

DECISION AND FINDINGS  
IN THE CONSISTENCY APPEAL OF  
MOBIL EXPLORATION & PRODUCING U.S. INC.  
FROM AN OBJECTION BY THE  
STATE OF FLORIDA

January 7, 1993

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## SYNOPSIS OF DECISION

On February 1, 1984, Gulf Oil Corporation, Tenneco Oil Company and Superior Oil Company successfully bid in Outer Continental Shelf (OCS) Lease Sale 79 to obtain oil and gas lease number OCS-G 6520. Mobil Exploration & Producing U.S. Inc. (Mobil),<sup>1</sup> is the operator of the lease. The lease area, described as Block 799, Pulley Ridge, OCS Official Protraction Diagram, NG 17-7, is located south of 26° north latitude approximately 59 miles northwest of the Dry Tortugas islands, 75 miles from the nearest Florida mainland (near Cape Romano), and 120 miles west-northwest of Key West, Florida, in the Eastern Gulf of Mexico in Federal waters. The leases are due to expire on December 22, 1992.

Mobil submitted its proposed Plan of Exploration (POE) for the leases for approval to the Minerals Management Service (MMS) of the Department of the Interior (DOI) together with a certification that the proposed POE was consistent with Florida's Federally-approved Coastal Management Program (CMP). Mobil proposed to drill four exploratory wells to evaluate the hydrocarbon potential of Block 799. The MMS approved Mobil's POE subject to review by the State of Florida (State or Florida) of Mobil's consistency certification. Florida subsequently objected to Mobil's consistency certification for the proposed POE on the grounds that Mobil had failed to provide sufficient information and analyses to demonstrate that all of its proposed activities, associated facilities and effects are consistent with provisions of the Florida CMP.

Under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(3)(B) and 15 C.F.R. § 930.81, a consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (or her designee) finds that the objected-to activity may be Federally-approved because it is consistent with the objectives or purposes of the CZMA (Ground I) or otherwise necessary in the interest of national security (Ground II).

Mobil filed a Notice of Appeal, Statement in Support of an Override, and exhibits with the Secretary pursuant to section 307(c)(3)(A) and (B) of the CZMA, 16 U.S.C. § 1456 (c)(3)(A) and (B) and the Department of Commerce's implementing regulations at 15 C.F.R. Part 930, Subpart H. Mobil appealed pursuant to Grounds I and II. Additionally, several threshold issues were raised during the course of the appeal. Mobil contended that Florida's objection was defective because Florida had failed to properly follow the Federal regulatory requirements for formulation of a consistency objection on the grounds of insufficient information. Further, Mobil argued that Florida's

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<sup>1</sup> Gulf Oil Corporation was merged into Chevron U.S.A. Inc. in 1985, and The Superior Oil Company was merged into Mobil in 1986.

objection was tainted by its alleged anti-drilling bias and that, in light of the numerous concessions made by Mobil and the Federal Government to address Florida's concerns, Florida should not be allowed to block the exploration for mineral resources in the eastern Gulf of Mexico. Florida raised the additional issue of burden of proof and contended that Mobil, as the appellant, bears the burden of demonstrating by clear and convincing evidence that the grounds for an override are met.

Upon consideration of the information submitted by Mobil, Florida, and interested Federal agencies as well as other information in the administrative record of the appeal, I made a number of findings. With regard to the threshold issues, I find that Florida's objection is not defective, and that Florida's alleged bias regarding oil and gas activities is irrelevant to the grounds upon which I must base my decision in this appeal. I also find that my decision must be supported by a preponderance of the evidence in the record of decision.

My findings on Grounds I and II are:

Ground I

(a) Mobil's proposed POE furthers one of the objectives or purposes of the CZMA because the CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency. Exploration of offshore oil resources serves the objective of energy self-sufficiency.

(b) The preponderance of the evidence in the record does not support a finding that Mobil's POE will not cause adverse effects on the natural resources of Florida's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest.

(c) Mobil's POE will not violate the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

(d) There is no reasonable alternative available to Mobil that would allow its proposed POE to be carried out in a manner consistent with Florida's CMP.

Ground II

There will be no significant impairment to a national defense or other national security interest if Mobil's project is not allowed to go forward as proposed.

Because Mobil's proposed POE does not meet the requirements of either Ground I or Ground II, the project may not proceed as proposed.

GLOSSARY OF ABBREVIATIONS AND SHORT NAMES

|                        |  |
|------------------------|--|
|                        | Area Environmental Report  |
| CAA                    | Clean Air Act  |
| C.F.R.                 | Code of Federal Regulations  |
|                        | Federal Water Pollution Control Act (Clean Water Act)  |
|                        | Continental Shelf Association  |
| CZMA                   | Coastal Zone Management Act  |
|                        | Coastal Management Program   |
| DIATF                  | Drilling Impact Assessment Task Force  |
|                        | Department of the Interior   |
| Drilling Impact Report |  |
|                        | Southwest Florida OCS Drilling Impact Assessment Report, developed by the DIATF pursuant to the Cooperative Agreement between the DOI and Florida  |
| EA                     | Environmental Assessment   |
|                        | U.S. Environmental Protection Agency   |
| ER                     | Environmental Report   |
| FDER                   | Florida Department of Environmental Regulation   |
| MOU                    | Memorandum of Understanding  |
| MMS                    | Minerals Management Service  |
| MMS Study              | Southwest Florida Shelf Ecosystem Study  |
| NAAQS                  | National ambient air quality standard  |
| NOAA                   | Department of Commerce, National Oceanic and Atmospheric Administration  |
| NPDES                  | National Pollutant Discharge Elimination System  |
| NRC Report             | National Research Council Report for the President's Interagency Task Force entitled "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" |

Outer Continental Shelf

OCSLA Outer Continental Shelf Lands Act

Oil Spill Report

Oil Spill Risk Assessment Task Force Report prepared by the Oil Spill Risk Assessment Task Force (OSRATF)

OSRATF Oil Spill Risk Assessment Task Force

Oil Spill Risk Assessment Analysis Model

OSRATF Oil Spill Risk Assessment Task Force, established pursuant to the Cooperative Agreement between the DOI and Florida

Plan of Exploration

Review of MMS Study Draft Report

Scientific Review of Environmental Studies Conducted by the U.S. Department of Interior in Consideration of Oil and Gas Drilling Off Southwest Florida, prepared by a group of 30 marine scientists at the request of the Governor of Florida.

Site-Specific Environmental Report

## DECISION

### I. Factual Background

On February 1, 1984, Gulf Oil Corporation, Tenneco Oil Company and Superior Oil Company successfully bid in Outer Continental Shelf (OCS) Lease Sale 79 to obtain oil and gas lease number OCS-G 6520. Mobil Exploration & Producing U.S. Inc. (Mobil),<sup>1</sup> is the operator of the lease.<sup>2</sup> The lease area, described as Block 799, Pulley Ridge, OCS Official Protraction Diagram, NG 17-7,<sup>3</sup> is located south of 26° N. latitude approximately 59 miles northwest of the Dry Tortugas islands, 75 miles from the nearest Florida mainland (near Cape Romano), and 120 miles west-northwest of Key West, Florida, in the Eastern Gulf of Mexico in Federal waters.<sup>4</sup> The lease was due to expire on December 22, 1992.<sup>5</sup>

Pursuant to the requirements of the Outer Continental Shelf Lands Act (OCSLA) and the regulations codified at 30 C.F.R. § 250.34-1, Mobil submitted its proposed Plan of Exploration (POE) to the Minerals Management Service, U.S. Department of the Interior (MMS), on May 13, 1988. On June 13, 1988, MMS informed Mobil that the POE and accompanying Environmental Report (ER) were complete and deemed submitted. As part of that submission, Mobil certified that its POE was consistent with Florida's Coastal Management Program (CMP). The POE, ER and all additional information submitted by Mobil were then sent to the State of Florida (State or Florida), which Florida received on June 15, 1988. On July 13, 1988, MMS approved Mobil's POE, ER and Environmental Assessment (EA) and informed Mobil that drilling permits would not be issued pending conclusion of Florida's review of Mobil's consistency certification and MMS' approval of a biological monitoring plan.<sup>6</sup>

In its POE, Mobil proposes to drill four exploratory wells to

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<sup>1</sup> Gulf Oil Corporation was merged into Chevron U.S.A. Inc. in 1985, and Superior Oil Company was merged into Mobil in 1986.

<sup>2</sup> Mobil's Statement in Support of a Secretarial Override at 1-2 (Mobil's Statement).

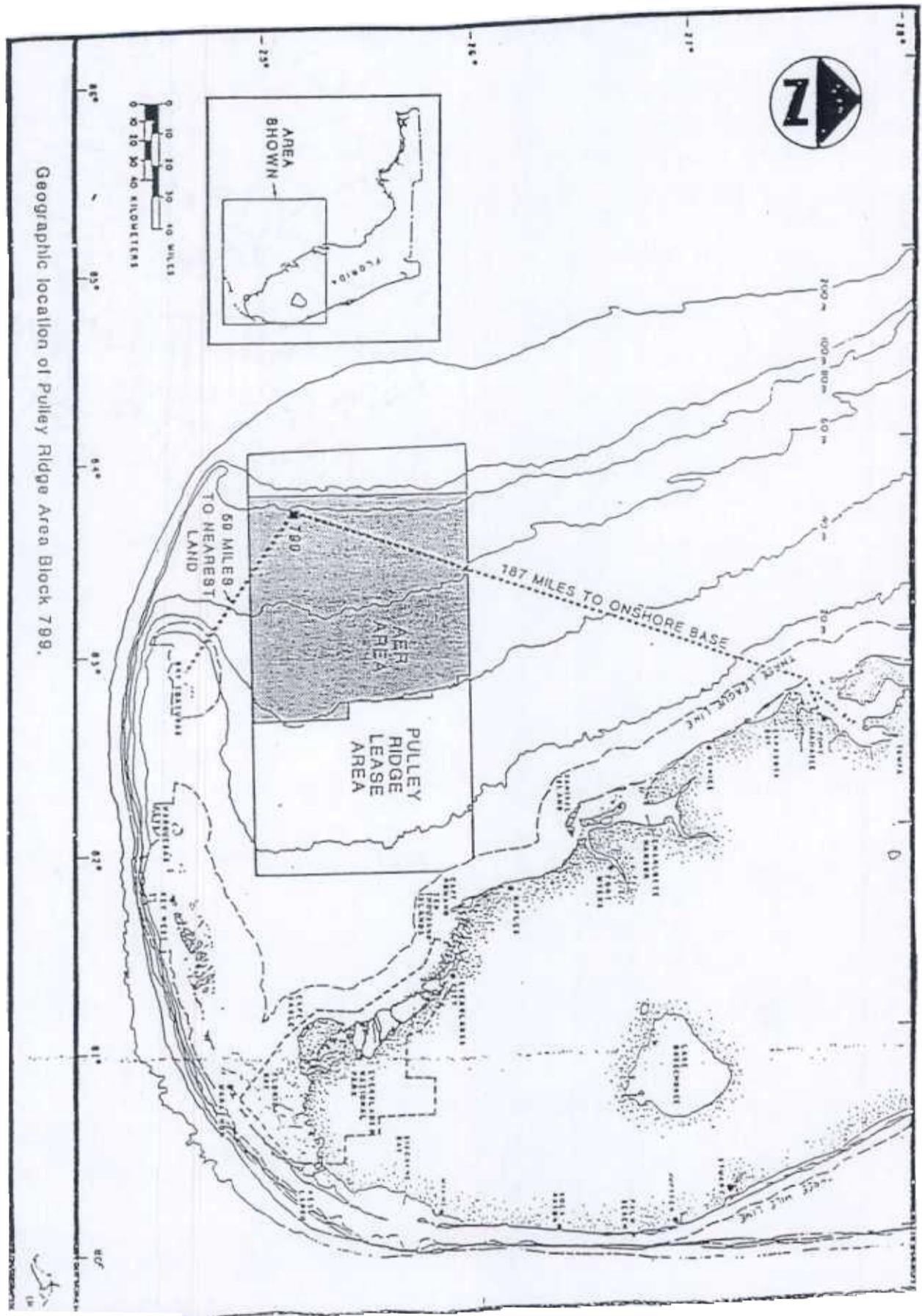
<sup>3</sup> Lease OCS-G 6520.

<sup>4</sup> See Figure 1.

<sup>5</sup> Comments provided under cover of letter from J. Rogers Percy, Regional Director of the Minerals Management Service, U.S. Department of the Interior, to Ms. Katherine Pease, Assistant General Counsel, NOAA, Apr. 28, 1989 (Percy Letter).

<sup>6</sup> *Id.*; That approval included a reminder that drilling operations could encounter hydrogen sulfide, requiring compliance with 30 C.F.R. § 250.67. Mobil was also advised that, in order to protect the endangered West Indian manatee, support activities would be restricted to Tampa Bay and use of boats and barges in the area south of Cedar Key, Florida, would be allowed only if certain conditions are met. (*Id.*)

FIGURE 1



evaluate the hydrocarbon potential of Block 799.<sup>7</sup> Mobil proposes to drill one location first and, based upon the results of that drilling, make a decision regarding the drilling of the three other locations. The proposed drilling is scheduled to take approximately 120 days for each well, for a total of approximately 480 days for the four proposed wells.<sup>8</sup> Mobil proposes drilling the locations as straight holes using a jack-up type drilling rig designed for 25,000' drilling in up to 300' of water. Mobil would support the drilling operation with a support facility in Port Manatee, Florida.<sup>9</sup>

The Florida Department of Environmental Regulation (FDER), then Florida's lead coastal zone management agency pursuant to section 306(c)(5) of the Coastal Zone Management Act of 1972, as amended, (CZMA) or (the Act), and 15 C.F.R. § 923.47, reviewed Mobil's POE. On September 12, 1988, FDER notified the MMS that it was unable to either concur or object with Mobil's consistency certification. The FDER stated that it needed the results of studies by two task forces jointly created by Florida and the Department of the Interior to provide additional information and analysis for the state to complete its review.<sup>10</sup> FDER, after stating that it had not completed its evaluation of the appropriateness of onshore locations for storing oil spill containment and clean-up equipment, also suggested that it may be prudent to place the equipment at facilities that may be closer to the drilling operations.<sup>11</sup>

By letter dated December 14, 1988, FDER notified the MMS that the POE, ER and accompanying information are inconsistent with the Florida CMP.<sup>12</sup> Florida's objections are based on the grounds that the proposed activity is inconsistent with the provisions of Chapter 370 of the Florida statutes.<sup>13</sup> Florida also explains

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<sup>7</sup> Plan of Exploration, Pulley Ridge Block 799 (Mobil's Exhibit 2.)

<sup>8</sup> Pearcy Letter.

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Randall L. Armstrong, Director, Division of Water Management, FDER, to Mr. Kent E. Stauffer, MMS, Gulf Mexico Region, Sept. 12, 1988, (Response Brief of the State of Florida (Florida's Response Brief), Exhibit 8.)

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Dale Twachtman, Secretary, FDER, to Mr. Kent E. Stauffer, U.S. Department of the Interior, MMS, Dec. 14, 1988 (Florida's Objection Letter), Florida's Response Brief, Exhibit 3.

<sup>13</sup> FDER specifically cites Chapters 370.013, 370.02 and 370.151, and states that there is sufficient information to determine that the proposed activities would have unacceptable adverse effects on live bottom, critical habitat for crustaceans such as stone crab, spiny lobster and shrimp, and for grouper and other finfish, and on other submerged and coastal habitats.

that "information and analyses are lacking which would demonstrate that all of the activities, associated facilities and effects proposed by Mobil are consistent" with provisions of the Florida CMP.<sup>14</sup> In addition to explaining the basis of its objection, Florida also notified Mobil of its right to appeal Florida's decision to the Secretary of Commerce (Secretary). Pursuant to section 307(c)(3)(B) of the CZMA and 15 C.F.R. § 930.131, Florida's consistency objection precludes the MMS from issuing the permits necessary for Mobil to carry out activities under the POE unless the Secretary overrides Florida's objection by finding that the activity is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interests of national security.

## II. Appeal to the Secretary

On January 12, 1989, in accordance with section 307(c)(3)(B) of the CZMA and 15 C.F.R. Part 930, Subpart H, counsel for Mobil filed with the Secretary a notice of appeal from Florida's objection to Mobil's consistency certification for the proposed POE.<sup>15</sup> Mobil's notice of appeal requested a 30-day extension from issuance of the briefing schedule to submit its full supporting statement, data and other information. That request was granted.<sup>16</sup>

Mobil timely filed a brief (entitled Statement in Support of a Secretarial Override) on April 19, 1989. By letter dated May 5, 1989, the Under Secretary of Commerce for Oceans and Atmosphere granted Florida's request for an extension of time to respond to Mobil's brief.<sup>17</sup> Florida filed its response to the appeal by brief dated June 15, 1989.

