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OUTER CONTINENTAL SHELF OIL AND  
GAS LEASING OFF SOUTHERN  
CALIFORNIA: ANALYSIS  
OF ISSUES

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PREPARED AT THE REQUEST OF  
HON. WARREN G. MAGNUSON, *Chairman*  
FOR THE USE OF THE  
COMMITTEE ON COMMERCE  
PURSUANT TO  
S. Res. 222  
NATIONAL OCEAN POLICY STUDY



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## LETTER OF SUBMITTAL

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U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C. November 12, 1974.*

HON. ERNEST HOLLINGS,  
*Chairman, Senate National Ocean Policy Study,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: I am enclosing per your request, a report analyzing the hearings which I chaired in Santa Monica, California on September 27 and 28. The report reflects the deep concern expressed at the hearings that the State of California and local government have been excluded from meaningful participation in the Interior Department's Outer Continental Shelf oil leasing program. Upon my return to Washington, I introduced Senate Resolution 426 with 26 cosponsors. This Resolution, which I hope will be voted on by the Senate this year, calls for greater consultation by the Federal Government with Coastal States in developing a leasing program, and a review by the National Academy of Sciences of the environmental baseline data prior to leasing in the Outer Continental Shelf.

Mr. Chairman, the recommendations in this Committee report are good ones and should be implemented before proceeding with massive leasing program which the Interior Department has proposed.

Sincerely,

JOHN V. TUNNEY, *U.S. Senator.*



## LETTER OF TRANSMITTAL

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SENATE COMMITTEE ON COMMERCE,  
U.S. SENATE,  
Washington, D.C.

DEAR COLLEAGUE: President Nixon's February, 1973, announcement to lease 10 million acres on the Atlantic and Pacific Outer Continental Shelves as one means of obtaining energy self-sufficiency provoked criticism from many members of Congress and the Public.

Since its creation by the Senate in February, the National Ocean Policy Study has undertaken a comprehensive study of the OCS leasing program in order to determine its short- and long-range environmental, social and economic ramifications.

One problem that surfaced in the initial phase of our study concerned the absence of substantive consultation and coordination between the Department of the Interior and the coastal states over the nomination, location and siting of specific areas for lease. A prime example of lack of intergovernmental coordination is best exemplified in California, where the State Legislature, the California Coastal Zone Conservation Commission and many local governments along the Southern California coast have asked that proposed leasing off Southern California be postponed until such time as proper planning mechanisms are in place. California is due to complete its coastal zone management plan by the end of 1975, but the Department of the Interior has said that the energy needs of the nation make postponement until that time an impossibility.

The National Ocean Policy Study held two days of hearings in Santa Monica, California, on September 27 and 28 to examine three issues raised by the California situation:

1. What should be the role of coastal states in the Federal decisionmaking as to the siting and location of oil and gas leases?
2. What role should coastal zone management play in the offshore leasing program? and
3. What is the justification, in terms of national energy needs, the availability of manpower and materials, and possible alternatives, for leasing 10 million acres on the Outer Continental Shelf in 1975, and what was the basis for nominating areas for lease in the Southern California area at this time?

These hearings, which were chaired by Senator John V. Tunney, were extremely important in testing public attitudes and Administration policies toward OCS development. Based on what we learned at Santa Monica, there appears to be growing sentiment in favor of a much stronger role for States in participating in the decisionmaking process of OCS development. This report contains our analysis of the California situation and reflects the Study's findings and recom-

mendations aimed at the creation of a policy of greater Federal responsibility to the needs of coastal states and greater emphasis on prior coastal planning to cope with resulting coastal impacts.

We urge that you give serious consideration to these recommendations. We hope that they will form the basis for legislative and Administrative action which will eliminate problems similar to those which have occurred in California as additional nominations for leases are proposed in other areas.

The staff was assisted in the preparation of this report by Dr. James W. Curlin of the Environmental Policy Division, Congressional Research Service, Library of Congress, who attended the Ocean Policy Study hearings in Santa Monica.

WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce.*

ERNEST F. HOLLINGS,  
*Chairman, National Ocean Policy Study.*

## I. INTRODUCTION

On January 2, 1974, the Department of the Interior called for nomination of tracts for oil and gas development on the Outer Continental Shelf offshore of Southern California. Announcement of the proposed leasing schedule came within five years after the Santa Barbara oil spill. This 1.6 million-acre sale would be the first OCS leases by the Federal Government in Southern California since the Santa Barbara blowout. It is also part of the first leasing schedule under the accelerated OCS development program which calls for the annual lease sale of 10 million acres for oil and gas development as part of the Administration's goal of energy self-sufficiency by 1985.

Drilling for oil off the coast of Southern California is hazardous. This was demonstrated dramatically by the Santa Barbara blowout and the subsequent environmental damage that resulted. Seismic activity and subsea faults in the region require special precaution in drilling and producing oil and gas from the area. In addition, over 10 million people live in Southern California adjacent to the proposed drilling sites. The onshore impact of processing and transportation facilities to handle the oil and gas produced offshore will directly affect an area which is already facing serious land use and environmental problems.

The proposed lease sale also comes at a time when the State of California is in the process of developing a coastal zone conservation plan under grants authorized by the Coastal Zone Management Act of 1972. During this hiatus period, between completion of the State plan and the approval of that plan by the Secretary of Commerce, which is expected in 1976, California is without the benefit of the provisions of the Coastal Zone Management Act which requires that actions of the Federal agencies be consistent with state programs. Offshore oil and gas development on the OCS will test the limits of the Act to accommodate the Nation's needs for energy while balancing the interests of states and the welfare of the people of the region.

For these reasons, the National Ocean Policy Study of the Senate Committee on Commerce held 2 days of hearings in Santa Monica, California, on September 27 and 28, 1974, to explore the Department of the Interior's lease sale proposal and the implications it may have for the coastal zone of Southern California.

The testimony disclosed eight significant issues which were discussed in depth at the hearings:

- Need and justification of OCS oil and gas development.
- Response of State and local governments, and the public to the Department of the Interior OCS lease schedule in Southern California.
- Energy conservation and the use of substitute energy sources as alternatives to OCS development.
- The impact of government credibility on OCS leasing.

- **Information and development of oil and gas resources of the OCS.**
- **Federal, state and local roles in the development of OCS oil and gas.**
- **The Coastal Zone Management Act and its role in OCS development.**
- **Role of the National Environmental Policy Act in the OCS planning process.**

This document is an analysis of the testimony and statements made at the Santa Monica hearings, and is keyed to the identified issues.

The introductory sections contain a chronology, a brief history of the development of Southern California OCS oil and gas and an outline of the Department of the Interior OCS leasing procedures. These introductory sections are intended to serve as background for the discussion of the issues contained in the last half of the report. Discussions of the individual issues are supplemented with appropriate material from other sources to provide additional background where needed. Other supporting documents, such as the list of witnesses, texts of resolutions adopted by State and local governments and legal material are included in the appendices.

## II. FINDINGS AND RECOMMENDATIONS

**A. The Department of the Interior's massive leasing schedule for OCS oil and gas resources, aimed at six sales per year, beginning in 1975, should be replaced with a more modest level of leasing, avoiding frontier areas until (1) Congress enacts legislation similar to S. 3221 or administrative procedures are developed so as to insure that Federal, State, local and public interests are properly considered in OCS leasing decisions, (2) coastal States have been given a reasonable time to undertake the development of coastal zone management programs to accommodate the demands of offshore oil and gas development, and (3) a comprehensive evaluation of the Programmatic Environmental Impact Statement and Blueprint of Project Independence is made and reviewed by competent authorities.**

1. Energy conservation is a feasible alternative to accelerated development of OCS oil and gas resources during the interim while the leasing policies and procedures are being reappraised.

2. In view of constraints posed by shortages in drilling rigs, construction materials and investment capital, the oil industry's capability to develop lease tracts each year is limited. Consequently, the temporary deferral of some lease sales in frontier areas would not significantly delay petroleum supplies.

3. All of the coastal states which would be affected by the 1975 accelerated lease schedule are drafting coastal zone management programs in accordance with the Coastal Zone Management Act of 1972. California, in particular, is in the advanced stages of development, with 1975 as its target date for completion. Within two years most of the coastal states will be substantially finished with their plans.

**B. The Department of the Interior should reassess its OCS leasing system to develop a pre-lease procedure which includes substantive participation by State, local, and regional representatives in all determinations or decisions from nomination to sale, coupled with full and candid disclosure of pending decisions and supporting information.**

1. Department testimony indicated that the Department of the Interior considers the environmental impact statement process required by NEPA after nomination of specific tracts to be the primary vehicle for input for state, local and regional interests. According to State and local officials, however, the Department failed to consult or warn them sufficiently in advance of the announcement of the call for tract nominations; and the determination to issue the call was made unilaterally by the Department.

2. The Department of the Interior uses a highly technical approach to interpret and administer the regulations promulgated under the Outer Continental Shelf Lands Act. One example is the determination that the "call for nominations" is not a "decision;" that a "deci-

sion" is not made until it is decided which tracts are to be sold. While perhaps technically defensible, the non-federal witnesses did not consider the distinction as a reason not to fully consult state and local representatives prior to the call for nominations.

3. Government credibility is at low ebb. Underlying the testimony of many Southern California witnesses appeared the attitude that Federal Government representatives are not trustworthy, that decisions and commitments to the oil and gas industry have already been made, and that the environmental impact statements and other planning documents are pro forma.

**C. The Federal government should have the primary responsibility for exploration and exploratory drilling so that the proprietary rights to information about the extent and location of OCS oil and gas are with the public. Until such exploratory activities are undertaken by the Federal Government, the Department of the Interior should make estimates of the numbers and types of facilities needed for the production, refining, and transportation of OCS oil and gas based on the best data available.**

1. While the USGS has responsibility for general exploration on the OCS lands, the detailed resource information is generally acquired by the industry and treated as proprietary. This imbalance in resource information casts doubt on the Government's ability to assess the value of oil and gas resources and ensure the American taxpayer receipt of fair market value in its sale to private companies.

2. The present nomination—pre-lease procedures do not provide adequate and timely information necessary for state and local planning. State and local officials in California emphasized the need for planning information, e.g. number and location of drilling platforms, locations of pipelines, location and size of refineries and processing facilities and transportation and service requirements. Such data are not available from the present leasing procedures until after the lease sale and discoveries are made by the lessee.

**D. The Council on Environmental Quality (CEQ) in cooperation with the Office of Coastal Zone Management of NOAA should convene an interagency task force to assess the programs of the Federal agencies as to their impact on the coastal zone, and to establish guidelines for achieving the objectives of the Coastal Zone Management Act and, more specifically, the "Federal consistency" provisions of the Act.**

1. Testimony by the Department of the Interior indicated that Federal agencies read the mandate of the Coastal Zone Management Act narrowly in the legal sense, and tend to diminish the operation of the broad objectives of Federal-State cooperative planning. The "Federal consistency" provisions are subject to interpretation: thus it is the responsibility of the Executive Branch to determine a course of action which will respect the legislative mandate for protecting and managing the coastal zone, while pursuing national goals through actions of the Federal agencies.

2. The National Environmental Policy Act and the Coastal Zone Management Act are the two primary planning devices to achieve balanced land use and environmental protection. Because of their importance to coastal zone management, detailed consideration should be given to the interaction and mutual roles of the two statutes in relation to the missions of the Federal agencies.

**E. The Department of the Interior should provide appropriate committees of Congress with a complete justification of its leasing program before leasing additional acreage in frontier areas. Such a justification should take into account the availability of capital, materials and manpower, the ability of the major oil companies to develop such large acreage at this time, and the ability of the U.S. Geological Survey to properly administer such a sizable area.**

**F. The final programmatic environmental impact statement of the expanded Federal OCS Leasing Program should include a comprehensive assessment of the onshore support facilities such as infrastructure, platform construction sites, pipeline landfalls, storage tank farms, refineries and tanker terminals. The impact statement should estimate the secondary impacts such as population growth, land use changes, need for new infrastructure, employment dislocations, and economic changes such as inflation in land and housing prices. In addition, the site specific impact statement should give more detailed attention to these factors as they affect Southern California and other affected coastal States.**



### **III. CHRONOLOGY OF SOUTHERN CALIFORNIA OCS LEASING SCHEDULE**

The following chronology was constructed from testimony presented at the Santa Monica hearings, and has been updated to include events which have occurred since that time. Since the hearings were held on September 27 and 28, 1974, the Department of the Interior has completed the "programmatic" environmental impact statement which deals with the environmental implications of the entire 10 million-acre accelerated lease schedule planned for 1975.

July 1973—Proposed schedule for provisional leasing of OCS lands was prepared which indicated that Southern California OCS would have a call for tract nominations issued in February 1974.

January 2, 1974—Call for nomination of tracts in the Southern California OCS.

February 8, 1974—Request for comments concerning OCS lands offshore of Southern California.

May 20, 1974—Announcement of programmatic impact statement to be drafted for the 10 million-acre proposed leasing program.

July 12, 1974—Deputy Under Secretary Jared G. Carter conferred with State and local officials and held public hearings at Santa Monica, Calif., on the Southern California lease proposal.

August 12, 1974—Attorney General of California filed suit against Department of the Interior for noncompliance with the National Environmental Policy Act.

September 27-28, 1974—Public hearings held by Senate Commerce Committee at Santa Monica, Calif., on the Southern California leasing proposal.

October 21, 1974—The Programmatic environmental impact statement was released for 10 million-acre accelerated lease program scheduled for 1975.

November 7, 1974—FEA's report on the blueprint for Project Independence will be issued which includes the proposal for the accelerated leasing program. The report will outline the basic energy supply and demand situation through 1985 and the major alternatives to deal with the situation.

December 2-3, 1974—The Department of the Interior will hold regional hearings on the draft environmental impact statement for its expanded offshore leasing program at the Civic Auditorium, Santa Monica, California.

Winter 1974-75—Public hearings will be held after the site-specific environmental impact statement is issued.

Summer 1975—Decision on whether to lease the nominated tracts will be made by BLM after all three documents, the programmatic impact statement, the site-specific statement and the report on Project Independence, are reviewed by the Director.



#### IV. CALIFORNIA OFFSHORE OIL AND GAS DEVELOPMENT: HISTORICAL BACKGROUND<sup>1</sup>

Oil was first discovered in the Summerland region on the coast of the Santa Barbara Channel in 1895. In 1897 the first "offshore" well was drilled from a pier which extended seaward into the Channel. Successful drilling of the first well precipitated a rush for beach property, which was soon covered by more than 300 oil derricks. The Summerland field proved to be shallow, however, and production dwindled soon after reaching its peak.

When Congress enacted the Mineral Leasing Act of 1920,<sup>2</sup> which authorized the filing of applications for leases on Federal lands, California followed suit with the State Mineral Leasing Act of 1921. Soon thereafter, the State began granting permits to explore for oil and gas in the tidelands and submerged lands. In 1927 the Elwood field was discovered and offshore parts of the Rincon field were developed. Sub-ocean drilling, which was begun at Summerland in 1897, was further perfected at the Elwood field, where a dozen derricks were constructed. It is interesting to note, however, that it was not until 1947 that the first drilling platform out of sight of land was constructed in the Gulf of Mexico off the coast of Louisiana.<sup>3</sup> And not until after World War II was the present offshore drilling technology developed and employed.

A number of problems were associated with the implementation of the California Mineral Leasing Act of 1921. There was no provision in the law for supervising offshore drilling, and the Act left unclear the extent of the State's powers to grant or withhold leases. When a large number of lease applications were rejected in 1926 a court test resulted. In *Boone v. Kingsbury*, the court held that the actions of the State were beyond its power since the proposed leases were detrimental to neither fish life nor navigation.<sup>4</sup> The result of the decision left the administrator unable to reject lease applications, and ultimately left the oil industry unregulated.

As a result of the *Boone* decision, the legislature declared an emergency moratorium on further leases and in 1928, after 350 wells had been drilled under the statute, repealed the Mineral Lease Act of 1921. Existing wells in the Elwood field were not affected, but curtailment of further exploitation made the offshore operations marginal, and expansion of drilling almost terminated until World War II.

In 1938, the California Legislature enacted the State Lands Act<sup>5</sup> which placed all State lands under the administration of the State Land Commission. Once more, California began issuing leases or ease-

<sup>1</sup> Source of chronology of events and historical color was C. Steinhardt and J. Steinhardt, *Blowout: A Case Study of the Santa Barbara Oil Spill* (1972).

<sup>2</sup> Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. (1970).

<sup>3</sup> D. Kash, et al., *Energy Under the Ocean: A Technology Assessment of Outer Continental Shelf Oil and Gas Operations* 25 (1973). [Hereinafter cited as Kash].

<sup>4</sup> *Boone v. Kingsbury*, 206 Cal. 148, 273 (1928).

<sup>5</sup> Cal. Pub. Res. Code §§ 6871 et seq. (West 1972).

ments for oil exploration on the basis of competitive bidding, but allowed the extraction of oil and gas from the tidelands only when State-owned oil was in danger of being drained by existing onshore wells—the latter restriction resulted from the threat of slant-drilling, which had been perfected by this time.

Soon after World War II new technologies enabled the oil companies to begin extensive geological and geophysical exploration of offshore areas. California once more began to grant leases for oil exploration and production, and offshore activities expanded rapidly with the full consent and supervision of the State. Increased exploration and drilling during the early post-war period showed that the stakes in offshore oil and gas production were high, and questions of Federal-State ownership of offshore resources, which had been acknowledged but largely ignored, began to emerge.

#### A. CONTROVERSY OVER OFFSHORE OWNERSHIP

Prior to the post-war development of offshore oil and gas resources, it was generally assumed that the tidelands—the land between high tide and low tide—belonged to the adjacent coastal states. Furthermore, most states believed they also controlled the sea from low tide-water to the three-mile limit which was recognized by international law.

Ownership of the subsurface lands within the original Colonies was based on a legal theory that the states, as Sovereigns, received these rights directly from the Crown under the Treaty of 1783, subject only to the rights surrendered by the Constitution to the Federal Government. Other states which were later admitted to the Union, including California in 1850, made similar claims under the “equal footing” doctrine.<sup>6</sup> In practice, however, the question of ownership of coastal water and underlying submerged lands had never been legally determined. Until recoverable offshore oil and gas were discovered in commercial quantities, there had been no purpose in raising the question. In fact, both the Federal Government and the states had tacitly behaved as though the coastal states controlled the tidelands and sub-adjacent submerged lands out to the three-mile limit.

California’s constitution of 1849 described the area of the state as including islands, harbors, and bays, and having a western boundary that was offshore “three English miles.” The State’s Civil Code, since 1872, had declared California to be owner of all land “below low tide-water.” Thus, based on these documents, California regulated the natural resources, including fishing and kelp harvesting, in its coastal waters and made grants to individuals and local governments for a variety of tideland activities.

By the middle of the 1930’s in the midst of the Depression, local, state and Federal Governments were desperately vying for offshore oil and gas revenues. Up to then, the Federal Government had exercised restraint under the Mineral Leasing Act of 1920, which clearly gave the Department of the Interior authority to lease public lands, and had routinely rejected all applications for leases in the California tidelands. Refusal by the Federal Government to lease offshore of Cali-

<sup>6</sup> See *Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10, 15-16 (1935); *Shirley v. Bowlby*, 152 U.S. 1, 26 (1893); *Mumford v. Wardell*, 73 U.S. 423, 435-36 (1867).

ifornia had been interpreted to imply a recognition that these areas were the property of the State. But in 1934, a permit for offshore exploration in California was refused to Joseph Cunningham. Cunningham's investment group sought legislative relief from Congress, thus the "tidelands" issue was born.

For eleven years the tidelands controversy periodically ebbed and flowed in Congress. Several court cases were litigated, but these generally resulted in dismissal on the basis for want of a Federal issue. As the tidelands controversy gained more visibility within Congress, a strong minority sentiment grew, generally among non-oil producing delegations, to favor assertion of Federal control of the marginal seas. A majority, however, favored state controls of the offshore lands; but prominent members of the Administration, including Secretary of the Interior, Harold Ickes, reportedly favored Federal control of submerged lands. While the tidelands controversy was largely set aside because of World War II, concern for national security did cause a greater commitment to Federal control of the tidelands during the post-war era.

With the end of the war, the tidelands controversy quickly became a national issue. On September 28, 1945, President Truman issued a proclamation which declared that the United States regarded all "resources of the subsoil and seabed of the continental shelf" as Federal property.<sup>7</sup> The extraordinary extension of our sovereign jurisdiction under the Truman Proclamation was purportedly made to clarify the United States position in international relations; however, the implications for the states with regard to submerged lands was clear—they held no claim under color of law to any offshore oil or mineral resources.<sup>8</sup>

Attorney General Tom Clark filed suit against the State of California on October 9, 1945, to determine which government owned, or had paramount rights to, the resources between the low-water mark and the three-mile limit. The United States Supreme Court, in *United States v. California*, 332 U.S. 19 (1947), held that California was not the owner of the three-mile marginal belt along its coast, and that the Federal Government, not the State, had paramount rights with full power and dominion over the resources of the soil under the water, including the oil and gas.

## B. CONGRESSIONAL INTERVENTION IN THE TIDELANDS CONTROVERSY

The tidelands controversy had expanded into a "state's rights" issue by the 1952 national elections. With the election of President Eisenhower, who supported the state's position, the atmosphere was right for congressional action to resolve the controversy over the marginal seas. During the 81st and 82nd Congresses, bills had been introduced and hearings held on the tidelands issue.<sup>9</sup> The 83rd Congress enacted two bills which partitioned the marginal sea between the Federal and

<sup>7</sup> Presidential Proc. 2667, Sept. 28, 1945, 3 C.F.R. 67 (comp. 1943-1949); See also, Exec. Ord. 9833 granting authority to Secretary of Interior to manage submerged lands.

<sup>8</sup> The historic "three-mile limit" of national jurisdiction had stood since Thomas Jefferson was Secretary of State, and was reportedly established on the basis of the range of a cannon shot at that time.

<sup>9</sup> See, Senate Committee on Interior and Insular Affairs, Selected Materials on the Outer Continental Shelf, 91st Cong., 1st Sess., 7. (1969) for brief discussion of congressional history.

state governments, and in effect, reversed the decision in *United States v. California*.

The dual legislation first gave jurisdiction over the three-mile limit back to the states through the Submerged Lands Act of 1953,<sup>10</sup> and then established Federal control and a framework for administering the offshore lands lying seaward of the three-mile extension through the passage of the Outer Continental Shelf Lands Act of 1953.<sup>11</sup> This Act gave the Department of the Interior responsibility for managing and leasing the subsurface resources on the OCS beyond the three-mile limit which was awarded to the states by the Submerged Lands Act. The Secretary of the Interior was authorized to grant leases to the highest bidder "In order to meet the urgent need for further exploration and development of the Outer Continental Shelf." The Submerged Lands Act relinquished Federal title to the offshore area out to the three-mile limit, with the right to manage these lands according to state laws. Certain additional seaward concessions were given to the States of Florida and Texas because of their historic boundaries in the Gulf Coast prior to joining the Union.

The Channel Islands of California remained under the control of the State. Their presence and location, however—some as far as 50 miles offshore—tended to complicate the establishment of a line of demarcation between Federal and State jurisdiction. In 1952, a temporary boundary was agreed upon. But in a subsequent decision on May 17, 1965, the State's claim to contiguous areas from the mainland to beyond the islands was denied by the Supreme Court. The State's title was limited to three miles from shore and around the islands. California did prevail, however, in its claim of the Monterey Bay under the provisions of the "24-mile bay rule", of the Geneva Convention on the Territorial Seas and the Contiguous Zone.<sup>12</sup> The seaward boundary of the Outer Continental Shelf is not defined in the Outer Continental Shelf Lands Act, thus the Federal offshore zone is subject to expansion as concepts of territorial boundaries change through international diplomacy or by unilateral action of the United States.

### C. OFFSHORE DEVELOPMENT SUBSEQUENT TO THE PASSAGE OF THE ACTS

The dichotomy of Federal-State ownership of offshore resources created by the operation of the Submerged Lands Act and the Outer Continental Shelf Lands Act has been a continuing source of friction between the States and the Federal Government. Perhaps nowhere has it been more manifest than in the southern California region.

California continued to lease offshore oil and gas resources, with the exception of certain sanctuaries adjacent to Montecito, Santa Barbara and the Goleta Valley; by 1966 the State had leased all submerged lands between the Ventura County line on the east and Point Concepcion on the west. Since 1966, almost all offshore developments have been on Federal leases.

The first Federal lease sale off the Pacific Coast under the Outer Continental Shelf Lands Act occurred in 1963 off the coast of northern California. In 1964, similar leases were granted by the Department of

<sup>10</sup> Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1303, 1311-1315 (1970).

<sup>11</sup> Outer Continental Shelf Lands Act of 1953, 43 U.S.C. §§ 1331-1343 (1970).

<sup>12</sup> Hearings on Outer Continental Shelf Oil and Gas Before the Subcommittee on Immigration, Citizenship, and International Law of the House Committee on the Judiciary, 93rd Cong., 2d. Sess., ser. 93-31, 60 (1974).

the Interior off Washington and Oregon. In 1965, the Department of the Interior authorized core drilling in the OCS lands between Point Concepcion and San Diego, which included the areas of the Santa Barbara Channel, San Pedro Bay, and Santa Monica Bay. Announcement of the exploratory operations brought protest from a broad spectrum of Southern Californians.

