulf of Mexico, off the coast of Louisiana. On August 6, 1980, respondents' husbands were killed while being transported in a helicopter owned and operated by petitioner Air Logistics, (hereafter petitioner), a Division of Offshore Logistics, Inc., from a drilling platform to Houma, Louisiana. The crash occurred approximately 35 miles off the coast of Louisiana, well over the 3-mile limit that separates Louisiana's territorial waters from the high seas for purposes of DOHSA.

Respondents each filed wrongful death suits in United States District Court, raising claims under DOHSA, OCSLA, and the law of Louisiana. These actions were later consolidated in the Eastern District of Louisiana. Upon petitioner's pretrial motion for partial summary judgment, the District Court ruled that DOHSA provides the exclusive remedy for death on the high seas, and it therefore dismissed respondents' claims based upon the Louisiana wrongful death statute. Petitioner admitted liability and the trial was limited to the question of damages. Because DOHSA limits recovery to "fair and just compensation for . . . pecuniary loss,"

[477 US 210]

the District Court's awards to respondents did not include damages for nonpecuniary losses. 46 USC § 762 [46 USCS § 762].

Respondents appealed the District Court's dismissal of their OCSLA and state law wrongful death claims, contending that they were entitled to nonpecuniary damages under the Louisiana wrongful death statute. See La Civ Code Ann, Art 2315(B) (West Supp 1986) (permitting recovery for both pecuniary and nonpecuniary damages, "includ[ing] loss of consortium, service, and society"). They argued that the Louisiana statute applied to this helicopter crash on the high seas, either of its own force by virtue of the saving provision in § 7 of DOHSA, 46 USC § 767 [46 USCS § 767], or as adopted federal law through OCSLA. See 43 USC § 1333(a)(2)(A) [43 USCS

§ 1333(a)(2)(A)]. The Court of Appeals for the Fifth Circuit reversed the District Court's denial of benefits recoverable under Louisiana law, with one judge specially concurring and another judge dissenting. See 754 F2d 1274 (1985).

The Court of Appeals first observed that even if OCSLA did apply to this action, OCSLA adopts state law as surrogate federal law only "[t]o the extent [the state laws] are . . . not inconsistent with . . . other Federal laws." 43 USC § 1333(a)(2)(A) [43 USCS § 1333(a)(2)(A)]. Because the precedent of the Fifth Circuit held that DOHSA applies to a helicopter crash on the high seas, the court concluded that Louisiana law could not be applied through OCSLA as the Louisiana wrongful death scheme was inconsistent with DOHSA. Accordingly, the court turned to the question whether state law could apply of its own force by virtue of § 7 of DOHSA, which provides:

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." 46 USC § 767 [46 USCS § 767].

After examining the legislative history of § 7, the Court of Appeals concluded that that section was intended to preserve

[477 US 211]

the applicability of state wrongful death statutes on the high seas. It further held that Louisiana had legislative jurisdiction to extend its wrongful death statute to remedy deaths on the high seas and that Louisiana in fact intended its statute to have that effect. In

reaching its result, the court acknowledged that the disunity that its decision would create was "profoundly unsettling," 754 F2d, at 1284, but ultimately concluded that "[o]ur desire for a uniform, consistent, scheme of maritime death remedies cannot justify a refusal to follow" the perceived legislative will. *Id.*, at 1288.

Judge Jolly filed a special concurrence, observing that although the court's result was compelled by § 7, it would create "significant problems in the field of maritime law because it defies reason, runs contrary to principles of the general precedent in the field, and creates all sorts of internal inconsistencies in the prosecution of cases dealing with death on the high seas." *Id.*, at 1289. Judge Garza dissented, arguing that § 7 was intended to preserve state wrongful death actions only in territorial waters and echoing the view of the Court of Appeals for the Ninth Circuit that the application of state law to wrongful death actions arising on the high seas would be "as damaging to uniformity in wrongful death actions as it is illogical." *Ibid.* (quoting *Nygaard v. Peter Pan Seafoods, Inc.* 701 F2d 77, 80 (CA9 1983)).

[1b, 2b, 3b] Because the Fifth Circuit's decision creates the potential for disunity in the administration of wrongful death remedies for causes of action arising from accidents on the high seas and is in conflict with the prevailing view in other courts that DOHSA pre-empts state law wrongful death statutes in the area of its operation, we granted certiorari. 474 US 816, 88 L Ed 2d 48, 106 S Ct 60 (1985). We now hold that neither OCSLA nor DOHSA requires or permits the application of Louisiana law in this case, and accordingly reverse the judgment of the Court of Appeals for the Fifth Circuit.

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[477 US 212]

II

In 1920, Congress enacted DOHSA, in which it finally repudiated the rule of *The Harrisburg* for maritime deaths occurring beyond state territorial waters by providing for a federal maritime remedy for wrongful deaths more than

[477 US 215]

three miles from shore.¹ DOHSA limits the class of beneficiaries to the decedent's "wife, husband, parent, child, or dependent relative." 46 USC § 761 [46 USCS § 761], establishes a 3-year statute of limitations period, § 763a, allows a suit filed by the victim to continue as a wrongful death action if the victim dies of his injuries while suit is pending, § 765, provides that contributory negligence will not bar recovery, § 766, and declares that "recovery . . . shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought. . . ." § 762.

As this Court explained in *Mobil Oil Corp. v. Higginbotham*, 436 US 618, 621-622, 56 L Ed 2d 581, 98 S Ct 2010 (1978):

"In the half century between 1920 and 1970, deaths on the high seas gave rise to federal suits under DOHSA, while those in territorial waters were largely governed by state wrongful-death statutes, [the primary exception being survivor's suits for wrongful death under the Jones Act, which gives a remedy no matter where the wrong takes place.] DOHSA

brought a measure of uniformity and predictability to the law on the high seas, but in territorial waters, where *The Harrisburg* made state law the only source of a wrongful-death remedy, the continuing impact of that decision produced uncertainty and incongruity. The reasoning of *The Harrisburg*, which was dubious at best in 1886, became less and less satisfactory as the years passed.

"In 1970, therefore, the Court overruled *The Harrisburg*. In *Moragne v. States Marine Lines, Inc.* 398

[477 US 216]

US 375 [26 L Ed 2d 339, 90 S Ct 1772], the Court held that a federal remedy for wrongful death does exist under general maritime law. The case concerned a death in Florida's territorial waters. The defendant argued that Congress, by limiting DOHSA to the high seas, had evidenced an intent to preclude federal judicial remedies in territorial waters. The Court concluded, however, that the reason Congress confined DOHSA to the high seas was to prevent the Act from abrogating, by its own force, the state remedies then available in state waters. *Id.*, at 400 [26 L Ed 2d 339, 90 S Ct 1772]. (Footnotes omitted.)

Subsequently, the Court confronted some of the various subsidiary questions concerning the *Moragne* federal death remedy in *Sea-Land Services, Inc. v. Gaudet*, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806 (1974), in which it was held that awards in a *Moragne*-based suit

1. [4b] DOHSA does not include a survival provision authorizing recovery for pain and suffering before death. We do not address the issue whether the DOHSA recovery for the beneficiaries' pecuniary loss may be "supplemented" by a recovery for the decedent's pain

and suffering before death under the survival provision of some conceivably applicable state statute that is intended to apply on the high seas. See generally *Barbe v. Drummmond*, 507 F2d 794, 797-798 (CA1 1974); *Dugas v. National Aircraft Corp.* 438 F2d 1386 (CA3 1971).

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could include compensation for loss of support and services, for funeral expenses, and for loss of society, but not for mental anguish. Finally, in *Higginbotham*, the Court ruled that the nonpecuniary loss standard provided by DOHSA controlled on the high seas, and could not be supplemented by the measure of damages recognized in *Gaudet* for Moragne causes of action. In so doing, the Court concluded:

"We realize that, because Congress has never enacted a comprehensive maritime code, admiralty courts have often been called upon to supplement maritime statutes. The Death on the High Seas Act, however, announces Congress' considered judgment on such issues as the beneficiaries, the limitations period, contributory negligence, survival, and damages The Act does not address every issue of wrongful-death law . . . but when it does speak directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that the Act becomes meaningless." 436 US, at 625, 56 L Ed 2d 581, 98 S Ct 2010.

With this background, we now proceed to the question at hand: whether the DOHSA measure of recovery may be supplemented [477 US 217]

by the remedies provided by state law, through either OCSLA or § 7 of DOHSA.

III

[1c, 5] As explained above, DOHSA is intended to provide a maritime remedy for deaths stemming from wrongful acts or omissions "occurring on the high seas." 46 USC § 761 [46 USCS § 761]. OCSLA, by contrast, provides an essentially nonmaritime remedy and controls only on "the subsoil and seabed of the outer Continental

Shelf, and artificial islands and fixed structures" erected thereon. 43 USC § 1333(a)(2)(A) [43 USCS § 1333(a)(2)(A)]. By its terms, OCSLA must be "construed in such a manner that the character of the waters above the outer Continental Shelf as high seas . . . shall not be affected." § 1332(2). Within the area covered by OCSLA, federal law controls but the law of the adjacent State is adopted as surrogate federal law to the extent that it is not inconsistent with applicable federal laws or regulations. § 1333(a)(2)(A).

The intent behind OCSLA was to treat the artificial structures covered by the Act as upland islands or as federal enclaves within a landlocked State, and not as vessels, for purposes of defining the applicable law because maritime law was deemed inapposite to these fixed structures. See *Rodrigue v Aetna Casualty & Surety Co.* 395 US 352, 361-366, 23 L Ed 2d 360, 89 S Ct 1835 (1969). This Court endorsed the congressional assumption that admiralty law generally would not apply to the lands and structures covered by OCSLA in *Rodrigue*, noting that accidents on the artificial islands covered by OCSLA "had no more connection with the ordinary stuff of admiralty than do accidents on piers." *Id.*, at 360, 23 L Ed 2d 360, 89 S Ct 1835. See also *Herb's Welding, Inc. v Gray*, 470 US 414, 422, 84 L Ed 2d 406, 105 S Ct 1421 (1985). Thus, in *Rodrigue*, the Court held that an admiralty action under DOHSA does not apply to accidents "actually occurring" on these artificial islands, and that DOHSA therefore does not preclude the application of state law as adopted federal law through OCSLA to wrongful death actions arising from accidents [477 US 218]

on offshore platforms. *Rodrigue v Aetna Casualty Co.*, *supra*, at 366, 23 L Ed 2d 360, 89 S Ct 1835.