Upon Mobil's perfection of its appeal by filing a brief and supporting information and data pursuant to 15 C.F.R. § 930.125, a notice of the appeal and request for comments was published in the Federal Register on March 29, 1989 (54. Fed. Reg. 12942-12943) and in two local newspapers. (The Key West Citizen, May 3, 10 and 17, 1989; Fort Myers News-Press, Apr. 29, 30 and May 1, 1989.) Comments received from the public have been included in the record of this appeal. Those comments have been

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<sup>14</sup> Florida's Response Brief, Exhibit 3. Florida's Objection Letter cites the Florida Code, Chapters 403.021(1), (2), (5) and (6); 403.061; 403.062; 403.151; 376.021(1), (2), (3) and (5); 376.041; 376.051; 380.0552; 288.03(3) and (4); and 288.34.

<sup>15</sup> Letter from William C. Whittemore, Senior Counsel, Mobil Exploration & Producing U.S. Inc., to The Honorable C. William Verity, then Secretary of Commerce, Jan. 11, 1989.

<sup>16</sup> Letter from Under Secretary William E. Evans to William C. Whittemore, Esquire, Mobil, Mar. 9, 1989.

<sup>17</sup> Letter from William E. Evans, then Under Secretary for Oceans and Atmosphere, to Deborah Hardin Wagner, Esquire, Assistant General Counsel, May 24, 1989.

considered only as they are relevant to the statutory grounds for deciding consistency appeals. On April 28, the Under Secretary of Commerce for Oceans and Atmosphere solicited the views of Federal agencies,<sup>18</sup> and the National Security Council regarding this appeal. All of the agencies responded with comments. The National Security Council (NSC) did not respond.

By letter dated May 22, 1989, Florida requested that a public hearing be held regarding the issues raised in this appeal and in the companion appeal of Union Exploration Partners, LTD (Union). On June 2, 1989, pursuant to delegated authority from the Secretary of Commerce, the General Counsel for NOAA granted Florida's request.<sup>19</sup> A Notice of Public Hearing was published in a local newspaper, (The Key West Citizen, September 19 and 26, 1989), and a joint public hearing<sup>20</sup> was held on September 29, 1989, in Key West, Florida, addressing the issues raised in both appeals. Petitions, resolutions, oral and written testimony were received from Mobil, Union, Congressman Dante B. Fascell, (then) Governor Martinez, local officials, representatives of local and national interest groups, and members of the public. On October 12, 1989, Mobil filed documents supplementing the information submitted at the hearing for the record.<sup>21</sup> The record closed for public comments on October 15, 1989. At the request of Florida, the two joint task force reports prepared by the State of Florida and the U.S. Department of the Interior, MMS, "Oil Spill Risk Assessment Task Force Report" (Oil Spill Report), and Southwest Florida OCS Drilling Impact Assessment Task Force Report (Drilling Impact Report) were admitted into the record. Additionally, by telephone conference call on November 20, 1989, Mobil, Union and Florida agreed to delay the establishment of a briefing schedule for final briefs until after release of the report by the President's OCS Leasing and Development Task Force<sup>22</sup> so that it could be included in the record for this

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<sup>18</sup> These agencies were the Department of State, the Environmental Protection Agency, the Department of the Interior (the Fish and Wildlife Service and the Minerals Management Service), the National Marine Fisheries Service of the Department of Commerce, the United States Coast Guard, the Department of Transportation, the Department of Defense, the Department of Energy, the Department of the Treasury, and the Federal Energy Regulatory Commission.

<sup>19</sup> Letter from Timothy R.E. Keeney, General Counsel, to William C. Whittemore, Esquire, dated June 2, 1989.

<sup>20</sup> This public hearing was consolidated with the public hearing to be held in the appeal of Union Exploration Partners, LTD. (Union) to the objection by the State of Florida that its proposed POE for two oil and gas leases (OCS-G 6491 and 6492) in the Gulf of Mexico is inconsistent with Florida's CZMP. The leases are for Blocks 629 and 630, Pulley Ridge, which are approximately 19 miles southwest of Mobil's Block 799, Pulley Ridge.

<sup>21</sup> Letter from Craig Wyman, Esquire, to Kirsten Erickson and Susan K. Auer, dated October 12, 1989.

<sup>22</sup> On February 9, 1989, in his budget address to Congress, President Bush announced the establishment of a cabinet-level Task Force to review environmental concerns in OCS oil and gas lease sales that were scheduled for fiscal year 1990: Sale 91 off the northern California coast, Sale 95 off the southern California coast, and Sale 116, Part II in the eastern Gulf of Mexico. Block 799, Pulley Ridge (the subject

appeal. The parties also agreed that if the report of the Presidential task force was not released by the end of January, 1990, the issue of setting up a final briefing schedule in the absence of the Task Force report would be revisited.

In the interim, Florida requested, and Mobil did not object, that the report by the National Research Council for the President's Interagency Task Force entitled "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" (NRC Report) be admitted into the record. On April 6, 1990, that request was granted and a final briefing schedule was established over the objection of Florida.<sup>23</sup> On May 21, 1990, Florida requested a stay of the May 25, 1990, deadline for filing of final briefs and the June 8, 1990, deadline for filing of supplemental final briefs on the grounds that the President, in the near future, might render a decision regarding a ban on oil and gas drilling and exploration for the area that includes Block 799, Pulley Ridge and release the report of the Presidential task force.<sup>24</sup> On May 22, 1990, Mobil formally opposed that stay.<sup>25</sup> The General Counsel for NOAA denied Florida's request by letters to the parties on June 7, 1990.<sup>26</sup>

On June 26, 1990, the President, in response to the recommendations of the task force, imposed a moratorium on oil and gas leasing and development in Lease Sale Area 116, Part 2, off the coast of Florida. In response to the Presidential

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of this appeal) is located within the area of Sale 116, Part II. Members of the Task Force included: the Secretaries of the Interior and Energy, the Administrators of NOAA and the EPA, and the Director of the Office of Management and Budget. Additionally, the President requested that the National Research Council provide the Task Force with a technical review of information about the environmental concerns and petroleum resources in the review areas. (54 Fed. Reg. 33150-33165 (1989)).

<sup>23</sup> Letter from Gray Castle to Deborah Tucker and Craig Wyman, Esquire, dated April 6, 1990. The Presidential Task Force report had not yet been released and there was no indication that it would be released in the near future.

<sup>24</sup> Letter from William A. Buzzett, Assistant General Counsel, Office of the Governor, to Dr. John A. Knauss, Under Secretary for Oceans and Atmosphere, NOAA, May 21, 1990.

<sup>25</sup> Letter from Craig Wyman, Esquire, to Dr. John A. Knauss, Under Secretary for Oceans and Atmosphere, NOAA, May 22, 1990.

<sup>26</sup> Letters from Thomas A. Campbell, General Counsel, NOAA (by James A. Brennan, Deputy General Counsel), to Craig Wyman, Esquire, and William A. Buzzett, Esquire, June 7, 1990. The denial indicated that Florida could request reconsideration of the denial in the event the President's decision or the Presidential Task Force Report was released prior to the decision in this appeal. Although the President announced his decision on June 26, 1990, the report has not been released.

moratorium, the issuance of a stay of the decision in this appeal was again considered and rejected.<sup>27</sup>

### Threshold Issues

Mobil raises three threshold issues in its opening brief. First, Mobil argues that Florida did not properly follow "the federal regulatory requirements for formulation of a consistency objection on the ground of 'insufficient information'."<sup>28</sup> Second, Mobil argues that "Florida's objection is tainted by the State's announced position against marine drilling in south Florida under any circumstances."<sup>29</sup> Third, Mobil asserts that "considering the abundant federal concessions already given Florida to appease its concerns, Florida's anti-drilling policy should not be allowed to obstruct the long overdue exploration of the mineral resources on the Eastern Gulf of Mexico." (Id.)

#### A. Whether Florida's Consistency Objection Complied With the Requirements of the CZMA and Its Implementing Regulations.

On September 12, 1988, Florida sent a letter to MMS<sup>30</sup> stating that information to be developed by state and DOI representatives will address questions concerning oil spill risks and containment/cleanup planning for the area that includes Block 799, Pulley Ridge, and that such information and analyses "is needed for us to be able to make a determination of concurrence or objection to Mobil's consistency certification."<sup>31</sup> Attached to the letter was another letter from Deborah L. Tucker, Office of the Governor, to Mr. Kent E. Stauffer, MMS, dated July 11, 1988, further explaining the task force assignments.

Mobil argues that Florida's objection should be dismissed because Florida's letter to MMS failed to comply with 15 C.F.R. § 930.64(d) which requires that the State request information from the applicant. Florida argues that 15 C.F.R. § 930.64(d) does not apply in this case because its consistency objection is based on technical and research information already in existence, although the objection also recognizes that there are ongoing studies which will provide additional information.<sup>32</sup>

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<sup>27</sup> Letter from Margo E. Jackson, Assistant General Counsel, NOAA, to David Maloney, Esquire, Office of the Governor and Brendan M. Dixon, Esquire, Mobil, Sept. 10, 1990.

<sup>28</sup> Mobil's Statement at 7.

(emphasis in original).

<sup>30</sup> Letter from Randall L. Armstrong, Director, Division of Water Management, FDER, to Mr. Kent E. Stauffer, MMS, Gulf Mexico Region, dated September 12, 1988, (State's Brief, Exhibit 8.)

<sup>31</sup> Id.

<sup>32</sup> Florida's Response Brief at 18.

Regulations codified at 15 C.F.R. Part 930, Subpart E, govern the review of OCS activities by state reviewing agencies for consistency with state-approved coastal zone management programs. These regulations incorporate by reference general consistency review requirements found in other subparts of 15 C.F.R. Part 930. Pursuant to those regulations, there are two grounds for objection available to a state: that the proposed activity is inconsistent with the state's coastal management program (15 C.F.R. § 930.64(b)), or that the applicant has failed to supply sufficient information for the state to determine the consistency of the proposed activity (15 C.F.R. § 930.64(d)).

Mobil first argues that Florida's objection is an objection based on insufficient information which fails to comply with the requirements of 15 C.F.R. §§ 930.64(d) and 930.79(c). Section 930.79(c) of 15 C.F.R. specifies that a State's objection to an OCS activity "must provide a separate discussion for each objection in accordance with the directives within 15 C.F.R. §§ 930.64(b) and (d). Section 930.64(d) of 15 C.F.R. provides:

A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to §[930.58]. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

Mobil contends that it supplied all the specific information requested by Florida to perform its consistency review and that Florida cannot now object to Mobil's proposed POE based on insufficient information because Florida never specifically requested the information which it now requests on appeal. Mobil argues that such a request on appeal violates the procedural requirements of 15 C.F.R. §§ 930.53(d) and 930.79(c).<sup>33</sup>

Florida asserts that its objection was based on its finding that the proposed activity is inconsistent with several provisions of its coastal management program. Florida argues that the requirement that the applicant be requested to supply the information is not applicable because the information it noted as lacking does not presently exist and because the information "does not concern the physical components of Mobil's operation."<sup>34</sup>

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<sup>33</sup> Mobil's Statement at 8-9.

<sup>34</sup> Florida's Response Brief at 21.

I agree with Florida's characterization of its objection. In September of 1988, Florida did notify MMS that it had major concerns regarding the effects of exploratory drilling on the south Florida area, and that information and analyses developed through efforts of the two DOI/State of Florida task forces "is needed for us to be able to make a determination of concurrence or objection to Mobil's consistency certification which accompanied the plan."<sup>35</sup> However, Florida's subsequent December 14, 1988, objection was not based on the grounds that it was unable to make a consistency determination due to a lack of information. Rather, Florida's objection is based on its review of the existing biological, ecological, oceanographic, and socioeconomic information and its determination based on that information that Mobil's proposed POE is inconsistent with Florida's CMP. Although Florida's objection letter contained a discussion of several proposed and ongoing studies that may yield the information which Florida views as necessary to find Mobil's proposed POE consistent with its CMP, the lack of these studies did not prevent Florida from making a consistency determination based on available information.

Consequently, the requirements of 15 C.F.R. § 930.64(d) are not applicable because they are directed at providing the state with a means to object if it is unable to make a consistency determination due to an applicant's failure to provide available information.<sup>36</sup> Accordingly, because Florida's objection was grounded in its determination pursuant to 15 C.F.R. § 930.64(b) that the proposed activity is inconsistent with the Florida CMP, Florida was under no obligation to request that Mobil provide it with the noted studies prior to issuing its objection.<sup>37</sup>

Mobil goes on to argue that Florida's objection is defective because Florida failed to comply with the requirements relating to objections on the grounds of insufficient information.<sup>38</sup> Because I find that Florida's objection is grounded in and

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<sup>35</sup> Letter from Randall L. Armstrong, Director, Division of Water Management, to Mr. Kent E. Stauffer, MMS, Gulf of Mexico Region, Sept. 12, 1988.

<sup>36</sup> Decision and Findings in the Consistency Appeal of Long Island Lighting Company, Feb. 26, 1988, at 5. These regulations also foster resolution of disputes and decrease the necessity of appeals by assuring that all parties have access to the information they need to resolve disputes. See, 43 Fed. Reg. 10514 (1978).

<sup>37</sup> Mobil does not argue that Florida's objection did not comply with 15 C.F.R. § 930.64(b), which requires the state objection to describe (1) how the proposed activity is inconsistent with specific elements of the management program, and (2) alternative measures which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program.

<sup>38</sup> Specifically, Mobil argues that Florida's objection failed to comply with the requirements of 15 C.F.R. § 930.79(c), and by reference § 930.64(d) (requiring that "the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program"), and with the "necessary data and information" requirements of 15 C.F.R. § 930.77.

complies with the requirements of 15 C.F.R. § 930.64(b), I need not inquire as to whether Florida has adequately based its objection on the alternative ground of 15 C.F.R. § 930.64(d).

#### B. Bias of Florida

Mobil next argues that in evaluating Florida's objection I must "be aware" of the alleged marked anti-drilling bias that serves as a back drop to Florida's concerns.<sup>39</sup> Mobil does not provide an argument why Florida's purported anti-drilling bias is relevant to this appeal before me, nor does Mobil suggest how my awareness of it should affect my decision in this appeal. As discussed in previous decisions, I do not consider whether the state complied with the State law requirements of its CMP in issuing its objections,<sup>40</sup> rather, my review is limited to whether a state in issuing its objection complied with the CZMA and its regulations and whether an override of the state's objection is warranted because a proposed project "is consistent with the objectives or purposes of the CZMA" or "necessary in the interest of national security" based upon the criteria defined at 15 C.F.R. §§ 930.121 and 930.122. Consequently, whether the state is biased against oil and gas activities on the Gulf of Mexico and along the south Florida coast is not a determinative factor in my decision in this appeal. The criteria for an override are provided solely by the CZMA and its implementing regulations.

#### C. Florida's Receipt of Federal Concessions

Mobil finally contends that Florida has received extensive accommodations from Congress, the DOI and the oil industry to address its concerns about oil and gas activities in south Florida. These accommodations have taken the form of moratoria on oil and gas drilling, agreements between the DOI and Florida to remove areas from Federal lease plans or to set conditions on exploration, production of environmental studies, and the voluntary rerouting of oil tanker traffic to avoid sensitive environmental areas off the South Florida coast.<sup>41</sup> Again, whether or not Congress, the DOI and the oil industry have made concessions to address Florida's concerns regarding oil and gas activities is not one of the criteria upon which I must base my decision in this appeal.

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<sup>39</sup> Mobil's Brief, 12.

<sup>40</sup> See Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd. (Korea Drilling Decision), Jan. 19, 1989, at 3.

<sup>41</sup> Mobil Brief at 14-16.