The first Federal lease issued in the Santa Barbara Channel was in the Federal portion of the oil field off Carpinteria in 1966. The reason for issuing the Federal lease was attributed to the need for a "drainage sale" to offset the drainage of oil from Federal lands caused by newly developed State leases in the Carpinteria field close by. In 1967, the Department of Interior announced another leasing schedule for the Santa Barbara Channel. A similar controversy arose, and Interior agreed to a comprehensive feasibility study. Based on the information of that study, the Department granted a record-breaking sale on 71 tracts in the Channel, which brought over \$600 million in cash bonuses.<sup>13</sup> As an example of how commingled the problems of offshore development in the California region had become, of the 18 producing oil fields off the coast, only one was wholly under Federal jurisdiction.<sup>14</sup>

#### D. SANTA BARBARA SITUATION

On January 28, 1969, a blowout occurred on Platform A in the Dos Cuadras Field in the Santa Barbara Channel. The flow of crude oil from below the surface continued unabated through February 7, 1969.<sup>15</sup> The operators of the platform, Union Oil Company, frantically attempted to disperse the oil slick before it was driven by tides and winds toward the recreational beaches in the Santa Barbara area. Log booms were deployed to protect harbors and marinas. Favorable winds delayed the arrival of the oil slick, but eventually it reached the beaches and harbors and resulted in nationwide publicity. Thus, the question of development of offshore oil and gas resources became a national issue of environmental and economic importance.

On February 2, 1969, Secretary of the Interior Walter Hickel requested all of the oil companies engaged in active drilling on Federal leases in the Channel—Union, Humble, Phillips, Gulf, Texaco and Mobil—to suspend operations. The companies voluntarily complied, but on February 5, 1969, the Federal moratorium was lifted and the companies resumed drilling. On February 7, 1969, under the pressure of severe public protest, Secretary Hickel imposed an absolute ban on all drilling and production in the Channel.

Ironically, a second blow-out occurred on the same Union Oil platform on February 24, 1969, during the drilling moratorium. Secretary Hickel had given interim permission to reopen completed and producing wells to relieve the pressure gradient which was developing in the formation. Union Oil officials later admitted that an attempt to reactivate the well that first blew out had caused the second rupture to occur.

<sup>13</sup> Hearings on Outer Continental Shelf Policy Issues Before the Senate Committee on Interior and Insular Affairs, 92nd Cong., 2d Sess., ser. 92-27, pt. 3 at 1436 (1972); A detailed chronology of oil and gas development, offshore of California is included in this document at 1435 et seq.

<sup>14</sup> *Id.* at 1420.

<sup>15</sup> Hearings on H.R. 3177, H.R. 3178, and H.R. 7500, Offshore Oil Drilling at Santa Barbara Before the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs, 93rd Cong., 1st Sess., ser. 93-36, pt. 1 at 12 (1973).

The California State Lands Commission imposed a ban on new drilling on State leases collaterally with the Federal action in February 1969. Today under the Commission's current policies, only limited new drilling is permitted on State lands where unique conditions assure safe operations.<sup>16</sup>

On April 2, 1970, the Department of Interior lifted the ban on drilling on five Channel leases. The shut down order continued in effect for 67 other leases, but incremental relaxation of the drilling ban has resulted in a resumption of development on Federal offshore leases. In 1973, Federal leases on 352,000 acres of the Outer Continental Shelf of California yielded 20.6 million barrels of crude oil and 8.3 billion cubic feet of natural gas from 69 individual leases.<sup>17</sup> However, the Department of the Interior has deferred further leasing off the coast of Southern California until the call for nominations for specific tracts was issued on January 2, 1974.<sup>18</sup>

### E. THE PRESENT CONFLICT PERSPECTIVE

Announcement of the call for tract nominations on 1.6 million acres of OCS offshore of Southern California, by the Bureau of Land Management (BLM) on January 2, 1974, came within five years after the Santa Barbara Blowout. According to many public witnesses and local officials who testified at the Ocean Policy Study hearings at Santa Monica, California, September 27 and 28, 1974, the most recent Interior Department announcement came without forewarning. However, there is evidence that a tentative outer continental shelf leasing schedule existed as an internal document within BLM in July, 1973.<sup>19</sup>

Although administered according to the regulations promulgated by the Department of the Interior to govern lease sales on the Outer Continental Shelf,<sup>20</sup> the abrupt call for tract nominations startled a public which still remembers the Santa Barbara blowout all too well. During the traumatic and tempestuous days after the blowout, when the oil was on the beaches, and the Federal establishment found itself unable to cope with the emergency, the people of Southern California apparently lost faith in the ability of the Federal Government to protect the public interest, according to the insight of some observers.<sup>21</sup> Actions subsequent to control of the first blowouts and the on-again/off-again drilling moratorium and the close-following second blowout, further eroded confidence in the Department of the Interior to the point that some even accused the government officials of bad faith, malfeasance and benign neglect.

Another force has emerged since the last major offshore leasing program in the 1960's. A new mood of environmental concern and land-use consciousness has developed nationwide, but it is perhaps most sharply manifest in the attitudes of Californians. In 1972, the California voters approved the California Coastal Zone Conservation Act

<sup>16</sup> Note 13 at 1437.

<sup>17</sup> Department of Interior, Public Land Statistics: 1973, at 110 (1974); See table 75.

<sup>18</sup> 39 Federal Register 4934 (Feb. 8, 1974).

<sup>19</sup> See Exhibit B, Complaint filed in U.S. District Court, Central District of California, Aug. 15, 1974, *California v. Morton*, Civ. 74-2374-AAH.

<sup>20</sup> 40 C.F.R. § 3301.4.

<sup>21</sup> See generally, C. Steinhardt & J. Steinhardt, *Blowout: A Case Study of the Santa Barbara Oil Spill (1972)*; J. Potter, *Disaster by Oil (1973)*; and R. Easton, *Black Tide: The Santa Barbara Oil Spill and Its Consequences (1972)*.

of 1972—so-called Proposition 20—as a general initiative. The Act establishes the California Coastal Zone Conservation Commission and six regional coastal zone conservation commissions.<sup>22</sup> The State coastal zone authority is charged with the responsibility for preparing a “comprehensive, coordinated enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone.” While the State Lands Commission still retains the responsibility for managing the State offshore lands granted under the Submerged Lands Act of 1953, the Coastal Zone Conservation Commission is responsible for seeing that the impacts resulting from offshore development do not jeopardize the coastal environment.

Operating in contrast, is the impetus of the national energy shortfall, particularly shortages in domestic petroleum. Proponents of the development of oil and gas offshore of Southern California who testified at the Santa Monica hearings repeatedly emphasized the danger of our dependence upon imported oil (particularly Arab oil from the unstable Middle East), the balance of payment problems, and national security implications. The justification for renewing Federal leasing offshore of Southern California is the Administration’s energy goal, which calls for the annual leasing of 10 million acres of Outer Continental Shelf land in order to achieve “energy self-sufficiency” by 1985.<sup>23</sup> With a presidential mandate to triple offshore leasing by 1978, the Department of the Interior sees its mission to accelerate its leasing program as a legitimate exercise of public administration.

Another Federal objective also interplays with both the State’s efforts to manage its coastal areas and the mission of the Department of the Interior to meet the energy goals of Project Independence. This is the Coastal Zone Management Act of 1972.<sup>24</sup> The Act provides funds to coastal states to develop coastal zone management plans similar to the plans being formulated by the California Coastal Zone Conservation Commission, and further provides matching money to operate the state management programs once approved.

The Coastal Zone Management Act of 1972 implicitly recognizes the problems emerging from the proposed leasing off Southern California. Two provisions of the Act relate to the central question: What are the proper roles of the State and Federal Government in reaching decisions on development of the Outer Continental Shelf? First, there is the “Federal consistency” provision which is designed to assure that Federal actions achieve a modicum of agreement with the state plans.<sup>25</sup> And second, there is the “national security” clause which is intended to insure that overwhelming national interests, when need be, can override a state plan.<sup>26</sup> The Federal consistency provisions of the Act do not become legally effective until a state program is approved by the Secretary of Commerce. Although California is further along in the development of a coastal zone plan than the other coastal states, it will not be completed until 1976—after the final leasing decision is to be made on the Southern California OCS lease schedule.

<sup>22</sup> California Coastal Zone Management Act of 1972, Cal. Pub. Res. Code §§ 27000 et seq. (West 1972).

<sup>23</sup> President’s Energy Message to Congress, April 18, 1973, 9 Weekly Compilation of Presidential Documents 389 (1973).

<sup>24</sup> Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 et seq. (Supp. 1972).

<sup>25</sup> 16 U.S.C. §§ 1456(c) (1) and (2) (1970).

<sup>26</sup> 16 U.S.C. § 1456(c) (3) (1970).

If the state plan were in operation and approved by the Department of Commerce at the present time, the leasing activities of the Department of the Interior would have to be consistent with the California plan. However, the exact meaning and the extent that the consistency provisions would affect OCS leasing procedures is uncertain because the Act is subject to interpretation.

Other factors are also involved. Property values, though seldom mentioned, must have certainly influenced the response of some members of the public. Large stakes in oil profits, both to the private sector and to the Federal Treasury, confuse the issue further. Additional constraints caused by the shortage of tubular drilling equipment, labor, and perhaps capital, make the prospect for implementing the prompt development of accelerated lease sales questionable.

It is in this historical background and current state-of-events that the Senate Commerce Committee, through the National Ocean Policy Study, convened its hearings on the proposed OCS oil and gas leasing program off the coast of Southern California in Santa Monica, California, September 27 and 28, 1974.

## V. PROCEDURES FOR LEASING OCS LANDS <sup>1</sup>

There are a number of procedural steps required by the Federal Regulations governing the development and administration of OCS oil and gas leases by the Department of the Interior. They establish a timetable and sequence of events which must be followed before a tract can be developed. The administrative procedures fall into five categories: (1) Exploration, (2) Pre-Lease Activities, (3) Leasing, (4) Exploration and Production, and (5) Transportation. This section outlines the procedures required at each of the categorical steps.

It is particularly important to note the steps required between the pre-lease and leasing stage in order to understand the issues raised by witnesses at the Santa Monica hearings on OCS leasing offshore of Southern California.

### A. EXPLORATION

Exploration is the initial phase of the leasing operation. Before any exploratory operation is initiated the industry must obtain an "exploratory permit" from the Area Oil and Gas Supervisor of the U.S. Geological Survey (USGS).<sup>2</sup> An applicant for an exploratory permit must obtain the permission of the Corps of Engineers to ensure that the operation will not create a navigation hazard. In addition, the applicant must also stipulate it will abide by the regulations of the adjoining coastal state, if such state is one which has entered cooperative agreements with the Department of the Interior (*See Fig. 1*). California is among the coastal states which have cooperative agreements in force; others are: Alabama, Florida, Georgia, Louisiana, and Texas.

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<sup>1</sup> See, D. Kash, I. White et al., *Energy Under the Oceans: A Technology Assessment of Outer Continental Shelf Oil and Gas Operations* 25 et seq. (1973) for a clear and concise explanation of the entire OCS development procedure.

<sup>2</sup> 43 C.F.R. §§ 3045.0-1 et seq. (1973).

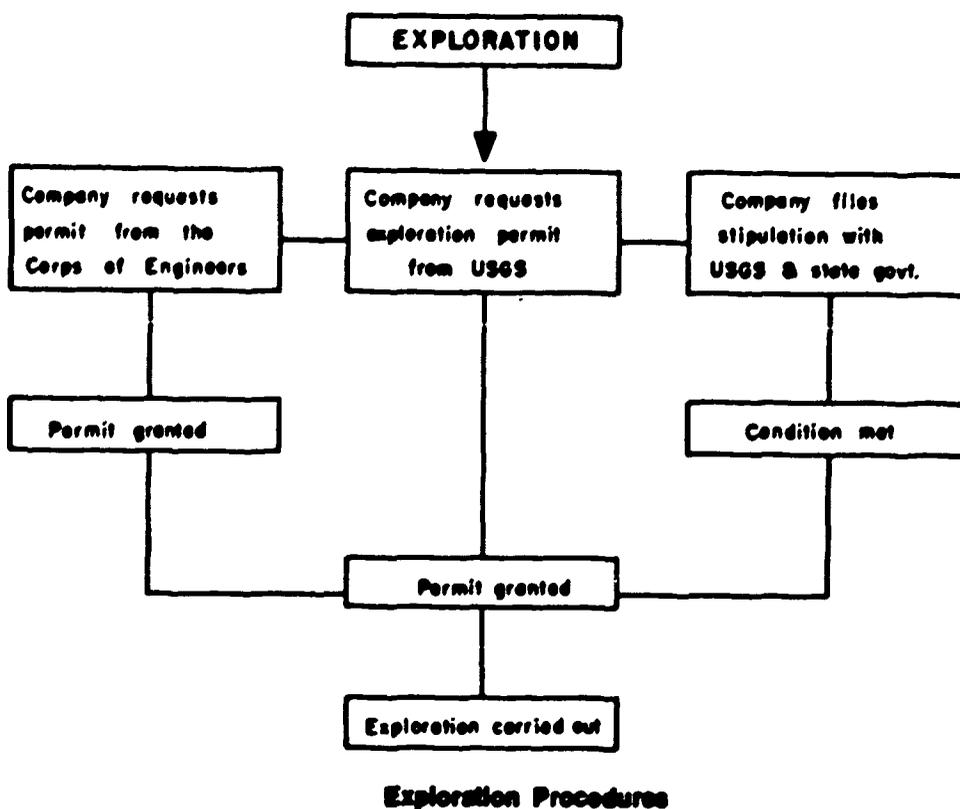


FIGURE 1.—Exploration permit procedures.

(From "Energy Under the Oceans." D. Kash, I. White et al.)

In the case of all other coastal states, permission does not have to be obtained from the Corps nor is a stipulation required by the Area Supervisor. Although the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA) and the Fisheries and Wildlife Service of the Department of the Interior, have no direct authority in regulating offshore oil and gas activities, their interests are expressed through cooperative agreements between these agencies, the USGS and BLM.<sup>3</sup>

Exploratory drilling is not permitted until after a tract has been purchased in a lease sale. Therefore, prior to acquiring a legal in-

<sup>3</sup>Commission on Marine Science, Engineering and Resources, House Document No. 91-42, 91st Congress, 1st Sess., pt. 4 at 217 (1969).

interest in a lease tract, the industry must rely on interpretation of geological and geophysical data to reach a decision whether to nominate a specific tract in the pre-lease procedures.

The cumulative effects of exploration are minimal and temporary. There has been little real conflict surrounding geophysical and geological exploration, and no opposition to this phase of the OCS development process was voiced at the Santa Monica hearings.

#### B. PRE-LEASE ACTIVITIES

Pre-lease procedures are the most complex of the entire OCS development process. They are also among the most controversial, particularly in the instant case of the Southern California leasing schedule. In the pre-lease stage of the decision process, the National Environmental Policy Act of 1969<sup>\*</sup> is activated when lease tracts are nominated for sale by the industry (*See Fig. 2.*).

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<sup>\*</sup> National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. (1970).

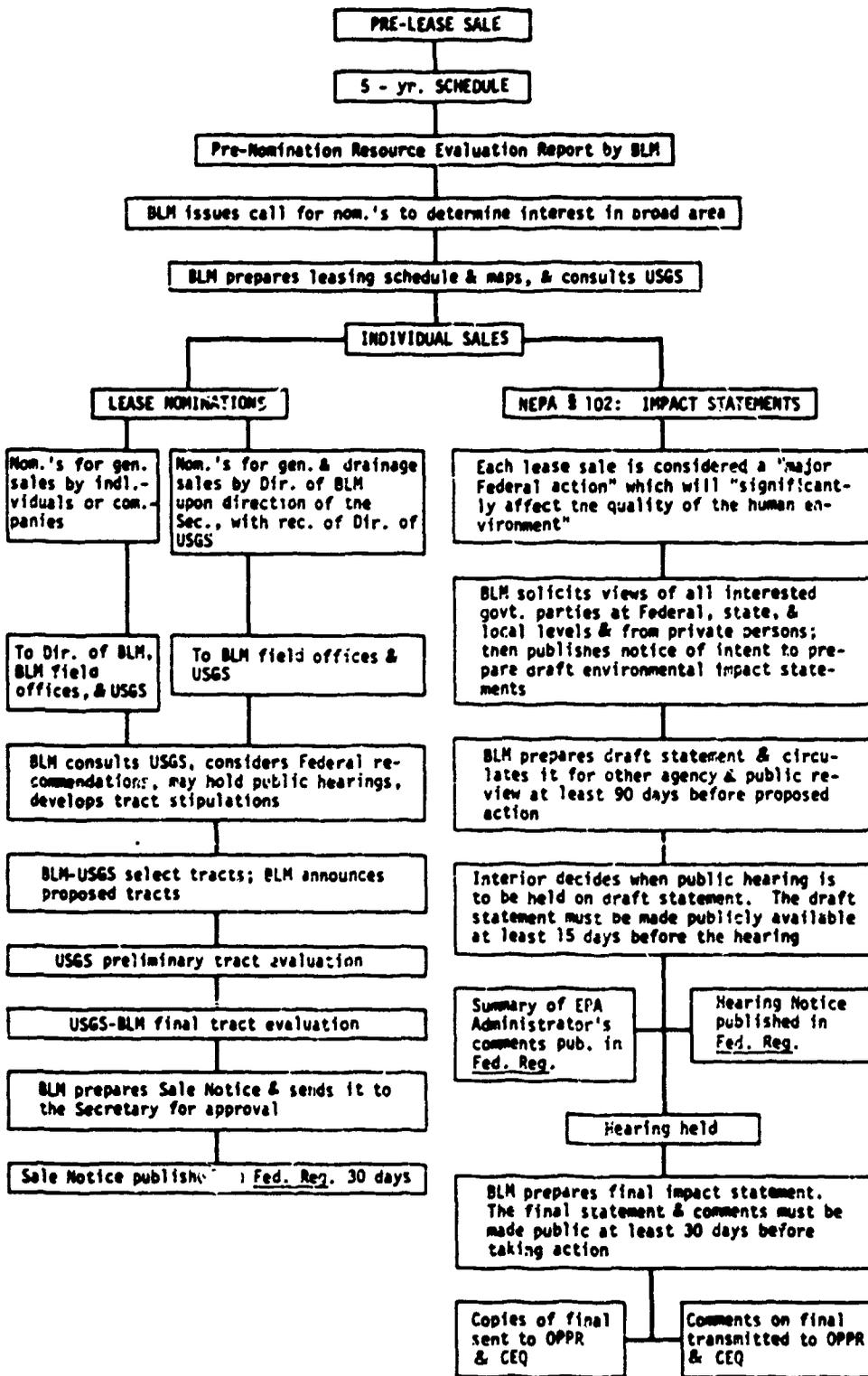


FIG. 2.—Pre-Lease Sale Procedures

(From, "Energy Under the Oceans," D. Kush, I. White, et al.)

At that point BLM must begin drafting a NEPA Section 102(2) (C) environmental impact statement to support the later decision whether to select tracts for sale. When state coastal zone management programs are approved by the Office of Coastal Zone Management of NOAA, the Federal consistency provisions of the Coastal Zone Management Act of 1972 will require that each Federal agency shall conduct its activities "in a manner which is . . . consistent with approved state management programs."<sup>2</sup> The consistency provisions are subject to interpretation; and until a state program is approved and the meaning of the language is interpreted, one can only speculate as to its practical effect.

California is actively developing a coastal management program through its Coastal Zone Conservation Commission which would likely qualify for approval under the Coastal Zone Management Act by the Summer of 1976. Because of this, a number of witnesses suggested that the Department of the Interior delay its leasing procedure until the California coastal zone plan is completed and approved.

The Bureau of Land Management issues calls for nominations of specific tracts by publication in the Federal Register, which specifies the general location from which nominations will be accepted.<sup>3</sup> The call for nominations off the Southern California coast was published January 2, 1974, and originally contained approximately 7.7 million acres for consideration.<sup>4</sup>

Preparation of NEPA impact statements begins immediately after tract selection. A draft statement must be prepared according to the guidelines set out by Department of the Interior regulations,<sup>5</sup> and must be available to the public and circulated to all interested parties and agencies for comment at least 90 days prior to the proposed sale date. As a matter of standard practice, all statements on actions which would affect a state will be referred through the OMB circular A-95 clearing-house procedure for state review and comment under the Intergovernmental Cooperation Act.<sup>6</sup> At the same time, the public may gain access to the draft document as well. Pre-sale public hearings are discretionary with the Director of BLM, but they have been held as a matter of course with every offshore sale. The draft environmental impact statement must then be available 15 days beforehand. The Department of the Interior is presently drafting an impact statement for the 1.6 million acres of OCS offshore Southern California for release in winter 1974-75.

Under the present pre-leasing system, the focal point of public participation is during the drafting of the environmental impact statement. This stage is reached after an initial decision is made to call for tract nominations, and after specific tracts have been selected for consideration. The Department of the Interior feels that the environmental impact statement process is the legitimate point to infuse state, local and public participation in the decision process.

Communications problems appear to have arisen from the pre-lease activities of the Southern California OCS lease schedule. State and lo-

<sup>2</sup> 16 U.S.C. § 1456(c) (1) & (2) (Supp. 1972).

<sup>3</sup> 43 C.F.R. § 3301.3.

<sup>4</sup> 39 Fed. Reg. 4834 (Jan. 2, 1974).

<sup>5</sup> 43 C.F.R. § 3301.4.

<sup>6</sup> 40 C.F.R. § 1500.9(c).

cal governments and citizen groups are demanding that good faith should compel the Department of the Interior to disclose its intentions to announce the call for nomination of tracts before the actual call is published in the Federal Register so that the Department of the Interior may have the benefit of local and regional input before the formal process begins. In contrast, the Department of the Interior does not consider the call for nominations to have the force or gravity of a decision; therefore, Interior considers the environmental impact statement process as the proper vehicle for local and regional participation. The Department of the Interior considers the first "significant" decision to be the selection of the proposed sale tracts by BLM and their approval by the Secretary (Fig. 2).<sup>10</sup> This occurs after the final environmental impact statement, thus in the opinion of the Department, the decision would be made with timely State and local participation. In practice, however, the public normally provides little input to a draft impact statement.

### C. LEASING

The lease sale is wholly procedural (Fig. 3). Sealed bids are submitted in advance after a list of nominated tracts has been published in the Federal Register for 30 days prior to the sale.<sup>11</sup> Twenty percent of the amount bid must be forwarded with the sealed bid. After the bids are opened at a public meeting, the Director of BLM has 30 days in which to decide whether to accept or reject the highest bid for each tract. They are awarded to "the highest responsible qualified bidder."<sup>12</sup> Bids may be rejected for good cause, but most rejections are for being too low. If the highest bid is not accepted within 30 days by the Director of BLM, all bids for the advertised lease tract are considered rejected.<sup>13</sup>

The leases are awarded for a term of five years "and so long thereafter as oil or gas may be produced from the leasehold in paying quantities."<sup>14</sup> The award of a lease assigns to the lessee the exclusive right to drill for, mine, extract, remove and dispose of oil and gas deposits, in or under the area. The lessee is obligated to proceed "diligently" to develop the tract. After a lease is awarded, the lessee may commence exploratory drilling to locate the commercial deposits of oil and gas.

<sup>10</sup> 43 C.F.R. § 3301.4 (1973).

<sup>11</sup> 43 C.F.R. § 3301.5 (1973); 43 C.F.R. § 3302.1 (1973).

<sup>12</sup> 43 U.S.C. § 3137(a) (1970); *See also*, 43 C.F.R. § 3302.5 (1973).

<sup>13</sup> 43 C.F.R. § 3302.5 (1973).

<sup>14</sup> 43 U.S.C. § 1337(b) (1970); *See also*, 43 C.F.R. § 3302.2(a) (1973).

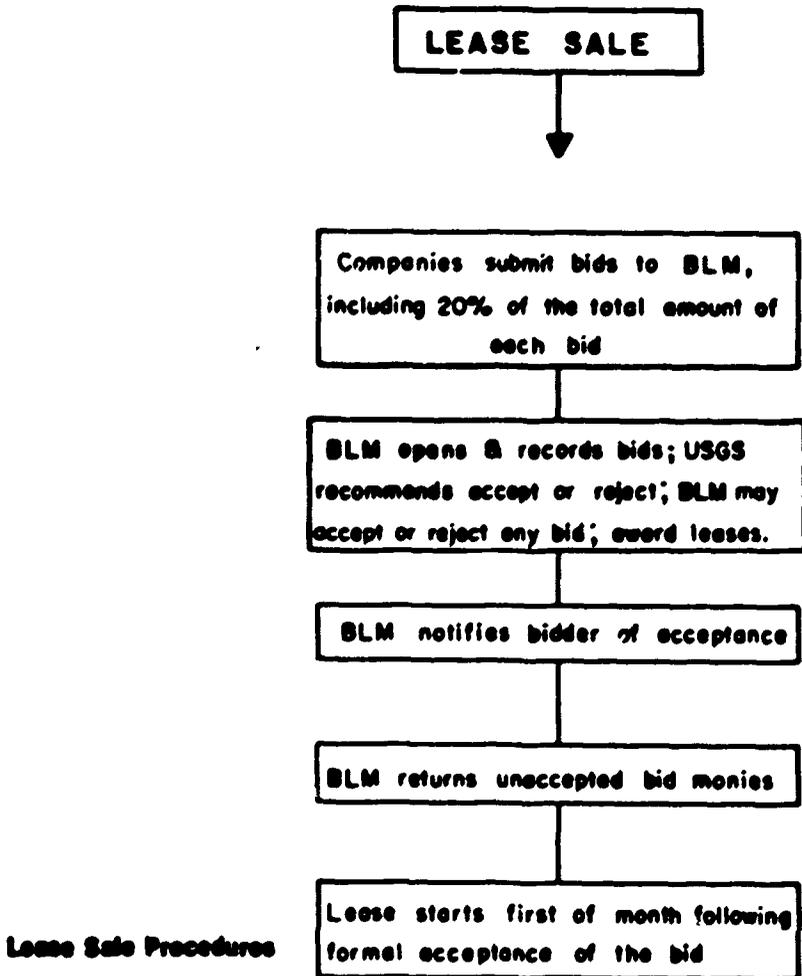


Fig.—3. Lease Sale Procedure

(From : Energy Under the Oceans, D. Kash, I. White et al.)