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Respondents argue that because the decedents were platform workers being transported from work to the mainland, OCSLA, not DOHSA, governs their cause of action. They contend that in *Rodrigue and Gulf Offshore Co. v Mobil Oil Corp.* 453 US 473, 69 L Ed 2d 784, 101 S Ct 2870 (1981), the Court recognized the applicability of state law through OCSLA to accidents that resulted in deaths or injuries not on platforms, but on boats in the waters immediately adjacent to the platforms. This, they state, evidences the Court's assumption that OCSLA applies to traditionally maritime locales on the high seas, beyond the confines of the platform, when the decedent is a platform worker. In support of their apparent assumption that it is the decedent's status as a platform worker that controls, they note that it was the "special relationship between the men working on these artificial islands and the adjacent shore to which they commute to visit their families" that moved Congress to treat drilling platforms as upland federal enclaves rather than vessels. *Rodrigue v Aetna Casualty Co.* 395 US, at 365, 23 L Ed 2d 360, 89 S Ct 1835.

[1d, 6] We cannot accept respondents' attempt to rewrite OCSLA. The extension of OCSLA far beyond its intended locale to the accident in this case simply cannot be reconciled with either the narrowly circumscribed area defined by the statute or the statutory prescription that the Act not be construed to affect the high seas which cover the Continental Shelf. Nor can the extension of OCSLA to this case be reconciled with the operative assumption underlying the statute: that admiralty jurisdiction generally should not be extended to accidents in areas covered by OCSLA. See, e.g., *id.*, at 361, 23 L Ed 2d 360, 89 S Ct 1835. Here,

admiralty jurisdiction is expressly provided under DOHSA because the accidental deaths occurred beyond a marine league from shore. See 46 USC § 761 [46 USCS § 761]. Even without this statutory provision, admiralty jurisdiction is appropriately invoked here under traditional principles because

[477 US 219]

the accident occurred on the high seas and in furtherance of an activity bearing a significant relationship to a traditional maritime activity. See *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 US 249, 34 L Ed 2d 454, 93 S Ct 493 (1972). Although the decedents were killed while riding in a helicopter and not a more traditional maritime conveyance, that helicopter was engaged in a function traditionally performed by waterborne vessels: the ferrying of passengers from an "island," albeit an artificial one, to the shore. *Id.*, at 271, and n 20, 34 L Ed 2d 454, 93 S Ct 493.

In the circumstances presented, then, the conclusion is inescapable that the remedies afforded by DOHSA, not OCSLA, govern this action. Thus, respondents may secure the nonpecuniary damages made available by Louisiana's wrongful death statute only if it is found that DOHSA preserves, or does not pre-empt, state remedies on the high seas.

IV

[2c] Respondents argue that the first sentence of § 7 of DOHSA was intended to ensure the applicability of state wrongful death statutes to deaths on the high seas. We conclude that that provision will not bear respondents' reading when evaluated

[477 US 221]

in light of the language of the Act as a whole, the legislative history of § 7, the congressional pur-

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poses underlying the Act, and the importance of uniformity of admiralty law. See *Mastro Plastics Corp. v NLRB*, 350 US 270, 285, 100 L Ed 309, 76 S Ct 349 (1956) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy") (quoting *United States v Heirs of Boisdore*, 8 How 113, 122, 12 L Ed 1009 (1849)).

These references persuade us that the first sentence of § 7 was intended only to serve as a jurisdictional saving clause, ensuring that state courts enjoyed the right to entertain causes of action and provide wrongful death remedies both for accidents arising on territorial waters and, under DOHSA, for accidents occurring more than one marine league from shore.

The first sentence of § 7 of DOHSA, as originally drafted, provided that "the provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this act as to causes of action accruing within the territorial limits of any State." See 59 Cong Rec 4482 (1920). During the House debate, Representative Mann proposed an amendment deleting the words "as to causes of action accruing within the territorial limits of any state." Although at first blush the language of the amended § 7 seems to support respondents' position, a closer comparison of the language of § 7, both before and after its amendment, with the language of § 4 of the Act belies respondents' facial argument.

[9] The only other amendment made to the bill as originally submitted was the addition of § 4, which provides:

"Whenever a right of action is granted by the law of any foreign

State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is

[477 US 222]

authorized, any statute of the United States to the contrary notwithstanding." 46 USC § 764 [46 USCS § 764].

Section 4 indicates that when Congress wanted to preserve the right to recover under the law of another sovereign for whatever measure of damages that law might provide, regardless of any inconsistency with the measure of damages provided by DOHSA, it did so expressly. We are reluctant to read the much more ambiguous language of § 7, which states only that state law "remedies" or "rights of action" would not be "affected" and which makes no provision for reconciling potentially conflicting state and federal measures of recovery, to have the same substantive effect as the explicit command of § 4. Normal principles of statutory construction require that we give effect to the subtleties of language that Congress chose to employ, particularly where, as here, Congress isolated only these sections for special consideration by way of amendment while it was considering DOHSA.

Thus, a natural reading of § 7 is that a state statute providing a wrongful death right of action traditionally unavailable at common law, would not be "affected" by DOHSA in the sense of being rendered an incompetent means of invoking state jurisdiction, but the state statute's substantive provisions would not, by virtue of the saving provision, "extend as a conduct-governing enact-

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ment on the high seas" if in conflict with DOHSA's provisions. *Safir v Compagnie Generale Transatlantique*, 241 F Supp 501, 508 (EDNY 1965) (interpreting § 7). The legislative history of § 7, as originally proposed and as amended, supports this construction of the section's language.

We conclude that Representative Mann's amendment extended the jurisdictional saving clause to the high seas but in doing so, it did not implicitly sanction the operation of state wrongful death statutes on the high seas in the same manner as the saving clause did in territorial waters. Under the prevailing "uniformity" doctrine expressed most forcefully in *Southern Pacific Co. v Jensen*, 244 US, at 215-216, 61 L Ed 1086, 37 S Ct 524, to the extent Congress provided a federal remedy for wrongful death on the high seas, the federal substantive law would clearly have pre-empted conflicting state wrongful death statutes, as was recognized by various Members during the debates on DOHSA.

Although Representative Mann's discussion may reflect a broader intent, we believe his references to state court jurisdiction should be read to mean only the ability of state courts to entertain maritime actions based on DOHSA, not the legislative ability to supply a different standard of recovery. As has been explained, even at the time that DOHSA was being considered it was understood that where Congress had spoken, or where general federal maritime law controlled, the States exercising concurrent jurisdiction over maritime matters could not apply conflicting state substantive law.

[2d, 11] In sum, the language of § 7 and its legislative history, as well as the congressional purposes underlying DOHSA, mandate

[477 US 232]

that § 7 be read not as an endorsement of the application of state wrongful death statutes to the high seas, but rather as a jurisdictional saving clause. Viewed in this light, § 7 serves not to destroy the uniformity of wrongful death remedies on the high seas but to facilitate the effective and just administration of those remedies. The recognition of concurrent state jurisdiction to hear DOHSA actions makes available to DOHSA beneficiaries a convenient forum for the decision of their wrongful death claims.

[3c] Once it is determined that § 7 acts as a jurisdictional saving clause, and not as a guarantee of the applicability of state substantive law to wrongful deaths on the high seas, the conclusion that the state statutes are pre-empted by DOHSA where it applies is inevitable. As we held in *Higginbotham*, Congress has "struck the balance for us" in determining that survivors should be restricted to the recovery of their pecuniary losses, and when DOHSA "does speak directly to a question, the courts are not free to supplement Congress' answer so thoroughly that the Act becomes meaningless." 436 US, at 625, 56 L Ed 2d 581, 98 S Ct 2010.

[477 US 233]

[3d] Admittedly, in the circumstances of this case, the recognition of a state damages remedy for loss of society would bring respondents' DOHSA recovery into line with the damages available to a beneficiary of a federal Moragne maritime cause of action arising from a death on territorial waters. See *Sea-Land Services, Inc. v Gaudet*, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806 (1974) (holding that awards under the general federal maritime cause of action for wrong-

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ful death could include compensation for loss of society). However, the questionable practical significance of this difference in recovery, see *Mobil Oil Corp. v Higginbotham*, supra, at 624, and n 20, 56 L Ed 2d 581, 98 S Ct 2010, is far overshadowed by the potential for serious conflicts between DOHSA and state substantive law in such areas as limitations periods, classes of beneficiaries, and the definition of potential defenses. We defer to Congress' purpose in making a uniform provision for recovery for wrongful deaths on the high seas, an area where the federal interests are primary.

The judgment of the Court of Appeals for the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Powell, with whom Justice Brennan, Justice Marshall, and Justice Stevens join, concurring in part, and dissenting in part.

The Court today holds that § 7 of the Death on the High Seas Act (DOHSA), 41 Stat 538, 46 USC § 767 [46 USCS § 767], forecloses application of state remedies for wrongful deaths on the high seas. Thus, the Court confines state courts to the adjudication of causes of action brought under DOHSA. Because I believe that the Court's reading of § 7 is at odds with the language of the statute and its legislative history, I dissent.¹

1. I agree with the Court's conclusion that the Outer Continental Shelf Lands Act, 67 Stat 462, as amended, 43 USC § 1331 et seq. [43 USCS §§ 1331 et seq.], does not govern this action, and therefore join Part III of the Court's opinion.

[477 US 234]

I

As the Court correctly observes: "§ 7, as originally proposed, ensured that [DOHSA] saved to survivors of those killed on territorial waters the ability to pursue a state wrongful death remedy in state court." Ante, at 225, 91 L Ed 2d, at 191.

Had the bill passed in that form, the resolution of this case would be clear—the federal statute would preclude application of state law for respondents' cause of action. During the floor debate in the House of Representatives, however, Representative Mann from Illinois successfully offered an amendment striking from § 7 the concluding phrase, "as to causes of action accruing within the territorial limits of any State." Thus, although the original § 7 preserved state-law rights of action within territorial waters, the ultimately enacted § 7 preserved these rights of action without geographic qualification. Although § 7 is plainly intended to save state remedies for death on the high seas, the Court today ignores the section's language and holds that it is a jurisdictional saving clause.

II

The starting point in statutory construction is, of course, the language of the statute itself. *Blue Chip Stamps v Manor Drug Stores*, 421 US 723, 756, 44 L Ed 2d 539, 95 S Ct 1917 (1975) (Powell, J., concurring). See *Consumer Product Safety Comm'n v GTE Sylvania, Inc.* 447 US 102, 64 L Ed 2d 766, 100 S Ct

2051 (1980). The language of § 7, given scant attention by the Court, reads as codified:

"§ 767. Exceptions from operation of chapter

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected

[477 US 237]

by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." 46 USC § 767 [46 USCS § 767] (emphasis added).

The terms of the provision are clear. The provision preserves state rights of action and state remedies for wrongful death without any territorial qualification. It encompasses not only jurisdiction, but also "rights of action" and "remedies." The geographic reach of these traditional rights of action is therefore undiminished by DOHSA.