#### D. Standard of Proof.

Florida argues that Mobil's burden of proof is to demonstrate by "clear and convincing evidence" that the grounds for an override of Florida's consistency objection are met."<sup>42</sup> I have not previously defined the degree of evidence necessary for the appellant to meet its burden of proof. Prior to resolving this issue it is important to distinguish the term "standard of proof" from the terms "scope of review" and "standard of review." As in judicial proceedings, these concepts as applied in administrative proceedings are separate matters.<sup>43</sup> Standard of proof refers to the "measure of belief which legally must exist in the mind of the trier of fact in order to sustain a finding." The scope of review marks the limits of a reviewing body's "authority to set aside factual findings and review is customarily limited to ascertaining whether there is enough evidence to support the findings."<sup>44</sup>

I recently addressed this issue in the Decision and Findings of in the Consistency Appeal of Chevron, U.S.A. Inc., (Chevron Decision), October 29, 1990. In the Chevron Decision, I noted that the standard of proof in a consistency appeal must be distinguished from the scope of review which will be applied to my decision by a reviewing court.<sup>45</sup> I noted that "the term consistency appeal is somewhat a misnomer," and that, unlike other appeal procedures, the consistency appeals process is not a review of the correctness of the underlying rationale of a state's objection of the agency's initial decision. In my analysis, I stated that "the appeals process is the agency's first look at the evidence presented by the parties."<sup>46</sup> Consequently, in deciding a consistency appeal, I sit not as a reviewing body but rather as the initial administrative finder of fact and law. Accordingly, in the Chevron Decision I declined to apply the substantial evidence test which is the standard or scope of review applied by a reviewing court to an agency's factual findings in defining the appellant's standard of proof. Rather, the Chevron Decision held that the decision maker in CZMA consistency appeals shall independently determine, based on all the information submitted during the procedure, whether the appellant has met its burden of establishing the grounds for

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<sup>42</sup> Mobil does not contest that it bears the burden of proof on appeal. Further, the Secretary has previously held that the Appellant bears the burden of proof on the appeal. See Korea Drilling Decision, at 22.

<sup>43</sup> Jaffe, Administrative Law: Burden of Proof and Scope of Review, 79 Harv. L. Rev. 914, 1966).

<sup>44</sup> Id.

<sup>45</sup> Chevron Decision at 5.

<sup>46</sup> Id.

Secretarial override of the state's objection. In that decision, however, I did not define the degree of evidence which the appellant must produce in order to meet that burden.<sup>47</sup>

Florida argues that Mobil must prove that the requirements for override are met by clear and convincing evidence. The traditional standard of proof in a civil or administrative hearing is the preponderance of the evidence.<sup>48</sup> The more stringent "clear and convincing" standard is applied generally in cases involving allegations of fraud or some other quasi-wrong by a defendant,<sup>49</sup> or cases which involved the protection of particularly important individual interests.<sup>50</sup> In light of the fact that consistency appeals do not address the review of fraudulent activities or the protection of particularly important individual interests, I find no reason to depart from the traditional preponderance of evidence standard of proof. Accordingly, I will apply that standard in my decision in this appeal.

### III. Grounds for Overriding a State's Objection

Section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. § 1456(c)(3)(B)(iii)) and the Department's implementing regulations codified at 15 C.F.R. § 930.120 provide that the Secretary may find "that a Federal license or permit activity, including those described in detail in an OCS plan . . . which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act [Ground I], or is necessary in the interest of national security [Ground II]." Mobil has pleaded both grounds.

The Department's regulations interpreting these two statutory grounds are codified at 15 C.F.R. §§ 930.121 and 930.122.

#### A. Ground I: Consistent with the Objectives or Purposes of the CZMA

The first statutory ground (Ground I) for overriding a state's objection to a proposed project is that the activity is consistent with the objectives or purposes of the Act. To so find, I must determine that the activity satisfied all four of the elements specified at 15 C.F.R. § 930.121.

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<sup>47</sup> The only guidance provided in the regulations on this issue can be found at 15 C.F.R. § 930.13 which provides that "[i]n reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity . . . is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion."

<sup>48</sup> Swartz, Administrative Law § 7.9 (1984); Collins Securities Corp., et al. v. SEC, 562 F.2d 820, 822 (1977).

<sup>49</sup> See, e.g., Collins Security, supra.

<sup>50</sup> See, e.g., Woodby v. Immigration and Naturalization Service, 385 U.S. 276 (1966) (deportation), and O'Haunt v. United States, 364 U.S. 350, 353 (1966) (denaturalization). See, generally, Addington v. Texas, 47 U.S. 418 (1979); 9 Wigmore, Evidence § 2498 (3rd ed. 1940); Swartz, Administrative Law, supra.

## 1. First Element

The first of the four elements, that "[t]he activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the CZMA."<sup>51</sup>

The CZMA identifies a number of objectives and purposes, including

- preservation, protection and where possible restoration or enhancement of the resources of the coastal zone (sections 302(a), (b), (c), (d), (e), (f), (g) and (i), and 303(1));
- development of the resources of the coastal zone (sections 302(a), (b), and (i), and 303(1); and
- encouragement and assistance to the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect and to develop coastal resources (sections 302(h), (i) and (m), and 303(2)).<sup>52</sup>

In addition, the CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency through the provisions of Federal financial assistance to meet state and local government needs resulting from new or expanded energy activities (section 302(j)), and that orderly processes for siting of major energy facilities, inter alia, be given priority consideration (section 303(2)(D)).

Previous consistency appeal decisions have also noted that OCS exploration, development and production activities and their effects on land and water uses of the coastal zone are included within the objectives and purposes of the CZMA. Congress has broadly defined the national interest in coastal zone management to include both the protection and development of coastal resources. Consequently, as stated in previous decisions, this element normally will be satisfied on appeal.<sup>53</sup> Florida, however, requests that I reconsider this position.

Florida argues that oil and gas activities, rather than being per se an objective of the CZMA, are an objective of the CZMA only if they are performed in a manner protective of the natural resources of the coastal zone. (Florida's Brief, 30-31.) This same argument was addressed and rejected in the Chevron

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<sup>51</sup> 15 C.F.R. § 930.121(a).

<sup>52</sup> It should be noted that the CZMA was recently reauthorized and this section, among others, was amended. This decision does not address nor apply the requirements of the amended CZMA.

<sup>53</sup> Chevron Decision, at 22.

Decision.<sup>54</sup> There the Deputy Secretary of Commerce held that an analysis of the environmental effects of an appellant's proposed activity is more appropriately considered under Element Two and that Element One requires no such analysis. The Deputy Secretary explained that to hold otherwise would unduly expand the regulatory criteria for Element One. The Deputy Secretary concluded that "[e]xploration, development and production of offshore oil and gas resources and their effects on the resources of the coastal zone are among the objectives of the CZMA."<sup>55</sup> Since Florida has not offered any additional argument to those considered in the Chevron Decision, the rationale of that decision is equally applicable here. Accordingly, because the record demonstrates that Mobil's proposed activity falls within and furthers the objectives of sections 302 and 303 of the CZMA, I find that Mobil's proposed POE satisfies the first element of Ground I.

## 2. Second Element

The second element of Ground I is that the proposed activity when performed separately, or when its cumulative effects are considered, will not "cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest."<sup>56</sup>

To find this element satisfied, I must identify: 1) the adverse effects of the objected-to activity on the natural resources of the coastal zone, 2) the cumulative adverse impact on the natural resources of the coastal zone of the objected-to activity being performed in combination with other activities affecting the coastal zone, and 3) the proposed activity's contribution to the national interest. I must then determine whether the adverse effects on the natural resources of the coastal zone are substantial enough to outweigh the activity's contribution to the national interest.<sup>57</sup> Further, normally I weigh both the adverse effects that may result from the normal conduct of the activity either by itself or in combination with other activities affecting the coastal zone and the adverse effects that result from unplanned or accidental events arising from the activity such as a vessel collision or an oil spill.

Prior to addressing and evaluating the parties' arguments regarding the potential adverse effects of Mobil's proposed exploratory drilling, several issues must first be addressed. First, in evaluating the adverse effects of its proposed exploratory drilling, Mobil contends that Florida misrepresents the relevant area and the natural resources potentially affected

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<sup>54</sup> *Id.* See, also Decision and Findings in the Consistency Appeal of Texaco, Inc. (Texaco Decision), May 19, 1989, where the California Coastal Commission presented a similar argument.

<sup>55</sup> Chevron Decision, at 23.

<sup>56</sup> 15 C.F.R. § 930.121(b).

<sup>57</sup> Chevron Decision, at 24.

by its proposed activities. Mobil notes that Pulley Ridge Block 799 is off the southwest coast of Florida in the area south of 26° N. latitude. Mobil does not dispute that parts of this area, including the Florida Keys and the Everglades, consist of a rich, varied and unique marine environment and habitat, and that the mangrove communities, coral reefs and seagrasses of the area are protected by approximately 16 Federal and State wildlife refuges. Nor does Mobil dispute that these habitats are within Florida's coastal zone.<sup>58</sup> Rather, Mobil asserts that there are no "true" coral reefs within 52 miles of Pulley Ridge Block 799, no seagrass beds within 57 miles, no mangrove communities within 99 miles,<sup>59</sup> and that the "nearby" refuges are not nearby in the sense that they will be affected by the proposed exploratory drilling. Mobil argues that, accordingly, the potential effects of Mobil's exploratory drilling should not include effects on these resources. However, as my discussion of this element indicates, *infra*, these resources could suffer adverse effects if an accidental oil spill occurs from Mobil's proposed exploratory drilling. Accordingly, the effects of such a spill on these resources are relevant to an evaluation of the adverse effects of the potential adverse effects of Mobil's proposed activity.

Second, Mobil contends that Florida misrepresents the activity to be evaluated under this element. Florida argues that, in addition to evaluating the adverse effects associated with exploration, the potential adverse effects associated with the development and production process also must be evaluated.<sup>60</sup> In opposition, Mobil argues that the only activity currently before the Secretary for review is Mobil's proposed exploratory drilling.

The rationale applied in the Texaco Decision is useful to this question. Florida's argument is only another version of the California Coastal Council's (CCC) argument in the Texaco Decision. In that case, the CCC argued that the cumulative adverse effects of the proposed activity should include the appellant's development of the proposed site. In that decision, the Secretary relied on the standard used in the Decision and Findings in the Consistency Appeal of Gulf Oil Corporation (Gulf Oil Decision), December 23, 1985: Cumulative effects means "the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected-to activity is likely to contribute to adverse effects on the natural resources of the coastal zone."<sup>61</sup> In applying that standard to the facts of this case, I find that in evaluating the individual and cumulative adverse effects of

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<sup>58</sup> Western Florida's coastal zone is coequal to its territorial sea which extends 9 nautical miles.

<sup>59</sup> Mobil's Final Brief at 25.

<sup>60</sup> Florida's Response Brief at 32-33.

<sup>61</sup> Texaco Decision, at 23-24 (quoting Gulf Oil Decision, at 8)

Mobil's proposed project, the relevant activity for review is Mobil's proposed exploratory drilling activity.

As discussed above, Florida contends, and Mobil does not dispute, that the area adjacent to Florida's southwest coastline south of 26° N. latitude is a unique ecosystem consisting of mangroves, seagrasses, marshes, coral reefs and live-bottom habitat. Florida asserts that exploratory drilling under the proposed POE would result in two major adverse impacts: harm caused by an oil spill, and physical destruction of critical fisheries habitat.<sup>62</sup> Mobil disagrees with both assertions.

The debate regarding the potential adverse effects of oil and gas activities on the natural resources in the area south of 26° N. latitude offshore southwest Florida antedates this appeal. The lease which is the subject of this appeal was offered for sale by the DOI in Lease Sale 79 in 1984. Florida, a vigorous opponent of that sale, had requested that the Secretary of the Interior remove the area below 26° N. latitude from the offering and recommended that "at least three years of environmental data be collected to aid in determining the potential for impacts from oil and gas activities before leasing decisions were made."<sup>63</sup>

In September, 1983, Congress enacted a moratorium on drilling in waters north of 26° N. latitude, and imposed limits on any leases for tracts located south of 25° N. latitude.<sup>64</sup> On August 9, 1984, in accordance with that moratorium, MMS issued a Notice of Suspension of Operations to all lease holders south of 26° N. latitude which extended the term of the leases, including Mobil's lease for Block 799, until completion of studies specified by Congress were completed.<sup>65</sup> Florida suggested, and Mobil and

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<sup>62</sup> Florida's Response Brief at 34.

<sup>63</sup> Florida's Exhibit P (Draft Report: Scientific Review of Environmental Studies conducted by the U.S. Department of Interior in Consideration of Oil and Gas Drilling Off Southwest Florida).

<sup>64</sup> Id. The Congressional limitations were:

- (1) No exploratory drilling activities will be approved by the [DOI] until the [DOI] has accumulated 3 years worth of physical oceanographic and biological resource data; and
- (2) Lessees will be required to perform biological surveys prior to approval and initiation of exploration or drilling operations and to work in cooperation with the [DOI] on the monitoring of any subsequent drilling activities.

(Congressional Record, House, September 30, 1983)

<sup>65</sup> The studies were performed under the Southwest Florida Shelf Program and included a survey of biological communities, a study of benthic communities (Florida's Exhibit E), and an ecosystems study for the southwest Florida shelf (south of 27° N. latitude and offshore to the edge of the OCS) (Mobil's Exhibit 14), a physical oceanography report for the Gulf of Mexico, and a study of the physical oceanography of Florida's Atlantic coast region. The objectives of the studies were to:

1. Determine the location and distribution of various benthic habitats and associated communities;
2. Determine the seasonal structure and density of selected live- and soft-bottom communities;
3. Compare the community structure of live- and soft-bottom fauna and flora to determine the differences and similarities between them and their dependence on

other lease holders agreed, that the leaseholders would also undertake two projects to prepare for the lifting of the MMS suspension. The two projects resulted in the Area Environmental Reports and development of "a predictive model for oil spill trajectory analysis using real-time oceanographic and meteorological conditions suitable for oil spill contingency planning off southwest Florida."<sup>66</sup> On March 1, 1987, after determining that the studies were complete, MMS lifted its suspension.<sup>67</sup>

On March 26, 1987, Florida requested that the area be deferred from further leasing until the state had an opportunity to ascertain the potential impact of oil and gas activities from the MMS studies. Along with its POE, Mobil submitted to MMS a Site-Specific Environmental Report (SER), an Area Environmental Report (AER) and Considerations for an Oil Spill Contingency Plan.<sup>68</sup>

In April, 1987, MMS released the final synthesis report on the Southwest Florida Shelf Ecosystems Study. To evaluate the results of the MMS effort, the governor of Florida assembled a group of 30 marine scientists from Florida and throughout the southeast United States.<sup>69</sup> The group concluded that "[w]hile the stated objecti[ves] of the study program were not met a vast amount of information was obtained."<sup>70</sup> Based upon the group's conclusions, and in spite of the AER and SER produced by Mobil, Florida continued to object to further leasing in the area and to any proposed drilling.

By letter to the Governor of Florida, dated June 16, 1988, the Secretary of the Interior, Donald Hodel, agreed to delay further leasing in the area for at least six months, and invited the State to participate in two task forces to address the effects of

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substrate type;

4. Determine and compare hydrographic structure of the water column and bottom conditions at selected sites within the study area;
5. Determine and compare sedimentary character at selected sites within the study area and estimate sediment transport;
6. Relate differences in biological communities to hydrographic, sedimentary and geographic variables; and
7. Provide essential information on the dynamics of selected live-bottom communities and determine the major factors which influence their development, maturation, stability, and seasonal variability.

The ultimate stated objective of the biological portion of the program was "to determine the potential impact of offshore oil and gas activities on live-bottom habitats and communities which are integral components of the southwest Florida shelf ecosystem. (Draft Report: Scientific Review of Environmental Studies..., pp. 3-4).

<sup>66</sup> Id. at 8.

<sup>67</sup> This action reinstated the 5-year term of the leases and MMS began accepting applications and POE submissions for the leased areas. Thus, Mobil was free to apply for approval of its POE.

<sup>68</sup> Mobil Exhibits, Vol. I.

<sup>69</sup> Florida's Exhibit P, Appendix I.

<sup>70</sup> Draft Report: Scientific Review of Environmental Studies Conducted by the U.S. Department of Interior in Consideration of Oil and Gas Drilling Off Southwest Florida (Review of MMS Study) at 30, Florida's Exhibit P, See also Florida's Objection Letter.

exploratory drilling on the south Florida area. Recognizing the area's sensitive natural resources, Florida and DOI entered into a cooperative agreement<sup>71</sup> that delayed Lease Sale 116<sup>72</sup> until May 1989 and established two task forces that, among other things, would provide "an estimate of the risk to and effects on the environmental resources of the South Florida area"<sup>73</sup> and "to estimate the likelihood of an oil spill during exploration activities."<sup>74</sup> As a result of that effort, the "Southwest Florida OCS Drilling Impact Assessment Task Force Report" (Drilling Impact Report) and the "Oil Spill Risk Assessment Task Force Report" (Oil Spill Report) were released in the fall of 1989.