The bidding system used for leasing OCS resources has received considerable attention in the past. While the form of bidding does not directly affect the leasing schedule off Southern California, a number of witnesses at the Santa Monica hearings raised the issue of whether bonus bidding is an optimal procedure as an ancillary topic in questioning the feasibility of the proposed leasing schedule.

The Outer Continental Shelf Lands Act requires the Secretary to achieve several specific policy objectives, including meeting "the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the Outer Continental Shelf," while providing "for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf," and insuring receipt of fair market value for the leased resources. A bidding system is not specified within the Act; therefore the Secretary may utilize any mechanism of cash bonus and royalty bidding which will reasonably achieve the broad objectives stated in the OCS Lands Act.

A recent study of OCS oil and gas leasing described the issues revolving around the present bidding systems as "fairness issues," having two principal questions: (1) Does the public receive fair value for the rights which are leased? and (2) Does the system provide adequate opportunities for independent oil producers to participate.<sup>15</sup> Comments from witnesses at the Santa Monica hearings addressed these same topics of concern. Although the Secretary has the alternative of designating either royalty or cash bonuses under the regulations, virtually all prior sales have been cash bonus sales with a fixed 16½ percent royalty. It is assumed that the bonus system that will also be used on the proposed Southern California sale. Royalty experiments are underway by BLM, but the royalty system is not generally being used for lease sales, pending the outcome of the trials.

#### D. EXPLORATION AND PRODUCTION

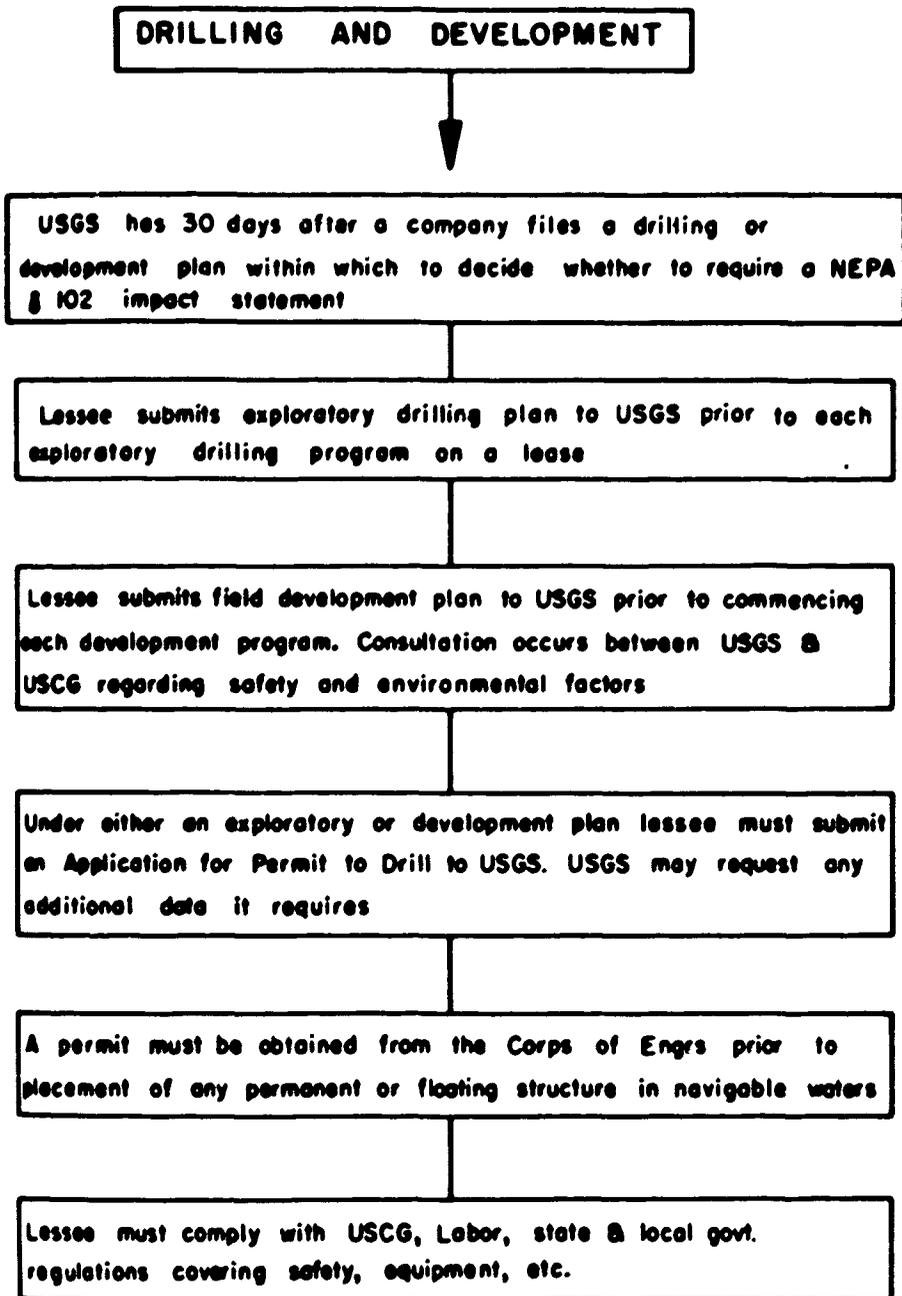
Subsequent to being awarded an oil and gas lease, the successful bidder must acquire exploratory permits prior to drilling exploratory wells. Requirements for each phase of exploration, development, production and transportation of oil and gas on the OCS are set forth in orders for each area supervised by the USGS. The regulatory functions of the Corps of Engineers, Coast Guard, Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA) which apply to OCS operations are coordinated through USGS.

Prior to exploratory drilling, a lessee must file an exploratory drilling plan with the USGS Area Supervisor (Fig. 4). At this point in the development process another environmental impact statement may be required if drilling is proposed in an "environmentally sensitive" area. Ordinarily, however, an additional statement will not be required for exploratory activities. Should the Area Supervisor decide that the drilling plan is a "major Federal action significantly affecting the human environment," then the state and local governments and citizen groups could have input to the decision of whether to permit the proposed exploratory activities. Even though an exploratory drilling plan is approved, the lessee must file an "Application for Permit to Drill" prior to initiating drilling operations.<sup>16</sup>

A similar procedure is followed to initiate the development and production of oil and gas from the lease tract after discoveries are confirmed (See Fig. 4). Development plans require comprehensive information about location and design of structures, and well configuration. If the development plan proposes to exploit environmentally sensitive areas, an environmental impact statement may again be required. Operationally, additional environmental impact statements are seldom prepared after a lease sale.

<sup>15</sup> See note 1 at 171.

<sup>16</sup> See USGS requirements for drilling, 30 C.F.R. § 250.34, 30 C.F.R. § 250.41, and 30 C.F.R. 250.91 (1973).



**Drilling and Development Procedures**

**FIG. 4.—Drilling and Development Procedures**  
(From: Energy Under the Oceans, D. Kash, I. White et al.)

### E. TRANSPORTATION

The transportation phase is the first direct link between OCS oil and gas production and the shoreline. Oil and gas may be transported ashore by bulk carriers, such as tankers or lighters, or may be transmitted by subsurface pipeline. At the present time, all oil produced from offshore California is transported by pipeline.<sup>17</sup> Gathering lines, which collect the oil from several units prior to onshore transport, are designated in the lease development plan submitted to the USGS Area Supervisor. No additional clearance is required for gathering facilities within the lease tract.

Other transmission lines which deliver oil or gas ashore require easements for rights-of-way from BLM (Fig. 5). Depending on whether the proposed line is to be a common carrier, that is one which carries oil from a number of producers, or whether it is a single "custodial" line carrying only the oil of one producer, in which case other certificates and approvals must be obtained. The Interstate Commerce Commission (ICC) regulates rates and access to common carrier pipelines. If the line transports natural gas, the Federal Power Commission (FPC) must grant certificates of public convenience and necessity, and both the FPC and the Office of Pipeline Safety (OPS) must approve the design.<sup>18</sup> USGS exercises authority over single custody lines and treats them as though they were gathering lines.

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<sup>17</sup> See note 1 at 63.

<sup>18</sup> 18 C.F.R. § 157.5 *et. seq.* (1973).

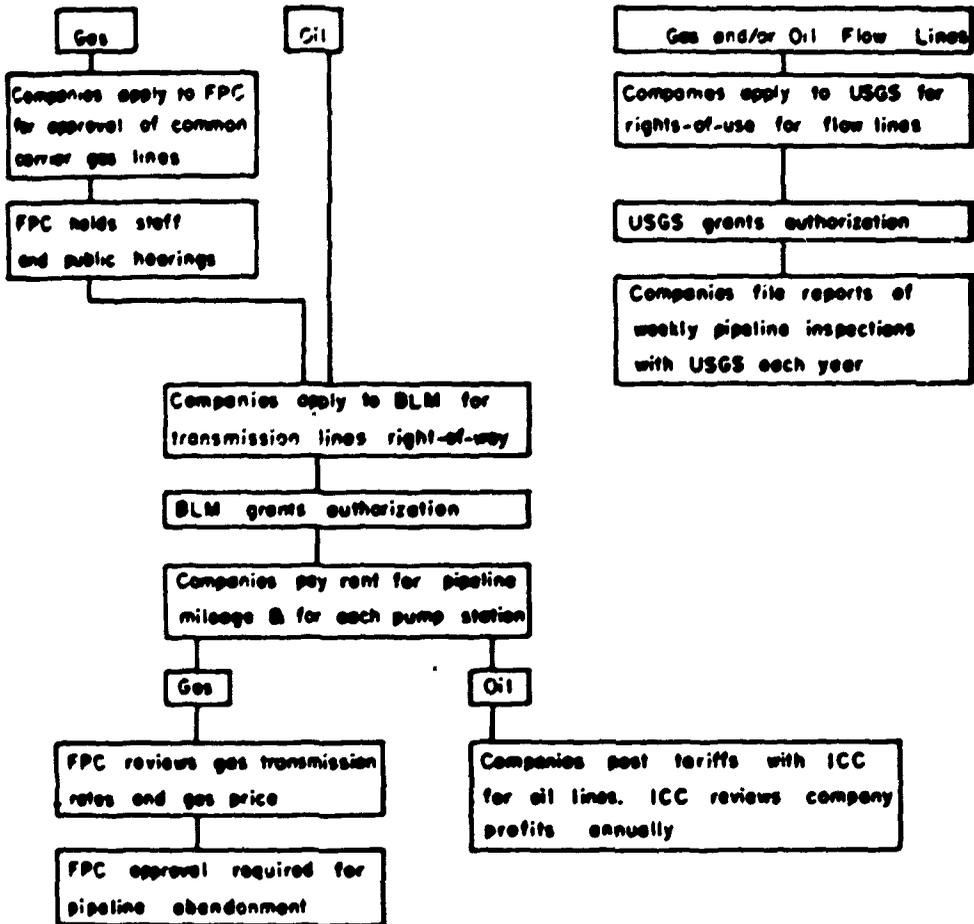
**TRANSPORTATION****Transportation Procedures**

FIG. 5.—Transportation procedures

(From : Energy Under the Oceans, D. Kash, I. White et al.)

The most important consideration of the transportation phase of OCS oil and gas development is the traverse of state-controlled lands within the three-mile limit and the connection with onshore facilities which are within the jurisdiction of state and local authorities. A recurring theme of the witnesses that addressed the problem of secondary impacts of OCS development was that the decision to lease offshore resources automatically locks the state and local governments into a program which must accommodate the growth caused by oil and gas processing plants onshore.

On the other hand, the state control within the three-mile limit, the State coastal zone management programs and the operation of local land use regulations are seen by the Department of the Interior as positive controls to ensure that offshore development meets with regional and local objectives.



## **VI. SURVEY AND ANALYSIS OF TESTIMONY**

The testimony presented at the Santa Monica hearings can be divided into two major topical issues: (1) Is drilling offshore of Southern California justified or necessary? and (2) What are the proper roles of the Federal, State, and local governments and the public in the decision to develop OCS oil and gas?

While the focus of the hearings was on the Southern California OCS, many of the comments and observations by the witnesses are applicable to the broader problems facing offshore development of oil and gas elsewhere. One item of particular importance which was discussed extensively by both government and private witnesses was the relationship of the Federal Coastal Zone Management Act, and the subsequent state plans developed under the Act, to the problems arising from OCS development. Another important topic which was discussed is the role of the NEPA and the environmental impact process and its effectiveness as a mechanism for involving the state, local and private sectors in the Federal decisionmaking procedures. Perhaps as revealing as any of the testimony, though, is the insight gained regarding attitudes and perspectives of the non-Federal witnesses toward government decisionmaking in general.

Excerpts of testimony by the witnesses are related to the specific issues in sections which follow. Where necessary, supplementary information is supplied from other sources to help the reader understand the context of the statement or the operation of a law which is referred to in the testimony.

Discussion of the issues is organized under the following headings:

### **A. JUSTIFICATION AND NEED FOR OCS DEVELOPMENT**

1. Federal position on development of the OCS.
2. State and local responses to the Southern California lease schedule.
3. Energy Conservation as an alternative to OCS development.
4. Government credibility: Its impact on OCS leasing.
5. Information and Development of Oil and Gas Resources on the OCS.

### **B. FEDERAL, STATE, AND LOCAL ROLES IN THE DEVELOPMENT OF THE OCS**

1. Coastal Zone Management Act: Its role in the development of OCS oil and gas.
2. National Environmental Policy Act and OCS planning.

## A. JUSTIFICATION AND NEED FOR OCS DEVELOPMENT

### 1. *Federal Position on Development of the OCS*

Those who question the wisdom of the sale and development of oil and gas leases on the Outer Continental Shelf off Southern California frequently ask: "Why Southern California? Why not somewhere else?" The Department of the Interior and the Federal Energy Administration (FEA) cited the national security and balance of payments problems associated with our national dependence on oil imports as general justification for the accelerated OCS leasing schedule.<sup>1</sup> National interest, they said, compels the United States to maximize domestic oil production, and the most promising way to accomplish this is through the development of offshore resources.

Notwithstanding the possibility of reducing the demand for petroleum products through energy conservation, it is the general consensus that oil must be relied on as the "swing fuel" for at least the next five to ten years until alternate energy supplies are developed. Deputy Solicitor David Lindgren of the Department of the Interior stated:

. . . the period of approximately the next 15 years is particularly critical. During that period we cannot expect alternative energy sources—such as coal gasification and liquifaction, oil shale, nuclear fusion, the fast liquid metal breeder-reactor or solar energy—to make any substantial contribution to the nation's energy picture in a manner that will reduce projected increases in petroleum demand.<sup>2</sup>

This view was not shared by a number of State, local and private witnesses who were of the opinion that timely conservation measures might preclude the need to accelerate the OCS leasing schedule to the level of 10 million acres annually as proposed by the administration.

Duke Ligon, Assistant Administrator, Resource Development, Federal Energy Administration, explained the reasons why the decision was made to open the Southern California OCS for leasing at this time:<sup>3</sup>

1. It is important to establish a workable schedule which industry can rely upon to make appropriate investment decisions.

2. It is important to offer new lease acreage with good resource potential. "While the Southern California resource base may be limited in comparison to other larger areas [it is reported there is only 8 to 26 percent of the total OCS oil] there is more certainty that petroleum exists in this area than in areas where drilling has never taken place, such as on the Atlantic OCS."

3. Although temporary oil surpluses may develop on the West Coast after Alaskan oil production reaches capacity, the national benefits to the remaining contiguous states are compelling.

4. Increased availability of natural gas would help air pollution problems in Southern California.

5. California leasing is favorable from a technological standpoint since it is easier to drill in areas closer to the mainland.

<sup>1</sup>Hearing on Development of the Outer Continental Shelf of California Before the Subcommittee on Oceans and Atmosphere, National Oceans Policy Study, Senate Committee on Commerce, Santa Monica, California, September 27-28, 1974, Official Transcript of Proceedings 176, 446 (1974); hereinafter cited as Official Transcript.

<sup>2</sup>Id. at 177, 227.

<sup>3</sup>Id. at 46, 47.

6. Weather conditions in Southern California are conducive to resource development.

Placed in the context of the entire United States OCS Deputy Solicitor Lindgren of Interior, explained that:

Since 1953, approximately 10.1 million acres have been leased in the Gulf of Mexico. With the next three sales in the Gulf of Mexico planned for October 1974, January 1975, and late spring or summer of 1975, the majority of large prospects will be leased. The most promising frontier areas outside of the Gulf of Mexico are Southern California, the Gulf of Alaska, George Banks off New England, and Baltimore Canyon off the mid-Atlantic states.<sup>4</sup>

The uncertainty of Federal-state claims to the OCS still beclouds the status of the East Coast offshore oil and gas resources. On June 16, 1969, the United States, through the Department of Justice, filed a complaint against the twelve eastern coastal states under the original jurisdiction of the Supreme Court (*See, United States v. Maine et al.*, Original No. 35). The complaint asserts that the United States exercises sovereign rights over the seabed and subsoil lying more than three geographic miles seaward from the coastline to the outer edge of the continental shelf for the purpose of exploring the area and exploiting its natural resources. These allegations of territorial rights merely embody the holdings of *California v. United States*, 332 U.S. 19 (1947), and deny the legal claims of the twelve coastal states, including Maine, which make special territorial claims to offshore areas outside the three-mile limit on various theories of sovereignty based on their original colonial status.

Final disposition of the case has not been made; however, the report of a Special Master was submitted August 27, 1974.<sup>5</sup> On the surface, the Master's report seems to affirm the contentions of the United States, and if adopted by the Court, would ratify the fixed three-mile limit established by the Submerged Lands Act of 1953.

The uncertainty of the Atlantic coast territorial controversy was cited by Deputy Solicitor Lindgren as further justification for pursuing the Southern California leasing schedule.

Pending litigation (*U.S. v. Maine*) before the Supreme Court, precludes initiating at this time actions leading to a sale in the Atlantic in the near future. Further, while it is believed there is oil offshore the East Coast, we do not know that oil or gas is present. Because of the potential environmental problems in the Gulf of Alaska and the short field seasons for data collection [and] . . . additionally, the physical condition in the Gulf of Alaska, the lack of industry infrastructure, and the distance from markets will result in slower development of these resources. . .<sup>6</sup>

However, shortly after the Santa Monica hearings on September 27 and 28, 1974, it was disclosed in an internal memorandum that the Department of Interior intends to schedule OCS sales offshore of Alaska and the Atlantic coast in 1975 (*see* Appendix D).<sup>7</sup>

<sup>4</sup> *Id.* at 179.

<sup>5</sup> Report of Albert B. Marks, Special Master, *United States v. Maine et al.*, October Term, 1973, No. 35 Original, Aug. 27, 1974.

<sup>6</sup> Official Transcript at 179-180.

<sup>7</sup> Memorandum from Jared G. Carter to Directors of BLM and USGS, Sept. 18, 1974; *See also* Washington Post, Oct. 4, 1974, at 1.

Southern California, as observed several of the witnesses, has "unique" characteristics which, so they concluded, should mitigate against developing the OCS oil and gas in that region. Recreational resources were consistently cited as a "national resource" which could be endangered by careless offshore operations. The region's beaches were referred to variously as the most highly used recreational area in the world, one of the greatest tourist industries in the world, and virtually a "national recreation area."<sup>8</sup>

While the problems of California may be different because, as Assemblyman Alan Sieroty testified, it is the "most populated area where oil has been expected to be drawn,"<sup>9</sup> citizens of any coastal area facing potential offshore developments will probably perceive the problems in the same way. Duke Ligon, Assistant Administrator of FEA, confirmed that lease proposals virtually anywhere along the coastal fringe, with perhaps the exception of the Gulf of Mexico, will face opposition similar to that expressed at the Santa Monica hearings.<sup>10</sup>

Monte Canfield, Energy Specialist, General Accounting Office, formerly Deputy Director of the Ford Foundation Energy Policy Project, summarized the dilemma faced in making incremental decisions concerning the development of energy resources:

If we decide to relieve the pressure to drill the OCS off the California coast a price must be paid. We must either put the burden on other sources and localities—who are no more anxious to develop their resources than are people here in California—or we must all make the hard decisions, even sacrifices, required to reduce consumption.<sup>11</sup>

## *2. State and Local Response to the Southern California Lease Schedule*

Opposition to the leasing schedule developed quickly after official announcement of the call for nominations from the Southern California OCS was made in January 1974. According to testimony presented at the Santa Monica hearings, it was not until July 1974 that officials of the Department of the Interior made substantive contact with State and local officials regarding the already-announced leasing schedule. Further dissatisfaction arose when it was established by evidence gathered to support a lawsuit filed by the Attorney General of California against the Department of the Interior for non-compliance with NEPA, that a preliminary leasing schedule showed that the Department had been considering a lease off Southern California for at least one year prior to contact with local and state officials by policy-level representatives of Interior.<sup>1</sup>

Following the announcement of the call for nominations on January 2, 1974, a number of local communities and regional organizations expressed their disagreement with the action taken by the Department of the Interior. Orange County and Los Angeles County division of the League of California Cities adopted a resolution opposing the proposed leasing, and the Orange County Board of Supervisors unanimously adopted a similar resolution.<sup>2</sup>

<sup>8</sup> Official Transcript at 7, 27, 32, 35.

<sup>9</sup> Id. at 129.

<sup>10</sup> Id. at 56.

<sup>11</sup> Id. at 227.

<sup>1</sup> See exhibit B, Complaint filed in U.S. District Court, Central District of California, Aug. 15, 1974, *California v. Morton*, Civ. 74-2374-AAH.

<sup>2</sup> Official transcript at 10.

The Los Angeles City Council adopted a resolution which called for delay in Federal offshore leasing until the Coastal Zone Conservation Commission has completed the State Coastal Zone Conservation Plan.<sup>3</sup>

In Resolution 7939, the City of Santa Barbara opposed the approval of any new offshore oil drilling leases or the renewal or commencement of drilling on any previously approved leases.<sup>4</sup> Santa Barbara also endorsed the petition circulated by Seashore Environmental Alliance (SEA), a citizen's group, which similarly opposed offshore drilling in Southern California.<sup>5</sup>

Speaking on behalf of the City of Newport Beach, California, Mayor Pro tem Milan Dostel supported the position of its "sister cities" and asked Congress to reverse the decision of the Department of the Interior.<sup>6</sup>

On August 8, 1974, the California Coastal Zone Conservation Commission adopted the following resolution addressed to the California congressional delegation:

The California Coastal Zone Conservation Commission hereby asks the Secretary of the Interior to defer issuing any new leases for oil and gas development on the submerged lands adjacent to the State of California until the California Coastal Zone Conservation Plan, or at least the applicable energy elements of the Plan, have been completed by the Regional and State Commissions or until the Federal Government's development plans for these lands have been otherwise adequately reviewed by and approved by the Coastal Commissions and other appropriate agencies of the State of California (Appendix A).

The Coastal Commission did not ask for any delay in geophysical exploration, research, or testing, but rather asked that "no Federal leases for *production* be signed until substantial environmental issues have been satisfactorily resolved" [emphasis in original]. The resolution further asked for specific information concerning development plans on the nominated tracts which had not been supplied by the Department of the Interior.

The California Legislature, April 18, 1974, in Assembly Joint Resolution No. 108 petitioned the President and Congress to take steps which would permit the State to participate in the decision of leasing oil and gas lands offshore of California (Appendix A). It further requested that Federal laws and regulations for offshore oil and gas development be at least as "comprehensive and stringent" as State laws and regulations. As a means of providing the necessary infrastructure needed to support the production of offshore oil and gas, the California Legislature requested that the State be compensated by part of the revenue from OCS leasing.

On August 18, 1974, the California Legislature adopted another resolution, Assembly Joint Resolution No. 122, which voiced disapproval of the proposed leases of the coast of Southern California, and requested the President and Congress to enact legislation which would designate the Outer Continental Shelf a national preserve "to be used for mineral production only in the event of a congressionally declared national emergency" (Appendix A).

<sup>3</sup> Id. at 23.

<sup>4</sup> Id. at 30.

<sup>5</sup> Id. at 29.

<sup>6</sup> Id. at 35.

In a public meeting at Santa Monica, California, July 12, 1974, Deputy Under Secretary of the Interior Jared G. Carter purportedly stated that, "If the 10 million people of Southern California say 'no' then it ain't gonna happen."<sup>7</sup> He added, however, that the "strong statements" of a few community spokesmen would not have as great an influence on Interior's decision whether to grant offshore leases. This was interpreted by the citizen's groups, such as Get Oil Out (GOO), Seashore Environmental Alliance (SEA), Sierra Club, No Oil, Inc. and the Planning and Conservation League, as a challenge to organize petition campaigns against the Southern California leasing proposal.

But David Lindgren, Deputy Solicitor of the Department, clarified Carter's statement at the Santa Monica hearings on September 28, 1974:

Mr. Carter was not stating an official position of the Department as much as he was recognizing—I believe he used the words, "the political realities of the situation" . . . He was using a number which would represent fairly much, a unanimous position of all of the people of Southern California and I think he was recognizing his view of the political realities that if everyone in Southern California were unanimously opposed he would not be able to proceed.<sup>8</sup>

While unanimity among Californians on the issue of OCS development is impossible to achieve, there was an unmistakable tone of opposition to offshore leasing expressed by the representatives of State and local governmental units and the public represented at the Santa Monica hearings. Several of the resolutions and witnesses expressed dissatisfaction with the manner in which the Department of the Interior unilaterally made the decision to lease offshore of Southern California without consulting State and local officials, but they did not express total opposition to all offshore oil and gas development, e.g., the resolution of the California Coastal Zone Conservation Commission (Appendix A) and the position of the Sierra Club.<sup>9</sup> The California Legislature expressed a similar position in Assembly Joint Resolution No. 108, adopted April 18, 1974. However, in a subsequent action on August 13, 1974, after Deputy Under Secretary Carter's July 12 trip to California, the Legislature adopted a countermanding resolution which called for a perpetual moratorium on drilling offshore of Southern California unless otherwise directed by Congress (*Sec A.J. Res. 122*, Appendix A). It is speculative whether there may be a correlation between the reversal of consensus in the Legislature and the public meetings held by Interior at Santa Monica in July. But dissatisfaction with the outcome and the tenor of the meeting was expressed by a number of witnesses at the Santa Monica OCS hearings on September 27th and 28th.