The congressional debate and other legislative history cast no doubt on the plain meaning of § 7. It is true, as the Court states, that the debate on the Mann Amendment was "exceedingly confused and often ill-informed."

In this circumstance, an attempt to discern the congressional intent from the conflicting statements by participants in the debate is hopeless. It is also unnecessary in light of the clear language of the statute. Absent a clearly-expressed legislative intention to the contrary, the plain words of the statute must ordinarily be regarded as controlling." 754 F.2d 1274, 1280-1282 (1985).

[477 US 238]

Despite the confusion of the debate, it is clear that the Mann Amendment removed the clause that expressly limited state remedies "to causes of action accruing within the territorial limits of any State." Accordingly, § 7, once confined to territorial waters, on its face extends to the high seas as well. Today's holding, by barring state rights of action for deaths occurring on the high seas, limits § 7 in a manner that Congress expressly rejected.

III

The Court concedes that the original version of § 7 preserved both state-law remedies for wrongful death occurring within territorial waters and state jurisdiction over those remedies. Ante, at 224, 225, 91 L. Ed 2d, at 191 ("§ 7, as originally proposed, ensured that the Act saved to survivors of those killed on territorial waters the ability to pursue a state wrongful death remedy in state court"). The Court then asserts, however, that the Mann Amendment "extended the jurisdictional saving clause to the high seas but in doing so, it did not implicitly sanction the operation of state wrongful death statutes on the high seas in the same manner as the saving clause did in territorial waters." Ante, at 227, 91 L. Ed 2d, at 192.

It is not easy to understand how § 7 was transformed from a provision that preserved both state jurisdiction and state rights of action in territorial waters, into a mere "jurisdictional saving clause" with no power to preserve state rights of action on the high seas. The Mann Amendment did nothing more than remove a territorial restriction; all other clauses of § 7 remained intact.

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IV

The Court argues that preserving state rights of action for death on the high seas, in accordance with the plain language of § 7, would undermine a uniform federal remedy and conflict with the exclusive, federal character of most aspects of admiralty law. I agree that such a result undercuts a federal uniformity that seems desirable here, but it is not the role of this Court to reconsider the wisdom of a policy choice that Congress has already made. Congress enacted the Mann Amendment to remove the territorial restriction from § 7's preservation of state-law rights of action for wrongful death.

[477 US 241]

The Court now holds that those rights of action may not be enforced on the high seas, and thereby imposes an *exclusive* federal remedy that Congress declined to enact. We should respect the outcome of the legislative process and preserve State rights of action for wrongful death on the high seas until Congress legislates otherwise. Accordingly, I dissent.

[498 US 19]

MERCEDEL W. MILES, individually and as administratrix of the succession
of LUDWICK ADAM TORREGANO, Petitioner

v
APEX MARINE CORPORATION et al.

498 US 19, 112 L Ed 2d 275, 111 S Ct 317

[No. 89-1158]

Argued October 3, 1990. Decided November 6, 1990.

OPINION OF THE COURT

[498 US 21]

Justice O'Connor delivered the opinion of the Court.

[1a, 2a] We decide whether the parent of a seaman who died from injuries incurred aboard respondents' vessel may recover under general maritime law for loss of society, and whether a claim for the seaman's lost future earnings survives his death.

I

Ludwick Torregano was a seaman aboard the vessel M/V Archon. On the evening of July 18, 1984, Clifford Melrose, a fellow crew member, stabbed Torregano repeatedly, killing him. At the time, the ship was docked in the harbor of Vancouver, Washington.

Mercedel Miles, Torregano's mother and administratrix of his estate, sued Apex Marine Corporation and Westchester Marine Shipping Company, the vessel's operators, Archon Marine Company, the charterer, and Aeron Marine Company, the Archon's owner (collectively Apex), in United States District Court for the Eastern District of Louisiana. Miles alleged negligence under the Jones Act, 41 Stat 1007, as amended, 46 USC App § 688 [46 USCS Appx § 688], for failure to prevent the assault on her son, and breach of the warranty of seaworthiness under general maritime law for hiring a crew member

unfit to serve. She sought compensation for loss of support
[498 US 22]

and services and loss of society resulting from the death of her son, punitive damages, and compensation to the estate for Torregano's pain and suffering prior to his death and for his lost future income.

At trial, the District Court granted Apex's motion to strike the claim for punitive damages, ruled that the estate could not recover Torregano's lost future income, and denied Miles' motion for a directed verdict as to negligence and unseaworthiness. The court instructed the jury that Miles could not recover damages for loss of society if they found that she was not financially dependent on her son.

The jury found that Apex was negligent and that Torregano was 7% contributorily negligent in causing his death, but that the ship was seaworthy. After discounting for Torregano's contributory negligence, the jury awarded Miles \$7,254 for the loss of support and services of her son and awarded the estate \$130,200 for Torregano's pain and suffering. The jury also found that Miles was not financially dependent on her son and therefore not entitled to damages for loss of society. The District Court denied both parties'

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motions for judgment notwithstanding the verdict and entered judgment accordingly.

The United States Court of Appeals for the Fifth Circuit affirmed in part, reversed in part, and remanded. 882 F2d 976 (1989). The court affirmed the judgment of negligence on the part of Apex, but held that there was insufficient evidence to support the contributory negligence finding. *Id.*, at 983-985. Miles was therefore entitled to the full measure of \$7,800 for loss of support and services, and the estate was entitled to \$140,000 for Torregano's pain and suffering. The court also found that Melrose's extraordinarily violent disposition demonstrated that he was unfit and therefore that the *Archon* was unseaworthy as a matter of law. *Id.*, at 983. Because this ruling revived Miles' general maritime claim, the court considered two questions concerning the scope of damages under general maritime law. The court reaffirmed

[498 US 23]

its prior decision in *Sistrunk v Circle Bar Drilling Co.*, 770 F2d 455 (CA5 1985), holding that a nondependent parent may not recover for loss of society in a general maritime wrongful death action. 882 F2d, at 989. It also held that general maritime law does not permit a survival action for decedent's lost future earnings. *Id.*, at 987.

We granted Miles' petition for certiorari on these two issues, 494 US 1003, 108 L Ed 2d 472, 110 S Ct 1295 (1990), and now affirm the judgment of the Court of Appeals.

II

We rely primarily on *Moragne v States Marine Lines, Inc.*, 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772 (1970).

Apex contends that *Moragne's* holding, creating a general maritime wrongful death action, does not apply in this case because *Moragne* was a longshoreman, whereas *Torregano* was a true seaman. Apex is correct that *Moragne* does not apply on its facts, but we decline to limit *Moragne* to its facts.

Historically, a shipowner's duty of seaworthiness under general maritime law ran to seamen in the ship's employ.

[498 US 28]

See *Sieracki*, 328 US, at 90, 90 L Ed 1099, 66 S Ct 872. In *Sieracki*, we extended that duty to stevedores working aboard ship but employed by an independent contractor. *Id.*, at 95, 90 L Ed 1099, 66 S Ct 872. As this was *Moragne's* situation, *Moragne's* widow was able to bring an action for unseaworthiness under general maritime law. In a narrow sense, *Moragne* extends only to suits upon the death of longshoremen like *Moragne*, so-called *Sieracki* seamen. *Torregano* was a true seaman, employed aboard the *Archon*. Were we to limit *Moragne* to its facts, Miles would have no general maritime wrongful death action. Indeed, were we to limit *Moragne* to its facts, that case would no longer have any applicability at all. In 1972, Congress amended the Longshore and Harbor Workers' Compensation Act (LHWCA), 86 Stat 1251, as amended, 33 USC §§ 901-950 [33 USCS §§ 901-950], to bar any recovery from shipowners for the death or injury of a longshoreman or harbor worker resulting from breach of the duty of seaworthiness. See 33 USC § 905(b) [33 USCS § 905(b)]; *American Export Lines, Inc. v Alvez*, 446 US 274, 282, n 9, 64 L Ed 2d 284, 100 S Ct 1673 (1980). If *Moragne's* widow brought her action today, it would be foreclosed by statute.

Apex asks us not to extend Moragne to suits for the death of true seamen. This limitation is warranted, they say, because true seamen, unlike longshoremen, are covered under the Jones Act. The Jones Act provides a cause of action against the seaman's employer for wrongful death resulting from negligence that Apex contends is preclusive of any recovery for death from unseaworthiness. See 46 USC App § 688 [46 USCS Appx § 688].

Moragne addressed the question explicitly. The Court explained there that the preclusive effect of the Jones Act established in Lindgren and Gillespie extends only to state remedies and not to a general maritime wrongful death action. See Moragne, 398 US, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772.

The Jones Act provides an action in negligence for the death or injury of a seaman. It thereby overruled The Osceola, 189 US 158, 47 L Ed 760, 23 S Ct 483 (1903), which established that seamen could recover under general maritime law for injuries resulting from unseaworthiness, but not negligence. The Jones Act evinces no general hostility to recovery under maritime law. It does not disturb seamen's general maritime claims for injuries resulting from unseaworthiness, *Pacific S.S. Co. v. Peterson*, 278 US 130, 139, 73 L Ed 220, 49 S Ct 75 (1928), and it does not preclude the recovery for wrongful death due to unseaworthiness created by its companion statute, DOHSA. *Kernan v. American Dredging Co.* 355 US 426, 430, n 4, 2 L Ed 2d 382, 78 S Ct 394 (1958). Rather, the Jones Act establishes a uniform system of seamen's tort law parallel to that available to employees of interstate railway carriers under FELA. As the Court concluded in Moragne, the extension of the DOHSA wrongful death action to

territorial waters furthers rather than hinders uniformity
[498 US 30]

in the exercise of admiralty jurisdiction. Moragne, supra, at 396, n 12, 26 L Ed 2d 339, 90 S Ct 1772.

There is also little question that Moragne intended to create a general maritime wrongful death action applicable beyond the situation of longshoremen. For one thing, Moragne explicitly overruled The Harrisburg. Moragne, supra, at 409, 26 L Ed 2d 339, 90 S Ct 1772. The Harrisburg involved a true seaman. The Harrisburg, 119 US, at 200, 30 L Ed 358, 7 S Ct 140. In addition, all three of the "anomalies" to which the Moragne cause of action was directed involved seamen. The "strangest" anomaly—that recovery was available for the wrongful death in territorial waters of a longshoreman, but not a true seaman—could only be remedied if the Moragne wrongful death action extended to seamen. It would be strange indeed were we to read Moragne as not addressing a problem that in large part motivated its result. If there has been any doubt about the matter, we today make explicit that there is a general maritime cause of action for the wrongful death of a seaman, adopting the reasoning of the unanimous and carefully crafted opinion in Moragne.