President Bush, in his February 9, 1989, budget address to Congress announced the postponement of three OCS lease sales, including Sale 116, Part 2, for the eastern Gulf of Mexico, and the establishment of a cabinet-level Task Force on Leasing and Development to review the environmental concerns for those lease sales.<sup>75</sup> Additionally, the President requested that the National Research Council provide the Task Force with a review of the "adequacy of the scientific and technical information base for decision making for the three OCS lease areas."<sup>76</sup> In the interim, Congress again issued a moratoria on drilling in the area which expired in September, 1990.

On June 26, 1990, after receiving the report of the Task Force on Leasing and Development, the President announced a series of decisions that accepted the Task Force's recommendation that further steps to protect the environment are needed.<sup>77</sup>

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<sup>71</sup> DOI's authority for the cooperative agreement is derived from section 19(3) of OCSLA.

<sup>72</sup> Lease Sale 116, Part II, area encompasses an area south of 26° north latitude and east of 86° west longitude. Block 799 is located within the boundaries of Lease Sale 116, Part II.

<sup>73</sup> "Terms of Cooperative Agreement; Drilling Impact Assessment Task Force in Consideration of Exploratory Drilling South of 25 Degrees North Latitude"; Florida's Exhibit L.

<sup>74</sup> Oil Spill Risk Assessment Task Force Report, Appendix A.

<sup>75</sup> 54 Fed. Reg. 154 (1989)

<sup>76</sup> National Research Council, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California", Released Nov. 3, 1989 (NRC Report).

<sup>77</sup> See "Statement by the President" and "Fact Sheet" (Attachment A). The provisions applying to Florida are:

I am announcing my support for a moratorium on oil and gas leasing and development in Sale Area 116, Part II, off the coast of Florida ... until after the year 2000.

The combined effect of these decisions is that the coast of southwest Florida ... will be off limits to oil and gas leasing and development until after the year 2000.

... I am asking the Secretary of the Interior to begin a process that may lead to the buyback and cancellation of existing leases in Sale Area 116, Part II, off southwest Florida.

For fiscal year 1990, Congress provided for a leasing moratorium, a 1-year drilling ban, and restrictions on geological and geophysical activities in the area south of 26° N. latitude in the Eastern Gulf of Mexico.<sup>78</sup> For fiscal years 1991 and 1992, Congress provided for moratoria as established in the President's moratorium statement of June 26, 1990, and on preleasing and leasing activities in the eastern Gulf of Mexico for Lease Sale Areas 137 and 151.<sup>79</sup>

#### Adverse Effects from Accidental Events -- Oil Spills

The NRC Report, developed pursuant to the President's cabinet-level Task Force, the Drilling Impact Report and the Oil Spill Report, developed pursuant to the Cooperative Agreements between the DOI and Florida, are the most recent and comprehensive evaluations of the available technical and scientific data regarding the long-standing issue of the environmental risks of oil and gas activity on the OCS. Specifically, the President charged the NRC with assessing the adequacy of the available scientific and technical information on estimated hydrocarbon resources and the potential environmental risks of oil and gas activity in three areas, including Lease Sale 116, Part 2, and determining whether the available information was sufficient to make a leasing decision.<sup>80</sup> The Drilling Impact Assessment Task Force (DIATF), through the cooperative agreement, was charged with analyzing the potential effects of OCS exploratory drilling, including the effects of oil spills on the coastal and marine resources of southwest Florida. The Oil Spill Risk Assessment Task Force (OSRATF), the NRC and the DIATF reviewed the risks of an oil spill occurring from exploratory drilling activities and reaching the natural resources of the Florida coast.

The NRC Report found that the current state of knowledge regarding the impacts of oil and gas activities on the natural resources of the southwest Florida coast is generally deficient because no experimental studies regarding the effects of oil and gas activities on the various defined resources have been conducted.<sup>81</sup> The NRC Report also found that the effects of oil and gas activities on the nearshore, estuarine and coastal habitats of southwest Florida have not yet been adequately evaluated and characterized, that the available scientific and technical data is insufficient to adequately evaluate the effects of oil and gas activities on the natural resources.<sup>82</sup>

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<sup>78</sup> Department of the Interior and Related Agencies Appropriations Act, Pub. L. 101-121, § 110, 103 Stat. 720 (1989).

<sup>79</sup> Department of the Interior Appropriations Act, Pub. L. 101-512, §§ 110 and 112, 101st Cong., 104 Stat. 1915 (1990); Department of the Interior Appropriations Act, Pub. L. 102-154, §§ 109 and 111, H.R. 2686, 102d Cong., 105 Stat. 990 (1991).

<sup>80</sup> Although the NRC's inquiry was not limited to the effect of exploratory drilling, but rather reviewed all phases of oil and gas development and production, I will limit my review of the NRC's findings to those relating to exploration.

<sup>81</sup> NRC Report at 45-46.

<sup>82</sup> *Id.*

The following summarizes the NRC Report and DIATF findings concerning the significant natural resources off the south Florida coast, the known impacts of oil and gas on those resources, and the information deficiencies regarding the impacts of oil and gas on those resources.

### Mangroves

Mangroves provide critical habitat as nursery areas for the majority of species important to Florida's fisheries and protect shorelines against erosion caused by winds, tides and waves, and slow and filter stormwater from the uplands thereby helping to control turbidity and salinity in adjacent open water areas, including the Florida Reef Tract.<sup>83</sup> Oil has an immediate effect on mangroves, including adult tree mortality, defoliation, root and seedling mortality, and leaf deformation. Mangroves appear to be affected by oil through direct toxicity, suffocation by clogging the lenticulas of the above-ground root system, and continuous residual oiling due to oil deposited in sediments. Studies indicate that considerable damage to mangroves occurs at low concentrations of oil.

### Corals

The coral reefs found seaward of the Florida Keys and around the Dry Tortugas represent the only shallow-water (less than 40 meters) tropical coral reef ecosystem found on the North American coast and comprise a unique resource providing fish and lobster habitat, storm protection and recreational use areas. The range of potential impacts to coral reefs from oiling is quite wide, ranging from physical smothering to subtle behavioral and reproductive changes. Some of the impacts that have been documented are reduced reproductive success, reduced growth rate, reduced colonization capacity, and inhibited or inappropriate feeding and behavioral responses. A diverse literature suggests that coral reef recovery can take decades. Although studies suggest that sponges and coralline algae constitute critical components of the coral reef system, little or no information is known about the effects of oil on these resources. The NRC Report concludes that the EIS for Lease Sale 116, Part 2, is inadequate and recommends that reference to and analysis of a study documenting the oil impacts of an accidental spill from the vessel WITWATER onto a Panamanian coral reef is critical to understanding the potential impacts of oil and gas activities on the coral reefs of southwest Florida.

### Birds

Coastal and marine birds using the shoreline or the water surface (e.g., cormorants, loons, phalaropes) are vulnerable to oil. The known impacts to birds include toxicity, hypothermia, shock or drowning, and reduced reproduction. Direct contact with oil is usually fatal.

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<sup>83</sup> The Florida Reef Tract encompasses the area between Miami and the Dry Tortugas. (Drilling Impact Report at 30).

Avian resources at risk are identifiable from the existing information base, but few studies reflect recent population changes. Information on the distribution of prey species in the area of the southwest Florida coast is generally fragmentary or inadequate. Additionally, little information regarding population dynamics is available to predict recovery time. Information regarding impacts and distribution, abundance and ecological relationships of pelagic, nearshore, coastal and estuarine species is inadequate. The NRC Report notes that the lack of this information is particularly significant for swimming species such as cormorants, loons, grebes and diving ducks, which would be most vulnerable to oil floating in the nearshore waters.

#### Marine Mammals

The marine mammals of chief concern in the south Florida Keys area are the west Indian manatee, various species of dolphin and whales. Except for common inshore species, marine mammal distribution and abundance in southwest Florida is poorly understood. Consequently, the presence of species that may be subject to effects of oil activities can not yet be determined on the information available. The most likely effects of oil on marine mammals are skin and eye irritation, death from respiratory disorders, and problems associated with food reduction and contamination and ingestion of oil. Increased vessel traffic and other OCS activity could also have a potential impact on the west Indian manatee.

#### Reptiles

The reptiles of chief concern in the south Florida Keys area are the protected species: American crocodile, American alligator, and five species of sea turtles. American crocodiles primarily inhabit fringing mangrove forests. Young sea turtles (post-hatchling) can be found in sargassum, which is important because floating marine pollutants concentrate in the same zones. Sea turtle abundance and distribution is not well understood because of the deficiency of available surveys.

Sea turtles contact surface oil when they come to the water surface to breathe, resulting in respiratory disorders, and eye and gland irritations. Known effects also include the toxicity of ingested tarballs and hatching mortality of oiled eggs. The effects of oil activity may include disorientation of turtle hatchlings due to bright lights on the rig at night.

#### Fisheries

Two protected species of fishes are found only in the lower Florida Keys--the Key Silversides and the Key Blenny. Contact with oil can impact fishery resources in a variety of ways, including direct mortality from coating and asphyxiation, contact poisoning, and through exposure to the water soluble toxic components of oil at some distance in time and space from the actual spill. Indirect effects include contact mortality to highly sensitive larval and juvenile organisms, sublethal effects

that reduce resistance to infection and other stresses, transferring carcinogenic and potentially mutagenic substances into marine organisms and sublethal effects that interrupt behaviors used to locate prey, avoid predators, locate mates, provide sexual stimuli and homing behaviors. Additionally, fisheries will be negatively affected by the oiling of nursery habitats, including mangroves and seagrasses.

Accordingly, the NRC Report concluded:

The southwest Florida shelf comprises subtidal and nearshore habitats that are unique within the U.S. continental margin and provide refuge to a number of rare and endangered species. Existing information on the sensitivity and recovery of critical habitats (e.g., coral reefs, mangroves, and seagrasses) is inadequate to predict the impact of OCS-related activities. Furthermore, the distribution and abundance of many important biological resources are not well understood. Therefore, the panel concludes that there is insufficient ecological information to make a leasing decision for lease sale 116, Part 2.<sup>84</sup>

In response to the findings of the Drilling Impact Report and the NRC Report, Mobil advances several arguments. Mobil first contends that the information deficiencies detailed in the NRC Report are not applicable to the issues in this appeal relating to exploration on Block 799.

Specifically, Mobil argues that the NRC Report concluded that oil and gas decisions must be based on site-specific ecological information, and that in this case there is ample site-specific information.<sup>85</sup> In support of its position, Mobil offers the results of the MMS Southwest Florida Shelf Ecosystem Study (MMS Study)<sup>86</sup> and the information it submitted with its POE to address the information needs. I am not persuaded by Mobil's argument.

The MMS Study concluded that the potential impacts of an oil spill on the natural resources selected for the study "would be widespread, and the severity of impacts would generally be high to medium in nature."<sup>87</sup> (Figure 2 summarizes the findings of the study.) Further, as identified above, the scientific review panel established by the Governor of Florida to evaluate the study found that although the study had accumulated a massive amount of valuable information, it did not accomplish its

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<sup>84</sup> NRC Report at 53.

<sup>85</sup> Mobil's Final Brief at 33.

<sup>86</sup> Southwest Florida Shelf Ecosystems Study, Volume I: Executive Summary was submitted by Mobil as Exhibit 14. I note that Mobil does not offer into evidence all the studies which comprise the total report.

<sup>87</sup> *Id.* at 57.

objectives of determining the effect of oil and gas activities on the natural resources off the southwest Florida coast.<sup>88</sup> Specifically, the panel noted that the study did not attempt to evaluate the effects of oil and gas on nearshore and intertidal marine communities, nor did it provide information on mangrove communities.<sup>89</sup> Additionally, the review panel noted that there was a general lack of information regarding the toxicity of hydrocarbons and oiling on the various species and that, in order to evaluate those effects, basic experimental studies need to be completed.

Further, it is significant that the MMS Study states that its assessments regarding the potential impacts of oil and gas activities are "generic" and that specific information regarding impacts in regards to the area surrounding leased blocks must be derived from the MMS environmental impact statement for Sale 116, Part 2.<sup>90</sup> Thus, Mobil's criticism that the NRC Report is not site-specific would appear to apply equally to the MMS Study. Mobil also ascribes importance to the fact that the NRC Report was issued before the MMS Study. In light of the deficiencies identified by the scientific review panel, particularly its lack of information regarding the effects of oil and gas on onshore and estuarine communities, and also in light of my earlier finding that the effects of a spill on these unique environments and habitats are relevant to an evaluation of the adverse effects of Mobil's proposed activity, I find that the MMS Study does not resolve the information deficiencies or requirements noted by the NRC Report.

Mobil argues that I should disregard the general trajectory data, and focus on the Oil Spill Report's analyses for model launch point 715, the closest to Mobil's drillsite, which "show[s] that any supposed spill from Mobil's drillsite poses minuscule risks of shoreline contacts."<sup>91</sup> Mobil cites the Oil Spill Report to show that launches from point 715 "typically showed first land falls after ten days" which would increase the weathering effects on the oil and allow for greater response time. While it seems clear that the probability of contact does depend to some extent on the launch point, it is not so clear that other resources would not be affected. The Oil Spill Report demonstrates that there are other environmental resources contacted within 3 to 10 days (e.g., the Tortugas Shrimp Sanctuary and the Looe Key National Marine Sanctuary (now subsumed into the Florida Keys National Marine Sanctuary)). Further, aside from the general deficiencies of data identified by the NRC, it is also not clear to what extent the Oil Spill Report data concerning launch point 715 are applicable to Block 799. Significantly, the MMS comments

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<sup>88</sup> Review of MMS Study at 25.

<sup>89</sup> Review of MMS Study at 22 and 32. It should be noted that the approach used for the MMS study was to "select a discrete and manageable number of valued ecosystem components (VECs) ... that have been identified as being of special importance for a given ecological analysis." (MMS Study, Exhibit 14, at 48.)

<sup>90</sup> MMS Study, Executive Summary, Exhibit 14, at 47.

<sup>91</sup> Mobil's Final Brief at 52-55, and Mobil's Supplemental Final Brief at 7.

VALUED ECOSYSTEM COMPONENT

| FACTORS            | POTENTIAL IMPACTS           | VALUED ECOSYSTEM COMPONENT |                 |                    |         |                    |             |             |               |              |                |             |              |                   |                           |             |
|--------------------|-----------------------------|----------------------------|-----------------|--------------------|---------|--------------------|-------------|-------------|---------------|--------------|----------------|-------------|--------------|-------------------|---------------------------|-------------|
|                    |                             | SEAGRASSES                 | ANADROMOUS FISH | ALGAL BIODIVERSITY | SPONGES | HERMATYPTIC CORALS | COCORCHONAS | CRUSTACEANS | PIPER BIRGULI | ROCK BIRGULI | SPINY LOBSTERS | STONE CRABS | WRECK CORALS | SQUID AND CUTTLER | SPYGLASS AND BOTTLE BRUSH | SEA TURTLES |
| OIL POLLUTION      | COATING                     | 3                          | 3               | 3                  | 3       | 3                  | 3           | 3           | 2             | 2            | 2              | 3           | 3            | 3                 | 3                         | 3           |
|                    | TOXICITY                    | 3                          |                 |                    |         |                    |             |             | 2             | 3            | 2              | 3           | 3            |                   | 2                         | 3           |
|                    | AVOIDANCE                   |                            |                 |                    |         |                    |             |             |               |              |                |             |              |                   | 2                         |             |
| SEWAGE AND GARBAGE | TOXICITY                    | 1                          | 1               | 1                  | 1       | 1                  | 1           | 1           | 1             | 1            | 1              | 1           | 1            | 1                 | 1                         | 1           |
|                    | NUTRIENTS                   | 1                          | 1               |                    |         |                    |             |             |               |              |                |             |              |                   |                           |             |
|                    | SMEOTHERING                 | 1                          |                 | 1                  | 1       | 1                  | 1           | 1           |               |              |                |             |              |                   |                           |             |
|                    | ATTRACTION                  |                            |                 |                    |         |                    |             |             | 1             | 1            | 1              | 1           | 1            | 1                 |                           | 1           |
|                    | BEHAVIORAL INTERFERENCE     |                            |                 |                    |         |                    |             |             |               |              | 1              |             | 1            | 1                 | 1                         | 1           |
|                    | INHIBITION OF PROCREANCE    | 1                          | 1               | 1                  |         | 1                  |             |             |               |              |                |             |              |                   |                           |             |
|                    | EFFECTS ON FOOD AND FEEDING |                            |                 |                    | 1       | 1                  | 1           | 1           | 1             | 1            | 1              | 1           | 1            |                   |                           | 1           |
|                    | DAMAGE AND MORTALITY        |                            |                 |                    | 1       | 1                  | 1           | 1           | 1             | 1            | 1              | 1           | 1            | 1                 | 1                         | 1           |
|                    | EFFECTS ON FOOD AND FEEDING |                            |                 |                    |         |                    |             |             |               | 1            | 1              | 1           | 1            | 1                 | 1                         | 1           |
|                    | HABITAT REDUCTION           |                            |                 |                    | 1       | 1                  | 1           | 1           |               |              |                | 1           | 1            |                   |                           |             |

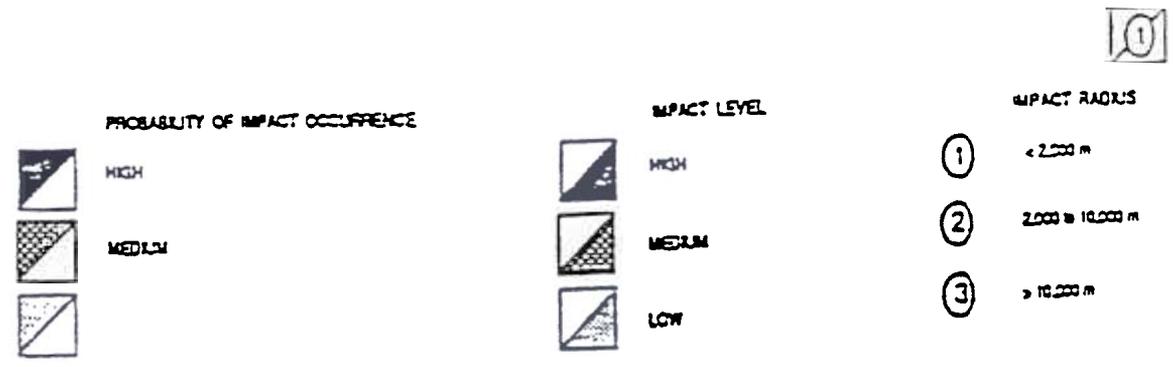


Figure 3-2 Matrix summary of potential impacts of oil- and gas-related activities on valued ecosystem components.

conclude that "[a]n accidental major oil spill from Mobil's exploratory operations could have significant adverse impacts on marine biological and recreational resources of the OCS and coastal zone, depending on the spill location, size and season of occurrence."<sup>92</sup> Accordingly, I am not persuaded by Mobil's argument that I should focus on the Oil Spill Report analyses for launch point 715.