### *3. Energy Conservation as an Alternative to OCS Development*

A number of the witnesses at the Santa Monica hearings, laypersons and experts alike, considered energy conservation as a plausible alternative to immediate drilling off the Southern California coast. Milan Dostel, Mayor Pro tem, Newport Beach, California, expressed the opinion that the development of substitute energy sources should be the Nation's first priority:

<sup>7</sup> Los Angeles Times, July 13, 1974.

<sup>8</sup> Official Transcript at 190.

<sup>9</sup> Id. at 286.

Exploring solar, nuclear, geothermal, conversion of solid waste and other sources of energy and adopting them for use in place of petroleum products should be the nation's number one priority.<sup>1</sup> Assemblyman Sieroty saw the possibility of buying sufficient time for developing alternative sources of energy through stringent conservation practices:

I believe that education, strong emphasis and leadership from Washington in the conservation of energy can buy us the necessary time to develop alternatives to fossil fuels.<sup>2</sup>

Mary Ann Erickson, Southern California Representative of the Sierra Club, viewed the role of energy conservation from a different perspective. Quoting from the findings of the Ford Foundation Energy Policy Project, she said:

The pace at which the Federal lands are opened can play a key role in determining the overall rate of energy growth, the mix of fuels, and the degree to which the nation must rely on imports. A policy of massive leasing of these resources . . . would signal a future based on high rates of energy consumption. On the other hand, decisions to limit development of one or more of these resources, coupled with policies of energy conservation, could lead the nation toward lower energy growth.<sup>3</sup>

Monte Canfield of GAO, affirmed the possibility of stabilizing energy demand growth, but gave only qualified support to the proposition that OCS development in California might be averted through conservation practices:

. . . [B]y the late 1980's we can even get to a situation that has been called "zero energy growth." We could do this by sharply limiting dependence on fossil and nuclear fuels, using all possible means of conserving energy and increasing the rate of shift of future economic growth the sectors of our economy having low energy consumption . . . [T]here is [also] a middle way, a "technical fix", which emphasizes conservation by squeezing the fat out of our energy consumption.<sup>4</sup>

Implicit in Canfield's statement is the underlying assumption, as he put it, that "there is no such thing as a free lunch." Tradeoffs must result from energy decisions, and while leasing offshore of California may be delayed, other consequences must certainly follow. Canfield stated further that,

. . . under either of the lower growth alternatives, I can say unequivocally that we could do without further leasing of the California OCS for the indefinite future.<sup>5</sup>

Canfield recognized the difficulty in implementing conservation practices because of the underlying fear that reduced demand necessarily means reduced economic growth—a proposition which he personally discounted.<sup>6</sup> Benefit/cost studies of conservation strategies conducted by the Ford Foundation Energy Policy Project showed that a net savings in investment capital and materials may also be realized as a side benefit of energy conservation.<sup>7</sup>

<sup>1</sup> Official Transcript at 24.

<sup>2</sup> Id. at 15.

<sup>3</sup> Id. at 277.

<sup>4</sup> Id. at 226.

<sup>5</sup> Id. at 227.

<sup>6</sup> Id. at 227.

<sup>7</sup> Id. at 233.

Although acknowledging that conservation practices might reduce demand projections, Deputy Solicitor David Lindgren held little hope for energy conservation offsetting the need for OCS oil and gas:

Vigorous conservation measures may reduce these figures significantly, but even with such conservation measures, all realistic estimates project an ever-increasing amount of oil being imported into the United States without significant increases in domestic production.<sup>9</sup>

Mayor Dostel approached conservation from another angle. He considered offshore oil and gas deposits as resources to be preserved for future use and posed the rhetorical question:

Shall we continue to deplete this natural, irreplaceable resource because it is expedient or should we preserve it for a time when we or future generations may find it to be of a more critical nature than it is today . . .<sup>10</sup>

Mayor Dostel's position with regard to offshore petroleum reserves was in agreement with the sense of the California Legislature as expressed in Assembly Joint Resolution No. 122, that offshore oil and gas should be considered a strategic reserve which would be tapped only for emergencies (Appendix A).

#### *4. Government Credibility: Its Impact On OCS Leasing*

Deputy Solicitor Lindgren repeatedly emphasized that the steps taken thus far by the Department of the Interior are merely preliminary to determining whether to lease tracts in the Southern California OCS. Interior is, in Lindgren's words, only considering "possible leasing." He explained the status of the Southern California lease schedule in these terms:

The Department of the Interior has not made any decision to begin leasing off the Southern California coast, either next spring or at any other time . . . The Department is, however, giving very serious consideration to such a sale. Accordingly, a number of environmental and other studies are being prepared . . . These studies and others by the Federal Energy Administration and State of California agencies will allow a sound, informed decision to be made that takes into account all relevant considerations.<sup>11</sup>

Later, Mr. Lindgren carefully distinguished the "study process," a term used for the post-nomination-presale period, from the "decision-making process," which occurs when BLM decides to advertise for the sale.<sup>12</sup> Public, State and local witnesses considered the call for nominations as equivalent to a decision to lease. Behind the semantic problem is the problem of government credibility, particularly Federal government credibility.

Characteristic of the tone of testimony given at Santa Monica is this statement of Pat Russell, Councilwoman, City of Los Angeles:

We feel the determination and movement by the Federal Government with Project Independence as well as what they have stated on granting leases and the administration work being done,

<sup>9</sup> Id. at 175.

<sup>10</sup> Id. at 34.

<sup>11</sup> Official Transcript at 174.

<sup>12</sup> Id. at 181.

really indicates that they intend to railroad through the granting of the leases in May and that the environmental impact statement will be made to appear that that is the correct action to take.<sup>5</sup>

A similar skepticism pervaded testimony by several representatives of State government. For instance, Assemblyman Sieroty, commenting on the Department of the Interior's leasing schedule, observed:

We have earthquake conditions on the West Coast, the problem of spills. What about underwater installations? We have had no assurance if there would be installations that they would be sub-sea stations. We have received no kind of assurance from the Department of Interior. Yes, they say they will lease in May. What kind of business is that? They are waiting for the Environmental Impact Statement and they will review these things and they will lease in May. If it doesn't tell you that the decision has been made, how can you expect the citizens to believe in this?<sup>6</sup>

Criticism was leveled at the Federal establishment for failure to develop a well-defined energy policy. Notwithstanding the Administration's policies embodied in Project Independence, several witnesses commented on the lack of a comprehensive energy policy. Assemblyman Sieroty, for example, concluded that,

. . . if there is no national energy policy, I believe we can legitimately ask why should California endure adverse impact from oil and gas development at this time when the need for such development has not been adequately demonstrated.<sup>7</sup>

Deputy Solicitor Lindgren acknowledged that the blueprint for Project Independence, which will evaluate the feasibility and impact of the proposal, had not been completed at the time nominations were called in January 1974. However, the completed study is expected early in November 1974.<sup>8</sup> But Shirley Solomon, representing Seashore Environmental Alliance and No Oil, Inc., two citizen's groups in opposition to the lease proposal, apparently did not consider Project Independence to be a legitimate policy statement, notwithstanding the findings of the forthcoming FEA report:

We believe Project Independence is a charade—a hucksterish catch phrase being used to stampede public opinion in order to sign away to private interests that last, most vital public energy resource before the issues have been properly examined.<sup>9</sup>

Mr. Canfield recognized the importance of Project Independence in motivating the Department of the Interior to accelerate its leasing schedule. Canfield observed that,

. . . answers tend to be formulated in terms of what the marching orders that a given institution is operating under. If the institution thinks its job is to lease ten million acres of Outer Continental Shelf area a year and you look around and you see what you have leased and what the opportunity of development is, you are going to come here [California] fairly quickly.<sup>10</sup>

The credibility of the Department of the Interior undoubtedly suffered from its handling of the events leading to the call for tract nominations on January 2, 1974, and the pre-lease events which have

<sup>5</sup> Id. at 236.

<sup>6</sup> Id. at 130.

<sup>7</sup> Id. at 120.

<sup>8</sup> Id. at 250.

<sup>9</sup> Id. at 117.

<sup>10</sup> Id. at 237.

occurred since that date. Interior has, from all outward appearances, handled the preliminary events according to the prescribed regulations which govern OCS leasing. The Department's alleged failure to consult state and local officials prior to the call for nominations created what some variously described as an atmosphere of betrayal, heavy-handedness, or at best, discourteousness.

Beginning with the public meetings convened by Deputy Under Secretary Carter at Santa Monica on July 12, 1974—six months after the call for nominations was announced—followed by a public statement by John Sawhill, Administrator of FEA in Los Angeles on August 19, 1974, public opposition to the offshore lease proposals grew rapidly. Deputy Under Secretary Carter's alleged statement that "If the 10 million people of Southern California say 'no' then it ain't gonna happen" held out the expectation that if sufficient opposition were voiced, the Department of Interior would abandon plans to develop offshore Southern California. This spurred petition campaigns over the Labor Day weekend and resulted in national publicity surrounding the identification of showbusiness personalities with the efforts of SEA and other citizen groups to stop the lease sale.

Administrator Sawhill's statement reportedly made at a Los Angeles, California, news conference that "There is oil and gas in California and it will be developed" tended to dispute Under Secretary Carter's earlier statement concerning the force of public opinion and perhaps gave the impression that the Federal Government was waffling from its earlier position.<sup>9</sup>

There were also allegations that the topical FEA field hearings held on Project Independence, which were conducted around the Country, were intentionally held at locations which would minimize the opposition to the topic being discussed. Pieter Van Den Steenhoven, Councilman, City of Santa Monica, observed that hearings were not scheduled for Southern California, Northern Great Plains, or Appalachia where extensive energy resource development is proposed.<sup>10</sup> He pointed out that a hearing on OCS development was held at Atlanta, Georgia, September 23, 1974, which is inland within a state where offshore development is not imminent.

While one can not discount the apparent underlying attitude among a segment of the citizenry of Southern California that OCS oil and gas development should be absolutely prohibited, there was an equally strong indication that what many Californians want is simply an early and effective role in determining whether to initiate the pre-lease procedures leading to lease sales, as well as a role in compiling the environmental impact statement.

##### *5. Information and Development of Oil and Gas Resources*

Resource information is critical to the administration of the bonus bid and fixed-percentage royalty system presently being used by the Department of the Interior for sale of OCS oil and gas leases. A bonus bid is essentially a bulk sale. As such, it is necessary for both the buyer and the seller to know the volume of the resource being sold so that a fair and equitable price can be determined.

Currently, the Department of the Interior must rely heavily upon geophysical exploratory information collected by the oil industry. In

<sup>9</sup> Los Angeles Times, Aug. 30, 1974, at 1.

<sup>10</sup> Official Transcript at 18.

practice, it is generally not until exploratory wells have been drilled on the lease tract that sufficiently detailed information about the extent of the resource is available. Exploratory drilling is not permitted until after the lease is sold under the present regulations.

The importance of resource information in the management of OCS oil and gas was noted by Mr. Canfield of GAO:

... it is impossible to understand the role of the OCS in the national energy picture without an adequate understanding of the physical data base of the public's resources ... Official USGS estimates are that the potential for the OCS off the Pacific Coast as against the total OCS is only about eight percent for oil and 2 1/2 percent for natural gas. This is not a very big percentage. But industry estimates are much higher, 26 percent and 25 percent respectively. I submit that decisions on whether to develop the California OCS should take these enormous discrepancies into account.<sup>1</sup>

Richard L. Manning of Western Oil and Gas Association quoted industry's estimates for the Southern California lease schedule:

WOGA geologists estimate that 6 to 19 billion barrels of oil may be found and produced from the 1.6 million-acre sales area ... Production estimates are reasonably placed at 14 billion barrels ... Natural gas should be produced along with the oil in the ratio of 2,000 cf/barrel and natural gas reserves are estimated to be 28 trillion Mcf.<sup>2</sup>

Government resource estimates cited by Deputy Solicitor Lindgren verified the differences between industry estimates and USGS data:

... the resource potential of the Southern California OCS is better known ... It is estimated that there may be from 1.6 to 2.7 billion barrels of oil and from 2.4 to 43.8 trillion cubic feet of gas there.<sup>3</sup>

California Assemblyman Kenneth Cory commented on what he perceived as a flaw in the Department of the Interior's leasing procedure:

The history of Outer Continental Shelf leasing indicates that the process of selecting the areas to be explored and leased has been left to the discretion of the industry ... For one thing, we must note in passing that the companies involved have more than a little opportunity to use inside information and contact in getting those areas put up for lease on which they can then bid to best advantage ... But, even more important, it means that the buyers in a government sale have far more information than the seller, as to the value of the item sold.<sup>4</sup>

The Department of the Interior, according to Deputy Assistant Secretary C. King Mallory, is reviewing its exploration policies, but he was skeptical about the latitude the law would permit government exploration:

We are examining the possibility of doing our own exploration ... I am not sure we have the authority from Congress to do it ourselves.<sup>5</sup>

Deputy Solicitor Lindgren concurred that in his opinion the Outer Continental Shelf Lands Act established the policy that exploration

<sup>1</sup> Official Transcript at 228.

<sup>2</sup> Id. at 141.

<sup>3</sup> Id. at 180.

<sup>4</sup> Id. at 68.

<sup>5</sup> Id. at 203.

and development should be done by the private sector and not by the United States Government itself:

To do our own exploration, to contract for exploratory work to be done for us would require additional authority from Congress.<sup>6</sup>

Mr. Canfield of GAO was not as certain that the Outer Continental Shelf Lands Act did not contain the implied authority for the Department of the Interior to explore:

I am not certain I can point to the line saying they don't have it . . . [but] if the Solicitor's Office feels they don't have the authority, the chances are good they won't experience it.<sup>7</sup>

A related problem is the effect that the bonus bid system, as it presently functions, may have in "forcing" the development and exploitation of the OCS. With the large front-end investments required by the bonus bid procedure, it is alleged that the industry is compelled to accelerate its drilling program to recover its investment quickly. This, according to some observers, can lead to hasty ill-conceived developments which may result in environmental damage.

It has been suggested that the Federal Government should reserve the right to cancel oil and gas leases so that if drilling cannot be done safely, the lease could be recalled. Under present regulations, a lease sale is executed before exploratory drilling is permitted. Senator Tunney analyzed the problem in this manner:

. . . we have to look at the thing pragmatically, you cannot expect to take hundreds of millions of dollars . . . from the oil companies in your bonus bid leasing schedule and then say, "Well, oil companies, we are not really telling you we have a plan now for you to develop those leases or even that we will agree to the development of it. We are just giving you a hunting license so you can see if there is oil and maybe in the future you can develop it."<sup>8</sup>

One approach suggested was to set aside the bonus bid money in an escrow account or trust fund so that the buyer may be reimbursed should the government be forced to cancel a lease. In answer to a question from the Chair, Deputy Assistant Secretary Mallory replied that the Department has not "fully considered" the trust question.<sup>9</sup>

## B. FEDERAL, STATE AND LOCAL ROLES IN THE DEVELOPMENT OF THE OCS

Whether State and local governments and the general public should participate in the Federal decisionmaking process is not in question. The real question is: To what extent and at what time in the decisional sequence should their input be made? As Mayor Dostel of Newport Beach, California put it:

. . . we have always believed that decisions which affect the lives of those who live within our boundaries should be made only after participation by those who are or will be affected . . . We . . . are concerned that this decision made by the Federal Government was made without benefit of public input from those who would be affected most.<sup>1</sup>

<sup>6</sup> Id. at 206.

<sup>7</sup> Id. at 243.

<sup>8</sup> Id. at 206.

The countervailing, but not mutually exclusive, perspective of Federal interest in OCS decisions was recognized by Deputy Solicitor Lindgren:

While the concerns of and impacts on the people and governments of Southern California are important factors in the decision, in the final analysis, the decision must be made from the perspective and the needs of the nation as a whole.<sup>2</sup>

The environmental impact statement process is seen as the primary vehicle for public participation in Federal decisions. Duke Ligon, of FEA, referring to the NEPA process, stated:

... [this] procedure is designed to assure the opportunity for all responsible public and private points of view to be expressed. Interested parties are encouraged to involve themselves at appropriate stages in the development of the environmental impact statement.<sup>3</sup>

Ligon stated further, that a Secretarial decision to lease OCS lands assumes "that national, state, and local governments have been involved in the process from the beginning to end."<sup>4</sup> If indeed Interior and FEA consider the NEPA environmental impact statement and comment procedures as the primary opportunity for state and local interests to involve themselves in the Federal decision-making process, it is far different from what the State and local witnesses perceive as their proper role.

Assemblyman Sieroty offered the opinion that:

The process of OCS development should involve effective Federal, state, and local planning for the social economic and environmental impact of Federal offshore oil activity. The Federal agencies have not shared in information and management decisions with the State agencies and officials responsible for the State's coastal zone planning and management program.<sup>5</sup>

Assemblyman Sieroty concluded that it is the position of the Department of the Interior "that this is their responsibility and the states have no role." Deputy Solicitor Lindgren disagreed that the Department of the Interior is insensitive to the needs of the states:

The state and its governmental subdivisions have a vital role in that [decisional] process, both because decisions as to pipelines, refineries and terminals are within their province and because they are concerned with and affected by any leasing decision that is made.<sup>6</sup>

The dimension of non-Federal participation in the Federal decisionmaking process will be expanded by the Coastal Zone Management Act when the state coastal zone plans, currently being developed, are approved by the Department of Commerce. It is speculated that the state coastal zone planning programs will go beyond the requirements of NEPA and prescribe a management plan to regulate onshore development that results from offshore oil and gas activity. Coupled with

<sup>1</sup> Official Transcript at 32.

<sup>2</sup> *Id.* at 185.

<sup>3</sup> *Id.* at 49.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 121.

<sup>6</sup> *Id.* at 185.

the National Environmental Policy Act impact statement process, the Coastal Zone Management Act will give state governments the potential for providing more information on which a Federal decision is to be based. But both of these mechanisms would operate after the decision is made to call for OCS tract nominations, according to departmental regulations.

Neither the Coastal Zone Management Act nor the National Environmental Policy Act mechanisms would answer the planning needs of the State in the opinion of Joseph Bodovitz, Executive Director of the California Coastal Zone Conservation Commission :

. . . the thing that makes planning in regard to the Outer Continental Shelf oil so difficult is it is impossible to understand what the full ramifications are on the basis of anything we have received from the Interior Department . . . it seems to me no one can plan adequately and no one can know what the proper litigation measures are or even if the drilling should take place until you know how, where, when, what the safety procedures would be and what kind of provisions would be made if there were an oil spill and there is great concern about the recreational and other uses of beaches and perhaps as important as everything, where does the oil go? What are the pipelines? What is the impact on the land? How many refineries and where? . . . It is just the uncertainty that makes this so exceedingly difficult to deal with.<sup>7</sup>

Anticipatory planning at the State level would seem logically to require the kinds of information suggested by Bodovitz, yet information at this level of detail is not available under the present procedures until at least after the environmental impact statements are prepared, and much of it not until exploration is completed and the "development plan" is filed with the USGS.

Assemblyman Sieroty made several suggestions which bear on this information-coordination problem :<sup>8</sup>

1. Federal OCS programs should be submitted to coastal zone agencies of each state for review and approval.

2. Federal Government should require conditions on any lease sale that the lessees must comply with state coastal zone management programs. This could be accomplished by requiring the oil companies to obtain a permit prior to commencement of activities.

3. Federal Government should provide the coastal states with the following information :

A. Data regarding the location and magnitude of potential offshore oil and gas resources.

B. Data and plans for OCS development, including the number and types of production facilities, the location and modes of transportation systems to bring the oil and gas ashore, the anticipated onshore facilities required to service OCS oil and gas, and any facilities needed for storage, assembly, onshore transportation, personnel, supply requirements, and refineries.

4. Plans should be undertaken jointly by the State and Federal government and should result in comprehensive state plans to minimize anticipated adverse effects.

<sup>7</sup> *Id.*, at 106, 107.

<sup>8</sup> *Id.*, at 122.

5. The Federal Government should provide support for the plans necessary to accommodate the anticipated onshore and offshore impacts. Most of the suggestions made by Assemblyman Sieroty could be implemented by administrative action should the Department of the Interior choose to do so. However, legislative action may be required if "Federal support" implies a transfer of funds rather than technical or information support. And any system of "state approval" would have to provide for protection of the national interest and limit the power of absolute veto.

According to Deputy Assistant Secretary of the Interior for Energy and Minerals C. King Mallory, the Department is presently considering innovations to achieve better communications between Interior and the state and local interests. Among these are:

1. Appointment of OCS coordinators in the states to be affected by OCS activities. This is being explored by a committee within the Department to have representatives from the state and local governments as well as environmental interests and governmental interests to consider the leasing policies of the Department and the leasing decision.

2. Centralizing OCS management from the contact level with a coordinator back in Washington and one in each of the areas to be impacted so that this type of feeling [as in California] will not occur again.<sup>9</sup>

The modest proposal outlined by Mr. Mallory does not go far toward fulfilling the planning needs as perceived by the State spokesman; however, it may indicate that the Department of the Interior realizes that a communications problem exists and is willing to seek reasonable solutions.

#### *1. Coastal Zone Management Act: Its Role in the Development of OCS Oil and Gas*

The Coastal Zone Management Act of 1972 was enacted in response to the recommendations of the Commission on Marine Science, Engineering and Resources (Stratton Commission).<sup>1</sup> The Act established an Office of Coastal Zone Management within the Department of Commerce through which grants to the states are made for developing management programs for the land and water resources of the coastal zone. The objectives of the Act are to encourage the states to exercise authority over the lands and waters of the coastal zone to provide more effective use and protection of coastal resources. The Administration, through the Office of Management and Budget, failed to request funding for the grant program in the FY 1974 Budget. Finally, at the urging of Congress and the coastal states, the Administration changed its position and requested funding for the Act in August of 1973. Congress eventually appropriated \$12 million for the program's first year of operation and another \$12 million for FY 1975.

To qualify for grants, state programs must include: (1) a definition of the boundaries of the coastal zone, (2) an inventory of permissible land and water uses which have a direct and significant impact on the coastal waters, (3) inventory and designation of "areas of particular

<sup>9</sup>Id., at 215.

<sup>1</sup>Commission on Marine Science, Engineering and Resources, *Our Nation and the Sea* 57 (1969).

concern" within the coastal zone. (4) identification of mechanisms the state proposes to use to control the use of land and water, (5) guidelines for establishing the priority of uses in particular areas, and (6) an organizational structure to implement the management program.

Once a state program is approved by the Secretary of Commerce, the "Federal consistency" provisions of the Act then require that any Federal agency "conducting or supporting activities" or undertaking any "development project" in the coastal zone of a state shall ensure that the activities or development is consistent with the state management program to the "maximum extent possible."<sup>2</sup> A certification system operates for "any applicant for a . . . Federal license or permit to conduct an activity" affecting land or water uses in the coastal zone. An applicant is required to include a certificate with each application to verify that the proposed action complies with the state's approved program.<sup>3</sup> No license or permit can be granted until the state concurs. The single exception to this provision is for actions which are in the "interest of national security".

A state program is required, however, to provide "adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature."<sup>4</sup> Development of the oil and gas resources of the OCS is a clear example of the kind of activities which impacts the coastal zone with which the Act is intended to deal. The consistency provisions of the Act, however, are not legally operational until a state coastal zone management program is approved. Even then it is uncertain what direct effect it will have on leasing procedures on the Outer Continental Shelf beyond the three-mile state-controlled limit. While development grants under Sec. 305 have been made to all but one of the eligible coastal states, including California, none has submitted plans to the Office of Coastal Zone Management for approval. California's plan is scheduled for completion in late 1975.

#### A. CALIFORNIA COASTAL ZONE MANAGEMENT PLAN

The California Coastal Conservation Act was adopted by initiative in the November 1972 election. It created the California Coastal Zone Conservation Commission and its six substate regional commissions. The action by the voters in adopting Proposition 20 was almost concurrent with passage by Congress of the Coastal Zone Management Act of 1972. Thus, California was one of the first states to recognize the need for a comprehensive program of coastal zone management.

The Office of Coastal Zone Management awarded California \$720,000 in 1974, the maximum rate allowed under the Act. With increased appropriations for the grant system, California is scheduled to receive an additional \$900,000 for continuation of program development in 1975.<sup>5</sup> Under the present schedule, however, it is unlikely that the coastal zone management plan for California can be completed, adopted by the Legislature, and submitted to the Office of Coastal Zone Management for approval before the spring of 1976. In the

<sup>2</sup> Coastal Zone Management Act of 1972, 16 U.S.C. § 1456(c)(1) & (2) (supp. 1972).

<sup>3</sup> *Id.* at § 1456(e)(3).

<sup>4</sup> *Id.* at § 1456(e)(8); See also 39 Fed. Reg. 30157 (Aug. 21, 1974).

<sup>5</sup> Official Transcript at 85.

absence of the final approval of its plan, California is without the benefit of the "Federal consistency" provision during the initial stages of the leasing procedure.