IV

[1b] Moragne did not set forth the scope of the damages recoverable under the maritime wrongful death action. The Court first considered that question in *Sea-Land Services, Inc. v. Gaudet*, 414 US 573, 39 L Ed 2d 9, 94 S Ct 806 (1974). Respondent brought a general maritime action to recover for the wrongful death of her husband, a longshoreman. The Court held that a dependent plaintiff

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in a maritime wrongful death action could recover for the pecuniary losses of support, services, and funeral expenses, as well as for the nonpecuniary loss of society suffered as the result of the death. *Id.*, at 591, 39 L Ed 2d 9, 94 S Ct 806. Gaudet involved the death of a longshoreman in territorial waters.¹

[498 US 31]

Consequently, the Court had no need to consider the preclusive effect of DOHSA for deaths on the high seas or the Jones Act for deaths of true seamen.

We considered DOHSA in *Mobil Oil Corp. v Higginbotham*, 436 US 618, 56 L Ed 2d 581, 98 S Ct 2010 (1978). That case involved death on the high seas and, like Gaudet, presented the question of loss of society damages in a maritime wrongful death action. The Court began by recognizing that Gaudet, although broadly written, applied only in territorial waters and therefore did not decide the precise question presented. 436 US, at 622-623, 56 L Ed 2d 581, 98 S Ct 2010. Congress made the decision for us. DOHSA, by its terms, limits recoverable damages in wrongful death suits to "pecuniary loss sustained by the persons for whose benefit the suit is brought." 46 USC App § 762 [46 USCS Appx § 762] (emphasis added). This explicit limitation forecloses recovery for nonpecuniary loss, such as loss of society, in a general maritime action.

[9] Respondents argued that admiralty courts have traditionally undertaken to supplement maritime statutes. The Court's answer in *Higginbotham* is fully consistent with those principles we have here de-

rived from *Moragne*: Congress has spoken directly to the question of recoverable damages on the high seas, and "when it does speak directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that the Act becomes meaningless." *Higginbotham*, supra, at 625, 56 L Ed 2d 581, 98 S Ct 2010. *Moragne* involved gap filling in an area left open by statute; supplementation was entirely appropriate. But in an "area covered by the statute, it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries." *Higginbotham*, supra, at 625, 56 L Ed 2d 581, 98 S Ct 2010.

[10] The logic of *Higginbotham* controls our decision here. The holding of Gaudet applies only in territorial waters, and it applies only to longshoremen. Gaudet did not consider the

[498 US 32]

preclusive effect of the Jones Act for deaths of true seamen. We do so now.

Unlike DOHSA, the Jones Act does not explicitly limit damages to any particular form. Enacted in 1920, the Jones Act makes applicable to seamen the substantive recovery provisions of the older FELA. See 46 USC App § 688 [46 USCS Appx § 688]. FELA recites only that employers shall be liable in "damages" for the injury or death of one protected under the Act. 45 USC § 51 [45 USCS § 51]. In *Michigan Central R. Co. v Vreeland*, 227 US 59, 57 L Ed 417, 33 S Ct 192 (1913), however, the Court explained that the language of the FELA wrongful death provision is essentially identi-

1. As with *Moragne*, the 1972 amendments to LHWCA have rendered Gaudet inapplicable on its facts. See supra, at 28, 112 L Ed 2d, at 288; 33 USC § 905(b) [33 USCS § 905(b)].

Suit in Gaudet was filed before 1972. Gaudet v Sea-Land Services, Inc., 463 F2d 1331, 1332 (CA5 1972).

cal to that of Lord Campbell's Act, 9 & 10 Vict ch 93 (1846), the first wrongful death statute. Lord Campbell's Act also did not limit explicitly the "damages" to be recovered, but that Act and the many state statutes that followed it consistently had been interpreted as providing recovery only for pecuniary loss. Vreeland, 227 US, at 69-71, 57 L Ed 417, 33 S Ct 192. The Court so construed FELA. *Ibid*.

[1d, 10] When Congress passed the Jones Act, the Vreeland gloss on FELA, and the hoary tradition behind it, were well established. Incorporating FELA unaltered into the Jones Act, Congress must have intended to incorporate the pecuniary limitation on damages as well. We assume that Congress is aware of existing law when it passes legislation. See *Cannon v University of Chicago*, 441 US 677, 696-697, 60 L Ed 2d 560, 99 S Ct 1946 (1979). There is no recovery for loss of society in a Jones Act wrongful death action.

[1e] The Jones Act also precludes recovery for loss of society in this case. The Jones Act applies when a seaman has been killed as a result of negligence, and it limits recovery to pecuniary loss. The general maritime claim here alleged that Torregano had been killed as a result of the unseaworthiness of the vessel. It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault than Congress has allowed in cases of

[498 US 33]

death resulting from negligence. We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.

Our decision also remedies an anomaly we created in *Higginbot-*

ham. Respondents in that case warned that the elimination of loss of society damages for wrongful deaths on the high seas would create an unwarranted inconsistency between deaths in territorial waters, where loss of society was available under *Gaudet*, and deaths on the high seas. We recognized the value of uniformity, but concluded that a concern for consistency could not override the statute. *Higginbotham*, *supra*, at 624, 56 L Ed 2d 581, 98 S Ct 2010. Today we restore a uniform rule applicable to all actions for the wrongful death of a seaman, whether under DOHSA, the Jones Act, or general maritime law.

V

[2b, 11a] We next must decide whether, in a general maritime action surviving the death of a seaman, the estate can recover decedent's lost future earnings. Under traditional maritime law, as under common law, there is no right of survival; a seaman's personal cause of action does not survive the seaman's death. *Cortes v Baltimore Insular Line, Inc.* 287 US 367, 371, 77 L Ed 368, 53 S Ct 173 (1932); *Romero v International Terminal Operating Co.* 358 US 354, 373, 3 L Ed 2d 368, 79 S Ct 468 (1959); *Gillespie*, 379 US, at 157, 13 L Ed 2d 199, 85 S Ct 308.

[11b] Congress and the States have changed the rule in many instances. The Jones Act, through its incorporation of FELA, provides that a seaman's right of action for injuries due to negligence survives to the seaman's personal representative. See 45 USC § 59 [45 USCS § 59]; *Gillespie*, *supra*, at 157, 13 L Ed 2d 199, 85 S Ct 308. Most States have survival statutes applicable to tort actions generally, see 1 S. Speiser, *Recovery for Wrongful Death* 2d § 3.2 (1975 and Supp 1989), 2 *id.*, §§ 14.1, 14.3, App, and admiralty courts have applied these state statutes in many

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instances to preserve suits for injury at sea. See, e.g., *Just v Chambers*, 312 US 383, 391, 85 L Ed 903, 61 S Ct 687 (1941). See also *Kernan v American*

[498 US 34]

Dredging Co. 355 US, at 430, n 4, 2 L Ed 2d 382, 78 S Ct 394; *Kossick v United Fruit Co.* 365 US 731, 739, 6 L Ed 2d 56, 81 S Ct 886 (1961); *Gillespie*, supra, at 157, 13 L Ed 2d 199, 85 S Ct 308; Comment, *Application of State Survival Statutes in Maritime Causes*, 60 Colum L Rev 534, 535, n 11 (1960); *Nagy*, *The General Maritime Law Survival Action: What are the Elements of Recoverable Damages?*, 9 U Haw L Rev 5, 27 (1987). Where these state statutes do not apply,² however, or where there is no state survival statute, there is no survival of unseaworthiness claims absent a change in the traditional maritime rule.

Several Courts of Appeals have relied on *Moragne* to hold that there is a general maritime right of survival. See *Spiller v Thomas M. Lowe, Jr., & Assocs. Inc.* 466 F2d 903, 909 (CA8 1972); *Barbe v Drummond*, 507 F2d 794, 799-800 (CA1 1974); *Law v Sea Drilling Corp.* 523 F2d 793, 795 (CA5 1975); *Evich v Connelly*, 759 F2d 1432, 1434 (CA9 1985). As we have noted, *Moragne* found that congressional and state abrogation of the maritime rule against wrongful death actions demonstrated a strong policy judgment, to which the Court deferred. *Moragne*, 398 US, at 388-393, 26 L Ed 2d 339, 90 S Ct 1772. Following this reasoning, the lower courts have looked to the Jones Act and the many state survival statutes

and concluded that these enactments dictate a change in the general maritime rule against survival. See, e.g., *Spiller*, supra, at 909; *Barbe*, supra, at 799-800, and n 6.

Miles argues that we should follow the Courts of Appeals and recognize a general maritime survival right. Apex urges us to reaffirm the traditional maritime rule and overrule these decisions. We decline to address the issue, because its resolution is unnecessary to our decision on the narrow question presented: whether the income decedent would have earned but for his death is recoverable. We hold that it is not.

[498 US 35]

[12a] Recovery of lost future income in a survival suit will, in many instances, be duplicative of recovery by dependents for loss of support in a wrongful death action; the support dependents lose as a result of a seaman's death would have come from the seaman's future earnings. Perhaps for this reason, there is little legislative support for such recovery in survival. In only a few States can an estate recover in a survival action for income decedent would have received but for death.³ At the federal level, DOHSA contains no survival provision. The Jones Act incorporates FELA's survival provision, but, as in most States, recovery is limited to losses suffered during the decedent's lifetime. See 45 USC § 59 [45 USCS § 59]; *Van Beeck v Sabine Towing Co.* 300 US 342, 347, 81 L Ed 685, 57 S Ct 452 (1937); *St. Louis, I. M. & S. R. Co. v Craft*, 237 US 648, 658, 59 L Ed 1160, 35 S Ct 704 (1915).

2. In *Offshore Logistics, Inc. v Tallentire*, 477 US 207, 215, n 1, 91 L Ed 2d 174, 106 S Ct 2485 (1986), we declined to approve or disapprove the practice of some courts of applying state survival statutes to cases involving death on the high seas.

3. See Mich Comp Laws §§ 600.2921, 600.2922 (1986); *Olivier v Houghton County St. R. Co.* 134 Mich 367, 368-370, 96 NW 434, 435 (1903); 42 Pa Cons Stat § 8302 (1988);

Incollingo v Ewing, 444 Pa 263, 307-308, 282 A2d 206, 229 (1971); Wash Rev Code § 4.20.060 (1989); *Balmer v Dilley*, 81 Wash 2d 367, 370, 502 P2d 456, 458 (1972). See generally 2 S. Speiser, *Recovery for Wrongful Death* 2d, § 14.7, App A (1975 and Supp 1989). Speiser explains that many States do not allow any recovery of lost earnings in survival, and that among those that do, recovery is generally limited to earnings lost from the time of injury to the time of death. *Ibid*.