Nor does the scientific and technical data that Mobil submitted with its POE resolve the information deficiencies identified by the NRC Report, the Drill Impact Report and the Oil Spill Report. In support of its POE, Mobil submitted the previously discussed AER and SER and a report titled, "Oil Spill Trajectory Analysis and Description of Sensitive Environments for Howell, Hook and Pulley Ridge Lease Areas."

First, the SER and AER add little or no information regarding the distribution and abundance of potentially-affected biological resources and the potential adverse effects of oil and gas activities on those resources. Both the AER and the SER are surveys of existing literature and data, and the NRC also considered those sources in reaching its more-recent conclusions that there is insufficient ecological information for even a leasing decision for the area south of 26° N. latitude. Second, both the SER and the Trajectory Analysis, to the extent they discuss impacts to natural resources, confirm the NRC Report conclusions concerning the negative effects of hydrocarbon on many of the resources.<sup>93</sup> Thus, since the NRC Report was an extensive review of the information presently available, and because the SER, the AER, the Trajectory Analysis, and the MMS Study failed to address the information deficiencies noted by the NRC Report, they have failed to resolve those information deficiencies.

Next Mobil argues that the Drilling Impact Report provides the site-specific information called for in the NRC report.<sup>94</sup> This argument is also unpersuasive. First, the Drilling Impact Report and the NRC study are contemporary studies. Second, the Drilling Impact Report, like the NRC Study, was primarily a review of the general literature and knowledge available at the time regarding the effects of oil and gas activity on coastal resources. Further, the Drilling Impact Report did not provide the results of any experiments regarding the effects of oil and gas activities as recommended in the NRC Report. Nor did it provide any new information regarding the effects of oil and gas activities on inshore and coastal habitats. Rather, the study arrived at many of the same conclusions as the NRC Report regarding known effects of hydrocarbon on various natural resources, and noted information deficiencies similar to those

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<sup>92</sup> Percy Letter.

<sup>93</sup> The AER defers to the Trajectory Analysis for predictions of minimum oil travel time to nearby coastal and island areas in the event of a spill. (AER at 171).

<sup>94</sup> Mobil's Final Brief at 30-31.

noted in the NRC Report regarding the effects of oil and gas activities.

Mobil also argues that the specific information requested by Florida can only be acquired during exploration.<sup>95</sup> Mobil quotes the NRC Report to support monitoring programs conducted concurrently with oil and gas activities.<sup>96</sup> However, that statement in the NRC Report is based on the assumption that oil and gas drilling activities are allowed to proceed, notwithstanding the lack of information."<sup>97</sup>

Further, as noted in the NRC Report, only a "small percentage of exploratory wells ever lead to commercial production" and therefore "it is unreasonable to expect that detailed site specific risk assessments for development and production phases be conducted prior to leasing and exploration."<sup>98</sup> The NRC Report notes that additional studies are often completed at the time of exploration to investigate factors that might influence the magnitude of impacts. Consequently, the NRC Report states, "an important question at the pre-lease phase of assessment is whether there is enough basic information on the environment to conduct these site-specific investigations . . . ." <sup>99</sup> With respect to this lease area, the report concludes that the ecological information available is inadequate to design the site-specific studies and monitoring to assess the effect of an oil spill on the natural resources.<sup>100</sup> Mobil presents no evidence to contradict this finding. Consequently, I am not persuaded by Mobil's argument that the need for information should be fulfilled by allowing Mobil's exploratory activities to proceed.

Based on the record before me, and notwithstanding the deficiencies of available technical and scientific data, I find that to the extent effects are known, the data demonstrate that the natural resources of the southwest Florida coastal zone will be adversely affected by an oil spill resulting from the proposed activities. Additionally, I find that the information submitted by Mobil has neither remedied any of those deficiencies nor contradicted any of the findings of the NRC Report or the Drilling Impact Report regarding the known adverse effects of oil and gas activities on the above discussed natural resources.

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<sup>95</sup> Mobil's Supplemental Final Brief, at 10-11.

<sup>96</sup> Mobil's Supplemental Final Brief at 11, quoting NRC Report at 55.

<sup>97</sup> NRC Report at 55.

<sup>98</sup> NRC Report at 42.

<sup>99</sup> *Id.* at 45.

<sup>100</sup> *Id.*

## Probability of an Oil Spill During Exploration

Mobil argues that both the NRC Report and the Drilling Impact Report demonstrate the minimal impacts of OCS exploratory oil and gas operations.<sup>101</sup> To support this argument, Mobil asserts that the potential adverse effects of exploratory drilling on the natural resources of the coastal zone must be evaluated based on the risk of an accidental spill during exploration. Mobil contends that the chance of an accidental oil spill occurring during exploratory drilling is extremely small and that, in the event of such a spill, Mobil's oil spill containment plan adequately addresses the risk. Citing the Gulf Oil Decision, Mobil argues that since the risk of a spill is negligible, the weight I assign to any adverse effects associated with that spill must also be negligible.

Mobil's own AER concludes that "the possibility of a major oil spill resulting from exploratory drilling does exist."<sup>102</sup> However, the OCS drilling record and the regional geological data support Mobil's contention that the risk of an oil spill from a blowout during exploratory drilling is extremely low. The statistical record regarding oil and gas drilling in the OCS demonstrates that of 7,853 exploratory wells drilling in OCS waters during the years 1947 through 1987, not one barrel of crude oil or condensate has spilled as a result of a blow-out during exploratory drilling operations.<sup>103</sup> Mobil asserts that regional geological data indicate that Mobil's proposed exploratory drilling operations will encounter very low bottomhole pressures, thus supporting the improbability of a blowout. Previous wells drilled in the offshore and onshore south Florida basin have repeatedly encountered very low bottomhole pressures and the stratigraphy in the Pulley Ridge area is predicted to conform closely to these surrounding areas.<sup>104</sup>

The statistical record also demonstrates that an oil spill during exploratory drilling would most likely be the result of a rig-service-related event, and would involve diesel fuel and not crude oil. Mobil presents a statement in the record offered by industry representatives relating to minimizing the opportunity for human error. The statement asserts that procedural errors and equipment failures are reduced because both the lease holder and the drilling contractor have direct supervision of well

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<sup>101</sup> Mobil's Final Brief at 60.

<sup>102</sup> AER at 171.

<sup>103</sup> Mobil's Statement in Support of Secretarial Override, at 29, citing "Oil Spill Trajectory Analysis and Description of Sensitive Environments for Howell, Hook and Pulley Ridge Lease Areas", Mobil's Exhibit 2(f), at 39.

<sup>104</sup> Mobil's Final Brief at 44-45. See also, Southwest Florida OCS Drilling Impact Assessment Task Force Report, p. 11 (presumed that the low formation pressures will preclude a crude oil spill resulting from a blowout), and AER at 171.

control operations.<sup>105</sup> Although the record does not reveal whether this joint supervision is effective in reducing errors, the statistical record shows that oil spills occur nonetheless. The largest diesel spill on record involved 1,500 barrels and 61 of the 72 reported incidents involved 50 barrels or less.<sup>106</sup> The joint MMS and Florida Task Force established to provide an oil spill risk assessment found that "the events leading to a spill larger than 50 barrels seemed to occur somewhere within the Gulf of Mexico roughly about once or twice a year" and determined that the spills resulting from the "unknown error" factor should serve as the basis for an analysis of potential environmental impacts of exploratory activities.<sup>107</sup>

Mobil's POE includes "extensive risk reducing mitigative measures" which "demonstrate that any adverse impacts on coastal resource (sic) have been considered and responsibly mitigated."<sup>108</sup>

Mobil states that pursuant to its plan:

Mobil will utilize and operate blowout prevention systems in strict compliance with MMS requirements;

All drilling rig discharges and emissions will be in strict compliance with MMS and EPA regulations;

Rig personnel will be thoroughly trained and all drilling equipment will be regularly inspected;

Mobil representatives will be at the drill site, and at the Port Manatee shore base, on a 24-hour basis;

A comprehensive Gulf-wide Oil Spill Contingency Plan containing necessary assurances of its full response capability for the proposed activity has been approved by MMS; and

Mobil also has prepared a site-specific spill contingency plan that includes spill trajectory modeling, and discussions of the logistics of a spill response and response times for deployment of cleanup equipment.

Mobil adds that to ensure the most rapid response, it will utilize containment and cleanup equipment maintained on a dedicated boat that will remain at or near the well site, and

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<sup>105</sup> Mobil's Final Brief at 60, citing the Hearing Statement of Wesley J. Wilkinson, National Ocean Industries Association.

<sup>106</sup> Mobil's Statement in Support of Secretarial Override at 30.

<sup>107</sup> Oil Spill Report at 11 (emphasis in original).

<sup>108</sup> Mobil's Statement in Support of Secretarial Override at 33-36.

supplemented by onshore stockpiles.<sup>109</sup> Additionally, Mobil asserts that its minimum response times fully address the minimum landfall contact times forecast for spills from the model launch point nearest Mobil's drillsite by the oil spill trajectory model specifically created for Mobil by Continental Shelf Association (CSA).<sup>110</sup>

Florida does not dispute the specifics of Mobil's contingency plan. Rather, Florida asserts that the state of knowledge regarding the physical oceanography of the area south of 26° N. latitude is insufficient to adequately define oil spill trajectory times and consequently adequate response times. Accordingly, Florida asserts that Mobil's containment plan is inadequate.

The physical oceanography of the area south of 26° N. latitude is dominated by wind-driven and eddy-related currents (*i.e.*, circular, swirling motions in the ocean) on the shelf (depths of 100 meters or less) and by the Loop Current in the deeper waters.<sup>111</sup> The long shore currents travel generally in the same direction as the wind, except that the eddy motions are usually more energetic than the wind-driven currents. The onshore-offshore component of wind-driven motion is difficult to predict (and measure) without extremely detailed measurements of the wind.<sup>112</sup>

The dominant feature in the deep water is the Loop Current. The Loop Current "enters the Gulf of Mexico from the Caribbean Sea through the Yucatan Straits, flows northward in the east central Gulf and curves clockwise, exiting the Gulf through the Straits of Florida."<sup>113</sup> The location of the Loop Current fluctuates from "tens of miles offshore to the edge of the shelf break."<sup>114</sup> Knowledge of the movement and effects of the Loop Current and the wind-driven and eddy-related currents in this area is fundamental to predicting the movement and circulation of material into the ocean, and accordingly, oil spill trajectories.<sup>115</sup>

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<sup>109</sup> *Id.* at 34-35, and Mobil's Final Brief at 57-58. Mobil asserts that the response time for onsite equipment deployment will range from "a matter of minutes to less than 2 hours" and that onshore equipment response time will be 20 hours. Mobil also states that, in accordance with the OCS DIATF recommendations, it will work with the MMS regarding use of production tests that will minimize the amount of crude oil brought to the surface. (Mobil's Final Brief, p. 56).

<sup>110</sup> *Id.* The CSA model and the Oil Spill Risk Assessment Analysis Model (OSRA) are defined by the Oil Spill Risk Assessment Task Force (OSRATF) in its Oil Spill Report. In the Oil Spill Report, the OSRATF evaluated the CSA model and declined to use it, finding that it "neglects representations of dominant cases and contained several inconsistencies." Oil Spill Report at 13. The Oil Spill Risk Assessment Analysis Model (OSRA) is the model traditionally used by MMS to perform spill trajectory analysis.

<sup>111</sup> Oil Spill Report at 14.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*; See, Figure 4; See, also, NRC Report at 26.

<sup>114</sup> Oil Spill Report at 14.

<sup>115</sup> NRC Report at 19.

As previously discussed, President Bush requested that the NRC review the adequacy of the scientific and technical information base for decision making regarding oil and gas activities in Lease Sale Area 116, Part 2. As part of that review, the NRC reviewed the state of knowledge regarding the noted unique features of the physical oceanography of the Gulf of Mexico.

In general, the NRC found that few oceanographic studies have been completed for this region and that the data base for southwest Florida is relatively incomplete.<sup>116</sup> In particular, the NRC noted that several basic oceanographic processes for the Gulf of Mexico have not been sufficiently studied, and that the present numerical modeling work for the area is marginal.<sup>117</sup> Accordingly, the NRC found that the current information base is inadequate to predict the movement of the previously discussed currents in the Gulf and, consequently, the severity of long-term chronic effects of an oil spill.<sup>118</sup> The Drilling Impact Report echoed these informational needs, stating that "[i]mproved knowledge of oceanographic convergence zones or fronts, cross-shelf transport mechanisms, and Loop Current variability would aid predictions when and where spilled oil and marine organisms would interact."<sup>119</sup>

In spite of the generally inadequate information base, the NRC Report found that the physical oceanographic information and the modeling results from this model provide reasonable first order estimates that "OCS activities would have a high probability of interacting with sections of the Florida coast"<sup>120</sup> and that such interaction will probably occur in a very short period of time.<sup>121</sup> The NRC noted that the model's "computed times for landfall of an oil spill were obtained from wind-driven flows only" and that this area would also be subject to eddy-driven flows.<sup>122</sup> The NRC further states that, where spills are influenced by both wind-driven flows and eddy-driven flows, the effects would be cumulative.<sup>123</sup> More importantly, the NRC

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<sup>116</sup> NRC Report at 4 and 18.

<sup>117</sup> *Id.* at 4 and 38.

<sup>118</sup> *Id.* at 38.

<sup>119</sup> Drilling Impact Report at 73.

<sup>120</sup> NRC Report at 3.

<sup>121</sup> *Id.* 29.

<sup>122</sup> *Id.* 28-29.

<sup>123</sup> *Id.* at 29. Although not available for the NRC's review, the OSRA Report does include a limited analysis of spill trajectories with both wind- and eddy-driven flows. Results of the trajectories show that:

In general, the plots show a range of differences up to a percentage or two within three days; less than 10% within 10 days; and a maximum of about 10 to 15 percent for the 30 days period. Also, in general, the "with currents" simulations shows more contacts, probably due to increased representation of variability." Oil Spill Report at 29.