Robert W. Knecht, Director of the Office of Coastal Zone Management, posed the problem in this way:

The critical question is, of course, the relevance of the Federal consistency provisions in a state which is in its program development phase under Section 305 and which does not yet have a coastal zone management program approved under Section 306 of this Act . . . Legally, Federal consistency does not yet apply in this case.<sup>6</sup>

Deputy Solicitor David Lindgren approached the problem of the partially completed plan in a narrower sense:

First, the Act applies to a coastal zone plan that has been adopted by a state and then approved by the Secretary of Commerce. So, we are looking some years down the line. Second, it applies to an activity affecting land or water use in the coastal zone of that state. Now, in terms of the activities, . . . the timing of that activity and I am referring here to the entire support infrastructure . . . the terminal, refineries or expansion of refineries, pipelines—the timing of all of the decisions relating to the location. . . . all of those decisions will not be made . . . until the California Coastal Zone is adopted.<sup>7</sup>

The Department of the Interior, therefore, interpreting the "Federal consistency" requirement in a strictly legal sense, finds it inoperative as to Interior's decision whether to lease offshore of Southern California at this time. The Department takes an equally restrictive view of the application of the entire Coastal Zone Management Act, implicitly limiting it to "an activity affecting land or water use in the coastal zone of that state." Thus, the Department of the Interior separates the processes of leasing OCS lands from the impact which development of these lands may have onshore. Knecht acknowledged that the Act is subject to interpretation:

The Federal consistency requirement and the strength of that requirement and how it will work mechanically has yet to be tested. I think we are in a situation we might have been in a year or so prior to the time that the first environmental impact statements were prepared and submitted under the National Environmental Policy Act.<sup>8</sup>

But, Knecht continues, the policy contained in Section 303 of the Act indicates,

. . . the intent of Congress [is] that Federal agencies should work closely with the states and should take into account evolving state coastal zone policies in planning and carrying out their federal missions.<sup>9</sup>

#### B. SCOPE OF "FEDERAL CONSISTENCY"

Section 307, the "Federal consistency" provision, is the "action forcing" mechanism to assure that Federal agencies honor the goals and policies of the coastal states in their planning.

<sup>6</sup> *Id.* at 88.  
<sup>7</sup> *Id.* at 105.  
<sup>8</sup> *Id.* at 92.  
<sup>9</sup> *Id.* at 88.

Two specific questions of statutory interpretation emerged in the testimony: (1) Whether a "Federal lease" is an activity "directly affecting the coastal zone" within the meaning of Sec. 307(c)(1);<sup>10</sup> and (2) whether an OCS oil and gas lease is a "Federal license or permit to conduct an activity affecting land or water uses in the coastal zone" within the certification requirements of Sec. 307(c)(3).

In general, Sections 307(c)(1) and (2) imply a lesser burden on the agencies than would the application of the "certification" procedures for a lessee if a "lease" is interpreted to be a "license or permit" under Section 307(c)(3). The requirements under Subsecs. (1) and (2) are to assure consistency "to the maximum extent practicable" for Federal activities that directly affect the coastal zone. Subsec. (3), on the other hand, would require a certification and concurrence by the state "that proposed activity complies with the state's approved program." Under the "compliance-certification" procedures of Sec. 307(c)(3), a state could exercise broad powers over development in the coastal zone, while under the less specific terms of Sec. 307(c)(1) and (2), agencies would not be limited by state "concurrence."

Underlying the interpretation of the entire Coastal Zone Management Act is the key definition of "coastal zone." The Act defines the coastal zone as:

. . . the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), . . . and included transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and in other areas, *seaward to the outer limit of the United States territorial sea.*<sup>11</sup> [emphasis added]

Since Sec. 307 refers to activities "directly affecting," or a "development project in" the *coastal zone*, the limitations of the consistency provisions extend seaward only to the edge of the "territorial sea," which is presently recognized as three nautical miles. The Outer Continental Shelf, on the other hand, lies in and beyond the "contiguous zone" seaward of the three-mile limit. Oil and gas development on the OCS presents the Coastal Zone Management Act with perhaps its most difficult situation. In this case, the development itself is on Federal lands beyond the jurisdiction of the state, yet the drilling for OCS oil and gas will both directly and indirectly affect the coastal waters and will require facilities which will cause secondary impacts onshore.

#### C. DELAY OF THE OCS LEASING SCHEDULE

A number of private witnesses and local government representatives suggested that the Department of the Interior delay its leasing schedule until the California Coastal Zone Conservation Plan is completed and approved in 1976. The Interior Department disagrees. It contends, for a variety of reasons, that it is unnecessary to delay drafting the environmental impact statement because the critical decision of whether to lease the tracts nominated will be made after the California plan is substantially completed.<sup>12</sup>

<sup>10</sup> *Id.* at 92.

<sup>11</sup> 16 U.S.C. § 1453(a) (supp. 1972).

<sup>12</sup> Official Transcript at 195 et. seq.

Duke Ligon, Assistant Administrator of FEA, presented a contrasting Federal government position:

The suggestion has been made that the proposed lease sale be delayed until the State's plan is complete, and it would seem that some flexibility in timing of the proposed lease sale could be negotiated.<sup>12</sup>

Under questioning from the Chair, Mr. Ligon reaffirmed that FEA felt that there should be a delay until after the State Coastal Zone Conservation Plan is completed.<sup>13</sup> Deputy Solicitor Lindgren, noting the testimony of Mr. Ligon, observed that the FEA-approved testimony was not clear on whether it meant a "delay in writing the impact statement" or a "delay in making the decision on the lease sale next summer."<sup>14</sup> If it were the former, Deputy Solicitor Lindgren would disagree, because

. . . if the Department should halt drafting the EIS at this time and wait for adoption of the Coastal Zone Plan, a sale could not be held before late 1976 or 1977. This would result in a delay in increased domestic production . . . and we would require substitute imports from the Middle East or Arab Countries.<sup>15</sup>

Monte Canfield of GAO saw both the NEPA impact statements and the input of the Coastal Zone Management Act as essential for reaching an informed decision on OCS leasing:

. . . it seems to me that the kinds of analysis expected to be undertaken under the Coastal Zone Management Act of 1972 and the National Environmental Policy Act of 1969 are precisely the kinds of analysis which must be made if intelligent decisions are to be made regarding OCS leasing . . . let's assume that such analysis could be done in a reasonable period of time, say one or two years . . . I would argue that the burden of proof must rest on those who would proceed with immediate leasing without the benefit of such analyses.<sup>16</sup>

The official positions of two State Commissions . . . the California Coastal Zone Conservation Commission and the California Lands Commission . . . were divergent. The State Coastal Zone Conservation Commission adopted a resolution on August 8, 1974, asking that "*production*" leases be delayed until the California Coastal Zone Conservation Plan is approved by the State (Appendix A). This point was amplified by Joseph Bodovitz, Executive Director of the Commission:

The policy of the Commission is, irrespective of the Federal law that leases for production—again we do not object to leases for exploration—but leases for production not be signed until the plan has been completed and acted upon.<sup>18</sup>

However, Edward Gladish, Executive Director, California Lands Commission, testified that the Lands Commission could accept development of the OCS in the absence of an adopted State coastal plan.<sup>19</sup> Both of the statements of the State agencies—the Coastal Commission's which would permit the leasing schedule to proceed up to "production leasing," and the Lands Commission's which would accept

<sup>12</sup> Id. at 48.  
<sup>13</sup> Id. at 53, 54.  
<sup>14</sup> Id. at 191.  
<sup>15</sup> Id. at 184.  
<sup>16</sup> Id. at 235.  
<sup>17</sup> Id. at 117.  
<sup>18</sup> Id. at 259.

development without an operative State coastal plan—are in conflict with the sense of the California Legislature as expressed in the Assembly Joint Resolutions adopted in August 1974 (Appendix A).

Deputy Solicitor Lindgren outlined the basis for the Department of the Interior's opposition to suggestions that the OCS leasing schedule be delayed:

1. Major "assembling of facts" for the state plan will occur at the same time Interior is drafting its environmental impact statement, and since the recommendations of the regional commissioners are to be made to the State Commission by April 1, 1975, the remaining state work will be primarily review, compilation and development of guidelines or recommendations. Thus, "we will have the full benefit of the California Coastal Zone studies and the recommendations of the regional commissions, who are most directly concerned, before a decision is made as to whether, where, or how leasing should occur . . ."

2. It will not be known whether the plan submitted by the Coastal Zone Conservation Commission will be adopted by the California Legislature until the 1976 Regular Session at the earliest.

3. California State and local governments still make specific decisions as to pipeline location across submerged lands and those cannot be made until after discoveries are made and specific development plans are devised. Therefore, decisions to be made by state and local governments are not needed until after the coastal plan is developed.

Monte Canfield, GAO, presented a different rationale for pacing OCS leasing schedules:

We should not lease the OCS at so fast a rate that it glutts the market and weakens competition for tracts . . . The constraints—lack of rigs, pipe, trained labor, and environmental and legal concerns—all argue against a policy of rapid leasing.<sup>20</sup>

Mr. Canfield noted that it would take three to five years to get any production to speak of, seven years to get intermediate production and ten to twelve years for peak production.<sup>21</sup> In response to a question from the Chair whether the nation could wait until 1976 when California completes its coastal zone study, Canfield replied:

. . . not only can we do it, we ought to do it. It is a sensible thing to do. The problem is the country is caught in an appetite, a self-fulfilling syndrome you get into. If we tighten belts and conserve energy, we open options up. We may decide in the '80s' or sometime to open the Outer Continental Shelf. Perhaps by then, we will have the technology and systems that people will be compatible with.<sup>22</sup>

## *2. National Environmental Policy Act and OCS Planning*

The Department of the Interior relies heavily on the NEPA environmental impact statement process to provide input from the state, local and private sectors to the Federal decisionmaking process.<sup>1</sup> The National Environmental Policy Act,<sup>2</sup> in Section 102(2)(C), requires that:

<sup>20</sup> *Id.* at 229.

<sup>21</sup> *Id.* at 236.

<sup>22</sup> *Id.*

<sup>1</sup> Official Transcript at 182.

<sup>2</sup> 42 U.S.C. § 4321 et. seq. (1970).

. . . to the extent possible . . . all agencies of the Federal Government shall—

(C) include in every recommendation or report on proposals for legislation and *other major Federal actions* significantly affecting the quality of the human environment, a detailed statement by the responsible officials on—

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved if the proposed action should be implemented. [emphasis added]

Thus, for every "major Federal action significantly affecting the quality of the human environment" an environmental impact statement is required prior to making the decision on the Federal action in question. As to the leasing program on the Outer Continental Shelf, a statement is required in the pre-lease procedures between the time tracts are nominated for sale and the decision is reached by BLM to advertise for the sale.

The statement itself is for the benefit of the decisionmaker, and is intended to aid the Federal official in reaching an informed decision based on documented information. Many observers consider NEPA to be a mandate to the agencies to consider environmental factors as co-equal with traditional technical and economic factors in the planning process. This implies that the impact statement must evolve from the germinal stages of planning through the final decision.

The substance of the Act has been provided largely by the courts, since the statute itself merely provides procedures and guidelines for the executive agencies. Over 300 cases have been litigated under NEPA within the past four years. In general, these decisions reflect an unwillingness of the courts to interfere with agency decisions when made in accordance with NEPA procedures. Thus courts have been reluctant to interpose their judgments for the decisions of Congress or the Executive Branch or to rule on the merits of conflicting scientific opinion.

The Department of the Interior has adopted a two-tier environmental impact statement process. Beginning with the 1975 accelerated leasing schedule, a "programmatic" impact statement was drafted for the 10 million-acre lease proposal. It includes the 1.6 million acres off Southern California as well as OCS tracts in the Gulf of Alaska, and a sizeable area off the Atlantic, Gulf of Mexico, and the Northern Pacific Coasts.<sup>2</sup> The 1,500 page draft statement was released on October 22, 1974. It broadly assesses the resource potential and environmental conditions on all of the areas under consideration. Its purpose is to assess the cumulative effect of accelerated leasing rather than to assess the impact of any specific sale.

After the specific tracts were selected on August 12, 1974, the Department began drafting a site-specific environmental impact to deal

<sup>2</sup> 39 Fed. Reg. 17777 (May 20, 1974).

with the local conditions in the Southern California OCS.<sup>4</sup> It is expected that this statement will be completed within 60 to 90 days after the programmatic statement is released. The two environmental impact statements will comprise the planning documents for the proposed lease sale.

According to Deputy Solicitor Lindgren, the Department has encouraged broad participation by the State, local and private sector.

We have attempted to bring into our studies representatives of state and local government agencies in California as well as concerned citizens organizations . . . We have asked that representatives from the Los Angeles area governments, the Orange County area governments, the California Coastal Zone Commission, and the States Lands Commission be designated to work fulltime while we prepare the environmental impact statement. We have made a similar request of the Sierra Club and the Seashore Environmental Alliance.<sup>5</sup>

The importance of the environmental impact statement process in the Federal OCS leasing system was emphasized by Assistant Administrator Ligon of FEA:

. . . [This] procedure is designed to assure the opportunity for all responsible public and private points of view to be expressed. Interested parties are encouraged to involve themselves at appropriate stages in the development of the environmental impact statement.<sup>6</sup>

Edward Gladish, Executive Director, California Lands Commission, agreed with the Federal spokesman, and noted that the environmental impact statement requirement of the California Environmental Protection Act, coupled with the Federal NEPA statement were useful for weighing alternative sites within the OCS:

We must weight heavily on the Environmental Impact Study process required by Federal and State law to bring forward the implications of proposed decisions . . . We are confident that full utilization of this process can result in consideration of all concerns . . . I believe this environmental impact statement process will ultimately prove, for example, the undesirability of platforms in sight of Santa Monica Bay. This process may, on the other hand, prove that other Southern California OCS areas can be developed in an acceptable manner.<sup>7</sup>

The Western Oil and Gas Association is compiling an independent environmental assessment of the impact of OCS oil and gas development. Richard L. Manning, Assistant General Manager of WOGA announce<sup>8</sup> that the Association would publish a 2,000-page document in October 1974, which would be available to the government and interested members of the public.<sup>8</sup>

Mary Ann Ericksen, Southern California Representative of the Sierra Club, noted, however, that there are practical limitations on

<sup>4</sup> Official Transcript at 181.

<sup>5</sup> Id. at 183.

<sup>6</sup> Id. at 49.

<sup>7</sup> Id. at 254.

<sup>8</sup> Id. at 140.

the ability of citizen's groups to participate in drafting environmental impact statements:

. . . we are faced with the same problem that all citizen groups are faced with. We do not have fulltime people that we can lend to BLM to work side-by-side with them day in and day out. We will try to assist with our limited personnel and resources."

On August 15, 1974, the State of California filed a complaint in the Federal District Court, Central District of California, against the Department of the Interior seeking injunctive and declaratory relief for non-compliance with the National Environmental Policy Act of 1969.<sup>10</sup> The State of California alleges in the complaint that "By failing to properly coordinate the timing of the designation of areas with the environmental analysis, the defendants are rendering the environmental impact statements which are being prepared valueless for accomplishing the goals of NEPA."<sup>11</sup> The question is: Whether designation of areas for nomination "prior to the analysis of the broad issues of energy alternative to Outer Continental Shelf development, alternative areas to the Southern California coast, and an analysis of alternative areas within the Southern California borderland, violates NEPA."<sup>12</sup> Put more simply: Is a "call for tract nominations" a "major Federal action" under NEPA?

The case relies on a theory that once the Department of the Interior announced its intent to draft the programmatic impact statement for the 10 million-acre 1975 lease schedule on May 20, 1974, the Department is prohibited from calling for nominations of specific tracts offshore of Southern California until the programmatic statement is released in final form. To support this contention, the "call for nominations" must be considered a decision which meets the definition of "major Federal action" under NEPA. Deputy Solicitor of Interior David Lindgren disavowed that the "call" was a "decision" in testimony at the Santa Monica hearings,<sup>13</sup> but the final determination may be made by the court.

<sup>10</sup> Id. 287.

<sup>11</sup> *California v. Morton*, Civ. No. 74-2374-AAH (D. C.D. Calif., filed Aug. 15, 1974); See Appendix B.

<sup>12</sup> Note 10, See Nature of Action, para. 2, p. 2 (Appendix B).

<sup>13</sup> Note 10, See Nature of Action, para. 2, p. 2 (Appendix B).

<sup>14</sup> Official Transcript at 174.



## VII Appendices

### APPENDIX A

Assembly Joint Resolution No. 108, California Legislature, April 18, 1974.

Assembly Joint Resolution No. 122, California Legislature, August 13, 1974.

Resolution, California Coastal Zone Conservation Commission, August 8, 1974.

Resolution No. 7938, Council of the City of Santa Barbara, California, August 27, 1974.

Resolution No. 7939, Council of the City of Santa Barbara, California, August 27, 1974.

#### ASSEMBLY JOINT RESOLUTION NO. 108

INTRODUCED BY ASSEMBLYMEN MEADE, LOCKYER, SIEROTY, DEDDEH, BERMAN, BURKE, COLLIER, FORAN, JOE A. GONSALVES, INGALLS, KEYSOR, LANTERMAN, MACGILLIVRAY, M'CARTHY, PAPAN, WILSON, AND WOOD—  
APRIL 18, 1974

(Without reference to committee)

ASSEMBLY JOINT RESOLUTION NO. 108—RELATIVE TO OFFSHORE OIL  
AND GAS PRODUCTION

#### LEGISLATIVE COUNSEL'S DIGEST

AJR 108, as introduced, Meade (W.R.T.C.). Offshore oil, gas production.

Memorializes the President and Congress to support and adopt such laws and regulations as will permit the state to participate in decision-making relating to the leasing of federal submerged lands off the California coast for oil or gas production. Requests that federal laws and regulations relating to such leases be at least as comprehensive and stringent as state laws and regulations governing oil or gas development under lease on state tidelands and submerged lands, and that the federal staff assigned to carry out such federal laws and regulations be at least as competent and at a comparable manpower level as the staff employed by the state for such purposes. Requests that the state be compensated by an adequate portion of the revenue derived from such federal leases, or by a share of the crude oil production itself, for expenses incurred by the state in providing support functions.

Fiscal committee: no.

WHEREAS. The President of the United States has indicated that the leasing of offshore waters for oil or gas production in coastal areas under federal control may be increased by 10 million acres in the next year; and

**WHEREAS**, The Council on Environmental Quality has informed the President recently that drilling for oil and gas in the Atlantic Ocean offshore from the States of Virginia, Maryland, Delaware, and other East Coast states is acceptable; and

**WHEREAS**, Expert testimony on known crude oil reserves off the California coast has estimated proven and potential reserves of crude oil in the billions of barrels; and

**WHEREAS**, Federal authorization for oil or gas drilling off the California coast is imminent and, in fact, the United States Bureau of Land Management has taken initial steps to authorize the leasing of more than seven million acres off the southern California coast, with tracts to be announced for lease in July 1974; and

**WHEREAS**, At the present time the State of California has no control or voice in the decisionmaking process for the leasing of offshore waters under federal jurisdiction, even though the state has a primary interest in the safety, pollution prevention, economics, and aesthetics of such operations; and

**WHEREAS**, The state has itself leased more than 175,000 acres of tidelands and submerged lands along the coast, and permitted, under state control, the drilling of more than 4,000 wells and core holes with no significant pollution incidents; and

**WHEREAS**, The state is known to have superior expertise in this area, with more stringent controls and safeguards than are required by the federal government; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to support and adopt such laws and regulations as will permit the State of California to participate in all decisionmaking relating to the leasing of federal submerged lands off the California Coast for oil or gas production, including granting to California the right to recommend denial of any proposal which endangers the state's coastline or life or property in the state, constitutes an immediate or potential geologic hazard, or is environmentally incompatible on an aesthetic or total use basis; and be it further

*Resolved*, That the Legislature of the State of California respectfully requests that federal laws and regulations relating to the leasing of offshore lands for oil or gas production be at least as comprehensive and stringent as laws and regulations governing oil and gas development under leases by the state on state tidelands and submerged lands, and that the federal staff assigned to carry out and enforce the federal laws and regulations be at least as competent and at a comparable manpower level as the staff employed by the State of California for these purposes; and be it further

*Resolved*, That the Legislature of the State of California respectfully requests that the state be compensated by an adequate portion of the revenue derived from oil and gas production on federal submerged lands off the coast of California or by a share of the crude oil production itself, inasmuch as the various jurisdictions within the state, and the state itself, will be required to supply, and bear the cost

of supplying, many support functions, including, but not limited to, police, fire protection, and community services; and be it further

*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

ASSEMBLY JOINT RESOLUTION NO. 122 AMENDED IN ASSEMBLY  
AUGUST 22, 1974

INTRODUCED BY [ASSEMBLYMAN BERMAN] ASSEMBLYMEN BERMAN, CORY,  
PRIOLO, AND SIEROTY, AUGUST 13, 1974

ASSEMBLY JOINT RESOLUTION NO. 122—RELATIVE TO OFFSHORE OIL  
DRILLING IN SANTA MONICA BAY

LEGISLATIVE COUNSEL'S DIGEST

AJR 122, as amended, Berman (P., L.F. & E.). Offshore oil drilling.

Declares the opposition of the Legislature to a designated proposal to drill for oil in [Santa Monica Bay] *the southern California area*, and memorializes the President and Congress to enact legislation designating the outer continental shelf a national preserve to be used for mineral production only in the event of a congressionally declared national emergency.

Fiscal committee: no.

WHEREAS, The United States Department of the Interior is preparing a plan to lease approximately [1.5] *1.6* million acres of outer continental shelf [land in the Santa Monica Bay] *area lands along the southern California coastline* for offshore oil drilling operations; and

WHEREAS, The department's *proposed* development of these lands appears to be based on Project Independence, a federal [proposal] *policy* requiring energy self-sufficiency [which only recently commenced its preliminary hearings] *for which preliminary hearings commenced only this month*, and is not the result of any comprehensive balanced energy policy of conservation and development; and

WHEREAS, It has not been demonstrated that the development of these *offshore* lands is necessary to meet future energy needs that cannot be met by the development of other areas [less likely to be as seriously harmed], *the development of which will have less serious adverse environmental consequences*, by the development of alternative energy resources, and by the institution of practices which will conserve energy and reduce demand; and

WHEREAS, The people of California, recognizing the unique quality of their coastline, overwhelmingly approved the establishment of the California Coastal Zone Conservation Commission as a means of protecting their coastal environment; and

WHEREAS, The development of these lands will result in considerable harm to the visual environment and greatly increase the possibility

of destruction of the existing underwater ecosystem and marine life in the area; and

**WHEREAS**, The Legislature has manifested its intent to protect the South Bay area by designating the state lands in that area a protected sanctuary, thereby preventing any new offshore oil drilling; and

**WHEREAS**, Many [South Bay area] *southern California* cities have already passed resolutions opposing the development of these *offshore* lands *at this time*, among which are the Cities of *Los Angeles*, Manhattan Beach, Redondo Beach, Hermosa Beach, Torrance, Rancho Palos Verdes, Laguna Beach and Santa Monica; [and many environmental groups and interested individuals also oppose such development;] now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California opposes the development [of] *at this time of federal* outer continental shelf land *for oil and gas production* in the [Santa Monica Bay area for offshore oil drilling operations] *southern California area*; and be it further

*Resolved*. That the Congress of the United States is hereby urged to enact legislation designating the outer continental shelf a national preserve to be used for mineral production only in the event of a congressionally declared national emergency; and be it further

*Resolved*. That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the United States Department of the Interior.

## RESOLUTION OF THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,  
*San Francisco, Calif., August 8, 1974.*

*To the California Congressional Delegation:*

The California Coastal Zone Conservation Commission, deeply concerned over the possible impact of oil and gas production in Federal waters off the southern California coast, has unanimously adopted the following resolution:

The California Coastal Zone Conservation Commission hereby asks the Secretary of the Interior to defer issuing any new leases for oil and gas development on the submerged lands adjacent to the State of California until the California Coastal Zone Conservation Plan, or at least the applicable energy elements of the Plan, have been completed by the Regional and State Commissions or until the Federal Government's development plans for these lands have been otherwise adequately reviewed by and approved by the Coastal Commissions and other appropriate agencies of the State of California.

The Commission did not ask for any delay in exploration, research or testing, but rather that no Federal leases for *production* be signed until substantial environmental issues have been satisfactorily resolved.

In adopting its resolution, the Commission indicated that the issues needing resolution *before* production leases are signed include the following:

1. Exactly how many platforms would be built, and where? Could the production be done on the ocean floor, thus removing any need for what many people will regard as extremely unsightly platforms that might be highly visible from much of the southern California coastline?
2. Will the Federal drilling safety procedures be at least as stringent as those established by the State of California for production in shallower State waters?

3. Will thorough, adequately-financed provisions be required for control of oil spills, which could have a major impact on southern California beaches that are a prime source of recreation for hundreds of thousands of Californians?

4. Where will the oil, once produced, be taken? How many pipelines to shore will be needed, and where? How many storage tanks, and where? How many refineries, and where (and with what impact on air quality)?

The State and Regional Coastal Commissions will soon be considering these and other matters of energy generation as part of their work on the Energy element of the Coastal Plan, and, as you know, the Coastal Plan required by Proposition 20 is to be submitted to the Governor and Legislature in January, 1976. The Commission urges your support for its position on this matter, and we will, of course, be glad to provide any additional information we can on this or any other matter affecting the California coast.

Sincerely,

MELVIN B. LANE, *Chairman.*

**TESTIMONY OF THE CITY OF SANTA BARBARA TO THE PANEL FOR THE  
SENATE COMMERCE COMMITTEE NATIONAL OCEAN POLICY STUDY**

Senator Tunney (Chairman) and Members of the Panel: The following resolutions are the statements authorized to be read into the record by the City Council of the City of Santa Barbara at its meeting of Tuesday, September 24, 1974:

**RESOLUTION NO. 7938**—A resolution of the Council of the City of Santa Barbara, California, supporting the Seashore Environmental Alliance Petition in opposition to offshore oil drilling.