[2c] This state and federal legislation hardly constitutes the kind of "wholesale" and "unanimous" policy judgment that prompted the Court to create a new cause of action in *Moragne*. See *Moragne*, supra, at 388, 389, 26 L Ed 2d 339, 90 S Ct 1772. To the contrary, the considered judgment of a large majority of American legislatures is that lost future income is not recoverable in a survival action. Were we to recognize a right to such recovery under maritime law, we would be adopting a distinctly minority view.

This fact alone would not necessarily deter us, if recovery of lost future income were more consistent with the general principles of maritime tort law. There are indeed strong

[498 US 36]

policy arguments for allowing such recovery. See, e.g., R. Posner, *Economic Analysis of Law* 176-181 (3d ed 1986) (recovery of lost future income provides efficient incentives to take care by ensuring that the tortfeasor will have to bear the total cost of the victim's injury or death). Moreover, *Miles* reminds us that admiralty courts have always shown a special solicitude for the welfare of seamen and their families. "[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy." *Moragne*, supra, at 387, 26 L Ed 2d 339, 90 S Ct 1772, quoting Chief Justice Chase in *The Sea Gull*, 21 F Cas 909, 910 (No. 12,578) (CC Md 1865). See also *Gaudet*, 414 US, at 583, 39 L Ed 2d 9, 94 S Ct 806.

We are not unmindful of these principles, but they are insufficient in this case. We sail in occupied waters. Maritime tort law is now dominated by federal statute, and we are not free to expand remedies at will simply because it might work to the benefit of seamen and those dependent upon them. Congress has placed limits on recovery in survival actions that we cannot exceed. Because this case involves the death of

a seaman, we must look to the Jones Act.

[2d, 12b] The Jones Act/FELA survival provision limits recovery to losses suffered during the decedent's lifetime. See 45 USC § 59 [45 USCS § 59]. This was the established rule under FELA when Congress passed the Jones Act, incorporating FELA, see *St. Louis, I. M. & S. R. Co.* supra, at 658, 59 L Ed 1160, 95 S Ct 704, and it is the rule under the Jones Act. See *Van Beeck*, supra, at 347, 81 L Ed 685, 57 S Ct 452. Congress has limited the survival right for seamen's injuries resulting from negligence. As with loss of society in wrongful death actions, this forecloses more expansive remedies in a general maritime action founded on strict liability. We will not create, under our admiralty powers, a remedy that is disfavored by a clear majority of the States and that goes well beyond the limits of Congress' ordered system of recovery for seamen's injury and death. Because *Torregano's* estate cannot recover for his lost future income under the Jones Act, it cannot do so under general maritime law.

[498 US 37]

VI

[11, 2e, 8b] Cognizant of the constitutional relationship between the courts and Congress, we today act in accordance with the uniform plan of maritime tort law Congress created in DOHSA and the Jones Act. We hold that there is a general maritime cause of action for the wrongful death of a seaman, but that damages recoverable in such an action do not include loss of society. We also hold that a general maritime survival action cannot include recovery for decedent's lost future earnings. Accordingly, the judgment of the Court of Appeals is affirmed.

Justice Souter took no part in the consideration or decision of this case.

TEXACO REFINING v. ESTATE OF DAU VAN TRAN
Cite as 808 S.W.2d 61 (Tex. 1991)

TEXACO REFINING AND MARKET-
ING, INC. and Texaco Marine
Services, Inc., Petitioners,

v.

ESTATE OF DAU VAN TRAN, et
al., Respondents.

No. D-0473.

Supreme Court of Texas.

April 24, 1991.

Rehearing Overruled May 30, 1991.

OPINION

GAMMAGE, Justice.

Dau Van Tran was crushed to death when a large wave, purportedly caused by the tanker TEXACO CALIFORNIA's excessive speed, washed ashore just as he exited the water between a dock barge and a shrimp boat. Suit was filed against the tanker's owners and operators, Texaco Refining and Marketing, Inc. and Texaco Marine Services, Inc. ("Texaco"), under the Texas Wrongful Death and Survivorship Statutes¹. The suit also alleged Texaco violated article 29 of the Inland Rules, by failing to practice good seamanship. Texaco named the owner/operator of the shrimp boat and dock involved, Farmer Boy's Catfish Kitchens International, Inc., as a third party defendant. Plaintiffs alleged negligence and violations of general maritime law against the third party.

The trial court rendered judgment against Texaco, exonerating the other defendant. The Beaumont Court of Appeals affirmed. 777 S.W.2d 783, writ denied. Subsequently, the U.S. Supreme Court granted writ of certiorari, vacated the judgment and remanded the cause to the court of appeals for further reconsideration in light of *Sisson v. Ruby*, 497 U.S. —, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990). On remand, the court of appeals reaffirmed its

original decision. 795 S.W.2d 870. Mindful of the U.S. Supreme Court's remand order, and after a review of applicable law, we conclude the court of appeals erred in its conclusions. Accordingly, we will reverse.

[1-4] Dau Van Tran was neither a seaman nor a longshoreman. He was a "good samaritan" who stopped to help the elderly captain of a shrimp boat free his propeller. He was against the dock barge between two tires when the wave washed ashore, throwing the shrimp boat against the dock crushing him. The facts and circumstances of this case remove it from statutes protecting classes of individuals under traditional maritime law: the Jones Act, 46 U.S.C.App. § 688, which protects seamen; the Death on the High Seas Act, DOHSA, 46 U.S.C.App. § 761 et seq., applicable to deaths of persons occurring on the high seas beyond a maritime league from shore; and the Longshoreman's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, et seq., giving longshoremen worker's compensation benefits. General maritime jurisdiction would be appropriate, however, under the Admiralty Extension Act of 1948, 46 U.S.C.App. § 740: "[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." The Admiralty Extension Act's purpose "was to prevent individuals from falling through the cracks of state law and admiralty jurisdiction". *Kahn v. Gates Constr. Corp.*, 103 A.D.2d 438, 480 N.Y.S.2d 351, 355 (1984). Texaco argues the trial court incorrectly awarded damages to the plaintiffs for mental anguish, loss of society, and prejudgment interest, none of which are permitted under general maritime law. Damages for the mental anguish suffered by the beneficiaries "are not compensable

1. Texas Wrongful Death Statute, Tex.Civ.Prac. & Rem.Code Ann. §§ 71.001-.002 (Vernon 1986);

Texas Survival Statute, Tex.Civ.Prac. & Rem.Code Ann. § 71.021 (Vernon 1986).

under the maritime wrongful-death remedy," *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 585 n. 17, 94 S.Ct. 806, 815 n. 17, 39 L.Ed.2d 9 (1974). Loss of society is not recoverable under general maritime law, *Miles v. Apex Marine, — U.S. —*, —, 111 S.Ct. 317, 326, 112 L.Ed.2d 275 (1990). Contrary to Texaco's assertions, however, an award of prejudgment interest in an admiralty case is within the sound discretion of the court. *Pickle v. International Oilfield Divers, Inc.*, 791 F.2d 1237, 1240 (5th Cir.1986), cert. denied, 479 U.S. 1059, 107 S.Ct. 939, 93 L.Ed.2d 989 (1987). "In fact, generally in maritime law, prejudgment interest should be awarded." *Curry v. Fluor Drilling*, 715 F.2d 893, 896 (5th Cir.1983).

[5, 6] The U.S. Supreme Court remanded this cause following its decision in *Sisson v. Ruby*, *supra*. *Sisson* sets out a two-part test to determine maritime jurisdiction's appropriateness: first, a court must determine the event's potentially disruptive impact on maritime commerce; second, the general conduct surrounding the incident must be substantially related to traditional maritime activity. Examining the first requirement of the *Sisson* test, we consider the potentially disruptive impact of the incident on maritime commerce—whether it poses a significant hazard to commercial vessels. Here a ship allegedly navigating at too great a speed caused a large wave which injured someone along the shoreline. This activity poses a threat to any person or thing in close proximity to the shoreline. This would not appear to constitute a potential disruption to maritime activity or commercial vessels. It could be argued, however, that such an event would potentially endanger passing vessels and docked commercial ships with their attendant dockside activities. Texaco also presented evidence at trial that the TEXACO CALIFORNIA's speed was necessary to protect the ship, apparently to compensate for a strong cross-current which could have grounded the ship. The second part of the *Sisson* test concerns whether the conduct involved was substantially related to traditional maritime activity. The general conduct giving rise to the

incident was the passage of the vessel through the ship channel, and is clearly substantially related to traditional maritime activity. Moreover, during oral arguments both sides conceded a maritime tort had occurred.

[7] Where applicable and properly invoked, general maritime law preempts state causes of action and remedies, consistent with the longstanding desire of Congress and the judiciary to achieve uniformity in the exercise of admiralty jurisdiction pursuant to the U.S. Constitution, art. 3, § 2, cl. 1. See *Foremost Insurance Co. v. Richardson*, 457 U.S. 668, 676-677, 102 S.Ct. 2654, 2659, 73 L.Ed.2d 300 (1982). The "savings to suitors" clause of 28 U.S.C. 1333(1) permits state courts to adjudicate maritime actions "constrained by the 'reverse-Erie' doctrine which requires that substantive remedies afforded by States conform to governing federal maritime standards." *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223, 106 S.Ct. 2485, 2494, 91 L.Ed.2d 174 (1986).

[8, 9] Where general maritime law is properly invoked by pleadings and litigated at trial, a trial court's failure to award damages consistent with maritime law is clearly reversible error. Plaintiff's live pleadings refer to the Inland Water Rules and failure to practice good seamanship. Texaco did not plead maritime law nor object to evidence of damages inconsistent with maritime law, but did raise it in its fourteenth proposed finding of fact and conclusion of law: "The case at bar is governed by the principles of general maritime law." Maritime remedy constraints were again raised in Texaco's motion for new trial. Moreover, one of the plaintiffs' proposed findings of fact states: "The TEXACO CALIFORNIA failed to observe the rules of the road and the rules of good seamanship on the day in question." In response to Texaco's motion for new trial, the plaintiffs filed amended findings of fact. Acknowledging Texaco's plea that the court not award mental anguish damages inconsistent with maritime law remedies, plaintiffs asked the court to "reconsider

TEXACO REFINING v. ESTATE OF DAU VAN TRAN
Cite: 808 S.W.2d 61 (Tex. 1991)

er its award for loss of companionship, affection and society, both past and future, for both the mother and father."

We conclude this was sufficient notice to the trial court to invoke general maritime law and its limited remedies. Accordingly, we reverse the judgment of the court of appeals and remand this cause to the trial court for rendition of judgment consistent with this opinion.

YAMAHA MOTOR CORPORATION, U. S. A., et al., Petitioners

LUCIEN B. CALHOUN, et al., Individually and as Administrators of the
ESTATE OF NATALIE CALHOUN, Deceased

516 US 199, 133 L. Ed 2d 578, 116 S. Ct 619

[No. 94-1387]

Argued October 31, 1995. Decided January 9, 1996.