Report concludes that, in the absence of further study, it is difficult--if not impossible--to ascertain the range of error in the results of models used to provide the first-order estimates" and that the "uncertainties of oil spill trajectories could be narrowed with more focused studies of the physical oceanography of the region."<sup>124</sup> Finally, the NRC Report notes that "[t]hese studies are within the current capabilities and state of knowledge . . . and could be accomplished within a few years after initiation."<sup>125</sup>

Based on the findings of the NRC, I find that the predictive value of both the CSA and OSRA models relied upon by Mobil to support the adequacy of the response times defined in its response plans is, at best, marginal. Further, Mobil has failed to offer any evidence to contradict the conclusions and findings of the NRC Report regarding the general lack of baseline data, pertaining to oceanographic processes in the area south of 26° north latitude, necessary to evaluate oil spill trajectories and probable contact times with the natural resources of concern.

Accordingly, I find that the response times defined in Mobil's contingency plan cannot be shown to be adequate. In the face of this failing, I cannot agree with Mobil that, even if an oil spill occurred, the risk from that spill is negligible.

The risk of an oil spill is a function of: the likelihood of a spill during exploration activity and, in the event of a spill, the ability to contain that spill. Although the record before me supports a finding that the risk of an oil spill during exploratory drilling is small, the record does not support a finding that Mobil could adequately contain a spill in the event it does occur. Consequently, I find that the adverse effects of Mobil's proposed POE are not negligible.

#### Cumulative Adverse Effects

In reviewing cumulative adverse effects, I review "the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected-to activity is likely to contribute to adverse effects on the natural resources of the coastal zone."<sup>126</sup> The only other proposed oil and gas activities in the vicinity of Mobil's proposed POE are three exploratory wells proposed by Union to be located approximately 19 miles to the northeast.<sup>127</sup> The State of Florida also objected to Union's proposed POE. Union has

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These results are questionable, however, as they are based on only three years of data.

<sup>124</sup> Id. at 3 and 38.

<sup>125</sup> Id.

<sup>126</sup> Gulf Oil Decision at 8.

<sup>127</sup> Letter from James M. Hushes, Deputy Assistant Secretary for Land and Minerals Management, DOI, to Dr. William E. Evans, dated June 9, 1989.

appealed this objection to the Secretary. That appeal is currently pending. Consequently, I am not able to find that Union's proposed exploration activities constitute a present or reasonably foreseeable future activity in the area of Mobil's proposed activity. Further, previous consistency appeal decisions have held that, even where it is reasonable to assume that exploratory drilling will occur, the analysis of the cumulative effects of such exploratory drilling activities must be examined to determine whether they will occur at a time when they will not contribute to other possible adverse effects from OCS activities.<sup>128</sup> In addition, there is nothing in the record to indicate that Union's proposed activity, even if it could be reasonably expected to occur, would at that time cumulate with adverse effects from Mobil's activities. Accordingly, I find that there are no cumulative impacts to be reviewed.

#### Evaluation of Adverse Effects

In the Gulf Oil Decision, the Secretary held that in order to weigh the adverse effects associated with an accidental event, the expected effects of the event (in this case crude oil contact with the natural resources of concern) must be multiplied by the chance of that event occurring. Mobil argues that, in order to evaluate the adverse effects of its proposed exploratory drilling activity, I must multiply the expected effects of the event by the risk of its occurring. Mobil further asserts that, since the risk of a spill during exploratory drilling operations is negligible, the weight I assign to any adverse effects must also be negligible.

I cannot accept Mobil's contention. While the risks of an oil spill occurring in the present case are similar to the risks of occurrence in the Gulf Oil Decision, the risks of a spill adversely impacting valuable natural resources is much higher in this case. It is true that the statistical evidence in both cases indicates that the risk of an oil spill occurring as a result of a blowout is very small with the risk of smaller spills from other accidents being somewhat higher. However, in the Gulf Oil Decision, much more was known regarding spill trajectories. The Oil Spill Risk Analysis in that case, which was uncontradicted, indicated that if a spill occurred the oil would be carried away from the resources of concern. For example, the risk of impact on the southern sea otter, the natural resource most at issue in the Gulf Oil Decision, was extremely small since in the event of a spill the prevailing currents would carry the spill away from the sea otter range.<sup>129</sup> Thus, in the Gulf Oil Decision, the Secretary, based upon the record before him, found that the risk of an oil spill occurring was low and that the possibility of a spill threatening or contacting the natural resources of concern was even lower. Accordingly, in the Gulf Oil Decision, the Secretary, based upon the record before him, was able to weigh the adverse effects associated with the

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<sup>128</sup> Gulf Oil Decision at 8-10.

<sup>129</sup> Id. at 14.

accidental event and due to the low risk of impact find them to be negligible.

In the present case, the risk of oil impact to the coastal resources at issue, the seagrass, mangroves, coral reef, living bottom and other components of the Florida mangrove coral reef ecosystem, is higher than the risks to the California coastal zone resources discussed in Gulf's POE. I cannot assign a precise number to the risk Florida's coastal zone natural resources would face from the drilling because the baseline data regarding the oceanographic processes south of 26° N. latitude is insufficient to adequately evaluate oil spill trajectories and probable contact times with the resources. However, based on the NRC report, the available physical oceanographic information, and the results from the OSRA model, exploratory drilling south of 26° north latitude has a high probability of adversely impacting such resources. While the risk associated with Mobil's proposed exploratory drilling (*i.e.*, the risk of the occurrence of a blow-out) would only be a component part of that probability, and thus not have a high probability by itself, Mobil does not have evidence sufficient to convince me that the risk of impact to seagrass, mangroves, live bottom, and particularly the coral reef, from Mobil's proposed POE is insignificant. This lack of evidence forces me to err on the side of protecting the resources by assuming a high enough risk factor to cover the unknowns. Accordingly, I determine that Mobil's proposed exploratory drilling presents a significant risk.

Regarding valuation of the resources, President Bush, on June 26, 1990, identified Lease Sale Area 116, Part II, off southwest Florida as a unique resource system. [Attachment A]. The President noted that it contains our nation's only mangrove coral reef ecosystem. *Id.* Also, on November 16, 1990, he further recognized the high value of resources surrounding the Florida Keys by signing into law the Florida Keys National Marine Sanctuary Act, Public Law No. 101-965.<sup>130</sup> That Act designated the Florida Keys National Marine Sanctuary, running the entire length of the Florida Reef Tract, as an area of the marine environment which is both unique and of special national significance due to its extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values, thus affording it special protections. The closest boundary point of the Sanctuary to the proposed drilling sites is approximately 40 miles away.

The President's assessment of the valuation of the resources is reflected in the comments of the U.S. Environmental Protection

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<sup>130</sup>That legislation bans all oil and gas activities in the Sanctuary and finds that (1) the Florida Keys extend approximately 220 miles southwest from the southern tip of the Florida peninsula, (2) adjacent to the Florida Keys land mass are located spectacular, unique and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs, (3) these marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, education, and aesthetic values which give this area special national significance, and (4) these environments are the marine equivalent of tropical rain forest in that they support high levels of biological diversity, are fragile and easily susceptible to damage human activities, and possess high value to from human beings if properly conserved. Florida Keys National Marine Sanctuary and Protection Act, Pub. L. 101-605, 104 Stat. 3089 (1990). (Emphasis added).

Agency (EPA) which noted that Mobil's proposed project is located in a sensitive area which "when taken through the development and production phases . . . may adversely affect sensitive mangrove and seagrass environments, fisheries and coral reef communities."<sup>131</sup>

I agree with President Bush, the Congress, the EPA, and the State of Florida. The resources of the Florida coastal zone at issue here are extremely unique and valuable.

While the probability of the occurrence of an accidental event may be low, Mobil has failed to meet its standard of proof and establish that the probability of the risk of impact to the resources of concern is also low. Due to the value of the resources and the potential for significant damage if those resources are impacted by oil, I conclude that the over-all adverse effects due to Mobil's proposed POE are not negligible but rather must be presumed to be substantial.

#### Contribution to the National Interest

Mobil contends that its proposed exploratory drilling activity significantly contributes to the national interest through the expeditious exploration and development of OCS oil and gas reserves and the subsequent achievement of greater energy self-sufficiency. Mobil asserts that the proposed lease areas are likely to contain "more than 160 million barrels of recoverable oil and over 16 billion cubic feet of gas".<sup>132</sup>

Florida disputes Mobil's claims and presents MMS' estimate that "the whole Pulley Ridge/Howell Hook Area . . . will produce only 90 million barrels of oil and that this 90 million represents only twenty percent of the estimated reserves for the entire Eastern Planning Area."<sup>133</sup> Consequently, Florida argues that the amount of recoverable oil and gas contained in Block 799 is "minuscule" and "does not rise to more than a de minimis contribution to the national interest."<sup>134</sup>

As previously held, the national interests to be considered under this element are limited to those recognized or defined by the objectives and purposes of the CZMA. Korea Drilling Decision at 16. Also as previously held, there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy

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<sup>131</sup> The EPA did not specifically address the effects of exploration activities.

<sup>132</sup> Mobil's Statement in Support of Secretarial Override at 18.

<sup>133</sup> Florida's Response Brief at 48, citing a letter from J. Rogers Percy to Deborah Tucker, dated June 9, 1989 (Florida's Exhibit V). Curiously, the Fact Sheet accompanying the President's Statement issued on June 26, 1990, asserts that MMS estimates "between 440 million and 1.72 billion barrels of crude oil and approximately 1.68 trillion cubic feet of natural gas in the Eastern Gulf Planning Area." (See Attachment A.)

<sup>134</sup> Id. at 48.

statements from the President and Federal agencies, and reviewing plans, reports and studies issued by the Federal agencies.<sup>135</sup>

Furthering the national interest in energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and, as previously held, it furthers the national interest for purpose of this element.<sup>136</sup> As Florida notes, however, the issue of how much oil and gas will actually be produced through drilling at the site is uncertain.<sup>137</sup>

When queried regarding Mobil's proposed POE contribution to the national interest, the Department of Transportation stated that hydrocarbon production generally contributes to the nation's energy needs.<sup>138</sup> Also, the Secretary of Energy, not surprisingly, recognized that it is in the national interest to explore for OCS oil and gas reserves.<sup>139</sup>

Recognizing that prior to exploration the amount of oil and gas reserves is uncertain, previous Secretaries have found that exploratory drilling furthers "the national interest in attaining energy self-sufficiency by ascertaining information concerning the oil and gas reserves available for production."<sup>140</sup> Accordingly, based on these prior decisions and on the record before me, I find that Mobil's proposed exploratory drilling in general furthers the national interest of fostering national energy self-sufficiency.

### Balancing

I have held that I must make my decision based upon a preponderance of the evidence. Accordingly, with regard to this element I must be convinced by a preponderance of the evidence that Mobil's proposed POE will not cause adverse effects on the natural resources of Florida's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh the proposed POE's contribution to the national interest. In other words, with regard to this element, Florida's objection will not be set aside unless the national

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<sup>135</sup> See, Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Oil Decision), November 9, 1984, at 15.

<sup>136</sup> See, Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SYU Decision), February 18, 1984, at 11.

<sup>137</sup> The NRC Report notes that "the history of OCS exploration suggests that prediction of oil and gas reserves by both MMS and the oil industry can differ from what is actually produced." NRC Report at 42. Consequently, the report states that "it is difficult to predict whether, where, and how much oil and gas will be discovered." *Id.*

<sup>138</sup> Letter from Patrick V. Murphy, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, to Ms. Katherine A. Pease, Assistant General Counsel, NOAA, dated June 23, 1989.

<sup>139</sup> Letter from James D. Watkins to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, NOAA, dated June 12, 1989.

<sup>140</sup> See Texaco Decision, at 30-31; Amoco Decision, at 45.

interest benefits of the proposed project outweigh<sup>141</sup> the proposed POE's adverse effects on the natural resources of Florida's coastal zone.

Based upon the record before me, I have concluded that the resources of the Florida coastal zone that could be adversely impacted by unplanned or accidental events which could arise from Mobil's proposed activities are extremely unique and valuable. While the probability of the occurrence of an accidental event may be low, Mobil has failed to meet its standard of proof and establish that the probability of the risk of impact to the resources of concern is also low. Due to the value of the resources and the potential for significant damage if those resources are impacted by oil, I have concluded that the over-all adverse effects due to Mobil's proposed POE are not negligible but rather must be presumed to be substantial.

On the contribution to the national interest side of the balancing, I have concluded that Mobil's proposed exploratory drilling in general would further the national interest of fostering national energy self-sufficiency.

I note also that several agencies when queried as to the proposed POE's adverse impacts on the natural resources of the coastal zone and to the proposed POE's contribution to the national interest conducted their own balancing and recommended that I do not override Florida's objection.

For example, the Department of Transportation stated that hydrocarbon production generally contributes to the nation's energy needs, "[h]owever, we do not believe that exploration of these leases at this time is necessary in the national interest, in the event of the questions that have been raised by the State of Florida" regarding the risks and containment of a discharge in the event of an oil spill. The Department further recommended that the findings of the President's Task Force be reviewed before I issue my decision in this appeal.<sup>142</sup>

While several of the agencies noted that oil and gas exploration serves the national interest without commenting on the environmental impacts of Mobil's proposed POE, none indicated that exploration should occur at the expense of the unique resources at issue here.

Even the Department of the Energy in pointing out that it is in the national interest to explore the OCS for oil and gas

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<sup>141</sup> The commentary regarding this element in the proposed regulation states that, "the Secretary will not set aside a State agency objection unless she determines, (on balance), that the national interest benefits of the proposed inconsistent activity significantly outweigh the negative effects upon coastal zone "resources." 42 Fed. Reg. 43591 (1977).

<sup>142</sup> Letter from Patrick V. Murphy, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, to Ms. Katherine A. Pease, Assistant General Counsel, NOAA, dated June 23, 1989.

reserves, added that "[i]t is essential to explore those areas in an environmentally sound and orderly but expeditious manner."<sup>143</sup>

Further, the President in imposing a moratorium on oil and gas leasing and development in Lease Sale Area 116, Part II until after the year 2000 and until the inadequacies identified by the NRC regarding the potential adverse effects of oil and gas activities in this area are addressed, discussed supra, based his decision on the need for adequate information upon which to base oil and gas leasing and development decisions and the need to strike a balance between the development of resources and their protection [Attachment A].

I too must now conduct a balancing. I find that at this time the national interest benefits of Mobil's proposed POE do not outweigh the proposed POE's adverse effects on the coastal zone.<sup>144</sup> Accordingly, I find that Mobil's proposed POE does not satisfy the second element of Ground I.

### 3. Third Element

The third element of Ground I is that "[t]he activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended."<sup>145</sup> The requirements of the Clean Air Act (CAA) and the Federal Water Pollution Control Act (CWA) are incorporated in all State coastal programs approved under the CZMA.<sup>146</sup>

#### Clean Air Act

Section 109 of the CAA, 42 U.S.C. § 7409, directs the Administrator of EPA to prescribe national ambient air quality standards (NAAQS) for air pollutants to protect the public health and welfare. Section 11 of the CAA, 42 U.S.C. § 7410, requires each state to prepare and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state.

Under the Outer Continental Shelf Lands Act, the DOI has exclusive jurisdiction to regulate air emissions from oil and gas activities on the OCS.<sup>147</sup> DOI must set these emission standards at levels permitting state and local governments to attain the air quality standards of the CAA.<sup>148</sup> The Secretary of the DOI

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<sup>143</sup> Letter from James D. Watkins to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, NOAA, dated June 12, 1989.

<sup>144</sup> In light of my balancing and my resulting determination that the adverse effects on the natural resources from a potential oil spill outweigh the project's contribution to the national interest, there is no need to consider and weigh in the adverse effects on the coastal resources from normal operations.

<sup>145</sup> 15 C.F.R. § 930.121(c).

<sup>146</sup> Section 307(f) of the CZMA, 16 U.S.C. 1456(f).

<sup>147</sup> California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979).

<sup>148</sup> Id.

has promulgated regulations to ensure compliance with CAA NAAQS for OCS activities, including exploratory drilling, which affect the air quality of a state.<sup>149</sup>

Florida asserts that Mobil's onshore support facility for the proposed POE is located in the Everglades area, a non-attainment area for air emission standards under the CAA. Florida argues that although the onshore support facilities may be small during exploratory drilling, the dimensions of this onshore support facility will increase ten-fold during production and that Mobil has not demonstrated that this larger facility supporting oil and gas development will comply with the Federal and state air emission standards for the air mass located over the state. Florida does not argue that the onshore support facility as defined in the POE fails to meet the CAA air emissions standards.