Whereas, the Seashore Environmental Alliance is a recently formed coalition dedicated to the preservation of the California coastline; and

Whereas, the Seashore Environmental Alliance is sponsoring the circulation of a petition declaring opposition to proposed off-shore oil drilling along the southern California coast except in the event of a national emergency declared by Congress; and

Whereas, the City of Santa Barbara sustained serious damages as a result of oil spilled from an off-shore oil drilling platform in 1969;

Now, therefore, be it resolved by the Council of the City of Santa Barbara:

That the City Council hereby declared its support of the petition circulated by the Seashore Environmental Alliance declaring opposition to the off-shore oil drilling proposal along the southern California coast, except in the event of a national emergency declared by Congress. (Adopted 8-27-74)

**RESOLUTION NO. 7939**—A resolution of the Council of the City of Santa Barbara, California, opposing off-shore oil drilling.

Whereas, the California coastline is an important and irreplaceable natural resource of great esthetic beauty and recreational value; and

Whereas, the recent decision of the United States Department of the Interior approving renewed oil drilling in the Santa Barbara Channel was made without adequate consideration of the restriction mandated by the California Coastal Zone Conservation Act; and

Whereas, the comprehensive plan for the land use of the California Coastal Zone as provided by the California Coastal Conservation Zone Act has not yet been completed and adopted; and

Whereas the City of Santa Barbara sustained severe damages as a result of oil spilled from an off-shore oil drilling platform in 1969; and

Whereas, the Federal Government has not promulgated adequate regulations for the conduct of off-shore oil drilling operations to ensure that another oil spill disaster will not recur; and

Whereas, the proposed off-shore oil drilling will endanger the beaches and other recreational areas of the California coastline;

Now, therefore, be it *resolved* by the Council of the City of Santa Barbara:

That the City of Santa Barbara opposes the approval by the Federal Government of any new off-shore oil drilling leases and the renewal or commencement of oil drilling on any previously approved leases.  
(Adopted 8-27-74)

## APPENDIX B

Complaint, *State of California v. Morton*, filed August 15, 1974, United States District Court, Central District of California, Civ. No. 74-2374-AAH.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
(Civ. No. 74-2374-AAH Complaint for injunctive and declaratory relief and mandamus; review of proposed administrative action)

PEOPLE OF THE STATE OF CALIFORNIA, EX REL., EVELLE J. YOUNGER, ATTORNEY GENERAL; AND CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION, PLAINTIFFS,

v.

ROGERS C. MORTON, IN HIS OFFICIAL CAPACITY AS SECURITY OF THE DEPARTMENT OF THE INTERIOR; CURTIS J. BERGLUND, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT; WILLIAM E. GRANT, MANAGER, PACIFIC OUTER CONTINENTAL SHELF OFFICE, BUREAU OF LAND MANAGEMENT, DEFENDANTS.

Plaintiffs, the People of the State of California, by and through Evelle J. Younger, Attorney General of the State of California, and the California Coastal Zone Conservation Commission, allege:

### NATURE OF ACTION

1. The Department of the Interior, Bureau of Land Management, is currently preparing a program environmental impact statement (hereafter EIS) pursuant to the National Environmental Policy Act (hereafter NEPA) on outer continental shelf potential future oil and gas leasing. The Secretary of the Interior has announced particular tracts off the Southern California coast that will be considered for potential lease sale. Designation prior to the analysis of the broad issues of energy alternatives to outer continental shelf development, alternative areas to the Southern California coast, and an analysis of alternative areas within the Southern California borderland, violates NEPA.

2. Plaintiffs seek declaratory relief, mandamus and an injunction prohibiting defendants from proceeding with consideration of the specific areas for potential development prior to the completion and consideration of an EIS which includes analysis of the broad range of energy alternatives to outer continental shelf development, alternative areas to Southern California, and alternative sites off the Southern California borderland.

### JURISDICTION

3. The jurisdiction of this Court is invoked pursuant to the provisions of 43 United States Code, section 1333(b), which gives original jurisdiction to United States District Courts for any case arising out of or in connection with the exploration, development, removal or transportation of natural resources from the outer continental shelf.

4. The jurisdiction of this Court is also invoked pursuant to the provisions of 28 United States Code, section 1361, this being an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof, to perform a duty owed to plaintiffs.

5. The jurisdiction of this Court is also invoked pursuant to the provisions of 28 United States Code, section 1331, this being an action arising under a federal law wherein the matter in controversy exceeds the value of \$10,000.

6. The jurisdiction of this Court is also invoked pursuant to the provisions of section 10 of the Administrative Procedure Act (5 U.S.C. §§ 701-706), this being an action brought by persons suffering legal wrongs because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute.

7. The jurisdiction of this Court is also invoked pursuant to the provisions of 28 United States Code, section 2201, whereby plaintiffs seek a declaration of their rights under the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347).

### VENUE

8. Venue is proper in this case, pursuant to 28 United States Code, section 1391, both because this is the judicial district in which a defendant officer or employee of the United States resides, and because this is the judicial district where the cause of action arose.

### PARTIES

#### *A. Plaintiffs*

9. Plaintiffs in this action are the People of the State of California, acting by and through Evelle J. Younger, Attorney General of the State of California, and the California Coastal Zone Conservation Commission.

10. The Attorney General is the chief law officer of the State of California, and has the responsibility for the uniform and adequate enforcement of the laws. Cal. Const. art. IV, § 13: In addition to the usual responsibilities for law enforcement exercised by an Attorney General, in 1971 the California Legislature delegated to the Attorney General specific responsibility for protecting the natural resources of the state: Cal. Gov. Code § 12600 et seq.

11. In November of 1972, the People of the State of California passed by initiative the California Coastal Zone Conservation Act. The People of the State of California declared by that Act:

“ . . . that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced eco system; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety,

health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations; and that to protect the coastal zone it is necessary:

“(a) To study the coastal zone to determine the ecological planning principles and assumptions needed to ensure conservation of coastal zone resources.

“(b) To prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan.

“(c) To ensure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.

“(d) To create the California Coastal Zone Conservation Commission, and six regional coastal zone conservation commissions, to implement the provisions of this division.” Cal. Pub. Resources Code § 27001.

The California Coastal Zone Conservation Commission is responsible for submitting a plan for preservation of the coastal zone on or before December 1, 1975. Cal. Pub. Resources Code § 27320.

12. The California Attorney General provides the necessary legal representation for the California Coastal Zone Conservation Commission. Cal. Pub. Resources Code § 27240.

### *B. Defendants*

13. Defendant Rogers C. B. Morton is Secretary of the Department of Interior. The Secretary of Interior has the responsibility, pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1331-1343), for authorizing the leasing of offshore tracts for mineral operations and development. He has responsibility, under 43 United States Code section 1334, to prescribe and amend necessary regulations to prevent waste and to conserve the natural resources of the outer continental shelf; under 43 United States Code section 1334(c), to grant pipeline rights-of-way through the submerged lands of the outer continental shelf; under 43 C.F.R. section 3300.0-3, to supervise the administration by the Director of the Bureau of Land Management of the leasing regulations; under 43 C.F.R. section 3301.3, to approve calls for nomination of tracts for leasing; and under 43 C.F.R. section 3301.4, to approve proposed notices of lease offers.

14. Curtis J. Berklund is the Director of the Bureau of Land Management, which has primary responsibility, under 43 C.F.R. section 3300.0-3, to administer the regulations on leasing submerged mineral lands of the outer continental shelf; under 43 C.F.R. section 3301.3, to receive and consider nominations of tracts or issue calls for nominations of tracts for leasing; under 43 C.F.R. section 3301.4, before final selection of tracts for leasing, to evaluate fully the potential

effect of the leasing program on the total environment, aquatic resources, aesthetics, recreation, and other resources in the entire area during exploration, development and operational phases, and to develop any special leasing stipulations necessary to protect the environment and other resources; and under 43 C.F.R. section 3301.5, to publish notice of lease offers, including special stipulations for protection of the environment.

15. William E. Grant is manager of the regional office of the Bureau of Land Management which has the primary responsibility for the Pacific outer continental shelf from the international boundary between the United States and Mexico north to the international boundary between the United States and Canada and offshore Hawaii.

#### FACTS

16. On April 18, 1973, President Nixon announced an accelerated leasing program on the outer continental shelf in order to increase domestic production of oil. He directed the Secretary of Interior to triple offshore leasing by 1978 and have 10 million acres put up for lease by 1975. The President's Message to Congress April 18, 1973: Weekly Compilation of Presidential Documents, Vol. 9, No. 16, pp. 389-406. (See Exh. A).

17. The sale of oil leases in the outer continental shelf begins when a tentative schedule is prepared which identifies general sales areas and develops tentative acreage figures for each sale. The Director then calls upon the oil companies to nominate particular tracts to within the overall area to be sold. 43 C.F.R. § 3301.3. The tracts which are nominated are evaluated by both the Bureau of Land Management and the Geologic Survey and tracts are tentatively selected by the Bureau of Land Management. A draft and then final environmental statement are prepared under the National Environmental Policy Act. 43 C.F.R. § 3301.4. The Director of Bureau of Land Management then makes a final selection of the tracts to be leased and the proposed notice of lease offer is submitted to the Secretary of Interior for final approval. 43 C.F.R. § 3301.4. A notice of lease offer is then published in the Federal Register at least 30 days prior to the date of sale. 43 C.F.R. § 3301.5. Tracts are offered for lease by competitive sealed bidding (43 C.F.R. § 3302.1) and are awarded to "the highest responsible qualified bidder" (43 U.S.C. § 3302.5). If the highest bid is not accepted within 90 days after the date on which the bids are opened, all bids for such lease are considered rejected. 43 C.F.R. § 3302.5. The leases are awarded "for a term of 5 years and so long thereafter as oil or gas may be produced from the leasehold in paying quantities." 43 U.S.C. § 1337(b); 43 C.F.R. § 3302.2(a).

18. In July of 1973, a tentative outer continental shelf leasing schedule was issued which included an unidentified Southern California area where leasing was being considered. (See Exh. B.) That schedule projected a call for nominations for the Southern California area in February of 1974, nominations due in April of 1974, announcement of tracts by the Secretary of Interior in July of 1974, circulation of a draft environmental impact statement in October of 1974, public hearing on drilling in designated areas off the Southern California coast in November of 1974, publication of a final environmental im-

fact statement in March of 1975, notice of sale in April of 1975 and sale in May of 1975.

19. On January 2, 1974, a call for nominations was issued by the Secretary of Interior for specific tracts within a large area off the Southern California coast encompassing approximately 7.7 million acres of submerged land. 39 Fed. Reg. 18 (Jan. 2, 1974). (See Exhs. C, D.)

20. On February 8, 1974, a request for comments concerning this offshore Southern California area was published in the Federal Register. Comments were requested to be submitted in writing not later than March 11, 1974 to defendant William E. Grant, but the time for comments was subsequently extended. 39 Fed. Reg. 4934 (Feb. 8, 1974). (See Exh. E.)

21. On May 20, 1974, the Department of Interior published in the Federal Register notice that it was preparing an environmental impact statement on potential future oil and gas leasing on the outer continental shelf. The Southern California coast was included as an area which might be affected by the proposed program. The environmental impact statement is to include the following:

"The proposed leasing action; the management system pertaining to the proposed action, including leasing procedures, supervision, inspection and regulation of lease operations, and monitoring of actual and threatened environmental effects of lease operations; OCS oil and gas resource potential; energy supply and demand; technology for developing oil and gas offshore; *environmental settings; natural phenomena that exist or occur in particular OCS regions*, and which have the potential to cause or contribute to environmental impacts arising from the proposed action; the potential environmental impacts of the proposed action, offshore and onshore, including without limitation matters such as the cumulative impact of oil and gas operations under the proposed leasing action, impacts on competing uses of OCS resources, the effect of the proposed action on the level of environmental study prior to leasing and on the level of supervision of lease operations after leasing, and the degree to which environmental effects might be reduced as a result of improvements in methods of lease supervision; and the alternatives to the proposed action and their potential environmental impacts." 39 Fed. Reg. 17777-78 (May 20, 1974) (emphasis added). (See Exh. F.)

22. According to John Sprague, Chief of the Division of Marine Minerals of the Bureau of Land Management, the draft environmental impact statement on this comprehensive program is expected to be completed in late August or early September of 1974. Under the guidelines of the Council on Environmental Quality, the draft environmental impact statement should be circulated and opportunity for public comment provided for at least 90 days before a final environmental impact statement would be issued. 40 C.F.R. § 1500.11(b), 38 Fed. Reg. 20555 (Aug. 1, 1973). Thus, at the earliest, a final program environmental impact statement on the entire offshore leasing program, including a separate section on the Southern California borderland, would be available in December of 1974. The Department of Interior, however, contends that the final program EIS will probably be completed by November.

23. Defendant Department of Interior has announced specific tracts to be considered for offshore oil leasing along the Southern California coast. (See Exhs. G, H.)

24. The regional office of the Bureau of Land Management is now proceeding to prepare a draft environmental impact statement upon the specific tracts designated. The draft environmental impact statement upon the specific tracts will be addressed to the environmental impact on the specific tracts and will not review the relative impact of drilling in the various Southern California coastal areas, nor will it evaluate the impact of the entire program of expanded offshore drilling.

25. The procedure being employed by the Department of Interior and the Bureau of Land Management in designating areas for further study prior to analysis of the board issues of energy alternatives, and consideration of alternative sites both nationwide and within the Southern California area violates the mandate of the National Environmental Policy Act that all federal agencies develop procedures which "will insure that presently unquantified environmental amenities and values may be given appropriate *consideration* in decision-making along with economic and technical considerations." 42 U.S.C. § 4332(2)(B) (emphasis added). By failing to properly coordinate the timing of the designation of areas with the environmental analysis, the defendants are rendering the environmental impact statements which are being prepared valueless for accomplishing the goals of NEPA.

#### CLAIM

26. A present controversy exists between plaintiffs and defendants with respect to the obligation of defendants to complete an environmental impact statement on the entire outer continental shelf development program and on alternative sites both nationwide and within the Southern California area prior to designation of specific areas for potential oil and gas development as required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (See Exhs. I and J, NEPA and the implementing regulations thereof).

27. The rights and interests of plaintiffs have been adversely affected, directly and substantially, by the failure of the federal defendants to comply with requirements of the National Environmental Policy Act, to wit, the failure to file an environment impact statement which discusses broad energy alternatives and alternative sites both nationwide and within the Southern California borderland prior to designation of specific areas for potential oil and gas development.

28. Plaintiffs will suffer immediate and irrevocable injury from the actions of defendants in taking a first step to eventual leasing of areas off the Southern California coast, and excluding other areas off the coast, from consideration without the benefit of an adequate EIS. Plaintiffs have no adequate remedy at law.

#### PRAYER FOR RELIEF

Wherefore, plaintiffs pray:

1. For a judgment pursuant to 28 United States Code, section 2201 declaring that the National Environmental Policy Act requires completion of an environmental impact statement or environmental impact

statements considering the broad energy alternatives to outer continental shelf development and alternative areas, should such development be appropriate, both nationwide and within the Southern California area prior to designation of areas off the Southern California coast for potential oil and gas development;

2. For an order enjoining both preliminarily and permanently, defendants, their agents and employees and all other persons acting in concert with them from proceeding with the decision-making process regarding potential oil and gas development off the Southern California coast prior to the completion of an environmental impact statement or environmental impact statements considering the broad energy alternatives to outer continental shelf development, and alternative areas, should such development be appropriate, both nationwide and within the Southern California area;

3. For relief in the nature of mandamus commanding the Department of the Interior and the Bureau of Land Management to prepare, circulate for comment and consider an environmental impact statement or environmental impact statements which adequately consider the broad energy alternatives to outer continental shelf development and alternative areas, should such development be appropriate, both nationwide and within the Southern California area prior to designation of areas off the Southern California coast for potential oil and gas development;

4. Plaintiffs also pray for cost of plaintiffs' suit and for such other and further relief as the Court may deem just and proper.

Dated: August 15, 1974.

EVELLE J. YOUNGER,  
*Attorney General*  
 ROBERT H. O'BRIEN,  
 CARL BORONKAY,  
*Assistant Attorneys General*  
 NORMAN N. FLETTE,  
 JOHN P. MECK,  
 LINDA B. MOK,  
 JAN CHATTEN-BROWN,  
*Deputy Attorneys General.*



## APPENDIX C

### LIST OF WITNESSES AND THEIR AFFILIATIONS IN ORDER OF APPEARANCE

#### PERSONS AND ORGANIZATIONS WHO TESTIFIED IN ORDER OF THEIR APPEARANCE

Roy Holm, Mayor, City of Laguna Beach, California  
Pieter Van Den Steenhoven, Councilman, City of Santa Monica, California  
Pat Russell, Councilwoman, City of Los Angeles, California  
Lois Seidenberg, City of Santa Barbara, California  
Milan Dostel, Mayor Pro tem, City of Newport Beach, California  
Duke Ligon, Assistant Administrator, Resource Development, Federal Energy Administration  
Kenneth Cory, Chairman, Joint Committee on Public Domain, California State Legislature  
Robert W. Knecht, Director, Office of Coastal Zone Management, NOAA, Department of Commerce  
Ellen Stern Harris, Member, California Coastal Zone Conservation Commission  
Joseph Bodovitz, Executive Director, California Coastal Zone Conservation Commission  
Alan Sieroty, Chairman, California Assembly Select Committee on Coastal Zone Resources, California State Legislature  
Richard L. Manning, Assistant to the General Manager, Western Oil and Gas Association  
Sherman Clark, Consultant, Western Oil and Gas Association  
Gordon Anderson, President, Santa Fe Drilling Company  
Stark Fox, Independent Oil and Gas Producers of California  
Johanna Hover, Arcadia, California  
David Lindgren, Deputy Solicitor, Department of the Interior  
C. King Mallory, Deputy Undersecretary, Department of the Interior  
Monte Canfield, Energy Specialist, General Accounting Office  
Edward Gladish, Executive Director, California State Lands Commission  
Mary Ann Ericksen, Southern California Representative Sierra Club  
Shirley Solomon, Seashore Environmental Alliance, and No Oil, Inc.  
Faye Hove, Planning and Conservation League  
William Gesner, Environmental Quality Advisory Board  
Gerald Shaffner, Private Citizen  
Alex Mann, Private Citizen  
Alex Cota, Eastside-Westside Concerned Citizens  
Sue Nelson, Friends of Santa Monica Mountains



## APPENDIX D

### MISCELLANEOUS CORRESPONDENCE AND MEMORANDA

MEMORANDUM FROM JARED G. CARTER, UNDER SECRETARY OF THE  
INTERIOR TO DIRECTORS OF BLM AND USGS, SEPTEMBER 18, 1974

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., September 18, 1974.*

Memorandum to: Director, Bureau of Land Management.  
Through: Assistant Secretary—Land and Water Resources.  
To: Director, Geological Survey.  
Through: Assistant Secretary—Energy and Minerals.  
From: Jared G. Carter, Deputy Under Secretary.  
Subject: OCS Leasing Schedule.

Prior to the meeting of the OCS Research Management Advisory Board on October 3 and 4, the Under Secretary wants a firm leasing schedule laid out that definitely includes the following items:

1. 10 million acres leased in 1975—not just 10 million acres offered.
2. A sale in '75 in both Alaska and the Atlantic.
3. An alternative, if number 2 fails, which will still allow leasing of 10 million acres.

On the same time schedule, the Under Secretary wants a plan for a lease sale on the Atlantic in 1973 that would include some leases in all of the promising areas of the Atlantic, rather than just the sale limited to Baltimore Canyon.

It is the responsibility of BLM to complete this response to the Under Secretary by no later than C.O.B. September 30th.

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LETTER FROM 20-SENATORS TO THE HONORABLE GERALD R. FORD,  
PRESIDENT OF THE UNITED STATES, OCTOBER 7, 1974

UNITED STATES SENATE,  
*Washington, D.C., October 7, 1974.*

The PRESIDENT,  
*The White House,*  
*Washington, D.C.*

DEAR MR. PRESIDENT: We wish to express our surprise and dismay on learning that the Department of Interior is proceeding toward the 1975 leasing of 10 million acres for offshore oil and gas development—including acreage in the Atlantic, the Pacific and the Gulf of Alaska—at a time when environmental baseline studies and State coastal zone management efforts are at a very early stage.

(69)

We recognize and support the need to expedite development of the Nation's domestic energy resources, including Outer Continental Shelf oil and gas, but we have not been informed of any factual basis for Interior's judgment that 10 million acres in 1975 is the magic number needed by the Nation. Moreover, we do not believe it wise to lease in hitherto undeveloped areas before environmental and coastal planning needs are met.

We are particularly concerned that the Interior leasing program is moving ahead with apparent disregard for the inter-agency effort to gather environmental baseline data on the proposed new areas, and similar disregard for State efforts to develop coastal zone management programs in accordance with the Coastal Zone Management Act of 1972.

We have serious doubts about the oil and gas industries' financial and technical capability to develop such a large number of acres in a single year, and about the rational basis for selecting this level of leasing as appropriate or necessary for the Nation's energy needs. We understand that the Department of Interior is in the early preparatory stages of an environmental impact statement on the 10-million acre program, as required by the National Environmental Policy Act of 1969. Hopefully, the Interior Department EIS will set forth the rationale behind the program. It seems most untimely, therefore, for lease sales to be planned before the completion of environmental impact studies or the determination of whether 10 million acres is a realistic or reasonable level for 1975 leasing.

The Senate recently passed S. 3221, the Energy Supply Act of 1974, which provides for several notable improvements in OCS leasing policies and practices. However, the House of Representatives has not yet acted on OCS legislation, and the deliberations of both Houses are expected to continue into the next Congress. We believe that OCS leasing in new areas should await the outcome of that legislative process.

The National Ocean Policy Study of the Senate is currently analyzing OCS issues. Preliminary analysis by the Study supports our belief that offshore leasing programs should proceed only as rapidly as the state and Federal programs for coastal planning and environmental data gathering can proceed.

You will recall that the Council on Environmental Quality, in reporting to former President Nixon on its environmental assessment of OCS oil and gas in the Atlantic and the Gulf of Alaska, stated several principles which should guide federal leasing programs. These principles included:

A policy of "very high priority on environmental protection" in regard to OCS exploration and development;

A leasing program in which the location and phases of lease sales are "designed to achieve the energy supply objectives . . . at a minimum environmental risk";

Use of the "best commercially available technology . . . to minimize environmental risk";

Federal regulations for environmental protection that are "fully implemented and requirements strictly enforced";

Federal consultation with state and local authorities to provide affected areas with "complete information as early as possible so that planning can precede and channel the inevitable development pressures";

A "major advisory role" for the interested public in OCS management and regulation.

We suggest, Mr. President, that unless given higher Federal priority, environmental and coastal planning measures cannot possibly be fully implemented in time for 1975 leasing in all new areas of the Atlantic and the Gulf of Alaska, and premature leasing in these new areas cannot possibly adhere to the principle of expanding energy supplies with minimum environmental risk.

We urge you to revise the Federal leasing program to ensure the concurrent progress of environmental baseline studies, impact assessment, and Federal assistance to state coastal zone management programs. The 1975 program should, in our view, also await a factual justification for leasing 10 million acres, some in new areas, including a determination that the oil and gas industries can cope with this high level of development.

When leasing does take place in new areas, we believe the areas chosen should reflect the results of environmental studies, and should begin with those areas found to hold the lowest level of risk to the marine and coastal environments. If we are to avoid undue delay in developing the Outer Continental Shelf, we must step up federal funding of environmental baseline studies and Federal assistance to coastal states as they develop their coastal zone management programs. This way, the OCS leasing program will clearly conform to the findings of the CEQ study, the views of the coastal states many of us represent, and the spirit of the Coastal Zone Management Act of 1972, which requires federal programs affecting the coastal zones to be consistent with state coastal zone management programs.

We were most heartened by your inaugural address to the Congress, in which you expressed your desire to build a good marriage with Congress and work together to solve the critical problems before us. We applaud your sincerity and we certainly share your goal. For this reason, we urge you to make it possible for us to work together toward a rational policy for development of the Outer Continental Shelf. The Interior Department's unilateral decision to go ahead with a hasty and ill-conceived 1975 leasing schedule at this time represents a serious impediment to our cooperative efforts. We hope you will heed and share our views on this vital matter.

Sincerely yours,

Ernest F. Hollings; Edward M. Kennedy; Edward W. Brooke; Alan Cranston; Mark O. Hatfield; Charles McC. Mathias, Jr.; Claiborne Pell; John V. Tunney; Joseph R. Biden, Jr.; Thomas J. McIntyre; Lowell Weicker; Clifford P. Case; Harrison A. Williams, Jr.; Lawton Chiles; William D. Hathaway; Edmund S. Muskie; Jacob K. Javits; John O. Pastore; Bob Packwood; Hubert H. Humphrey.

LETTER FROM ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR TO  
20 SENATORS, OCTOBER 25, 1974

THE SECRETARY OF THE INTERIOR,  
Washington, D.C., October 25, 1974.

HON. ERNEST F. HOLLINGS,  
United States Senate,  
Washington, D.C.

DEAR SENATOR HOLLINGS: The President has asked me to respond to your letter of October 7, 1974 in which you requested that the Department of the Interior cease planning efforts to sell 10 million acres of the Outer Continental Shelf in 1975. You indicated you were not familiar with the rationale behind this proposed leasing program and you suggested that frontier lease sales should begin in the OCS areas found to hold the lowest level of risk to the marine and coastal environments, without regard to the resource potential of such areas. You also suggested that no lease sales in frontier area should be held until the coastal states involved complete their Coastal Zone Management Plans, as envisioned by the Coastal Zone Management Act.

Let me briefly explain why adoption of these suggestions would contribute to inflation and would be contrary to the national interest in developing our domestic sources of energy with minimum risk to the environment:

1. On March 22, 1974, when introducing his proposed Energy Supply Act of 1974, Senator Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, stated:

"During the next decade, development of conventional oil and gas from the U.S. Outer Continental Shelf can be expected to provide the largest single source of increased domestic energy; to supply this energy at a lower average cost to the U.S. economy than any alternative; and to supply it with substantially less harm to the environment than almost any other source." (Emphasis added)

2. Moreover, importing oil by tankers is environmentally more risky than producing oil from the OCS. It is estimated that only 2% of the oil in the ocean comes from offshore petroleum development, whereas 40-50% comes from accidental and intentional spills from tankers. In areas such as the Atlantic Coast and California, where demand exceeds local production of oil, delay in developing the OCS only prolongs the time when oil must be imported by tankers.