Justice Ginsburg delivered the
opinion of the Court.

[1a] Twelve-year-old Natalie Calhoun was killed in a jet ski accident on July 6, 1989. At the time of her death, she was vacationing with family friends at a beach-front resort in Puerto Rico. Alleging that the jet ski was defectively designed or made, Natalie's parents sought to recover from the manufacturer pursuant to state survival and wrongful death statutes. The manufacturer contended that state remedies could not be applied because Natalie died on navigable waters; federal, judge-declared maritime law, the manufacturer urged, controlled to the exclusion of state law.

Traditionally, state remedies have been applied in accident cases of this order—maritime wrongful death cases in which no federal statute specifies the appropriate relief and the decedent was not a seaman, long-shore worker, or person otherwise engaged in a maritime trade. We hold, in accord with the United States Court of Appeals for the Third Circuit, that state remedies remain applicable in such cases and have not been displaced by the federal maritime wrongful death action recognized in *Moragne v. States Marine Lines, Inc.*, 398 US 375, 26 L. Ed 2d 339, 90 S. Ct 1772 (1970).

Natalie Calhoun, the twelve-year-old daughter of respondents Lucien and Robin Calhoun, died in a tragic accident on July 6, 1989. On vacation with family friends at a resort hotel in Puerto Rico, Natalie had rented a "WaveJammer" jet ski manufactured by Yamaha Motor Company, Ltd., and distributed by Yamaha Motor Corporation, U. S. A. (collectively, "Yamaha"), the petitioners in this case. While riding the WaveJammer, Natalie slammed into a vessel anchored in the waters off the hotel frontage, and was killed.

The Calhouns, individually and in their capacities as administrators of their daughter's estate, sued Yamaha in the United States District Court for the Eastern District of Pennsylvania. Invoking Pennsylvania's wrongful death and survival statutes, 42 Pa. Cons. Stat. §§ 8301-8302 (1982 and Supp. 1995), the Calhouns asserted several bases for recovery (including negligence, strict liability, and breach of implied warranties), and sought damages for lost future earnings, loss of society, loss of support and services, and funeral expenses, as well as punitive damages. They grounded federal jurisdiction on both diversity of citizenship, 28 USC § 1332 [28 USCS § 1332],¹ and

1. The Calhouns are citizens of Pennsylvania. Yamaha Motor Corporation, U. S. A. is incorporated and has its principal place of business in California; Yamaha Motor Company, Ltd. is incorporated and has its principal place of business in Japan.

admiralty, 28 USC § 1333 [28 USCS § 1333].

Yamaha moved for partial summary judgment, arguing that the federal maritime wrongful death action this Court recognized in *Moragne v States Marine Lines, Inc.*, 398 US 375, 26 L Ed 2d 339, 90 S Ct 1772 (1970), provided the exclusive basis for recovery, displacing all remedies afforded by state law. Under *Moragne*, Yamaha contended, the Calhouns could recover as damages only Natalie's funeral expenses. The District Court agreed with Yamaha that *Moragne's* maritime death action displaced state remedies; the court held, however, that loss of society and loss of support and services were compensable under *Moragne*.

Both sides asked the District Court to present questions for immediate interlocutory appeal pursuant to 28 USC § 1292(b) [28 USCS § 1292(b)]. The District Court granted the parties' requests, and in its § 1292(b) certifying order stated:

"Natalie Calhoun, the minor child of plaintiffs Lucien B. Calhoun and Robin L. Calhoun, who are Pennsylvania residents, was killed in an accident not far off shore in Puerto Rico, in the territorial waters of the United States. Plaintiffs have brought a diversity suit against, *inter alia*, defendants Yamaha Motor Corporation, U. S. A. and Yamaha Motor Co., Ltd. The counts of the complaint directed against the Yamaha defendants allege that the accident was caused by a defect or defects in a Yamaha jet ski which Natalie Calhoun had rented and was using at the time of the fatal accident. Those counts sound in negligence, in strict liability, and in implied

warranties of merchantability and fitness. The district court has concluded that admiralty jurisdiction attaches to these several counts and that they constitute a federal maritime cause of action. The questions of law certified to the Court of Appeals are whether, pursuant to such a maritime cause of action, plaintiffs may seek to recover (1) damages for the loss of the society of their deceased minor child, (2) damages for the loss of their child's future earnings, and (3) punitive damages." App. to Pet. for Cert. A-78.

Although the Court of Appeals granted the interlocutory review petition, the panel to which the appeal was assigned did not reach the questions presented in the certified order, for it determined that an anterior issue was pivotal. The District Court, as just recounted, had concluded that any damages the Calhouns might recover from Yamaha would be governed exclusively by federal maritime law. But the Third Circuit panel questioned that conclusion and inquired whether state wrongful death and survival statutes supplied the remedial prescriptions for the Calhouns' complaint. The appellate panel asked whether the state remedies endured or were "displaced by a federal maritime rule of decision." 40 F. 3d 622, 624 (1994). Ultimately, the Court of Appeals ruled that state law remedies apply in this case. *Id.*, at 644.

II

[2] In our order granting certiorari, we asked the parties to brief a preliminary question: "Under 28 USC § 1292(b) [28 USCS § 1292(b)], can the courts of appeals exercise ju-

jurisdiction over any question that is included within the order that contains the controlling question of law identified by the district court?" 514 US —, 131 L Ed 2d 999, 115 S Ct 1998 (1995). The answer to that question, we are satisfied, is yes.

Section 1292(b) provides, in pertinent part:

"When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals . . . may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order." (Emphasis added.)

As the text of § 1292(b) indicates, appellate jurisdiction applies to the order certified to the court of appeals, and is not tied to the particular question formulated by the district court. The court of appeals may not reach beyond the certified order to address other orders made in the case. *United States v Stanley*, 483 US 669, 677, 97 L Ed 2d 550, 107 S Ct 3054 (1987). But the appellate court may address any issue fairly included within the certified order because "it is the order that is appealable, and not the controlling question identified by the district court." 9 J. Moore

& B. Ward, *Moore's Federal Practice* ¶ 110.25[1], p. 300 (2d ed. 1995). See also 16 C. Wright, A. Miller, E. Cooper, & E. Gressman, *Federal Practice and Procedure* § 3929, pp. 144-145 (1977) ("[T]he court of appeals may review the entire order, either to consider a question different than the one certified as controlling or to decide the case despite the lack of any identified controlling question."); Note, *Interlocutory Appeals in the Federal Courts Under 28 USC § 1292(b)* [28 USCS § 1292(b)], 88 Harv. L. Rev. 607, 628-629 (1975) ("scope of review [includes] all issues material to the order in question").

We therefore proceed to the issue on which certiorari was granted: Does the federal maritime claim for wrongful death recognized in *Moragne* supply the exclusive remedy in cases involving the deaths of nonseafarers² in territorial waters?

III

[1b, 3] Because this case involves a watercraft collision on navigable waters, it falls within admiralty's domain. See *Sisson v Ruby*, 497 US 358, 361-367, 111 L Ed 2d 292, 110 S Ct 2892 (1990); *Foremost Ins. Co. v Richardson*, 457 US 668, 677, 73 L Ed 2d 300, 102 S Ct 2654 (1982). "With admiralty jurisdiction," we have often said, "comes the application of substantive admiralty law." *East River S. S. Corp. v Transamerica Delaval Inc.*, 476 US 858, 864, 90 L Ed 2d 865, 106 S Ct 2295 (1986). The exercise of admiralty jurisdiction, however, "does not result in automatic displacement of state law." *Jerome B. Grubart, Inc. v Great*

2. By "nonseafarers," we mean persons who are neither seamen covered by the Jones Act, 46 USC App. § 688 (1988 ed.) [46 USCS Appx § 688], nor longshore workers covered by the Longshore and Harbor Workers' Compensation Act, 33 USC § 901 *et seq.* [33 USCS §§ 901 *et seq.*].

Lakes Dredge & Dock Co., 513 US —, —, 130 L Ed 2d 1024, 115 S Ct 1043 (1995). Indeed, prior to *Moragne*, federal admiralty courts routinely applied state wrongful death and survival statutes in maritime accident cases.³ The question before us is whether *Moragne* should be read to stop that practice.

Our review of maritime wrongful death law begins with *The Harrisburg*, 119 US 199, 30 L Ed 358, 7 S Ct 140 (1886), where we held that the general maritime law (a species of judge-made federal common law) did not afford a cause of action for wrongful death. The *Harrisburg* Court said that wrongful death actions are statutory and may not be created by judicial decree. The Court did not question the soundness of this view, or examine the historical justifications that account for it. Instead, the Court merely noted that common law in the United States, like the common law of England, did not allow recovery "for an injury which results in death," *id.*, at 204, 30 L Ed 358, 7 S Ct 140 (internal quotation marks omitted), and that no country had "adopted a different rule on this subject for the sea from that which it maintains on the land," *id.*, at 213, 30 L Ed 358, 7 S Ct 140. The Court did not consider itself free to chart a different course by crafting a judge-made wrongful death action under our maritime law.

Federal admiralty courts tempered the harshness of *The Harrisburg*'s rule by allowing recovery under state wrongful death statutes. See, e.g., *The Hamilton*, 207 US 398, 52 L Ed 264, 28 S Ct 133 (1907); *The City of Norwalk*, 55 F. 98 (SDNY 1893).⁴ We reaffirmed this practice in *Western Fuel Co. v Garcia*, 257 US 233, 66 L Ed 210, 42 S Ct 89 (1921), by holding that California's wrongful death statute governed a suit brought by the widow of a maritime worker killed in that State's territorial waters. Though we had generally refused to give effect to state laws regarded as inconsonant with the substance of federal maritime law, we concluded that extending state wrongful death statutes to fatal accidents in territorial waters was compatible with substantive maritime policies: "The subject is maritime and local in character and the specified modification of or supplement to the rule applied in admiralty courts . . . will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations." *Id.*, at 242, 66 L Ed 210, 42 S Ct 89.⁵ On similar reasoning, we also held that state sur-

3. Throughout this opinion, for economy, we use the term wrongful death remedies or statutes to include survival statutes.

4. Congress also mitigated the impact of *The Harrisburg* by enacting two statutes affording recovery for wrongful death. In 1920, Congress passed the Death on the High Seas Act (DOHSA), 46 USC App. § 761 *et seq.* (1988 ed.) [46 USCS Appx §§ 761 *et seq.*], which provides a federal claim for wrongful death occurring more than three nautical miles from the shore of any State or Territory. In that same year, Congress also passed the Jones Act, 46 USC App. § 688 (1988 ed.) [46 USCS Appx § 688], which provides a wrongful death claim to the survivors of seamen killed in the course of their employment, whether on the high seas or in territorial waters.