As discussed earlier in this decision, the activity which is the subject of this appeal is Mobil's proposed POE and the onshore support facility as defined in the POE, not the yet to be defined and approved production plan for oil and gas development. Consequently, at this time Mobil need not demonstrate that the onshore support facility for its as yet undefined development plan meets the Federal and State air emission standards under the CAA.

Florida next contends that Mobil has not carried its burden of demonstrating that no violations of the CAA will occur.<sup>150</sup> Florida urges that I not follow the previously established precedent in consistency appeals which dictates that an activity's compliance with DOI regulations regarding air quality on the OCS, as determined by DOI, constitutes compliance with the CAA. Florida argues that such a deferral to DOI's judgement on the issue "render[s] this element superfluous"<sup>151</sup> and that I should make an independent determination as to whether Mobil's proposed activity meets the requirements of the CAA.

I recently addressed this same argument in the Chevron Decision. In the Chevron Decision, I noted that pursuant to the OCSLA, DOI must establish regulations to govern air emissions for activities on the OCS and that those regulations must assure compliance with NAAQS for activities "significantly affecting the air quality of any state."<sup>152</sup> Further, the OCSLA provides the Secretary of the DOI with the exclusive authority and responsibility to establish and enforce air emissions standards for activities on the OCS.

Consequently, in the Chevron Decision I held that I did not have the authority to make an independent determination as to whether the proposed activity in that appeal met the requirements of the

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<sup>149</sup> 30 C.F.R. Part 250.

<sup>150</sup> Brief of the State of Florida in Response to Comments, 29.

<sup>151</sup> Response to Comments, 30.

<sup>152</sup> 43 U.S.C. § 1334(a)(8).

CAA. Rather, I presumed that DOI's regulations ensured compliance with the NAAQs of the CAA and that the DOI's determination of compliance with its regulations is sufficient to constitute compliance with the CAA. The State offers no new evidence to suggest that my position is incorrect. Accordingly, since the activities described in Mobil's POE must comply with the DOI's emission standards in order to proceed, I find that those activities will not violate the CAA.

Federal Water Pollution Control Act (Clean Water Act)

Sections 301(a) and 403 of the Clean Water Act (CWA), 33 U.S.C. §§ 1311(a) and 1342, provide that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency (EPA). Discharges from activities in the area of Pulley Ridge Block 799 are subject to a general NPDES permit for the Gulf of Mexico and to the terms of a Memorandum of Understanding (MOU) between the EPA and the State of Florida.<sup>153</sup> According to the EPA:

The Southwest Florida Shelf Studies and live bottom review submitted for Pulley Ridge Area Block 799 have documented a productive and sensitive habitat for fisheries and crustaceans with greater than 25% coverage across the entire block. Therefore, under the terms of the MOU ..., we have determined that Mobil is not eligible to release discharges from its operations under the existing general permit. Mobil may propose to carry out the exploration with no discharge or request an individual, site-specific permit review. Mobil has not requested an individual permit at this time.<sup>154</sup>

Florida argues that, although Mobil must obtain a NPDES permit before drilling pursuant to the POE can commence, Mobil nonetheless must demonstrate that its activities under the POE will not violate the CWA. The same reasoning in the previous section applying to the CAA also applies here. Because Mobil cannot conduct its proposed exploratory drilling without obtaining and meeting the terms and conditions of an individual permit, and accordingly meet the requirements of the CWA, I find that Mobil's activity will not violate the CWA.

Accordingly, I find that Mobil's proposed POE satisfies the third element of Ground I.

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<sup>153</sup> The MOU was developed between EPA and the State of Florida "to establish a process enabling the State to consider whether the general permit should cover discharge connected with a plan of exploration, production or development."

<sup>154</sup> Letter from R. Augustus Edwards, Acting Assistant Administrator for External Affairs, to Honorable William E. Evans, Under Secretary for Oceans and Atmosphere, June 13, 1989.

#### 4. Fourth Element

The fourth elements of Ground I is that "[t]here is no reasonable alternative available . . . which would permit the activity to be conducted in a manner consistent with the [State's coastal] management program."<sup>155</sup>

Florida contends that a reasonable alternative to Mobil's POE is for Mobil to defer its proposed exploratory drilling until the completion of several pending and proposed studies regarding the environmental effects of such drilling.

Mobil argues that Florida has expressed a per se opposition to drilling on Pulley Ridge and that there is not an "implicit" allowance of drilling once additional studies are completed,<sup>156</sup> and that Florida is identifying this alternative for the first time on appeal and accordingly has failed to comply with the requirements of 15 C.F.R. §§ 930.64(b) and 930.79(c). I am persuaded by Mobil's arguments that Florida's deferral is not an alternative in accord with those regulations.

The plain language of 15 C.F.R. § 930.121(d) states that the alternative must "permit the activity to be conducted in a manner consistent with the management program."

Citing the Korea Drilling Decision, Florida argues that its objection letter or the entire record discloses an alternative that is consistent with Florida's CMP. In the Korea Drilling Decision, the Secretary held that a state generally does not have the right to describe an alternative for the first time on appeal. However, the Secretary also indicated that there may be instances "where the record discloses an alternative that might be consistent with the State's CMP and that appears reasonable and available."<sup>157</sup> Florida asserts that the "entire thrust of the objection is that drilling in this area should be deferred until the[se] studies are complete and the oil industry is able to demonstrate, on the basis of these or other studies, or through the development of greater safeguards, that drilling activity can occur without undue impacts to marine resources."<sup>158</sup> I agree with Florida that its "no-action" alternative is disclosed by the record. However, it is not the type of alternative that satisfies 15 C.F.R. § 930.121(d) because it would not allow drilling under the proposed POE to proceed in a manner that is consistent with the Florida CMP.<sup>159</sup>

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<sup>155</sup> 15 C.F.R. § 930.121(d).

<sup>156</sup> Mobil's Final Brief at 64.

<sup>157</sup> Korea Drilling Decision at 24.

<sup>158</sup> Florida's Response Brief at 52-53 (emphasis in original).

<sup>159</sup> The MMS also raised this issue in its comments. In its letter from James M. Hushes to Dr. William E. Evans, dated June 9, 1989, MMS asserts that "the FDER's consistency objection letter contains no discussion of reasonably available alternatives...."

As stated in earlier decisions, the DOC regulation at 15 C.F.R. § 930.121(d) indicates that an alternative to an objected-to activity may require changes in "location" or "design" or "timing" of the activity.<sup>160</sup> In the Gulf Oil Decision, the Secretary held that delaying of the appellant's exploratory drilling was not a reasonable alternative because:

although it is feasible for Gulf to delay its proposed drilling for some time because the hydrocarbon resources will still be exploitable, it would be unreasonable to do so in light of the speculative benefit to be derived from the completion of the . . . EIS on an unrelated tract for development and production activities, the unproven relationship between the infrastructure planning and Gulf's exploratory well, and the opportunity for local planning which already exists.<sup>161</sup>

Florida's alternative to indefinitely delay drilling in Block 799 pending completion of certain studies<sup>162</sup> without any idea whether such drilling would be consistent with the Florida CMP in the future is too speculative. As asserted by Mobil, Florida's deferral alternative would have Mobil "await information which, if anything, could only be relevant to possible future, long-range drilling activity."<sup>163</sup> The validity of this statement is ascertained by Florida's offer to Mobil at the close of its objection letter that "[o]nce the information noted above is forthcoming, we will be happy to discuss how this information can be best applied to future oil and gas exploration activities off Florida."<sup>164</sup>

Therefore, although an alternative of "no-action" is disclosed on the record, I find that it is not an alternative within the

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<sup>160</sup> Gulf Oil Decision at 22.

<sup>161</sup> In the Gulf Oil Decision, the State and the appellant had already agreed to measures which would mitigate the adverse impacts of the project. Similarly, in the Exxon SYU Decision, I held that the delay in timing of the proposed activity was a reasonable alternative that would permit the appellant to conduct its exploratory drilling in a manner consistent with the California CZMP. In that decision, the CCC proposed that the appellant could comply with the enforceable policies of the California CZMP by limiting its exploratory drilling outside the thresher shark fishing season to the five months from Thanksgiving to May 1. See also, Exxon SYU Decision. In the Exxon SYU Decision, I delayed finding whether there was a reasonable alternative to Option A available until the State and local government permitting agencies in California completed action on the appellant's application for the State and local permits necessary for it to proceed with Option B, until the final EIR/EIS was made available, and until the County of Santa Barbara's pipeline feasibility study is made available.

<sup>162</sup> Initially, Florida advocated that drilling under the POE be deferred until the completion of the joint Florida/DOI task force studies. As indicated, these studies are now complete but Florida now advocates deferral until the completion of studies to be conducted by the National Research Council.

<sup>163</sup> Mobil's Supplemental Final Brief at 15.

<sup>164</sup> Letter from Twachtman to Stauffer, dated December 14, 1988.

meaning of 15 C.F.R. § 930.121(d) because it does not allow the proposed activity to be conducted in a manner consistent with the state's CMP. Accordingly, since Florida has not posited an alternative in accordance with 15 C.F.R. 930.121(d), I find that there is no reasonable, available alternative to Mobil's proposed project that would permit Mobil to conduct the project in a manner that is consistent with the Florida CMP.<sup>165</sup> Accordingly, Mobil's proposed activity satisfies the fourth element of Ground I.

#### Conclusion for Ground I

As discussed and held above, Mobil's proposed POE satisfies the first, third, and fourth elements of Ground I. However, the proposed POE fails to satisfy the second element. Because I must find all four elements satisfied in order to find Ground I satisfied, I hold that Mobil's proposed POE does not satisfy Ground I--namely, it is not consistent with the objectives of the CZMA.

#### B. Ground II: Necessary in the Interest of National Security

The second statutory ground for override of a State's objection to a proposed activity is that the activity is necessary in the interest of national security. To make this determination, the Secretary must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed."<sup>166</sup>

Mobil first asserts that decreased reliance on oil imports contributes to the national defense and national security. Mobil contended that exploration is a necessary step in the development of new domestic reserves. Mobil next requests that the Secretary interpret more broadly the national defense and security interest. In previous decisions, the Secretary has made findings on whether these interests have been significantly impaired based on the size of the potential oil and gas reserves in the area of the proposed activity. Mobil contends that, in light of dwindling oil and gas reserves, new discoveries of oil and gas

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<sup>165</sup> This decision that Florida's alternative does not satisfy the requirements of 15 C.F.R. § 930.121(d) is in accordance with my previous decisions. In the Exxon SRU Decision, the State had proposed an alternative with a definite date which would allow the activity to proceed. That alternative was found to be reasonable. In the Gulf Oil Decision, the State requested a delay, with a strong likelihood that the drilling would proceed at that later date. That alternative was found to be unreasonable. In the Exxon SYU Decision, because certain studies and actions were pending, I deferred my decision on whether Option B was a reasonable alternative. In the Amoco Decision, I found that Alaska's proposed bowhead whale monitoring program had no nexus with the proposed activity and therefore was not an alternative within the meaning of 15 C.F.R. § 930.64(b).

<sup>166</sup> 15 C.F.R. § 930.122 (emphasis added).

reserves are needed and exploration is necessary to make those discoveries. Additionally, Mobil asserts that there are few large oil and gas reserves to be found and that the country must now focus on developing the maximum number of middle- to smaller-size reserves.

It has been previously held that the size of oil and gas reserves is not determinative of whether the requirements of this ground are met. Further, the degree of importance that such be assigned to the size of oil and gas reserves depends on the facts of the case.<sup>167</sup>

To aid in this determination of the national security interests involved in the project, the Secretary must seek the views of the Department of Defense and other Federal agencies. The views of these agencies are not binding on the Secretary, but he must give them considerable weight in making his determination.<sup>168</sup> In order to decide this ground, the Under Secretary of Commerce for Oceans and Atmosphere solicited comments from various interested Federal agencies. Specifically, the Under Secretary of Commerce for Oceans and Atmosphere asked those agencies to "identify any national defense or other national security objectives directly supported by [Mobil's] Plan of Exploration. Also, please indicate which of the identified national defense or other national security interests would be significantly impaired if Mobil's activity were not allowed to go forward as proposed."<sup>169</sup>

The Department of Defense responded by stating:

[D]omestic exploration and identification of potential petroleum reserves are an important element in maintaining national energy security. ... In addition, 43 U.S.C. § 1341(b) provides that crude oil from the OCS can be used to meet defense requirements during a national energy emergency.<sup>170</sup>

The Department of State asserted:

New indigenous hydrocarbon production continues to be essential to our nation's energy security. U.S. production and exploration has declined since 1985 as a

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<sup>167</sup> Chevron Decision at 71.

<sup>168</sup> 15 C.F.R. § 930.122.

<sup>169</sup> Letters from Under Secretary William Evans to Hon. James A Baker III, Secretary of State; Hon. Richard B. Cheney, Secretary of Defense; Hon. Brent Scowcroft, Assistant to the President for National Security; and Hon. James D. Watkins, Secretary of Energy, April 28, 1989.

<sup>170</sup> Letter from Jack Katzon, Assistant Secretary of Defense, to Hon. William E. Evans, Under Secretary, U.S. Department of Commerce, June 27, 1989.

result of lower oil prices. These trends increase the urgency of taking advantage of economically-available opportunities for new domestic production to slow our growing dependency on imported oil.

The Department of State further noted that reducing U.S. reliance on imported oil would contribute to the strength of the U.S. economy.<sup>171</sup>

The Department of Energy stated:

[T]he proven and potential oil and gas reserves in the Outer Continental Shelf (OCS) can play an important role in furthering our energy security objectives, and consequently our national security. . . . It is in our national interest not to be overly reliant on imported oil and to replenish the Nation's petroleum reserves through new discoveries. Obviously, new discoveries can only be made through exploration drilling . . . .<sup>172</sup>

Although the comments of the federal agencies clearly link Mobil's proposed POE with furthering the national defense and security interest in lessening this Nation's dependence on foreign oil and the enhancement of our domestic supply, none of the comments specifically address how these interests would be "significantly impaired" if Mobil's proposed POE is not allowed to proceed in its present form. These general conclusory comments fail to meet the standard for the criteria of Ground II. Additionally, I find that Mobil's general assertions also fail to meet this standard.

#### Conclusion on Ground II

Neither Mobil nor any Federal agency commenting on Ground II specifically identified or explained how Mobil's inability to proceed with its POE would significantly impair the national security interest of energy self-sufficiency or a national defense interest. Based on the record before me, I find that the requirements for Ground II have not been met.

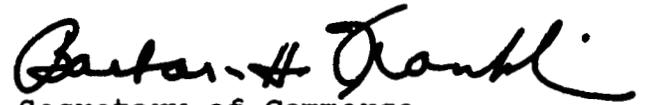
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<sup>171</sup> Letter from John P. Ferriter, Deputy Assistant Secretary of Energy, Resources and Food Policy, to William E. Evans, June 12, 1989.

<sup>172</sup> Letter from Retired Admiral James D. Watkins, Secretary of Energy, to Hon. William E. Evans, Under Secretary, Department of Commerce, June 12, 1989.

Conclusion

I have found that Mobil's proposed POE is neither consistent with the objectives of the CZMA or necessary in the interests of national security. Accordingly, I decline to override Florida's objection to Mobil's POE.

  
Secretary of Commerce

THE WHITE HOUSE  
Office of the Press Secretary

FOR IMMEDIATE RELEASE

Tuesday, June 26, 1990

STATEMENT BY THE PRESIDENT

I have often stated my belief that development of oil and gas on the outer continental shelf (OCS) should occur in an environmentally sound manner.

I have received the report of the interagency OCS Task Force on Leasing and Development off the coasts of Florida and California, and have accepted its recommendation that further steps to protect the environment are needed.

Today, I am announcing my support for a moratorium on oil and gas leasing and development in Sale Area 116, Part II, off the coast of Florida, Sale Area 91 off the coast of northern California, Sale Area 119 off the coast of central California, and the vast majority of Sale Area 95 off the coast of southern California, until after the year 2000.

The combined effect of these decisions is that the coast of southwest Florida and more than 99 percent of the California coast will be off limits to oil and gas leasing and development until after the year 2000.

Only those areas which are in close proximity to existing oil and gas development in Federal and state waters, comprising less than 1% of the tracts off the California coast, may be available before then. These areas, concentrated in the Santa Maria Basin and the Santa Barbara Channel, will not be available for leasing in any event until 1996 -- and then only if the further studies for which I am calling in response to the report of the National Academy of Sciences satisfactorily address concerns related to these tracts.

I am also approving a proposal that would establish a National Marine Sanctuary in California's Monterey Bay and provide for a permanent ban on oil and gas development in the sanctuary, and I am asking the Secretary of the Interior to begin a process that may lead to the buyback and cancellation of existing leases in Sale Area 116, Part II, off southwest Florida.