3. We must begin development of the promising frontier areas of our Outer Continental Shelf as soon as possible if we are to avoid the inflationary and foreign relations impact of increasing dependence upon foreign sources of crude oil. We are now importing about 6.4 million barrels of oil per day, at an annual cost to our economy of approximately \$23 billion. Stringent conservation measures must be taken to reduce our demand for petroleum, but such measures alone will not reduce our imports. In fact, we are now importing 10% more petroleum than we did in October 1973, when the Middle East War began. These large imports contribute to inflation, even if the money we pay is "recycled" into our economy. At some point, real resources—such as grain, steel, and manufactured items—will have to be exported to redeem the \$23 billion a year we are paying for these

imports, thereby increasing competition for, and the price of, these real resources here at home.

4. Or viewed another way, it is not efficient to import \$11.00 per barrel oil when we could use domestic petroleum that could be produced at a lower cost. It is estimated that petroleum can be produced on our OCS at costs from \$1.40 to \$3.50 per barrel. Thus, fewer real resources are required to acquire this oil. While this oil will sell within the U.S. at world prices, the difference between \$11.00 and \$1.40 to \$3.50 will remain in the United States in the form of bonus payments for the leases and taxes (and hence lower U.S. taxes), higher wages, and reinvestable corporate profits.

5. It would not be wise to lease first those areas of the Outer Continental Shelf which hold the lowest level of environmental risk, as you suggest, unless those areas also have great resource potential. Our national objective must be to increase our domestic resource base with the least possible environmental cost. If we concentrate our efforts in areas that do not produce much oil and gas, we will consume scarce resources—such as drilling rigs, money, and manpower—and incur some level of environmental cost without substantially adding to our supply of oil and gas. We have sought, therefore, to strike a balance between resource potential and environmental cost, and we have tried to develop a leasing schedule, for planning purposes, to guide our efforts to complete the resource and environmental studies necessary to determine what areas should actually be offered for sale.

6. It would be a serious mistake to stop the environmental and resource studies which we have underway, and to defer all further effort directed toward the possible leasing of 10 million acres in 1975, as you suggest, until all the coastal states involved have adopted Coastal Zone Management Plans. The Coastal Zone Management Act does not require a state to adopt a Coastal Zone Management Plan; it requires only that the state establish procedures for the adoption of such plans in order to qualify for federal grants. The Federal Government has no control over the timing and content of the eventual state plan, and the Act in no way envisions that the Federal Government should halt its programs in the coastal areas until the states have adopted plans. I believe, therefore, that it is not in the national interest to refrain from making OCS studies and eventually OCS leasing decisions until such plans are adopted. This approach could, in an extreme case, give an important veto power over an extremely important national decision to a very limited number of people.

Particularly along the Atlantic Coast where there has been no exploratory offshore drilling, the exact location of possible offshore oil and gas resources is not known at this time. Until leasing occurs and actual discoveries are made, decisions for the specific location of pipelines, refineries, and other onshore facilities cannot be made, and development within the Atlantic coastal zone cannot be definitively projected and planned for. The California situation is somewhat different because previous exploration and development in the state offshore areas has increased our knowledge of where oil and gas might exist; and, additionally, onshore facilities already exist. In California, we are interacting with the state and local officials as they develop their Coastal Zone Plan and we expect to work with them in the future when specific decisions stemming from the development of the OCS leases occur.

7. I share your view that all reasonable steps should be taken to include state and local officials in the processes leading to Outer Continental Shelf leasing decisions. We have taken the initiative in California by requesting state and local governmental units to appoint experts to work with us in the preparation of an Environmental Impact Statement on the proposed Southern California lease. We have made every effort to comment constructively on that state's draft Coastal Zone Plan, particularly as it relates to energy.

8. It was in recognition of these facts, and with a desire to obtain the maximum possible public input into the decision-making processes regarding energy development, that in May 1974 we published in the *Federal Register*, and by press release, a comprehensive rationale of the proposed 10 million acre leasing program. Other steps have also been taken, and widely publicized, to develop the knowledge required to make intelligent leasing decisions:

(a) In April of 1974 the CEQ published a report based on a year-long environmental study of Outer Continental Shelf frontier areas.

(b) In June 1974 this Department published the results of its study of these frontier areas, including an assessment of their resource potential as well as the specific environmental factors that might be encountered in these areas.

(c) In July 1974 officials of this Department met with California state and local officials and held a public meeting to discuss with them our rationales, plans, and procedures for a possible OCS sale off Southern California.

(d) In September 1974 this Department appeared at the Senate Commerce Committee, National Ocean Policy Study hearing in Los Angeles, California, with regard to the timing of the proposed Southern California sale vis-a-vis the State's coastal zone planning efforts.

(e) On October 8, 1974, this Department briefed the House Appropriations Subcommittee, at their request, on the rationale for the acceleration of the OCS leasing efforts and the steps that were being taken to protect the environment and to secure fair value for the resources being sold.

I hope this information convinces you of the importance of taking all reasonable steps to increase our domestic supplies of energy and of the wisdom of the steps we are taking in this regard concerning Outer Continental Shelf leasing. I am convinced that if we don't promptly develop the Outer Continental Shelf, our national problems, stemming from an inadequate energy supply base, will grow in the future.

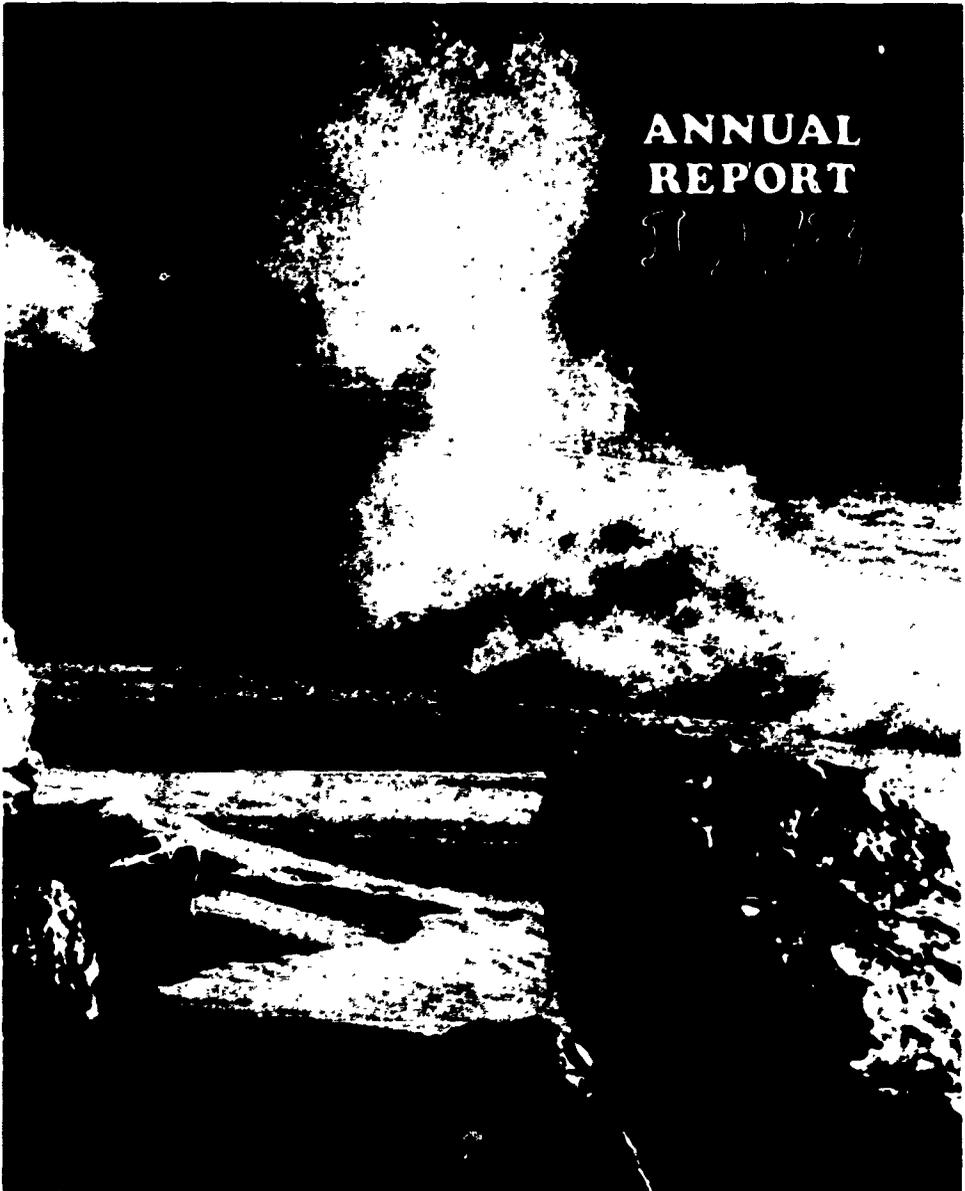
I would be happy to receive any suggestions you might have for increasing our energy supply base in the next few years if we do not turn to our Outer Continental Shelf.

Sincerely,

ROGERS C. B. MORTON,  
*Secretary of the Interior.*

APPENDIX E

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION'S  
ANNUAL REPORT 1973



**California Coastal Zone  
Conservation Commissions**



FUNDS FOR PRINTING THIS REPORT CAME ENTIRELY FROM PRIVATE CONTRIBUTIONS.

Photography: JACK McLOWELL

## CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

1980 EDITION PRINTED BY STATE  
 LAW PUBLISHERS, CARLSBAD, CALIF.  
 PAPER: 50% RECYCLED



TO GOVERNOR RONALD REAGAN  
 AND MEMBERS OF THE CALIFORNIA LEGISLATURE

This is the first annual progress report of the California Coastal Zone Conservation Commissions, as required by Section 27060 of the Public Resources Code.

As you know, 1973 was the year the Coastal Commissions came into existence through passage of the Coastal Zone Conservation Act (Proposition 20) by the voters of California at the election of November 7, 1972.

The Coastal Initiative is working and is accomplishing its objectives. In comparison with other governmental planning and regulatory bodies, it is doing so with a minimum of inconvenience and hardship and at little taxpayer expense.

The State Commission and the six Regional Commissions quickly organized themselves and began the work for which they were created: 1) preparing a plan for the future of the long and varied California coastline, and 2) controlling coastal development, through a permit system, while the plan is being prepared.

Most of the Regional Commissions began work with a sizable backlog of permit applications. Because the 84 part-time Commissioners and their staffs were willing to work unusually long hours, these backlogs were reduced and coastal developments in accordance with the Act were allowed to proceed. Commissioners often have many hours of travel to and from each meeting. Special accommodation is due the 12 members of the South Coast Regional Commission, with jurisdiction over the coastline of Los Angeles and Orange Counties, who met 43 times during 1973 with most meetings going until 1:00 in the evening.

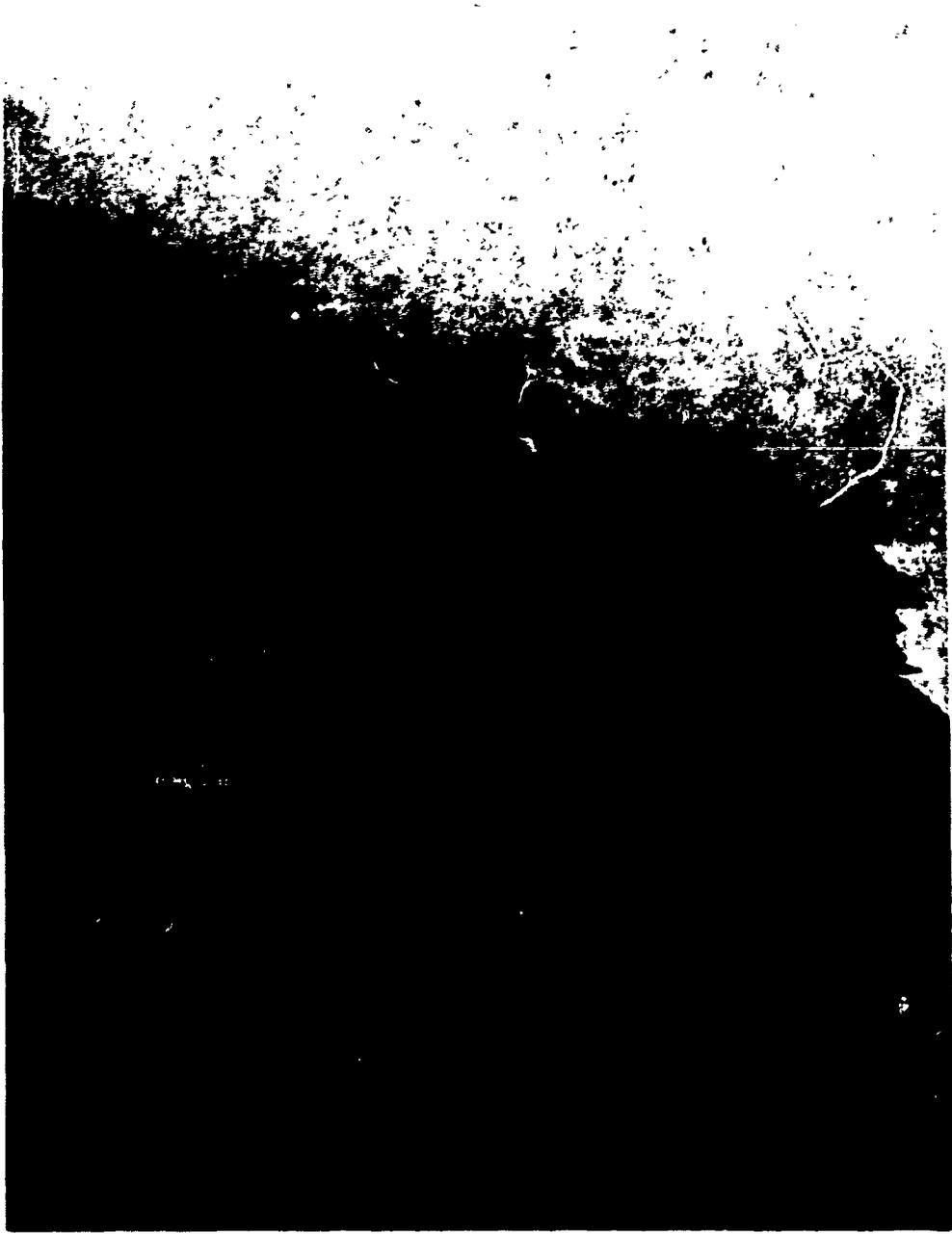
The coastal planning program is well under way, with much of the least viable foundation work having been completed in 1973 and with widespread public involvement being sought in the planning scheduled for the next two years. We have a head start because of the earlier planning work, particularly data collection and preliminary planning, of other government agencies. This leaves us free to concentrate on the policies and priorities for the future of coastal resources.

Finally, a word about a particularly serious problem facing the Commissions: the shortage of funds. We are grateful to you and the legislature for approval of adequate funds for the legal work of the Attorney General in our behalf and for clarification of our right to retain and use funds collected as permit fees.

As explained in more detail later in this report, Federal funds that were anticipated by the sponsors of Proposition 20 have not yet been made available. These funds were expected to total \$2.5 to 3 million, and their absence has severely hampered the work of the Commissions. We are, therefore, vigorously pursuing efforts to guarantee for California its fair share of whatever Federal funds may become available. To the extent these funds are less than the anticipated amount, however, we have no alternative but to request additional State funding to do the job mandated by the voters in approving Proposition 20.

Respectfully submitted,

*Malvin B. Lane*  
 Malvin B. Lane  
 Chairman, State Commission





## The Coast of California

### Length

1,672 miles of mainland shoreline (excluding San Francisco Bay) and 307 miles of offshore island shoreline (the Channel Islands, the Farallon Islands, and smaller islands).

### Ownership

Private: 682 miles (approximately 81 per cent)  
 Public: 410 miles (approximately 39 per cent)  
     Federal: 145 miles (47 miles open to public)  
     State: 262 miles  
     County: 34 miles  
     Local: 29 miles

### Coastal Land

The primary coastal zone (between the mean high tide line and one-half mile inland) contains approximately 345,000 acres, about .5 per cent of California's total land area. Included in this area are approximately 52,000 acres of prime agricultural land and about 150,000 acres of grazing land.

### Population

About 84 per cent of California's 20 million residents live within 30 miles of the State's shoreline.

### Habitat

California's coastal waters and lands provide habitat for more than 100 species and subspecies of mammals, 200 birds, 54 reptiles and amphibians, and a wide variety of fish.

### Wetlands

Coastal wetlands (marshes, mudflats, estuaries, lagoons, etc.) necessary to maintain many species of coastal fish and wildlife totaled about 381,000 acres in 1900 but, because of man's filling and diking, total only about 125,000 acres today.

### Coastal Commissions

One State Commission and six Regional Commissions with a total of 64 Commissioners. One-half of the Commissioners are locally-elected officials—County Supervisors, Mayors, and City Councilmen.

The other half are public representatives appointed one-third by the Governor, one-third by the Senate Rules Committee, and one-third by the Speaker of the Assembly.

## Planning

"The commission shall prepare, adopt, and submit to the Legislature for implementation the California Coastal Zone Conservation Plan."

—Section 27300

"The coastal zone plan shall be consistent with all of the following objectives:

"(a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

"(b) The continued existence of optimum populations of all species of living organisms.

"(c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

"(d) Avoidance of irreversible and irretrievable commitment of coastal zone resources."

—Section 27302

On June 8, 1973—well ahead of the July 24 deadline in the law—the State Commission adopted a planning program based on the following factors:

1. **Deadline.** The final plan must be submitted to the Governor and the Legislature in January,

1976. Thus an unusually complex planning program must be completed in less than 2 years from the writing of this first annual report.

2. **Public Support.** The final decision on the coastal zone plan will rest, of course, with the Governor and the Legislature. Widespread public support will be necessary if legislation is to be enacted in 1976 to carry out the plan. To achieve that support, the planning program is designed to elicit the full participation of governmental agencies, special interests and, of great importance, the general public. The goal is to have widespread understanding of coastal issues and widespread support for coastal zone conservation and development policies.

3. **Role of the Regional Commissions.** The Regional Commissions are better able than the State Commission to achieve extensive involvement of large numbers of individuals and groups because 1) the Regional Commissions are more directly accessible, and 2) coastal problems and solutions are more easily understood as they affect parts of the shoreline with which a person is most familiar. Thus, the first hearings and work on plan elements will be done by the Regional Commissions.

4. **Emphasis on Decisions, Not Data.** The emphasis of the Commission's planning is on reaching

decisions, not on accumulating data. Volumes of information about the coastal zone already exist because of the work of the many local governments along the coast, the preparation of the Comprehensive Ocean Area Plan (by the Department of Navigation and Ocean Development in the State Resources Agency), and the work of many other State and Federal agencies.

Data is the necessary foundation for planning, but data is not of itself a plan. What is needed now is to use all available information, along with other necessary research, to arrive at policies for the future of the coastal zone. For example, should "superports" for supertankers be built in the coastal zone? If so, where, and subject to what conditions? What priority should agriculture have in the coastal zone? Should large coastal areas be used for housing, or should recreational development have a higher priority? Can better public access to the ocean be provided in built-up urban areas?

5. **What the Plan Will Be.** The goal of the Commission's planning program is to arrive at a set of policies to guide future conservation and use of coastal resources—a constitution for the coastline. Once these policies have been established, further



planning can then apply them to specific coastal areas. In a period of rapid change, no planning can solve all problems for all time. But the Commission's planning can, and will, set a course for the future. The plan will have two parts: first, policies of statewide importance and applicability, and second, policies compatible with the statewide policies but sensitive to the special needs of each region and of local communities within each region. Local governments have had, and will continue to have, an important role in coastal planning.

6. **Plan Elements.** The Commission's planning program consists of the following plan elements, some of which may be combined and consolidated as the planning proceeds. For each element, the goal is 1) to arrive at the best possible solutions, using available information and new research within the time limits specified in the Act; and 2) to recommend steps necessary to carry out each proposed solution, such as channelling development to new areas, funding acquisition programs, and passing new legislation. The elements are as follows:

—**Marine Environment:** The offshore waters as a living environmental system.

—**Coastal Land Environment:** Resources of coastal lands.

—**Geology:** Geological hazards in coastal areas; beach maintenance and replenishment.

—**Mineral Resources:** Major petroleum and non-petroleum mineral deposits—their economic benefits and the environmental concerns with their extraction and processing.

—**Energy:** The impact of current energy shortages on the coastal zone, with regard to power plants, petroleum extraction, tanker terminal facilities, and refineries.

—**Recreation:** Use of the coastal zone for a wide variety of recreational pursuits.

—**Appearance and Design:** Scenic views in the coastal zone; ways to encourage attractive design in coastal developments. (The work on this element was underwritten by a grant from Mr. and Mrs. David Packard).

—**Transportation/Water:** Port needs; uses of coastal land for water-related industries.

—**Transportation/Land and Air:** Methods of transportation in the coastal zone and possible changes; means of providing increased access to beaches.

—**Power Plants and Other Public Utilities:** Proposals for coastal power plants and other utilities (i.e., desalting plants).

—**Intensity of Development in the Coastal Zone:** What uses of coastal lands should have highest priority? Can high-density development be designed so as not to congest traffic and block public access to the ocean? What is the cumulative effect of the steadily-increasing density and intensity of use of coastal land areas? What priority should housing for permanent residents have in relation to housing for visitors (hotels, resorts, recreational vehicle compounds, etc.)?

—**Carrying Out the Plan: Powers and Funding Needed:** How should the coastal zone plan be carried out? What new legislation should be considered? What will it cost?

—**Carrying Out the Plan: Governmental Organization:** Are existing agencies of government adequate to carry out the coastal zone plan? What alternative governmental possibilities are there, and what are the advantages and disadvantages of each?



7. **Schedule.** The first plan element—the marine environment—is being processed by the Regional Commissions as this report is being written, and the others will follow at frequent intervals. When all of the elements have been completed in early 1975, the resulting tentative policies will be combined into a preliminary plan for further public hearings. Then, after necessary revisions, the final plan will be adopted for presentation to the Governor and the Legislature.



## Permits

"On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency."

—Section 27400

As the accompanying table shows, 6,236 permit applications were received by the six Regional Commissions during 1973. Of this total, 5,191 were granted and 148 denied; the remainder were being processed as of January 1, 1974.

Because of the stringent environmental provisions of the Coastal Act, it may appear surprising that such a high percentage of permits were granted, but these are the reasons:

1. Many of the permits are for single-family homes or for other relatively small developments in areas where the environmental consequences of construction are minimal. Such permits are often approved by the Regional Commissions on a consent calendar, similar to that used by the Legislature. This enables non-controversial development proposals to be reviewed and acted upon with a minimum of delays.

2. Many of the permits are approved subject to conditions as to density of development, protection of scenic views, provision of new public access to

the shoreline, and other matters to bring the proposed projects within the requirements of the Coastal Act.

3. As a rule applicants do not seek permits for developments that would have to be turned down because they clearly do not comply with the Act. Instead, applicants often seek to modify their proposals, in consultation with the Regional Commissions and their staffs, to bring them into compliance with the Act.



**Summary.** Despite the fears expressed at the time of the Proposition 20 election, the Coastal Act has not halted construction in the coastal zone. Instead, it has allowed construction to proceed, provided the building is consistent with the Act.

**Claims of Exemption.** In the weeks after the Commissions began their work, many persons sought to have their developments declared exempt from the permit requirements of the Act. With the help of the Attorney General's office, forms were prepared and procedures adopted for reviewing these claims of exemption. In essence, claimants for exemption assert that because of work done or expenditures made before the effective date of the Act, they were entitled to complete their projects without first obtaining a Regional Commission permit.

The table on this page shows how many of these claims have been granted and how many denied. In many cases where an exemption was denied, an applicant was later granted a permit for the development.

Permit Applications and Claims of Exemption Processed by Regional Commissions During 1973

PERMITS			
	Applications Received	Number Granted	Number Denied
North	442	430	3
North Central	360	280	13
Central	945	827	18
South Central	878	731	8
South	2,456	1,882	77
San Diego	1,212	1,042	20
<b>TOTALS</b>	<b>6,236</b>	<b>5,191</b>	<b>148</b>

CLAIMS OF EXEMPTION			
	Applications Received	Number Granted	Number Denied
North	0	0	0
North Central	41	26	5
Central	83	52	15
South Central	48	34	11
South	215	124	20
San Diego	133	80	34
<b>TOTALS</b>	<b>520</b>	<b>344</b>	<b>186</b>

The statistics above may be misleading; see NOTE at bottom of pages 11 and 12.

## Appeals

"An applicant, or any person aggrieved by approval of a permit by the regional commission may appeal to the [state] commission.

"The [state] commission may affirm, reverse, or modify the decision of the regional commission: If the [state] commission fails to act within 60 days after notice of appeal has been filed, the regional commission's decision shall become final.

"The [state] commission may decline to hear appeals that it determines raise no substantial issues."

—Section 27404

During 1973, 263 decisions of Regional Commissions were appealed to the State Commission. The table shows the actions of the State Commission on appeals.

The State Commission, as provided by the Act, declines to hear appeals unless a substantial issue is presented. In determining substantial issue, the State Commission has generally voted not to hear an appeal unless one or more of the following matters are present:

1. The decision of the Regional Commission is in question because there is little evidence to support it but substantial, undisputed evidence to support a contrary decision.
2. The procedures of the Regional Commission in the matter being appealed are in question, and the procedures appear to clearly and directly lead to a questionable decision as, for example, approval of a project by a majority vote when there is substantial evidence that a 2/3 vote was required.
3. Matters of statewide importance are involved, as, for example, a need to insure uniformity among Regional Commissions on matters of major concern.
4. The Regional Commission decision could adversely affect the coastal zone plan being prepared by, for example, allowing development in an area being proposed in the plan as a park, or making

commitments of major coastal zone resources prior to the preparation of the plan.