5. Indeed, years before *The Harrisburg*, this Court rendered a pathmarking decision, *Steamboat Co. v Chase*, 16 Wall 522, 21 L Ed 369 (1873). In *Steamboat*, the Court upheld, under the "saving-to-suitors" proviso of the Judiciary Act of 1789 (surviving currently in 28 USC

vival statutes may be applied in cases arising out of accidents in territorial waters. See *Just v Chambers*, 312 US 383, 391-392, 85 L Ed 903, 61 S Ct 687 (1941).

State wrongful death statutes proved an adequate supplement to federal maritime law, until a series of this Court's decisions transformed the maritime doctrine of unseaworthiness into a strict liability rule. Prior to 1944, unseaworthiness "was an obscure and relatively little used" liability standard, largely because "a shipowner's duty at that time was only to use due diligence to provide a seaworthy ship." *Miles v Apex Marine Corp.*, 498 US 19, 25, 112 L Ed 2d 275, 111 S Ct 317 (1990) (internal quotation marks omitted). See also *Moragne*, 398 US, at 398-399, 26 L Ed 2d 339, 90 S Ct 1772. *Mahnich v Southern S. S. Co.*, 321 US 96, 88 L Ed 561, 64 S Ct 455 (1944), however, notably expanded a shipowner's liability to injured seamen by imposing a nondelegable duty "to furnish a vessel and appurtenances reasonably fit for their intended use." *Mitchell v Trawler Racer, Inc.*, 362 US 539, 550, 4 L Ed 2d 941, 80 S Ct 926 (1960). The duty imposed was absolute; failure to supply a safe ship resulted in liability "irrespective of fault and irrespective of the intervening negligence of crew members." *Miles*, 498 US, at 25, 112 L Ed 2d 275, 111 S Ct 317. The unseaworthiness doctrine thus became a "species

of liability without fault," *Seas Shipping Co. v Sieracki*, 328 US 85, 94, 90 L Ed 1099, 66 S Ct 872 (1946), and soon eclipsed ordinary negligence as the primary basis of recovery when a seafarer was injured or killed. *Miles*, 498 US, at 25-26, 112 L Ed 2d 275, 111 S Ct 317.⁵

The disparity between the unseaworthiness doctrine's strict liability standard and negligence-based state wrongful death statutes figured prominently in our landmark *Moragne* decision. Petsonella Moragne, the widow of a longshore worker killed in Florida's territorial waters, brought suit under Florida's wrongful death and survival statutes, alleging both negligence and unseaworthiness. The district court dismissed the claim for wrongful death based on unseaworthiness, citing this Court's decision in *The Tun-gus v Skovgaard*, 358 US 588, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280 (1959). There, a sharply-divided Court held that "when admiralty adopts a State's right of action for wrongful death, it must enforce the right as an integrated whole, with whatever conditions and limitations the creating State has attached." *Id.*, at 592, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280. Thus, in wrongful death actions involving fatalities in territorial waters, state statutes provided the standard of liability as well as the remedial regime. Because the Florida Supreme Court had pre-

⁵ 1333(1) [28 USCS § 1333(1)]), a state court's application of the State's wrongful death statute to a fatality caused by a collision in territorial waters between defendants' steamboat and a sailboat in which plaintiff's decedent was passing.

6. The Court extended the duty to provide a seaworthy ship, once owed only to seamen, to longshore workers in *Seas Shipping Co. v Sieracki*, 328 US 85, 90 L Ed 1099, 66 S Ct 872 (1946). Congress effectively overruled this extension in its 1972 amendments to the Longshore and Harbor Workers' Compensation Act, 33 USC § 901 et seq. (33 USCS §§ 901 et seq.). See 33 USC § 905(b) [33 USCS § 905(b)]. We have thus far declined to extend the duty further. See *Kormar v Compagnie Generale Transatlantique*, 358 US 625, 629, 3 L Ed 2d 550, 79 S Ct 406 (1959) (unseaworthiness doctrine inapplicable to invitee aboard vessel).

viously held that Florida's wrongful death statute did not encompass unseaworthiness as a basis of liability, the Court of Appeals affirmed the dismissal of Moragne's unseaworthiness claim. See *Moragne*, 398 US, at 377, 26 L Ed 2d 339, 90 S Ct 1772.

[1c] The Court acknowledged in *Moragne* that *The Tungus* had led to considerable uncertainty over the role state law should play in remedying deaths in territorial waters, but concluded that "the primary source of the confusion is not to be found in *The Tungus*, but in *The Harrisburg*." 398 US, at 378, 26 L Ed 2d 339, 90 S Ct 1772. Upon reexamining the soundness of *The Harrisburg*, we decided that its holding, "somewhat dubious even when rendered, is such an unjustifiable anomaly in the present maritime law that it should no longer be followed." 398 US, at 378, 26 L Ed 2d 339, 90 S Ct 1772. Accordingly, the Court overruled *The Harrisburg* and held that an action "lie[s] under general maritime law for death caused by violation of maritime duties." 398 US, at 409, 26 L Ed 2d 339, 90 S Ct 1772.

IV

[1d] Yamaha argues that *Moragne*—despite its focus on "maritime

duties" owed to maritime workers—covers the waters, creating a uniform federal maritime remedy for all deaths occurring in state territorial waters, and ousting all previously available state remedies. In Yamaha's view, state remedies can no longer supplement general maritime law (as they routinely did before *Moragne*), because *Moragne* launched a solitary federal scheme.⁷ Yamaha's reading of *Moragne* is not without force; in several contexts, we have recognized that vindication of maritime policies demanded uniform adherence to a federal rule of decision, with no leeway for variation or supplementation by state law. See, e.g., *Kossick v United Fruit Co.*, 365 US 731, 742, 6 L Ed 2d 56, 81 S Ct 886 (1961) (federal maritime rule validating oral contracts precluded application of state Statute of Frauds); *Pope & Talbot, Inc. v Hawn*, 346 US 406, 409, 98 L Ed 143, 74 S Ct 202 (1953) (admiralty's comparative negligence rule barred application of state contributory negligence rule); *Garrett v Moore-McCormack Co.*, 317 US 239, 248-249, 87 L Ed 239, 63 S Ct 246 (1942) (federal maritime rule allocating burden of proof displaced conflicting state rule).⁸ In addition, Yamaha correctly points out that

7. If *Moragne*'s wrongful death action did not extend to nonseafarers like Natalie, one could hardly argue that *Moragne* displaced the state law remedies the Calhouns seek. Lower courts have held that *Moragne*'s wrongful death action extends to nonseafarers. See, e.g., *Sutton v Barles*, 26 F. 3d 908 (CA9 1994) (recreational boater); *Wahlstrom v Kawasaki Heavy Industries, Ltd.*, 4 F. 3d 1084 (CA2 1993) (jet skier), cert. denied, 510 US —, 127 L Ed 2d 380, 114 S Ct 1060 (1994). We assume, for purposes of this decision, the correctness of that position. Similarly, as in prior encounters, we assume without deciding that *Moragne* also provides a survival action. See *Miles v Apex Marine Corp.*, 498 US 19, 34, 112 L Ed 2d 275, 111 S Ct 317 (1990). The question we confront is not what *Moragne* added to the remedial arsenal in maritime cases, but what, if anything, it removed from admiralty's stock.

8. The federal cast of admiralty law, we have observed, means that "state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system[.] [b]ut this limitation still leaves the States a wide scope." *Romero v International Terminal Operating Co.*, 358 US 354, 373, 3 L Ed 2d 368, 79 S Ct 468 (1959). Our precedent does not precisely delineate that scope. As we recently acknowledged, "[i]t would be idle to pretend that the line separating permissible from impermissible state regulation is readily

uniformity concerns informed our decision in *Moragne*.

The uniformity concerns that prompted us to overrule *The Harrisburg*, however, were of a different order than those invoked by *Yamaha*. *Moragne* did not reexamine the soundness of *The Harrisburg* out of concern that state damage awards in maritime wrongful death cases were excessive, or that variations in the remedies afforded by the States threatened to interfere with the harmonious operation of maritime law. Variations of this sort had long been deemed compatible with federal maritime interests. See *Western Fuel*, 257 US, at 242, 66 L Ed 210, 42 S Ct 89. The uniformity concern that drove our decision in *Moragne* related, instead, to the availability of unseaworthiness as a basis of liability.

By 1970, when *Moragne* was decided, claims premised on unseaworthiness had become "the principal vehicle for recovery" by seamen and other maritime workers injured or killed in the course of their employment. *Moragne*, 398 US, at 399, 26 L Ed 2d 339, 90 S Ct 1772. But with *The Harrisburg* in place, troubling anomalies had developed that many times precluded the survivors of maritime workers from recovering for deaths caused by an unseaworthy vessel. The *Moragne* Court identified three anomalies and concluded they could no longer be tolerated.

First, the Court noted that "within territorial waters, identical conduct violating federal law (here the furnishing of an unseaworthy vessel) produces liability if the victim is

merely injured, but frequently not if he is killed." *Id.*, at 395, 26 L Ed 2d 339, 90 S Ct 1772. This occurred because in nonfatal injury cases, state substantive liability standards were superseded by federal maritime law, see *Kermarec v Compagnie Generale Transatlantique*, 358 US 625, 628, 3 L Ed 2d 550, 79 S Ct 406 (1959); *Pope & Talbot*, 346 US, at 409, 98 L Ed 143, 74 S Ct 202, which provided for maritime worker recovery based on unseaworthiness. But if the same worker met death in the territorial waters of a State whose wrongful death statute did not encompass unseaworthiness (as was the case in *Moragne* itself), the survivors could not proceed under that generous standard of liability. See *The Tungus*, 358 US, at 592-593, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280.

Second, we explained in *Moragne* that "identical breaches of the duty to provide a seaworthy ship, resulting in death, produce liability outside the three-mile limit . . . but not within the territorial waters of a State whose local statute excludes unseaworthiness claims." *Moragne*, 398 US, at 395, 26 L Ed 2d 339, 90 S Ct 1772. This occurred because survivors of a maritime worker killed on the high seas could sue for wrongful death under the Death on the High Seas Act (DOHSA), 46 USC App. § 761 *et seq.* (1988 ed.) [46 USCS Appx §§ 761 *et seq.*], which encompasses unseaworthiness as a basis of liability. *Moragne*, 398 US, at 395, 26 L Ed 2d 339, 90 S Ct 1772 (citing *Kernan v American Dredging Co.*,

discernible in our admiralty jurisprudence." *American Dredging Co. v Miller*, 510 US —, —, 127 L Ed 2d 285, 114 S Ct 981 (1994). We attempt no grand synthesis or reconciliation of our precedent today, but confine our inquiry to the modest question whether it was *Moragne's* design to terminate recourse to state remedies when nonseafarers meet death in territorial waters.