In addition, I am directing the Secretary of the Interior to delay leasing and development in several other areas where questions have been raised about the resource potential and the environmental implications of development. For Sale Area 132 off the coasts of Washington and Oregon, I am accepting the recommendation of the Secretary that further leasing and

ATTACHMENT A

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 26, 1990

FACT SHEET

PRESIDENTIAL DECISIONS CONCERNING OIL AND GAS DEVELOPMENT  
ON THE OUTER CONTINENTAL SHELF

The President today announced a series of decisions related to oil and gas development on the outer continental shelf (OCS). The President believes that these decisions strike a needed balance between development of the Nation's important domestic energy resources and protection of the environment in sensitive areas.

Decisions by the President on Three Pending Sales

Decision for California Sales

- o Cancel all sales scheduled for 1990, 1991 and 1992 offshore California, including Sale 91 off the coast of northern California and Sale 95 off the coast of southern California.
- o Conduct additional oceanographic and socioeconomic studies as recommended by the National Academy of Sciences in a review conducted for the interagency Task Force on Leasing and Development of the OCS (the Task Force). These studies should take 3 to 4 years.
- o Exclude more than 99 percent of the tracts (including all of the Sale 91 area and all of the Sale 95 area south of the Santa Barbara Channel) off California from consideration for any lease sale until after the year 2000. The Interior Department has identified 87 tracts off the coast of southern California within the Sale 95 area that have high resource potential. These tracts are located in the Santa Maria Basin and Santa Barbara Channel, where oil and gas production is currently underway. They comprise approximately 0.7 percent of all of the tracts off California, or 0.67 percent of the 74 million total acres off California that could be leased and 1.63 percent of the 30.5 million acres in the Southern California Planning Area. These tracts will not be available for leasing consideration until after January 1, 1996 and completion of the additional

development appears viable based on the guiding principles outlined below and the results of the studies.

#### Decision for Florida

- o Cancel Sale 116, Part II, and exclude the area from consideration for any lease sale until after the year 2000. Any development after the year 2000 would be pursued only if it appears viable based on the guiding principles outlined below and the results of additional studies.
- o Conduct additional oceanographic, ecological and socioeconomic studies as recommended by the National Academy of Sciences in its review. These studies should be completed within 5 to 6 years.
- o Begin cancellation of existing leases off Florida and initiate discussions with the State of Florida for its participation in a joint federal-state buy-back of the leases.

#### Guiding Principles

The President's decisions were based on the following principles:

- (1) Adequate Information and Analysis -- Adequate scientific and technical information regarding the resource potential of each area considered for leasing and the environmental, social and economic effects of oil and gas activity must be available and subjected to rigorous scrutiny before decisions are made. No new leasing should take place without such information and analysis.
- (2) Environmental Sensitivity -- Certain areas off our coasts represent unique natural resources. In those areas even the small risks posed by oil and gas development may be too great. In other areas where science and experience and new recovery technologies show development may be safe, development will be considered.
- (3) Resource Potential -- Priority for development should be given to those areas with the greatest resource potential. Given the inexact nature of resource estimation, particularly offshore, priority should be given to those areas where earlier development has proven the existence of economically recoverable reserves.
- (4) Energy Requirements -- The requirements of our nation's economy for energy and the overall costs and

benefits of various sources of energy must be considered in deciding whether to develop oil and gas offshore. The level of petroleum imports, which has been steadily increasing, is a critical factor in this assessment.

(5) National Security Requirements -- External events, such as supply disruptions, might require a reevaluation of the OCS program. All decisions regarding OCS development are subject to a national security exemption. If the President determines that national security requires development in the areas of these three lease sales or in other areas, he has the ability to direct the Interior Department to open the areas for development.

The need to develop adequate information, particularly needed to meet the inadequacies identified by the National Academy of Sciences, is an essential factor in calling for further studies and cancellation of the pending sales. The Sale 116 area off southwest Florida, which contains our nation's only mangrove-coral reef ecosystem and is a gateway for the precious Everglades, deserves special protection. The presence of successful drilling operations and known resources off certain areas of southern California merits allowing continued development, assuming scientific and environmental uncertainties can be resolved.

#### Other Actions by the President

The President has also directed certain other actions affecting offshore oil and gas development.

#### Sale 119 and Monterey Bay Sanctuary

The Task Force consideration of development off northern and southern California has been accompanied by strong concern about the prospect of development off central California and Sale 119. Sale 119, originally scheduled for March 1991, covers an area stretching from San Francisco southward to the northern tip of Monterey Bay. This area includes unique coastal and marine resources and a portion of the area of the Monterey Bay National Marine Sanctuary proposed by the National Oceanic and Atmospheric Administration (NOAA) (the proposed sanctuary would cover approximately 2,200 square miles). NOAA has also proposed regulations to prohibit all oil and gas exploration and development activities within the sanctuary. This area contains nationally significant, environmentally sensitive resources, including the largest breeding ground for marine mammals in the lower 48 states.

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The President has directed Interior Secretary Manuel Lujan and NOAA Administrator John Knauss to take the following actions:

- o Cancel Sale 119 and adopt the sanctuary proposed by NOAA.
- o Permanently prohibit all oil and gas exploration and development within the sanctuary.
- o Allow no development in the Sale 119 area outside the sanctuary until after the year 2000. At that time the guiding principles outlined above will be applied to determine the viability of development in the area.

#### Sale 96 in North Atlantic

Sale 96 has been proposed for the Georges Bank area of the North Atlantic Planning Area, which stretches northward from Rhode Island to Canada. The President has directed Interior Secretary Lujan to:

- o Cancel Sale 96 and exclude it from the 1992-1997 five-year plan.
- o Conduct additional studies, including studies designed to determine the resource potential of the North Atlantic area and to assess the environmental, scientific and technical considerations of development in the area.
- o Consult with the governors of the states whose residents would be affected by future development of oil and gas in the North Atlantic.

These actions ensure that no sale will be considered in the North Atlantic Planning Area until after the year 2000, and then only if studies show that development is warranted because of resource potential and is environmentally safe.

#### OCS Development off Washington and Oregon

The President has accepted the recommendation of Interior Secretary Lujan to conduct a series of additional environmental studies of the effects of oil and gas development off Washington and Oregon, including the Sale 132 area, before any environmental impact statement would be completed. These studies are expected to take 5 to 7 years. No sale will be considered off Washington and Oregon until after the year 2000 and then only if studies show that development can be pursued in an environmentally safe manner.

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### General OCS Decisions

The President also decided that:

- o Air quality controls for oil and gas development offshore California should be substantially the same as those applied onshore.
- o Immediate steps should be taken to improve the ability of industry and the federal government to respond to oil spills offshore, regardless of their source.
- o Federal agencies should develop a plan to reduce the possibility of oil spills offshore from whatever source, including and especially from tanker traffic. This plan should include moving tanker routes further away from sensitive areas near the Florida Keys and the Everglades.

### Restructuring the CCS Program

The President determined that providing the necessary balance between developing domestic energy resources and protecting the environment requires certain revisions to the OCS program. The program must be:

- o targeted more carefully toward areas with truly promising resource potential;
- o buttressed by information adequate to ensure that oil and gas development proceeds in an environmentally sound manner; and
- o sensitive to the concerns and needs of local areas affected by offshore development.

Accordingly, the President directed Interior Secretary Lujan to take three actions to improve the overall OCS program:

- o Improve the information needed to make decisions on OCS development by conducting the studies identified by the National Academy of Sciences and studies to explore new technologies for alleviating the risks of oil spills from OCS platforms and new oil and gas drilling technologies, such as subsea completion technology.
  - o Target proposed sale areas in future OCS five-year plans to give highest priority to areas with high resource potential and low environmental risk. This will result in offering much smaller and more carefully selected blocks of tracts.
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- o Prepare a legislative initiative that will provide coastal communities directly affected by OCS development with a greater share of the financial benefits of new development and with a larger voice in decision-making. Currently, states receive 100 percent of revenues from leases within three miles of shore. Revenues from leases between three and six miles of shore are divided 73 percent to the federal government and 27 percent to the states. Revenues from leases six miles or further offshore go 100 percent to the federal government. Coastal communities directly affected by development are not presently guaranteed any of these revenues.

### Background on Sales

#### Sale 91

The Sale 91 area contains approximately 1.1 million acres and lies offshore Mendocino and Humboldt Counties in northern California, primarily in two areas off Eureka and from south of Cape Mendocino to south of Point Arena. It is within the Northern California Planning Area, which stretches from the California/Oregon border to the Sonoma/Mendocino County lines. There is currently no oil and gas production within this planning area. The Minerals Management Service (which is responsible for the OCS program within the Interior Department) estimates that there are between 210 million and 1.54 billion barrels of crude oil and approximately 2.5 trillion cubic feet of natural gas in the Northern California Planning Area and between 20 million and 820 million barrels of oil and approximately 1.0 trillion cubic feet of natural gas in the Sale 91 area. Congress imposed a moratorium prohibiting leasing in the Northern California Planning Area as part of the Interior Department's FY 1990 appropriations bill.

#### Sale 95

The Sale 95 area contains approximately 6.7 million acres and lies offshore southern California from the northern border of San Luis Obispo County to the United States/Mexico border. It is within the Southern California Planning Area, which extends from the northern border of San Luis Obispo County to the United States/Mexico border. Oil and gas production is currently taking place in the Southern California Planning Area in the Santa Maria Basin, the Santa Barbara Channel and offshore Long Beach. There are 135 active federal leases in the area, producing approximately 90,000 barrels of crude oil and 95 million cubic feet of natural gas daily from 17 producing platforms in federal

waters. One platform in federal waters is used exclusively for processing and four other platforms are under construction or completed but not yet producing. In addition, there are 10 platforms and four artificial islands in the area supporting production facilities within state waters, which extend three miles from the shore. The Minerals Management Service estimates that there are between 610 million and 2.23 billion barrels of crude oil and approximately 3.01 trillion cubic feet of natural gas in the Southern California Planning Area and between 200 million and 960 million barrels of oil and approximately 1.1 trillion cubic feet of natural gas in the Sale 95 area.

#### Sale 116, Part II

The area of Sale 116, Part II contains approximately 14 million acres, lying south of 26 degrees north latitude off the southwest Florida coast off Collier, Monroe and Dade Counties. This area is within the southeastern portion of the Eastern Gulf of Mexico Planning Area. (In 1988 the Eastern Gulf of Mexico was divided for leasing purposes into two parts along the 26 degrees north latitude line.) There is no oil and gas production within the sale area, although 73 active leases are held within the area by ten oil and gas companies. The Minerals Management Service estimates that there are between 440 million and 1.72 billion barrels of crude oil and approximately 1.68 trillion cubic feet of natural gas in the Eastern Gulf of Mexico Planning Area and between 279 million and 1.06 billion barrels of oil and approximately 110 billion cubic feet of natural gas in the Sale 116, Part II area.

#### Background on the OCS Task Force

In his February 9, 1989 budget message to Congress, the President indefinitely postponed three OCS lease sales scheduled for FY 1990 -- Sale 91 off the coast of northern California, Sale 95 off the coast of southern California and Sale 116, Part II off the coast of southwestern Florida -- pending a study of the sales by a Cabinet-level task force charged with reviewing and resolving environmental concerns over adverse impacts of the sales. The Task Force was named on March 21, 1989. It consisted of Interior Secretary Manuel Lujan as Chairman, Energy Secretary James Watkins, Administrator John Knauss of the National Oceanic and Atmospheric Administration (NOAA), Administrator William Reilly of the Environmental Protection Agency, and Director of the Office of Management and Budget Richard Darman. The Task Force conducted nine public workshops in Florida and California, heard from over 1,000 witnesses, took ten field trips to sites in the two states, received briefings from various federal agencies,

met twice with Members of Congress, and solicited and received over 11,000 written public comments.

The Task Force also commissioned a technical review from the National Academy of Sciences regarding the environmental and other information available on which decisions could be made. The National Academy of Sciences determined that adequate ecological, oceanographic or socioeconomic information was not available to some extent for each of the three sale areas.

The Task Force found that:

- o The southwest Florida shelf comprises subtidal and nearshore habitats that are unique within the U.S. continental margin and provide refuge to a number of rare and endangered species;
- o The incremental risks of an oil spill associated with the Sale 91 area off northern California are greater than those associated with the other two sales.
- o Information concerning the onshore socioeconomic effects of oil and gas development is particularly lacking for Sale 115, Part II off Florida and Sale 91.
- o Additional studies in response to the report of the National Academy of Sciences are needed before the Secretary of the Interior makes leasing decisions in any of the three areas.

#### Background on the OCS Program

Management of oil and gas found in federal waters offshore (which generally begin three miles from a state's coast and can extend out 200 to 300 miles) is vested in the Department of the Interior under the Outer Continental Shelf Lands Act of 1953, as amended. The Act directs the Interior Department to:

- o make OCS resources available to meet the nation's energy needs;
  - o protect human, marine and coastal environments;
  - o ensure that states and local governments have timely access to information and opportunities to participate in OCS program planning and decision-making; and
  - o obtain for the federal government a fair and equitable return on resources while preserving and maintaining free enterprise competition.
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These responsibilities within the Interior Department are administered by the Minerals Management Service (MMS), created in 1982 to oversee the orderly development of offshore energy and mineral resources while safeguarding the environment. The current director of the MMS is Barry Williamson.

The MMS makes resources available by leasing federal acreage offshore to private companies, which explore for and can develop and produce commercial deposits, subject to continuing review and permitting procedures. Environmental standards are established by the MMS in regulations and lease stipulations and enforced through review of companies' exploration, development and production plans (including drilling permits that must be obtained) before operations can begin on leases, and an offshore facility inspection program, under which inspectors review safety, operational and environmental activities on offshore platforms. Inspectors currently oversee 3,800 platforms in the Gulf of Mexico and 22 platforms off California.

Oil and gas lease sales are conducted in a competitive sealed bid process. Sales are scheduled in five-year planning cycles (the first of which was in 1978) developed by the Secretary of the Interior with public review and comment on the draft plan. Efforts are made to address concerns raised during this review process, which normally takes two years. After the adoption of a plan, extensive pre-lease activities are conducted before any sales occur. These activities include the preparation of an environmental impact statement for each sale, with opportunities for public review and comment, and submission of sale proposals to the governors of the affected states before final decisions are made. These steps generally take an additional two or more years.

The total OCS area covers 1.4 billion acres, and is composed of over 260,000 tracts. Since 1954 over 118,000 (or approximately 45 percent) of the tracts have been offered for lease; 10,115 (3.9 percent) have been leased; 4,111 (1.5 percent) have been drilled; and slightly more than 1,250 (approximately .05 percent) are occupied by platforms. Production from the OCS program since 1954 totals over 8.5 billion barrels of crude oil and condensate and 88 trillion cubic feet of natural gas. Since its creation, the Minerals Management Service has been responsible for overseeing the production of more than two billion barrels of crude oil and condensate and over 25.6 trillion cubic feet of natural gas and for generating over \$90 billion in revenues from lease sales and lease rental payments for the United States Treasury.

The OCS accounts for a significant portion of existing United States oil and gas resources. Table 1 shows: the quantities of proven oil and gas reserves that have been discovered and are economically recoverable within the United States as a whole and

the OCS separately (Column A); and the quantities of undiscovered oil and gas resources estimated to be economically recoverable using existing technologies within the United States as a whole and the OCS separately (Column B).

TABLE I

OIL AND GAS RESERVES IN THE UNITED STATES  
AND THE OUTER CONTINENTAL SHELF (OCS)

|   | Column A                    |                 | Column B                       |                 |
|---|-----------------------------|-----------------|--------------------------------|-----------------|
|   | Proven Oil and Gas Reserves |                 | Estimated Oil and Gas Reserves |                 |
|   | <u>All U.S.</u>             | <u>OCS Only</u> | <u>All U.S.</u>                | <u>OCS Only</u> |
| Oil<br>(billion barrels)                    | 26.8                        | 2.6             | 34.8                           | 8.2             |
| Natural Gas<br>Liquids (billion<br>barrels) | 8.2                         | .6              | 6.3                            | .8              |
| Natural Gas<br>(trillion cubic<br>feet)     | 168.0                       | 32.3            | 252.7                          | 74.0            |

Note: Column A shows the quantities of proven oil and gas reserves that have been discovered and are economically recoverable within the United States as a whole and the OCS separately; Column B shows the quantities of undiscovered oil and gas resources estimated to be economically recoverable using existing technologies within the United States as a whole and the OCS separately.

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