### STATE COMMISSION ACTION ON APPEALS

Total appeals received in 1973:	263
Total permits approved:	53
After public hearing:	37
(includes 24 approved with conditions and modifications)	
Regional Commission permits approved when State Commission declined to hear appeals on grounds they presented no substantial issue:	18
Total permits denied:	66
After public hearing:	40
Regional Commission denials left standing when State Commission declined to hear appeals on grounds they presented no substantial issue:	28
Total claims of exemption approved:	17
(includes 5 partial approvals)	
After public hearing:	13
Regional Commission grants of exemption approved when State Commission declined to hear appeals on grounds they presented no substantial issues:	4
Total claims of exemption denied:	27
After public hearing:	21
Regional Commission denials of exemption left standing when State Commission declined to hear appeals on grounds they presented no substantial issues:	6
Total appeals later withdrawn:	27
Total appeals determined to be invalid:	3
Total appeals pending before State Commission as of January 1, 1974:	66



## Permits and Appeals: SOME COMMENTS

1. **Planning and Permits.** The Coastal Act gives the Commissions two principal responsibilities:

a. To prepare a plan for the future of the California Coastal Zone; and

b. To control all development, through a permit process, to insure that construction consistent with the Act is allowed to proceed, and to prevent harmful developments from thwarting the plan before it can be completed.

These are two separate responsibilities under the law, but in practice they reinforce each other. As the planning proceeds, decisions on permit applications can help carry out the plan. And, of equal importance, decisions on plan recommendations grow out of the permit experience. The same Commissioners who vote on plan recommendations also vote on permit applications. This insures that the plan is not prepared in Ivory tower isolation but instead is prepared on the solid foundation that comes from understanding the very real conflicts over conservation and development in the coastal zone.

To put this another way, the many, many hours spent by the Commissions on permit hearings are not time taken away from planning but often provide the essential understanding of issues necessary for sound planning. For example, out of a hearing

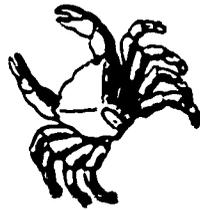
on an appeal regarding a proposed recreational vehicle park in the Malibu area of Los Angeles County came the following policy statement by the State Commission:

"This appeal poses one of the most important policy questions yet to come before the Commission: should uses of land in the coastal zone that can benefit many people have preference over uses that benefit a few? Or, more precisely, when a piece of land is not proposed for public acquisition and is thus almost certain to be developed, should it be used for housing—of benefit primarily to the residents of the housing—or should encouragement be given to vacation or similarly temporary uses, such as resorts, hotels, rental units, and recreational vehicle parks, that will allow many more people to enjoy the amenities of the coastal zone?"

"Although this question will be more fully explored in the Commissions' planning, it appears entirely consistent with that planning to make clear, at least tentatively, a preference for land uses that will allow the most people to enjoy the coastal zone. This is particularly important because, in many areas of the coastal zone, the costs of housing are already high and still rising. Many Californians who will wish to use and enjoy the coastal zone may not be able to afford to live permanently in it. Thus, landowners and developers should be encouraged to provide increasing opportunities for Californians of all levels of income to enjoy coastal areas."

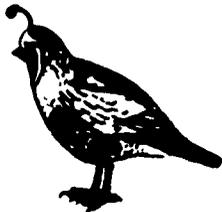
2. **Permit Processing.** In some Regions, the permit workload has been little short of overwhelming, while in others it has been easier to manage. By far the greatest number of permit applications has been in the South Coast Region (Los Angeles and Orange Counties). The 12 members of that Commission met 43 times in 1973, largely to try to process applications as rapidly as possible so as to prevent any unnecessary delays. In some cases, Regional Commission meetings have gone from 9 a.m. until after midnight. And in every region, Commission members—fully aware of the hardships caused by delay—have worked long hours to try to arrive at prompt decisions on often-complex and controversial projects.

3. **Appeals.** The Act appears to make it relatively easy for Regional Commission decisions to be challenged by appeals, and there was initial concern that a large number of frivolous appeals could easily be brought, thus diverting the time and



energy of the State Commission from its essential planning responsibilities. This has not happened, however, because assembling the evidence necessary to pursue an appeal requires sufficient work to discourage anything but serious filings. And, as noted above, the State Commission may decline to hear any appeal that does not raise a substantial issue.

4. **Permit Denials.** Much attention has been focused by the news media on the relatively few controversial decisions on coastal zone permits; little notice has been given to the many permits that have been approved over slight objection. In particular, three types of denial have drawn the greatest public attention:



a. **Exemptions.** As noted above, these involve essentially legal determinations as to whether a particular development may proceed without a coastal zone commission permit on the basis of work done or money spent prior to the effective date of the Act. Applications for exemption have been carefully reviewed by the Attorney General's office, as legal advisor to the Commissions, and the Attorney General's representatives have advised the Commissions on legal aspects of exemption decisions. The whole question of exemptions, or of vested rights to complete projects, is a complex area of the law, about which there is considerable disagreement (as evidenced by the fact that in the first of the coastal zone exemption cases to reach the State Supreme Court, the justices divided 4-3 in their decision). What is insufficiently understood about the exemption decisions is that they are not based on the merits of the project but solely on whether the project has acquired sufficient vested rights to be exempt from obtaining a permit. Thus, even when an exemption is denied, a permit could be granted for the project.

b. **San Onofre.** By far the most controversial appeal before the State Commission was with regard to the proposed expansion of the nuclear power plant at San Onofre on Camp Pendleton in San Diego County. After lengthy hearing and debate, the Commission voted not to grant a permit for the project in the form it was presented to the Commission on grounds the application did not conform to the standards of the Coastal Act. In doing so, the Commission made clear that it believed a modified application would comply with the standards of the Act and that with modifications, the San Onofre expansion could provide needed

energy consistent with environmental protection. Immediately following the denial, discussions were begun between the Commission and the permit applicants (Southern California Edison Co. and San Diego Gas & Electric Co.) regarding a revised plan. The project was approved a couple of months later but with stringent controls to minimize the environmental damage.

c. **Small Developments.** In general, small commercial buildings, small apartment projects, and single-family homes in coastal areas have been quickly approved, often on the consent calendar. But occasionally a few have been denied, and the reasons for denial have not always received the same public attention as the denials themselves.

In every case, however, the denials are recognized as clearly temporary—until the problems raised by the particular building can be resolved. The following are examples of such problems:

1) In some cases, proposals have been made to build in scenic coastal areas proposed for public park acquisition. Denials in such cases have generally been for a limited time to allow the appropriate public agency time to buy the property.

2) In many cases, the problem is one of cumulative effect: one house in a particularly scenic area might have no effect on public enjoyment of the coast, but if the first structure is built, there would appear to be no reason to deny a second on an adjacent lot. With more to follow, the cumulative



effect could be a wall of buildings screening off the ocean from a nearby scenic highway. The goal here is not to prevent construction (unless public purchase of the area is feasible) but to arrive, through study and planning, at a means of allowing construction to proceed consistent with protecting public views and other public values of the coastal area.

3) Similarly, in many cases the denials have been to allow time for preparation of a "blanket permit"—conditions under which construction of all homes in a subdivision would be allowed to proceed in a manner fair to all. It would be manifestly unfair to allow some construction to proceed while similar proposals received different treatment. Thus the Regional Commissions have tried to develop means of allowing construction to proceed subject to well-publicized conditions affecting all construction in the area in the same way.

## Regional Commissions Action on Appeals



### NORTH COAST REGIONAL COMMISSION

Del Norte, Humboldt and Mendocino Counties have the longest coastline of any region—287 miles. Much of this sparsely populated region consists of forest and pasture land, and several coastline permit applications have dealt with logging. The region possesses some of the State's most spectacularly beautiful coastline, and in recent years emphasis on tourism and park acquisition has increased.

Total permit applications in 1973:		442
Granted:	439	
Denied:	3	
Total claims of exemption in 1973:		9
Granted:	9	
Denied:	0	



### NORTH CENTRAL COAST REGIONAL COMMISSION

Sonoma, Marin and San Francisco Counties bracket the Golden Gate and include scenic areas in which large second-home and other residential developments have been proposed. The region also includes the extensive Point Reyes National Seashore, the new Golden Gate National Recreation Area, and the largely developed western-most areas of San Francisco.

Total permit applications in 1973:		300
Granted:	280	
Denied:	13	
Total claims of exemption in 1973:		41
Granted:	38	
Denied:	5	

(Other applications were being processed at the time of the writing of this report.)



### CENTRAL COAST REGIONAL COMMISSION

San Mateo, Santa Cruz and Monterey Counties include coastal lands of great value for agriculture, in many of which residential development has been proposed. The region also includes the beaches and parks of Monterey Bay and the rugged grandeur of the Big Sur coast.

Total permit applications in 1973:		845
Granted:	827	
Denied:	18	
Total claims of exemption in 1973:		83
Granted:	52	
Denied:	15	

(Other applications were being processed at the time of the writing of this report.)

**NOTE:** These statistics alone may be misleading, for they do not reflect the size or nature of the projects involved. Furthermore, they do not reflect the conditions which the Commissions, in cooperation with applicants, frequently



**SOUTH CENTRAL COAST REGIONAL COMMISSION**

San Luis Obispo, Santa Barbara and Ventura Counties have the second longest coastline of any region, 244 miles, and include the scenic areas around the Hearst Castle, Morro Bay, the off-shore oil drilling in the Santa Barbara-Ventura area, and a combination of urban development and agriculture in many coastal areas of Ventura County. The region has perhaps a wider range of urban and rural, conservation and development, issues than any other.

Total permit application:	in 1973:	878
Granted:		731
Denied:		6
Total claims of exemption:	in 1973:	48
Granted:		34
Denied:		11

(Other applications were being processed at the time of the writing of this report.)



**SOUTH COAST REGIONAL COMMISSION**

Los Angeles and Orange Counties contain coastal areas that are almost entirely developed. Within them, however, there is great pressure for new development, often at a higher density than the existing development. Problems of public access to the major public beaches and developed shorelines in this area are an important planning issue.

Total permit applications:	in 1973:	2,488
Granted:		1,882
Denied:		77
Total claims of exemption:	in 1973:	218
Granted:		124
Denied:		30

(Other applications were being processed at the time of the writing of this report.)



**SAN DIEGO COAST REGIONAL COMMISSION**

San Diego County includes the open expanse of Camp Pendleton on the North, many highly productive agricultural areas, and many urban areas where substantial developments are proposed. Among the principal planning issues are the remaining coastal lagoons, some of which are in areas where developments are proposed.

Total permit applications:	in 1973:	1,212
Granted:		1,042
Denied:		29
Total claims of exemption:	in 1973:	133
Granted:		88
Denied:		34

(Other applications were being processed at the time of the writing of this report.)

attached to an approval permit. Those applications which the Commissions felt would cause major environmental damage or would seriously interfere with planning were denied.



## Finances

"There is hereby appropriated from the Bagley Conservation Fund to the California Coastal Zone Conservation Commission the sum of five million dollars (\$5,000,000) to the extent that any moneys are available in such fund and if all or any portions thereof are not available then from the General Fund for expenditure to support the operations of the [state] commission and the regional coastal zone conservation commissions during the fiscal years of 1973 to 1976, inclusive, . . . ."

—Chapter 8, Sec. 4

As the adjacent table shows, the work of the State and Regional Commissions is not yet fully funded. Why? Principally for two reasons:

1. **Inflation.** The funding provisions written into Proposition 20 in early 1972 could not, and did not, anticipate the rapid inflation that has taken place

since then and that appears likely to continue. Increases have occurred in the cost of virtually every phase of the Commissions' work—office rent, travel, printing, postage, etc.

2. **Federal Funds.** The funding estimates prepared by the sponsors of Proposition 20 included the probability of Federal funds. On October 27, 1972, Congress passed (and President Nixon later signed) the Coastal Zone Management Act of 1972 (Public Law 92-583). This Act authorized grants to the States for coastal zone planning, and under the provisions of the Act, it was reasonable to assume that California's share would be \$2.5-3 million during the planning period. But funds of this magnitude have not yet been appropriated. The estimates made by the sponsors of Proposition 20 appear to have been accurate—the Commissions' additional needs (based on present costs and assuming an 8% rate of inflation) will be about \$2.2 million. Thus, as of the writing of this report, the Commissions' finances were uncertain.

## Projected Expenditures

	1972-73 (5 mo.)	1973-74	1974-75	1975-76	1976-77 (6 mo.)	TOTAL
Personal Services	199,581	1,431,858	1,611,304	1,438,442	578,979	5,280,284
Operating Expenses and Equipment <sup>1</sup>	178,835	1,039,643	1,100,944	984,585	356,448	3,658,455
Total	378,413	2,471,601	2,712,248	2,423,027	935,427	8,918,719

These figures anticipate some inflation, but they may nonetheless be too low, particularly with regard to expenditures in the final years of the Commissions' work.

1. Includes estimates of expenses incurred by the State Attorney General on behalf of the Commission. These expenses are not normally included in the budgets of other State General Fund agencies.

## Projected Funding

	1972-73 (5 mo.)	1973-74	1974-75	1975-76	1976-77 (6 mo.)	TOTAL
Begley Conservation Fund <sup>1</sup>	290,533	1,806,886	1,700,083	1,391,498		5,000,000
Permit Processing Fees <sup>2</sup>	76,883	368,484	366,484	360,000	180,000	1,352,851
Special Appropriations <sup>3</sup>	0	294,231	243,681	288,049	120,000	925,961
Total	376,416	2,271,601	2,312,248	2,019,547	300,000	7,279,812

1. Appropriated by Coastal Zone Conservation Act of 1972 (Proposition 20).

2. Estimated income on the basis of initial Commission experience, which may not be sufficiently reliable for future projection because of uncertainty as to future building costs, economic conditions, and other factors that could affect the rate of building and thus of permit applications.

3. Includes funds for the State Attorney General for work on behalf of the Commission; these costs are not normally included in the budgets of other State General Fund Agencies.

## Projected Need for Supplemental Funds

	1972-73 (5 mo.)	1973-74	1974-75	1975-76	1976-77 (6 mo.)	TOTAL
Anticipated Expenditures	376,416	2,471,601	2,712,248	2,423,027	935,427	8,918,719
Anticipated Income	376,416	2,271,601	2,312,248	2,019,547	300,000	7,279,812
Deficit	0	200,000	400,000	403,480	635,427	1,638,907

These figures are necessarily drawn from the initial months of the work of the State and Regional Commissions. Because of uncertainties as to future rates of inflation, permit fee income, and other factors, they cannot be considered as more than careful projections on the basis of limited information.



## State and Regional Commissions

(as constituted February 28, 1974)

### NORTH COAST REGIONAL COMMISSION

Counties of Del Norte, Humboldt, Mendocino		John Mayfield, Jr. (C), Chairman
Mildred R. Benloff (A)	Cery Croder (S)	William McHugh (A)
Cmn. Richard L. Brown	Dr. Donald W. Hedrick (C)	Sup. Cory E. Ruzher
Cmn. Ward F. Falor	*Dwight May (S)	Cmn. Bernard Vaughn
Sup. Ted Calletti	Sup. Bernard McClendon	Executive Director: John Lehr

### NORTH CENTRAL COAST REGIONAL COMMISSION

Counties of Sonoma, Marin, San Francisco		Margaret Azevedo (A), Chairman
Cmn. Frank J. Egger	Cmn. Gregory Jones, Jr.	Sup. Robert Thellier
Phyllis Faber (S)	Dr. Bradford W. Lundborg (A)	Sup. Michael Wernum
Sup. Dianne Feinstein	*Sup. Robert Mendelsohn	Wanda Zankich (S)
Cmn. Leonard Crote	Meiville Owen (C)	Executive Director: Michael Fischer
Ellen J. Jehack (C)	Dr. Kenneth Stocking (C)	

### CENTRAL COAST REGIONAL COMMISSION

Counties of San Mateo, Santa Cruz, Monterey		Charles B. Kramer (C), Chairman
Ruth R. Andreas (S)	Victoria Orben (A)	Herbert Rhoads (A)
Julian Camacho (A)	Samuel H. Hallett (S)	Norman A. Walters (S)
Sup. Warren Church	*Sup. Philip W. Harry	Cmn. Ilona Weisreb
Sup. Corral F. Day	Cmn. James Hughes	Cmn. Loretta Wood
Cmn. Joseph Dolan	Frank J. Lodato (C)	Executive Director: Edward Y. Brown
	Cmn. Grace McCarthy	

### SOUTH CENTRAL COAST REGIONAL COMMISSION

Counties of San Luis Obispo, Santa Barbara, Ventura		J. Tim Terry (S), Chairman
Emmons Blake (C)	Robert Kallman (C)	Sup. Curtis Tunnell
Sup. Ralph R. Bennett	Sup. Elston L. Kidwell	Cmn. Derrill B. Wright
Allen S. Chittorman (A)	*Ira K. Laufer (S)	Cmn. Ernest Waldbreit
Gary Hart (A)	Cmn. Robert H. Newdell	Executive Director: Francis Buchter

### SOUTH COAST REGIONAL COMMISSION

Counties of Los Angeles, Orange		Dr. Donald B. Bright (C), Chairman
Sup. Ronald W. Coopers	Cmn. Louis R. Newell	Cmn. Russ Rabley
Dr. Kimmon C. Fay (S)	Donald W. Phillips (C)	Carmen Warschew (A)
*Sup. James A. Hayes	Dr. Robert F. Rooney (S)	Cmn. Dr. Donald E. Wilson
Cmn. Arthur J. Holmes	Judy Resener (A)	Executive Director: Capt. Melvin Carpenter

### SAN DIEGO COAST REGIONAL COMMISSION

County of San Diego		Dr. Malcolm A. Love (C), Chairman
Sup. Lou Conde	Cmn. F. Gilbert Johnson	Leslie Parker (A)
Cornelius Dutcher (S)	Evan V. Jones (C)	Cmn. Tom B. Pearson
*Jeffrey D. Frautschy (S)	Dr. Elmer Keen (A)	Sup. Lee R. Taylor
Cmn. Robert Frazier	Cmn. Roland M. McNeely	Executive Director: Thomas Crandall

### CALIFORNIA STATE COMMISSION

Melvin B. Lane (C), Chairman		
Fred Farr (S)	Sup. James A. Hayes	Bernard J. Ridder, Jr. (S)
Jeffrey D. Frautschy (S)	Ira E. Laufer (S)	Richard A. Wilson (A)
Ellen Stern Harris (A), Vice Chairman	Dwight May (S)	Executive Director: Joseph E. Bedovitz
Sup. Philip W. Harry	Sup. Robert Mendelsohn	Chief Planner: E. Jack Schoop
	Roger T. Osenbough (C)	

#### LEGEND:

County Supervisors (Sup.) and City Councilmen (Cmn.) are appointed by the Counties and Cities and the regional association of local governments. (C) Appointed by the Governor of California; (S) Appointed by the Senate Rules Committee; (A) Appointed by the Speaker of the Assembly. \* State Commission representative.

## APPENDIX F

PUBLIC LAW 92-583, 92D CONGRESS, S. 3507, OCTOBER 27, 1972



Public Law 92-583  
92nd Congress, S. 3507  
October 27, 1972

## An Act

86 STAT., 1280

To establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved June 17, 1966 (80 Stat. 203), as amended (33 U.S.C. 1101-1124), is further amended by adding at the end thereof the following new title:

Marine Resources and Engineering Development Act of 1966, amendment.

80 Stat. 990;  
84 Stat. 865.

## TITLE III—MANAGEMENT OF THE COASTAL ZONE

## SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

## CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that—

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone;

(b) The coastal zone is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation;

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion;

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations;

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values;

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate; and

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

## DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

## DEFINITIONS

SEC. 304. For the purposes of this title—

(a) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(b) "Coastal waters" means (1) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (2) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(c) "Coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(d) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(e) "Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set

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96 STAT. 1282

aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(f) "Secretary" means the Secretary of Commerce.

(g) "Management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(h) "Water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

(i) "Land use" means activities which are conducted in or on the shorelands within the coastal zone, subject to the requirements outlined in section 307(g).

#### MANAGEMENT PROGRAM DEVELOPMENT GRANTS

Sec. 305. (a) The Secretary is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;

(3) an inventory and designation of areas of particular concern within the coastal zone;

(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;

(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(c) The grants shall not exceed 66 $\frac{2}{3}$  per centum of the costs of the program in any one year and no state shall be eligible to receive more than three annual grants pursuant to this section. Federal funds received from other sources shall not be used to match such grants. In order to qualify for grants under this section, the state must reasonably demonstrate to the satisfaction of the Secretary that such grants will be used to develop a management program consistent with the requirements set forth in section 306 of this title. After making the initial grant to a coastal state, no subsequent grant shall be made under this section unless the Secretary finds that the state is satisfactorily developing such management program.

Limitation.

(d) Upon completion of the development of the state's management program, the state shall submit such program to the Secretary for

review and approval pursuant to the provisions of section 306 of this title, or such other action as he deems necessary. On final approval of such program by the Secretary, the state's eligibility for further grants under this section shall terminate, and the state shall be eligible for grants under section 306 of this title.

Grants,  
allocation.

(e) Grants under this section shall be allocated to the states based on rules and regulations promulgated by the Secretary: *Provided, however,* That no management program development grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(f) Grants or portions thereof not obligated by a state during the fiscal year for which they were first authorized to be obligated by the state, or during the fiscal year immediately following, shall revert to the Secretary, and shall be added by him to the funds available for grants under this section.

(g) With the approval of the Secretary, the state may allocate to a local government, to an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to a regional agency, or to an interstate agency, a portion of the grant under this section, for the purpose of carrying out the provisions of this section.

80 Stat. 1262;  
82 Stat. 208.  
42 USC 3334.

Expiration  
date.

(h) The authority to make grants under this section shall expire on June 30, 1977.

#### ADMINISTRATIVE GRANTS

Limitation.

Sec. 306. (a) The Secretary is authorized to make annual grants to any coastal state for not more than 66 $\frac{2}{3}$  per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) hereof. Federal funds received from other sources shall not be used to pay the state's share of costs.

Allocation.

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: *Provided, however,* That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

Program  
requirements.

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration

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Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

80 Stat. 1262;  
82 Stat. 208.  
42 USC 3334.

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

80 Stat. 1262;  
82 Stat. 209.  
42 USC 3334.

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section: *Provided*, That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

Program  
modification.

(g) The state shall be authorized to amend the management program. The modification shall be in accordance with the procedures required under subsection (c) of this section. Any amendment or modification of the program must be approved by the Secretary before additional administrative grants are made to the state under the program as amended.

Segmental  
development.

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs: *Provided*, That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

#### INTERAGENCY COORDINATION AND COOPERATION

Sec. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered. In case of serious disagreement between any Federal agency and the state in the development of the program the Secretary, in cooperation with the Executive Office of the President, shall seek to mediate the differences.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

Certification.

(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such

certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

Notification.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

42 USC 4231.

(e) Nothing in this title shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

Ante, p. 816.  
81 Stat. 485;  
84 Stat. 1676.  
42 USC 1857  
note.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such pro-

gram, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

#### PUBLIC HEARINGS

SEC. 308. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

#### REVIEW OF PERFORMANCE

SEC. 309. (a) The Secretary shall conduct a continuing review of the management programs of the coastal states and of the performance of each state.

Financial  
assistance,  
termination.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

#### RECORDS

SEC. 310. (a) Each recipient of a grant under this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this title.

#### ADVISORY COMMITTEE

Coastal Zone  
Management  
Advisory  
Committee,  
establishment,  
membership.

SEC. 311. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

Compensation,  
travel ex-  
penses.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including traveltime, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their

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homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

80 Stat. 499;  
83 Stat. 190.

#### ESTUARINE SANCTUARIES

SEC. 312. The Secretary, in accordance with rules and regulations promulgated by him, is authorized to make available to a coastal state grants of up to 50 per centum of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of the natural and human processes occurring within the estuaries of the coastal zone. The Federal share of the cost for each such sanctuary shall not exceed \$2,000,000. No Federal funds received pursuant to section 305 or section 306 shall be used for the purpose of this section.

Grants.

Federal share.

#### ANNUAL REPORT

SEC. 313. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year. The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; and (9) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

#### RULES AND REGULATIONS

SEC. 314. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

80 Stat. 383.

## AUTHORIZATION OF APPROPRIATIONS

Sec. 315. (a) There are authorized to be appropriated—

(1) the sum of \$9,000,000 for the fiscal year ending June 30, 1973, and for each of the fiscal years 1974 through 1977 for grants under section 305, to remain available until expended;

(2) such sums, not to exceed \$30,000,000, for the fiscal year ending June 30, 1974, and for each of the fiscal years 1975 through 1977, as may be necessary, for grants under section 306 to remain available until expended; and

(3) such sums, not to exceed \$6,000,000 for the fiscal year ending June 30, 1974, as may be necessary, for grants under section 312, to remain available until expended.

(b) There are also authorized to be appropriated such sums, not to exceed \$3,000,000, for fiscal year 1973 and for each of the four succeeding fiscal years, as may be necessary for administrative expenses incident to the administration of this title.

Approved October 27, 1972.

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LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1049 accompanying H.R. 14146 (Comm. on Merchant Marine and Fisheries) and No. 92-1544 (Comm. of Conference).

SENATE REPORT No. 92-753 (Comm. on Commerce).

CONGRESSIONAL RECORD, Vol. 118 (1972):

Apr. 25, considered and passed Senate.

Aug. 2, considered and passed House, amended, in lieu of H.R. 14146.

Oct. 12, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 44:

Oct. 26, Presidential statement.