355 US 426, 430, n. 4, 2 L Ed 2d 382, 78 S Ct 394 (1958)).

Finally, we pointed out that "a true seaman [a member of a ship's company] . . . is provided no remedy for death caused by unseaworthiness within territorial waters, while a longshoreman, to whom the duty of seaworthiness was extended only because he performs work traditionally done by seamen, does have such a remedy when allowed by a state statute." 398 US, at 395-396, 26 L Ed 2d 339, 90 S Ct 1772. This anomaly stemmed from the Court's rulings in *Lindgren v United States*, 281 US 38, 74 L Ed 686, 50 S Ct 207 (1930), and *Gillespie v United States Steel Corp.*, 379 US 148, 13 L Ed 2d 199, 85 S Ct 308 (1964), that the Jones Act, 46 USC App. § 688 (1988 ed.) [46 USCS Appx § 688], which provides only a negligence-based claim for the wrongful death of seamen, precludes any state remedy, even one accommodating unseaworthiness. As a result, at the time *Moragne* was decided, the survivors of a longshore worker killed in the territorial waters of a State whose wrongful death statute incorporated unseaworthiness could sue under that theory, but the survivors of a similarly-situated seaman could not.⁹

The anomalies described in *Mor-*

agne relate to ships and the workers who serve them, and to a distinctly maritime substantive concept—the unseaworthiness doctrine. The Court surely meant to "assure uniform vindication of federal policies," 398 US, at 401, 26 L Ed 2d 339, 90 S Ct 1772, with respect to the matters it examined. The law as it developed under *The Harrisburg* had forced on the States more than they could bear—the task of "provid[ing] the sole remedy" in cases that did not involve "traditional common-law concepts," but "concepts peculiar to maritime law." 398 US, at 401, n. 15, 26 L Ed 2d 339, 90 S Ct 1772 (internal quotation marks omitted). Discarding *The Harrisburg* and declaring a wrongful death right of action under general maritime law, the Court concluded, would "remov[e] the tensions and discrepancies" occasioned by the need "to accommodate state remedial statutes to exclusively maritime substantive concepts." 398 US, at 401, 26 L Ed 2d 339, 90 S Ct 1772.¹⁰

Moragne, in sum, centered on the extension of relief, not on the contraction of remedies. The decision recalled that "it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by estab-

9. As noted earlier, unseaworthiness recovery by longshore workers was terminated by Congress in its 1972 amendments to the Longshore and Harbor Workers' Compensation Act, 33 USC § 901 *et seq.* [33 USCS §§ 901 *et seq.*]. See 33 USC § 905(b) [33 USCS § 905(b)].

10. The Court might have simply overruled *The Tungus*, see *supra* pp. —, 133 L Ed 2d, at 587-588, thus permitting plaintiffs to rely on federal liability standards to obtain state wrongful death remedies. The petitioner in *Moragne*, widow of a longshore worker, had urged that course when she sought certiorari. See *Moragne v States Marine Lines, Inc.*, 398 US 375, 378, n. 1, 26 L Ed 2d 339, 90 S Ct 1772 (1970). But training *Moragne* solely on *The Tungus* would have left untouched the survivors of seamen, who remain blocked by the Jones Act from pursuing state wrongful death claims—whether under a theory of negligence or unseaworthiness. See *Gillespie v United States Steel Corp.*, 379 US 148, 154-155, 13 L Ed 2d 199, 85 S Ct 308 (1964). Thus, nothing short of a federal maritime right of action for wrongful death could have achieved uniform access by seafarers to the unseaworthiness doctrine, the Court's driving concern in *Moragne*. See 398 US, at 396, n. 12, 26 L Ed 2d 339, 90 S Ct 1772.

lished and inflexible rules.' " *Id.*, at 387, 26 L Ed 2d 339, 90 S Ct 1772 (quoting *The Sea Gull*, 21 F. Cas. 909, 910 (No. 12,578) (CC Md. 1865) (Chase, C. J.)). The Court tied Petersonella Moragne's plea based on the unseaworthiness of the vessel to a federal right-of-action anchor,¹¹ but notably left in place the negligence claim she had stated under Florida's law. See 398 US, at 376-377, 26 L Ed 2d 339, 90 S Ct 1772.¹²

Our understanding of *Moragne* accords with that of the Third Circuit, which Judge Becker set out as follows:

"*Moragne* . . . showed no hostility to concurrent application of state wrongful death statutes. Indeed, to read into *Moragne* the idea that it was placing a ceiling on recovery for wrongful death, rather than a floor, is somewhat ahistorical. The *Moragne* cause of action was in many respects a gap-filling measure to ensure that seamen (and their survivors) would all be treated alike. The 'humane and liberal' purpose underlying the general maritime remedy of *Moragne* was driven by the idea that

survivors of seamen killed in state territorial waters should not have been barred from recovery simply because the tort system of the particular state in which a seaman died did not incorporate special maritime doctrines. It is difficult to see how this purpose can be taken as an intent to preclude the operation of state laws that do supply a remedy." 40 F. 3d, at 641-642 (citation omitted).

We have reasoned similarly in *Sun Ship, Inc. v Pennsylvania*, 447 US 715, 65 L Ed 2d 458, 100 S Ct 2432 (1980), where we held that a State may apply its workers' compensation scheme to land-based injuries that fall within the compass of the Longshore and Harbor Workers' Compensation Act, 33 USC § 901 *et seq.* [33 USC §§ 901 *et seq.*]. See *Sun Ship*, 447 US, at 724, 65 L Ed 2d 458, 100 S Ct 2432 (a State's remedial scheme might be "more generous than federal law" but nevertheless could apply because Congress indicated no concern "about a disparity between adequate federal benefits and superior state benefits") (emphasis in original).¹³

[1e, 4] When Congress has pre-

11. While unseaworthiness was the doctrine immediately at stake in *Moragne*, the right of action, as stated in the Court's opinion, is "for death caused by violation of maritime duties." *Moragne*, 398 US, at 409, 26 L Ed 2d 339, 90 S Ct 1772. See *East River S. S. Corp. v Trans-America Delaval Inc.*, 476 US 858, 865, 90 L Ed 2d 865, 106 S Ct 2295 (1986) (maritime law incorporates strict product liability); *Kermarec*, 358 US, at 630, 3 L Ed 2d 550, 79 S Ct 406 (negligence). See also G. Gilmore & C. Black, *The Law of Admiralty* 368 (2d ed. 1975).

12. *Moragne* was entertained by the Court of Appeals pursuant to a 28-USC § 1292(b) [28 USC § 1292(b)] certification directed to the District Court's order dismissing the unseaworthiness claim. See 398 US, at 376, 26 L Ed 2d 339, 90 S Ct 1772.

13. Federal maritime law has long accommodated the States' interest in regulating maritime affairs within their territorial waters. See, e.g., *Just v Chambers*, 312 US 383, 390, 85 L Ed 903, 61 S Ct 687 (1941) ("maritime law [is] not a complete and perfect system"; "a considerable body of municipal law . . . underlies . . . its administration"). States have thus traditionally contributed to the provision of environmental and safety standards for maritime activities. See, e.g., *Askew v American Waterways Operators, Inc.*, 411 US 325, 36 L Ed 2d 280, 93 S Ct 1590 (1973) (oil pollution); *Huron Portland Cement Co. v Detroit*, 362 US 440, 4 L Ed 2d 852, 80 S Ct 813, 78 ALR2d 1294 (1960) (air pollution); *Kelly v Washington ex rel. Foss Co.*, 302 US 1, 82 L Ed 3, 58 S Ct 87 (1937) (safety inspection); *Cooley v Board of Wardens of Port of Philadelphia* ex

scribed a comprehensive tort recovery regime to be uniformly applied, there is, we have generally recognized, no cause for enlargement of the damages statutorily provided. See *Miles*, 498 US, at 30-36, 112 L Ed 2d 275, 111 S Ct 317 (Jones Act, rather than general maritime law, determines damages recoverable in action for wrongful death of seamen); *Offshore Logistics, Inc. v Tallentire*, 477 US 207, 232, 91 L Ed 2d 174, 106 S Ct 2485 (1986) (DOHSA, which limits damages to pecuniary losses, may not be supplemented by nonpecuniary damages under a state wrongful death statute); *Mobil Oil Corp. v Higginbotham*, 436 US 618, 624-625, 56 L Ed 2d 581, 98 S Ct 2010 (1978) (DOHSA precludes damages for loss of society under general maritime law). But Congress has not prescribed remedies for the wrongful deaths of nonseafarers in territorial waters. See *Miles*, 498 US, at 31, 112 L Ed 2d 275, 111 S Ct 317. There is, however, a relevant congressional

disposition. Section 7 of DOHSA states: "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter." 46 USC App. § 767 [46 USCS Appx § 767]. This statement, by its terms, simply stops DOHSA from displacing state law in territorial waters. See *Miles*, 498 US, at 25, 112 L Ed 2d 275, 111 S Ct 317; *Tallentire*, 477 US, at 224-225, 91 L Ed 2d 174, 106 S Ct 2485; *Moragne*, 398 US, at 397-398, 26 L Ed 2d 339, 90 S Ct 1772. Taking into account what Congress sought to achieve, we preserve the application of state statutes to deaths within territorial waters.

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[1f, 5a] For the reasons stated, we hold that the damages available for the jet ski death of Natalie Calhoun are properly governed by state law.¹⁴ The judgment of the Court of Appeals for the Third Circuit is accordingly affirmed.

rel. Soc. for Relief of Distressed Pilots, 12 How 299, 13 L Ed 996 (1852) (pilotage regulation). Permissible state regulation, we have recognized, must be consistent with federal maritime principles and policies. See *Romero*, 358 US, at 373-374, 3 L Ed 2d 368, 79 S Ct 468.

14. [5b] The Third Circuit left for initial consideration by the District Court the question whether Pennsylvania's wrongful death remedies or Puerto Rico's apply. 40 F. 3d 622, 644 (1994). The Court of Appeals also left open, as do we, the source—federal or state—of the standards governing liability, as distinguished from the rules on remedies. We thus reserve for another day reconciliation of the maritime personal injury decisions that rejected state substantive liability standards, and the maritime wrongful death cases in which state law has held sway. Compare *Kermarec*, 358 US, at 628, 3 L Ed 2d 550, 79 S Ct 406 (personal injury); *Pope & Talbot, Inc. v Hayn*, 346 US 406, 409, 98 L Ed 143, 74 S Ct 202 (1953) (same), with *Hess v United States*, 361 US 314, 319, 4 L Ed 2d 305, 80 S Ct 341 (1960) (wrongful death); *The Tungus v Skovgaard*, 358 US 588, 592-594, 3 L Ed 2d 524, 79 S Ct 503, 71 ALR2d 1280 (1959) (same).